

(2009) 09 AHC CK 0176

Allahabad High Court

Case No: None

State Bank of Bikaner and Jaipur

APPELLANT

Vs

Anurag Sharma and Others

RESPONDENT

Date of Decision: Sept. 1, 2009

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2(oo)(bb), 25H

Citation: (2010) 3 AWC 3090 : (2009) 123 FLR 700 : (2010) 2 LLJ 251 : (2010) 5 SLR 358

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Tarun Agarwala, J.

Heard Shri Ashish Srivastava, the learned Counsel holding the brief of Shri Vipin Sinha, the learned Counsel for the petitioner and Shri Roop Narain, the learned Counsel for respondent.

2. A dispute was referred before the Industrial Tribunal with regard to the validity and legality of the termination of the services of the workers in question and further for not considering them for further employment u/s 25-H of the Industrial Disputes Act, 1947. The Industrial Tribunal, after considering the material evidence on record, held that the workers were employed for a limited period, and upon the expiry of the fixed term, their services came to an end and consequently no retrenchment compensation was payable in view of Section 2(oo)(bb) of the Industrial Disputes Act. The Tribunal, however, found that since the provisions of Section 25-H was violated, it therefore directed reinstatement but without any back wages. The petitioner, being aggrieved, has filed the present writ petition.

3. Admittedly, the termination of the services of the workers was not in violation of the provision of Section 25-F of the Industrial Disputes Act. The only question which is required to be considered is, whether the Tribunal was justified in directing

reinstatement on account of the provision of Section 25-H. For facility, Section 25-H of the Industrial Disputes Act is quoted hereunder:

25-H. Re-employment of retrenched workmen.--Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity (to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons.

4. The procedure is prescribed under Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as the Rules), which reads as under:

77. Maintenance of seniority list of workmen--The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.

78. Re-employment of retrenched workmen--(1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered thereof, to the address given by him at the time of retrenchment or at any time thereafter;

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the senior-most retrenched workmen in the list referred to in Rule 77 the number of such senior-most workmen being double the number of such vacancies:

Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen:

Provided also that if a retrenched workman, without sufficient cause being shown in writing to the employer, does not offer himself for re-employment on the date or dates specified in the intimation sent to him by the employer under this sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.

(2) Immediately after complying with the provisions of Sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to

whom intimation has been sent under that sub-rule.

Provided that the provisions of this sub-rule need not be complied with by employer in any case where intimation is sent to every one of the workmen mentioned in the list prepared under Rule 77.

5. The workers in paragraph 10 of their statement of claim, contended:

10. That, fresh hands were employed by the Bank after termination of services of the petitioners without affording them any opportunity, continuation in service or re-employment.

6. The contents of para 10 of the statement of claim of the workmen was specifically denied by the employers in paragraph 10 of their written statement, which is quoted hereunder:

10. That the contents of paragraph 10 of the Statement of claim are emphatically denied. It is submitted that the regular recruitment in the Bank's services are made by Recruitment Board after following the prescribed procedure which allots the selected candidates to all concerned Banks and the Bank has no choice except to appoint the persons selected by the Recruitment Board. This action of the Bank is not against the provisions of Sastry Award/Settlement or in violation of Section 25-H of the Industrial Disputes Act. It is submitted that the concerned workmen admittedly had not put in one year's continuous service within the meaning of Section 25-B of the Industrial Disputes Act, 1947. Section 25-G and 25-H form part of Chapter V A of the Industrial Disputes Act, 1947 and consequently the benefits thereof would be available to a person who becomes eligible u/s 25-F of the Act *ibid*. The provisions of Chapter V A of the Industrial Disputes Act do not apply in the present case. That a mere perusal of Sections 25-G and 25-H of the Industrial Disputes Act read with Rules 76, 77 and 78 of the Industrial Disputes (Central) Rule, 1957 will indicate that Sections 24-G and 25-H, in terms are applicable only in the case of a workmen who had been in continuous service for not less than one year. Admittedly, the workmen concerned were not such a workmen.

7. Apart from the aforesaid, no evidence was filed by the workers nor specific names of those persons was supplied who were appointed after the dispensation of the services of the workers. On the other hand, the persons who were appointed was as per regulations which has also not been disputed by the workers. Section 25-H read with Rules 77 and 78 only indicates that an offer is required to be made by the employers to the retrenched workers, and those workers who apply for re-employment would be given a preference over other persons. It does not mean that the retrenched workers will get an absolute right for re-employment. It is only a preferential right for re-employment which is hedged with certain conditions, viz., eligibility for holding the post in question. It does not mean that a workman is automatically granted employment on a post.

8. In the instant case, the Labour Court has found that there has been a valid termination and that there was no violation of Section 25-F. The Court further finds that there is nothing to indicate that there has been a violation of Section 25-H read with Rules 77 and 78, inasmuch as the onus was upon the workers to give proof about the alleged violation, which has not been done in the present case, and only a vague allegation was made. Further, there is nothing on the record to indicate that the workers were required to be given the preferential treatment as per the seniority list prepared under Rule 77 of the rules.

9. In my opinion, a bald allegation made in paragraph 10 of the statement of claim, which has been denied by the employers in para 10 of the written statement, will not allow the Industrial Tribunal to hold that there has been a violation of the provision of Section 25-H on the basis of surmises and conjectures. In the absence of any specific allegation, the Labour Court committed a manifest error in directing reinstatement of the workers for the alleged violation of Section 25-H.

10. In view of the aforesaid, the impugned award cannot be sustained and is quashed. The writ petition is allowed.