
Rajinder Singh Chauhan and Others Vs State of Haryana and Others

Civil Appeal No. 302 of 2004

Court: Supreme Court of India

Date of Decision: Nov. 21, 2005

Acts Referred:

CONFED Staff Service Rules, 1975 "Rule 3(b)#Factories Act, 1948 "Section 2, 2(1)#Industrial Disputes Act, 1947 "Section 2, 25F, 25K, 25L, 25N#Mines Act, 1952 "Section 2#Plantations Labour Act, 1951 "Section 2(f)

Citation: (2005) 85 DRJ 139 : (2006) 108 FLR 1 : (2005) 10 JT 25 : (2006) 1 LLJ 303 : (2006) 1 RLW 308 : (2005) 9 SCALE 428 : (2005) 13 SCC 179 : (2006) SCC(L&S) 739 : (2006) 2 SLJ 26 : (2006) 1 UPLBEC 844

Hon'ble Judges: R. V. Raveendran, J; Arijit Pasayat, J

Bench: Division Bench

Advocate: U.S. Chaudhury and Sunita Sharma, for the Appellant; Praveen Kumar Rai, Shibashish Misra, Ajay Siwach, T.V. Geroage and Kailash Chand, for the Respondent

Final Decision: Allowed

Judgement

Arijit Pasayat, J.

Appellants call in question legality of the judgment rendered by a Division Bench of the Punjab and Haryana High Court

holding that the appellants' stand about applicability of Section 25N of the Industrial Disputes Act, 1947 (in short the "Act") was not correct.

2. Controversy lies within a narrow compass.

Appellants were employees of the Haryana State Federation of Consumers Co-operative Wholesales Stores Limited (in short the "CONFED"),

fourth respondent herein. The service conditions of its employees are covered by CONFED Staff Service Rules, 1975 (in short the "Rules"). On

account of continued financial losses, a restructuring plan for gainful employment for employees was prepared. It was noted that Retail Outlets (in

short the "ROL") were causing huge loss to the organization. Therefore, it was decided that all ROL should be closed being financially non-viable.

Retrenchment compensation in terms of Section 25F of the Act was paid. In the retrenchment order it was specifically stated as follows:

It is made clear that employees of CONFED from where the retrenchment is being effected are not covered by Chapter V-B of the Industrial

Dispute Act, 1947, necessitating any permission u/s 25N of the said Act. Therefore the retrenchment is being effected in accordance with Chapter

V-A by employing with Section 25F and other provisions of the said Chapter.

3. Questioning the retrenchment, writ petitions were filed before the High Court taking the stand that provisions of Section 25N and not Section

25F were applicable and in any event the appellants were entitled to the benefit in terms of Rule 35(b) of the Rules. High Court did not find any

substance in the stand and dismissed the Writ Petitions holding that there was compliance with the requirements of Section 25F(b) of the Act.

4. According to the learned counsel for the appellants the High Court has erroneously held that Section 25N has no application. Even otherwise, it

was contended that the appellants were entitled to the benefits available under Rule 35(b).

5. It was in this context submitted by the learned counsel for the appellants that after completion of the probation period, the appellants had

become permanent employees and, therefore, they were governed by the Rules and the benefits under Rule 35(b) were clearly applicable.

In response, learned counsel for the respondents submitted that the High Court's view is in order.

6. In order to appreciate rival submissions the relevant provisions need to be noted. Section 25F, 25K, 25L and 25N of the Act read as follows:

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).

25F: Application of Chapter V-B: (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a

seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average

per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the

decision of the appropriate Government thereon shall be final.

25L: For the purpose of this chapter, - (a) "Industrial Establishment"" means:

(i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948(63 of 1948);

(ii) a mine as defined in clause (j) of sub- section(1) of Section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause(ii) of clause (a) of Section 2 ;

(i) in relation to any company in which not less than fifty-one percent of the paid up share capital is held by the Central Government, or

(ii) in relation to any corporation (not being a corporation referred to in sub-clause (i) of clause (a) of Section 2) established by or under any law

made by Parliament,

the Central Government shall be the appropriate Government.

25N: CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN:

(1) No workman employed in any industrial establishment to which this Chapter applies, 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 three months" 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; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official

Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2). An application for permission under sub- section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the

intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making

such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons

interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the

workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of

such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not

communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such

application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

Xxx xxx xxx

(7). Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such

retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be

entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

Xxx xxx xxx

(9). Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted

under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this

section shall be entitled to receive, 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.

7. Section 25F appears in Chapter V-A of the Act which relates to lay-off and retrenchment. Section 25F, 25L and 25N appear in Chapter V-B

which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. In other words Chapter V-A deals with

the general provisions relating to lay-off and retrenchment, while special provisions have been made for certain establishments covered by Chapter

V-B. Section 25N refers to workman in an industrial establishment. The expression "'Industrial Establishment'" is defined in Section 25L, which

means a factory or a mine or a plantation. Admittedly, the employer is not covered by the definition of the "'Industrial Establishment'". Therefore, the

High Court was right in holding that Section 25N has no application.

There is no dispute that the requirements of Section 25F have been complied with by the employer.

8. The residual question is whether any benefit was to be extended under Rule 35. Rule 4, 10(5&6) and 35(b) of the Rules read as follows:

Rule 4 (a) "'Permanent'" employee means an employee who has been continued on vacant permanent post. The staff of the federation shall be

classified into the following:

1. Class-I Managing Director, Addl. Managing Director

2. Class-II Business Manager, Accounts officers, general Manager,
establishment officer and Assistant Manager.

3. Class-III Accountants, Assistants, purchase and Sale Assistant

Accounts Assistant, Storekeepers, Cashiers, Clerks,

Stenographers/Steno-typists and Salesmen.

4. Class-IV Driver, Peons, Daftri, Chowkidar and

Sweepers.

4(b). "Probationer" means an employee who is provisionally employed to fill a permanent vacancy of post and has not been made permanent or

confirmed in services. The probation period will be 12 months for all the posts of Class I, II, III which may further be extended by such time as

deemed fit, but in no case it will exceed 24 months, in all. The probation period for Class-IV shall be 6 months which may further be extended by

such time as may be deemed fit but in no case total period of probation shall exceed 12 months.

4(c). "Temporary" employee means an employee who has been appointed for a limited period for work which is of an essentially temporary

nature.

4(d). An "Apprentice" means a learner who is given a nominal stipend during the period which will ordinarily be of 6 months before he is taken up

as a temporary employee.

4(e). Every employee shall be given a written order regarding his appointment, confirmation, promotion, transfer and ending of service as the case

may be.

Rule 10 (5): If the work and conduct of an employee during the period of probation is found satisfactory, he will be confirmed from the date of

completion of the probation period.

10(6). No employee will be deemed to have been confirmed in the federation service unless specific orders in this regard are issued. The

appointing authority shall have to take a decision regarding confirmation or reversion or removal of a probationer within the prescribed period of

probation.

35(b). Confirmed employee shall be entitled to one month's pay and allowance for every completed year of service. In addition to this, they will

also be entitled to such pay and allowance as may be due to them on account of accumulated earned leave upto the maximum of one month.

9. Rule 35(b) inter-alia provides that confirmed employees shall be entitled to one month's pay and allowance for every completed year of service

on retrenchment of service. In addition they are entitled to pay and allowance as may be admissible to them on account of accumulative earned

leave upto the maximum of one month.

10. The stand of the respondents was that the appellants were not confirmed employees. The appointment order of each of the appellants contains

the stipulations which are as follows:

1. Your appointment as Sales man is purely temporary.

2. During the period of probation, your services are liable to be terminated without giving any notice or assigning any reason.

3. You shall be governed by the terms and conditions contained in the Staff Service Rules of the Federation, amended from time to time.

11. This is a case where the period of probation is fixed having regard to Rule 4(b) read with Rule 10 as quoted above. Rule 10(6) no doubt

provides that no employee shall be deemed to have been confirmed in the service unless specific order in this regard is issued. Relying on this

provision, learned counsel for the fourth respondent submitted that there was no specific orders of confirmation and, therefore, the appellants

should be deemed to have continued as probationers till the date of termination of their services. A similar stand was considered in Om Prakash

Maurya v. U.P. Co-operative Sugar Factories Federation, Lucknow and Ors. (AIR 1986 SC 1844) . A Constitution Bench of this Court in The

State of Punjab v. Dharam Singh (AIR 1968 SC 1210) noted as follows:

Where as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended and an

employee appointed or promoted to a post on probation is allowed to continue in the post after completion of the maximum period of probation

without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an

implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case,

it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has

been confirmed in the post by implication.

12. In High Court of M.P. through Registrar and Ors. v. Satya Narayan Jhavar (2001 (7) SCC 161) , this Court categorised the provisions for

probation as follows:

The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the

subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One

line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also

conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or

extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the

period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a

maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the

officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of

termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same

requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In

such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person

concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.

13. In above view of the matter, the stand of the appellants that they were deemed to have been confirmed at the end of 24 months and they were

permanent employees is in terra firma. "Salesmen" belong to Class III of the category of permanent employees. The definition of ""Probationer

given in Rule 4(b) fully supports the appellants' stand that the probation period shall not exceed 24 months in all. Therefore as was held in Om

Prakash's case, Satya Narayan Jhavar's case and Dharam Singh's case (supra) the appellants inferentially have to be treated as permanent

employees, and consequently the benefits under Rule 35(b) were available to them. But the same shall not be in addition to what is payable u/s

25F. The amount which is higher of the two i.e. of Section 25F or Rule 35(b) shall be paid to the appellants. If any amount has already been paid

in terms of Section 25F the same shall be adjusted while making the payment under Rule 35(L), which shall be made within three months. The

appeal is allowed to the aforesaid extent. No costs.