
(2007) 12 DEL CK 0019

Delhi High Court

Case No: LPA No"s. 1284 and 1296 of 2007

India Trade Promotion
Organisation

APPELLANT

Vs

Workmen of ITPO

 Workmen of
ITPO Vs Management
of ITPO

RESPONDENT

Date of Decision: Dec. 20, 2007

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25F

Citation: (2008) 100 DRJ 541 : (2008) 117 FLR 611 : (2008) 2 LLJ 912

Hon'ble Judges: Dr. M.K. Sharma, C.J; Sanjiv Khanna, J

Bench: Division Bench

Advocate: Suman Jyoti Khaitan, P.S. Sudheer and Rishi Maheshwari, in LPA No. 1284/2007 and Varun Prasad, in LPA No. 1296/200, for the Appellant; Varun Prasad in LPA No. 1284/2007 and Suman Jyoti Khaitan, P.S. Sudheer and Rishi Maheshwari, in LPA No. 1296/2007, for the Respondent

Final Decision: Dismissed

Judgement

Mukundakam Sharma, C.J.

CM No. 14473/2007 in LPA 1296/2007

1. By this application, condensation of delay in filing the appeal has been prayed for. There is a delay of 12 days in filing the appeal. On going through the application, we find that the applicant has been able to make out sufficient cause for condensation of delay. Accordingly the application is allowed and the delay in filing the appeal stands condoned. The appeal is taken on record.

The application stands disposed of.

1. Both these appeals are similar in nature as they relate to the same judgment and order, Therefore we dispose of these appeals by this common order.

2. The workmen herein were employed with the India Trade Promotion Organisation (ITPO for short) as muster roll Beldars w.e.f. 1985. In the year 1987 certain regular and casual workers of ITPO went on strike. The striking employees approached the Supreme Court by filing a writ petition. The Supreme Court by judgment dated 26th September, 1989 directed reinstatement of 243 casual workers and further directed the ITPO to prepare a seniority list of the casual workers and also to formulate a scheme for regularisation. Pursuant to the said judgment, process of regularisation was undertaken and some employees were regularised. ITPO undertook a need based assessment and decided to retrench surplus employees. Vide notice dated 12th April, 1993 ITPO declared 111 employees, including the workmen herein, as surplus and ordered that their engagement shall cease on the expiry of seven days from the date following the publication of the said notice. The said notice further states that casual workers concerned shall collect their dues from the concerned officer on 19th April, 1993.

3. Aggrieved by the said order, the workmen herein raised an industrial dispute on the ground that ITPO had violated provisions of Section 25F(a) and (b) of the Industrial Disputes Act, 1947. Appropriate Government referred the said dispute for adjudication to the Labour Court. After hearing the parties and considering the evidence adduced by them, the learned Labour Court came to the conclusion that under the law, ITPO had a right to immediately retrench the workmen by tendering one month's salary in case of immediate retrenchment or after giving one month's notice and that since the ITPO had also offered something more than the retrenchment compensation, there was no illegality in the order of termination of the services of the workmen.

4. Aggrieved by the award of the Labour Court, the workmen approached the learned Single Judge by filing the writ petition. Before the learned Single Judge it was contended by the workmen herein that notice dated 12th April, 1993 was not in accordance with the mandatory requirement of Section 25F(a) of the Industrial Disputes Act inasmuch as instead of 30 days notice or salary in lieu thereof, only seven days' notice was issued by the ITPO which was not even served on the workmen and no salary in lieu of the notice was paid to them. Further it was contended that the notice dated 12th April, 1993 did not specify whether the dues offered included the amount as contemplated u/s 25F(b) of the Act, which is a condition precedent. Another contention was that the said notice was not served on the appellants individually and Therefore the notice could not be said to have been duly served on the appellants. ITPO rebutted all the contentions of the workmen.

5. After hearing the learned Counsel for the parties and on perusal of the records the learned Single Judge held that there was non-compliance of the provisions of 25F(a) of the Act inasmuch as the workmen were given only seven days notice instead of the

mandatory 30 days" notice. It was also held that provisions of Section 25F(b) were also not complied with. The learned Single Judge set aside the award dated 27th January, 2005 holding that termination of the workmen was illegal and unjustified. As the workmen had failed to contribute to the ITPO for almost 14 years from the date of their termination, no order for their reinstatement was passed but in lieu thereof ITPO was directed to pay a lump sum amount of Rs. 1 lac each to the workmen.

6. Aggrieved, both ITPO and the workmen challenged the judgment and order of the learned Single Judge by filing two different appeals on which we have heard the counsel appearing for the parties.

7. Though both the parties have assailed the judgment of the learned Single Judge on various grounds, the main thrust of their contentions revolved around compliance of Section 25F of the Industrial Disputes Act. Learned Counsel for the workmen contended that provisions of Section 25F(a) of the ID Act were not complied with inasmuch as the notice dated 12th April, 1993 informed the workmen that their services would cease after seven days from that date and provisions of Section 25F(b) was violated as the said notice did not specify the dues offered include the amount as contemplated under the said Section. The contention was that it was mandatory for the management to give one month's notice or one month's salary in lieu thereof to the workmen before retrenching/terminating their services. It was also contended that even the notice dated 12th April, 1993 was not served on them individually and it was only posted on the notice board of the ITPO Office. The stand of the ITPO on the other hand was that there was no need for them to comply with the provisions of Section 25-F of the Act but still they complied with the said provisions by pasting the notice on the notice board. The grievance of ITPO in their appeal is mainly related to the award of compensation of Rs. 1 lac, whereas the grievance of the workmen was that compensation of Rs. 1 lac to each of the workmen was a very meagre amount.

8. The relevant portion of the termination notice dated 12th April, 1993 reads as under:

It is hereby notified that the ITPO Management has made the need-based assessment of staff requirement. Based on such assessment, the following casual workers are declared as surplus and their engagement shall cease on the expiry of seven days from the date following the publication of this Notice....

...The casual worker concerned shall collect their dues from Room No. 141, Annexe Building, Pragati Bhawan, Pragati Maidan, New Delhi, on 19th April, 1993.

In our opinion the learned Single Judge has rightly held that the termination notice did not meet the mandatory statutory requirements of Section 25-F of the Act. The said Section is reproduced below for the sake of convenience:

25F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN. - No workman employed in any industry who has been in continuous service for not less than one year

under an employer shall be retrenched by that employer until - (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, 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; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

It is well settled that Clauses (a) and (b) of Section 25-F are mandatory and must be strictly complied with whereas Clause (c) is directory (see [Gurmail Singh and Others Vs. State of Punjab and Others](#)). In case of failure to comply with the mandatory provisions the retrenchment order is illegal and void and necessary consequences flow. In the case of *Sain Steel Products v. Naipal Singh* AIR 2001 SC 2401 the Supreme Court after referring to two earlier judgments in the case of [Strawboard Manufacturing Co. Vs. Gobind](#), and [Management of Delhi Transport Undertaking Vs. Industrial Tribunal, Delhi and Another](#), has observed as under:

However, a reading of the letter dated 8.9.1975 on which reliance is placed, it is clear that all that is stated is to ask the respondent to collect whatever is due to him but it does not spell out whether it included the amount as contemplated u/s 25-F or not. In these circumstances we cannot take this sentence to be making an offer in terms of Section 25-F of the Act to comply with the terms thereof. Hence, the view taken by the Labour Court as affirmed by the High Court stands to good reason and it does not call for any interference at our hands.

This judgment of the Supreme Court and some other cases were examined and explained in [Pramod Jha and Others Vs. State of Bihar and Others](#). It was explained that in the case of Gurmail Singh (supra) demand drafts in respect of individual employees were dispatched in time so as to reach the Divisional/Sub-Divisional Officer well in advance of the expiry of the notice period as the workers were spread all over the State and there was some difficulty in making available compensation at the door step of each of the employee. It was not alleged that the bank drafts were not of the correct amount and as such it was held that there was sufficient compliance of Section 25-B of the Act. The Court also noticed the two following objectives of Section 25-F:

10. ...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 25-F 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.

In Delhi Transport Undertaking(supra) it was observed that tender of the amount of retrenchment compensation before order of dismissal become effective is mandatory and sufficient compliance.

9. In view of the above, we entirely agree with the findings of the learned Single Judge that the appellant has not complied with Section 25-F Clause (a) and (b). Not only the notice dated 12.4.1993 was seven days notice, the same was never served upon any of the employees. There is no material to suggest that the retrenchment compensation was tendered and offered to the employees. The learned Single Judge has referred to the counter affidavit filed by the appellant management in which it was categorically stated that the workmen were duly served but they did not prove and support the above statement by bringing any material or evidence on record. Before the Labour Court the stand taken by the management was that putting up notice on the notice board was sufficient.

10. We note that Mr. K.S. Dabas, Deputy General Manager in his cross examination had stated that he could not trace the record whether the notices were sent to the workmen by registered A/D. Before us stand of the ITPO was that they were not having addresses of all employees. We find from the award dated 27th January, 2005 that learned Labour Court noted the statement made on behalf of ITPO that notice and compensation amount could not be sent to the workmen in absence of postal address. It cannot be believed that an established organisation like ITPO employs people without having their addresses. It was contended by the workmen that the management had proceeded on the wrong premise that the workmen were employed as daily rated workers on casual basis and Therefore there was no requirement of serving individual notices upon them and since the notice was put up on the notice board, the mandate of the Act had been fulfilled .In effect ITPO could not support their statement that notice dated 12th April, 1993 was served on the workmen and, Therefore, we uphold the conclusion of the learned Single Judge that provisions of the Act was not complied with.

11. The workmen were retrenched pursuant to the need based assessment conducted by the ITPO in which the workmen were declared surplus. Since they have been found surplus, as observed by the learned Single judge, it would not be proper to foist the workmen back on the management by directing their reinstatement. So far as the contention with regard to back wages are concerned, settled law requires the workmen to raise a specific plea either in the statement of claim or in their affidavit that they were not gainfully employed after their termination. The workmen herein had not raised any such averment in their statement of claim. Even the contention that such a law was developed only recently and was not in practice when the statement of claim was filed was negated by the learned Single Judge holding that even in writ petition no averment that they were not gainfully employed during the interregnum was raised by the workmen.

12. On the question of relief which the workmen are entitled to, it may be noticed that the workmen have not been working with the appellant since 12.4.1993. Fourteen years have since gone by. It is a case of the appellant management that they do not require the said workmen as the organisation is already over staffed and is facing competition from private players who have set up similar exhibition grounds, where operational costs are much lower. It is stated that the management cannot bear the burden of extra and surplus labour force. In similar circumstances in [Haryana State Electronics Development Corporation Ltd. Vs. Mamni](#), and [Nagar Mahapalika \(Now Municipal Corpn.\) Vs. State of U.P. and Others](#), the Supreme Court has held that instead of granting relief of reinstatement with back wages and continuity of service, some compensation can be granted.

13. For long 14 years the workmen were out of work from ITPO and thus they were not contributing to the ITPO during these years. Annexure L-3 to the appeal is a chart showing total gratuity payable to the workmen as on the date of their retrenchment along with interest at 9% up to 30th September, 2007. Except for one amount all other amounts are below Rs. 10,000/-. Considering the facts and circumstances of the case we feel that a lump sum payment of Rs. 75,000/- to each of the workmen as compensation in lieu of reinstatement would be fair enough to meet the interest of justice. It is ordered accordingly. The said amount shall be paid within four weeks from today failing which it will carry interest @ 9% from the date of the impugned order till actual payment.

14. With the above modification, we uphold the impugned judgment and order passed by the learned Single judge. We find no merit in these appeals and the same are dismissed. We, however, make it clear that the present order is passed in the background facts of this case and for the reasons stated herein, which are peculiar to the case in hand.