
Reeta Pandey Vs Industrial Tribunal (III) U.P. and Another

C.M.W.P. No. 39137 of 2000

Court: Allahabad High Court

Date of Decision: Nov. 18, 2004

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 " Section 25F, 4K, 6N

Citation: (2005) 5 AWC 4026

Hon'ble Judges: V.C. Misra, J

Bench: Single Bench

Advocate: K.P. Agarwal and Mahima Maurya, for the Appellant; P.S. Baghel, S.C., for the Respondent

Final Decision: Allowed

Judgement

V.C. Misra, J.

Heard Sri K. P. Agarwal, learned senior advocate assisted by Ms. Mahima Maurya, learned Counsel for the Petitioner and

learned standing counsel appearing on behalf of the Respondent No. 1. No one is present on behalf of Respondent No. 2.

2. This writ petition has been filed by the Petitioner challenging the impugned award dated 31.1.2000 (Annexure-1 to the writ petition) passed by

the Respondent No. 1-Industrial Tribunal (III) U.P., Kanpur, holding that the termination of the service of the Petitioner-workman as absolutely

valid and legal, she was not entitled to any relief or compensation.

3. The facts of the case in brief are that the Petitioner was in the employment of the Respondent No. 2-U.P. Small Industries Corporation Limited,

Industrial Estate, Kanpur, since 14.1.1988 and had been placed in the regular pay scale on 5.7.1988. She worked with the Respondent No. 2

continuously during the period 1988 to 1995 and was retrenched from service by the Respondent No. 2 vide its order dated 23.12.1995, without

compliance of the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). A dispute was raised

before the State Government and thereupon a reference was made by the State Government to the Respondent No. 1. u/s 4K of the Act to the

effect that whether disengagement/cessation from the employment of Smt. Reeta Pandey w.e.f. 23.12.1995 was proper and legal and, if so, to

what relief and from what date and to what other consequential benefits, the workman was entitled to. On this reference an Adjudication Case No.

45 of 1999 was registered before the Respondent No. 1.

4. The Respondent No. 1-Industrial Tribunal vide its impugned award dated 31.1.2000 (Annexure-1 to the writ petition) held that termination of

the service of the workman was absolutely valid and legal and she was not entitled to any relief or compensation. Feeling aggrieved, the Petitioner

filed the present writ petition before this Court.

5. The Petitioner challenged the impugned award dated 31.1.2000 (Annexure-1 to the writ petition) mainly on the grounds, inter alia, that the

cessation of employment of the Petitioner on 23.12.1995 was not in compliance with the provisions of Section 6N of the Act, which is pari-

materia with Section 25F of the Central Act and non-compliance of the mandatory conditions precedent, the retrenchment invalidated the

cessation of employment leading to the relief of reinstatement with continuity in service and with full back wages. Learned Counsel for the

Petitioner in support of his contention relied upon the decisions rendered in Workmen of Subong Tea Estate Vs. The Outgoing Management of

Subong Tea Estate and Another, ; The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, ; The State Bank of India Vs.

Shri N. Sundara Money, ; National Iron and Steel Co. Ltd. and Others Vs. The State of West Bengal and Another, and Hindustan Tin Works

Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, .

6. Learned standing counsel, Sri R. K. Awasthi, has submitted that the provisions of Section 25F are not mandatory but are directory and since

the Petitioner had been paid the retrenchment compensation even subsequently, it cannot be said that the provisions of Section 25F had been

flouted. In support of his contention, he has relied upon the decision of the Apex Court rendered in Bombay Union of Journalists and Others Vs.

The State of Bombay and Another, .

7. Learned Counsel for the Petitioner rebutted the contention of the learned standing counsel and has submitted that the above said decision does

not apply to the present case. The said decision was in respect with the matter covered by Section 25F(C) of the Act, in which the Apex Court

held that notice prescribed by Clause (C) of Section 25F of the Act is not mandatory and not a condition precedent for valid retrenchment.

8. I have looked into the decisions of the cases cited by the learned Counsel for the parties. In my view the decisions of the cases cited by the

Petitioner are applicable to the facts of the present case inasmuch as in Workmen of Subong Tea Estate (supra), the Apex Court held that the right

of the management to effect retrenchment cannot normally be questioned when a dispute arises before an Industrial Court in regard to validity of

any retrenchment, but it would be necessary for industrial adjudication to consider whether the impugned retrenchment was justified for proper

reasons and it would not be open to the management either capriciously or without any reason at all to say that it proposes to reduce its labour

force for no rhyme or reason. In *National Iron and Steel Co. Ltd. and Ors.* (supra), the Supreme Court has held that it is the duty of the employer

to pay one month's wages in lieu of notice to the workman forthwith. In the case of *National Iron and Steel Co. Ltd. and Ors.* (supra), wherein the

workman's services were terminated w.e.f. November, 17 and that he would get one month's wages in lieu of notice of termination of his service

and the workman was further asked to collect his dues from the cash office on November 20, 1958, or thereafter during the working hours. The

Apex Court held that, manifestly Section 25F 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. Learned Counsel for the Petitioner has further placed much reliance on the

decision of the case in *State of Bombay and Ors.* (supra), wherein the Apex Court has held that the requirement prescribed u/s 25F(b) of the Act

is a condition precedent for the retrenchment of the workman, and non-compliance of the said condition renders the impugned retrenchment invalid

and inoperative. Section 25F(b) of the Act provides that no workman shall be retrenched until the condition in question has been satisfied. The

decision cited by the learned standing counsel rendered in *Bombay Union of Journalists and Ors. v. State of Bombay and Anr.* (supra), does not

apply to the facts and circumstances of the present case.

9. In view of the above said facts and circumstances of the case and the settled law, I find that the Respondent No. 1 has erred in passing the

impugned award dated 31.1.2000 (Annexure-1 to the writ petition) and committed manifest error of law while holding that the retrenchment of the

workman-Petitioner was valid and legal and she was not entitled to any relief, as claimed by her. Accordingly, the impugned award dated

31.1.2000 (Annexure-1 to the writ petition) passed by the Respondent No. 1-Industrial Tribunal III, U.P. Kanpur, in Adjudication Case No. 45

of 1999 is hereby quashed. The writ petition is allowed. The matter is remanded back to the Industrial Tribunal-Respondent No. 1 to decide the

case afresh in accordance with law expeditiously, preferably within a period of three months from the date of communication of this order. There

will be no order as to costs.