Haryana State Electricity Board Vs Presiding Officer, Labour Court, Ambala and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 6, 2014

Acts Referred: Industrial Disputes Act, 1947 â€" Section 17-B, 25F, 25-F, 25-F(a), 25-F(b)

Citation: (2014) 141 FLR 757 : (2014) 2 LLJ 217 : (2014) 3 SCT 548

Hon'ble Judges: Gurmeet Singh Sandhawalia, J

Bench: Single Bench

Advocate: A.C. Jain, Advocate for the Appellant; Rajesh Gupta, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

G.S. Sandhawalia, J.

C.M. No. 1709 of 2014

1. The present application has been filed to recall the order whereby, the petition was dismissed for want of prosecution on 16.01.2014. Notice of

the application.

2. Mr. Rajesh Gupta, Advocate, counsel for respondent No. 2, who is present in Court accepts notice and states that he has no objection if the

application is allowed.

3. Accordingly, the application is allowed. Order dated 16.01.2014 is recalled and the main writ petition is restored to its original number.

C.W.P. No. 6532 of 1993

4. With the consent of counsel for the parties, the main case is taken up on Board and is taken up for hearing today itself.

5. Challenge in the present writ petition is to the award dated 30.12.1992 (Annexure P-3) vide which, the respondent No. 2-workman was

reinstated with all consequential benefits and continuity of service with full back wages w.e.f. 01.04.1987 i.e. date of demand notice.

6. The perusal of the paper book would go on to show that vide the demand notice dated 01.04.1987 (Annexure P-1), respondent No. 2-

workman raised his claim that he had joined services in July, 1980 and his services were terminated on 25.05.1984. The mandatory provisions of

Section 25-F of the Industrial Disputes Act, 1947 (in short ''the Act'') were not complied with and no notice was given and no retrenchment

compensation was paid. The principle of ""last come first go"" was not observed and accordingly sought reinstatement.

7. The defences taken by the petitioner-Board before the Labour Court was that the retrenchment had been made after following the mandatory

provisions and one month''s notice was served upon the workman vide Office Memo No. 5274 dated 23.04.1984 and retrenchment

compensation amounting to Rs. 345/- was offered. The workman had refused to accept the money order and the same had been received back. It

was pleaded that it was contract on daily wage basis and it was over in the evening on the same day and therefore, the reference was not

maintainable. It was pleaded that the principle of ""last come first go"" was duly complied with when the workman was retrenched and no junior

persons were retained.

8. The Labour Court, after taking into account the statement of the worker and the management witness Sh. Yash Kumar UDC and Brij Bhushan

UDC, came to the conclusion that the provisions of Section 25-F(a) had not been complied with. There was no evidence on record to show that

the retrenchment notice dated 23.04.1984 was served upon the workman and the workman had denied having received the notice. The

management witness Sh. Brij Bhushan, in his cross examination, had admitted that there was no evidence that the retrenchment notice Ex. M-2

was actually served upon the workman. The contents of the said notice were also examined and it was further held that there was no mention of

any specific amount, which was to be paid to him as retrenchment compensation. The management witness MW-1 Yash Kumar had deposed that

compensation amount of Rs. 450/- was sent to the petitioner by money order in July, 1984 whereas Brij Bhushan stated that an amount of Rs.

795/- was sent by money order on 23.05.1984. It was further noticed that the workman had worked from July, 1980 to 24.05.1984 and in view

of the provisions of Section 25-F(b) of the Act, the petitioner-Board was to pay 60 days'' pay since he had worked from July 1980 to

24.05.1984. The workman was drawing Rs. 25/- as wages and the retrenchment compensation thus came to Rs. 1,500/- whereas, according to

the management version, it was Rs. 345/-. Even as per the version of the two management witnesses, compensation was amount was Rs. 450/-

and total amount of Rs. 795/- was sent as compensation which was not adequate and not in conformity with Section 25-F(b) of the Act.

Accordingly, it was held that the termination of the services were not made in accordance with law.

9. Further on the question of juniors being retained, it was noticed that some workmen had joined after the joining of the petitioner who were still in

service and, therefore, the principle of ""last come first go"" u/s 25-G of the Act was not at all adopted by the management while terminating the

services of the workman. The issue of delay in raising the dispute was dealt with by granting hall back wages from 01.04.1987 i.e. the date of

demand notice.

10. The operation of the award was stayed on 02.06.1993 and the writ petition was admitted on 13.12.1993 and the stay granted was made

absolute. Thereafter, an application u/s 17-B of the Act came to be filed, which was allowed on 12.01.2007 whereby, the petitioner-Board was

directed to pay the last drawn wages on furnishing of affidavit that he was not gainfully employed.

11. Counsel for the petitioner-Board has submitted that if the amount of compensation was not correct, the workman could have agitated his claim

for the same and it would not be a ground to direct reinstatement. It is further submitted that there was delay in raising the dispute and, therefore,

the reference should not have been entertained.

12. On the other hand, counsel for the respondent submitted that due to no fault, he was wrongly terminated and the procedure was not followed

and juniors had been retained and he had been out of job since 1984.

13. After hearing counsel for the parties, this Court is of the opinion that the said argument of the Board whereby the Court has held that the

amount of compensation was not correct and that the workman could ask for the balance, is without any basis. The provisions of Section 25-F(a)

of the Act are mandatory and the employer is to give one month''s notice to the workman and also as per the provisions of Section 25-F(b) of the

Act, he has to be paid compensation which shall be equivalent to fifteen days'' average pay for every completed year of continuous service or any

part thereof in excess of six months. The salutary purpose of the Section was examined by a three Judge Bench of the Apex Court in The State

Bank of India Vs. Shri N. Sundara Money, and thereafter followed in Pramod Jha and Others Vs. State of Bihar and Others, . It was held that the

retrenchment compensation is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker

for the period which may be spent in searching for another employment. Payment of tender of compensation after the time when the retrenchment

has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public

policy behind would result in nullifying the retrenchment.

14. In view of the said observations, the argument raised by counsel for the petitioner deserves outright rejection. Recently, the Apex Court in

Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana), , while examining the issue of non-compliance of Section

25-F(b) of the Act, held as under:

13. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not

less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of

the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month''s notice in writing indicating the reasons

for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of

retrenchment, compensation equivalent to fifteen days'' average pay for every completed year of continuous service or any part thereof in excess of

six months. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the

retrenchment of an employee nullity - The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, , Bombay Union of

Journalists and Others Vs. The State of Bombay and Another, , Santosh Gupta Vs. State Bank of Patiala, , Mohan Lal Vs. Management of Bharat

Electronics Ltd., , L. Robert D''souza Vs. Executive Engineer, Southern Railway and Another, , Surendra Kumar Verma and Others Vs. Central

Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, , Gammon India Limited Vs. Niranjan Dass, , Gurmail Singh and

Others Vs. State of Punjab and Others, and Pramod Jha and Others Vs. State of Bihar and Others, . This Court has used different expressions for

describing the consequence of terminating a workman''s service/employment/engagement by way of retrenchment without complying with the

mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and

sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of

retrenchment without complying with the requirement of giving one month''s notice or pay in lieu thereof and compensation in terms of Section 25-

F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service

was not terminated.

14. The question whether the offer to pay wages in lieu of one month''s notice and retrenchment compensation in terms of Clauses (a) and (b) of

Section 25-F must accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a

tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in National Iron and Steel Co.

Ltd. and Others Vs. The State of West Bengal and Another, . The facts of that case were that the workman was given notice dated 15.11.1958

for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month''s wages in lieu

of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the

Additional Solicitor General that there was sufficient compliance of Section 25-F was rejected by this Court by making the following observations:

The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down

if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned counsel further argued that the Tribunal had gone

wrong in holding that the retrenchment was illegal as Section 25-F of the Industrial Disputes Act had not been complied with. Under that section, a

workman employed in any industry should not be retrenched until he had been given one month''s notice in writing indicating the reasons for

retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The

notice in this case bears the date November 15, 1958. It is to the effect that the addressee''s services were terminated with effect from 17th

November and that he would get one month''s wages in lieu of notice of termination of his service. The workman was further asked to collect his

dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25-F, had not been complied with

under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he

was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there

was no compliance with Section 25-F, we need not consider the other points raised by the learned counsel.

15. In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the

time of retrenchment, compensation computed in terms of Section 25-F(b).

16. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month''s time available at his disposal to search for

alternate employment, and so, either he should be given one month''s notice of the proposed termination or he should be paid wages for the notice

period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been

retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only

a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in

searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along

with one month''s notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment

and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the

retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and

a public policy behind it would result in nullifying the retrenchment.

17. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to

lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act.

15. After taking into consideration the above said principles, it was held that the compensation which was offered was after more than 3 months of

his termination and, therefore, there was non-compliance of Section 25-F of the Act. Resultantly, the appeal was allowed and the award passed

by the Labour Court was restored. The observations in Anoop Sharma v. Executive Engineer Public Health Division No. 1, Panipat (supra) are

directly applicable to the facts and circumstances of the present case in view of the fact neither notice nor the adequate amount of compensation,

which the workman was entitled to, was ever paid. A factual finding has also been recorded that juniors had been retained in service whereas, the

services of the workman were dispensed with thus violating Section 25-G of the Act. In such circumstances, scope of interference in the Award

passed by the Labour Court does not arise.

16. The argument of counsel for the Board that the workman has not contributed towards the Corporation for the last so many years and,

therefore, back wages from 01.04.1987 would gravely prejudice the Board, is without any basis. Due to the fault of the Board, the workman is

not to suffer and due to the non-compliance of the mandatory provisions, it is the employer who has to suffer.

17. On the issue of delay, it is settled principle that there is no limitation provided under the Act. However, if there is inordinate delay, in such

cases, this Court would step in to interfere. In the present case, the Labour Court has balanced the equities by granting back wages only from the

date of demand notice i.e. 01.04.1987 and not from 25.05.1984, when the alleged termination took place. Therefore, even on that account, there

is no scope for interference in the award. In view of the above, finding no merit in the present petition, the same is dismissed.