

(2009) 06 AP CK 0002

Andhra Pradesh High Court

Case No: Writ Petition No. 6352 of 2008

S. Narayana Rao

APPELLANT

Vs

K.C.P.S.I.C. Limited and Another

RESPONDENT

Date of Decision: June 12, 2009**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 25F, 25O, 2A(2)

Citation: (2009) 3 APLJ 15 : (2009) 123 FLR 59**Hon'ble Judges:** B. Seshasayana Reddy, J**Bench:** Single Bench**Advocate:** M. Pitchaiah, for the Appellant; K. Srinivasa Murthy and G.P. for Labour, for the Respondent**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

Seshasayana Reddy, J.

Petitioner S. Narayana Rao joined as daily wage labourer in the year 1992 in K.C.P.S.I.C. Ltd., Lakshmipuram-1st respondent. He was designated as Assistant in sugar sales department and did clerical work till 14.06.2001. He was transferred to workshop of the 1st respondent at Tada, Nellore District on 15.06.2001. He worked there for about an year. Thereafter, the 1st respondent issued retrenchment order dated 09.07.2002 alleging that the workshop at Tada proved futile and incurred huge losses to the tune of Rs. 3.5 to 4.00 Lakhs per month. He made representation to the 1st respondent contending that his retrenchment on the ground of closure of workshop at Tada is not legal since his initial engagement was in KCPSIC Ltd, Lakshmipuram and not at Tada workshop. Since the 1st respondent did not respond to his representation, he filed a petition u/s 2-A(2) of the Industrial Disputes Act, 1947 (for short, "the I.D. Act") before the Labour Court, Guntur. The Labour Court entertained the petition as I.D. No. 135 of 2002 and issued notice to the 1st

respondent. The 1st respondent entered appearance and filed counter contending that the petitioner received retrenchment compensation and workshop at Tada came to be closed because of its non-viability.

2. On behalf of the petitioner-workman, he got himself examined as WW.1 and marked 12 documents as Exs.W.1 to W.12. On behalf of the 1st respondent, one K. Krishna, was examined as MW.1 and 3 documents were marked as Exs.M1 to M3. The Labour Court, framed the following issues for consideration:

1) Whether the retrenchment order is in accordance with the provisions of the I.D. Act?

2) Whether the petitioner is entitled for the relief as prayed for?

The Labour Court, on considering the evidence brought on record and on hearing the counsel appearing for the parties, came to the conclusion that the retrenchment of the petitioner-workman is not in accordance with the provisions of Sections 25-F and 25-O of the I.D, Act. While recording so, the Labour Court proceeded to award compensation instead of reinstatement. The Award passed by the Labour Court to the extent of not granting reinstatement is assailed by the petitioner/workman in this writ petition.

3. Heard learned Counsel appearing for the parties.

4. Learned Counsel appearing for the petitioner submits that the Labour Court having recorded a finding that the retrenchment is not in accordance with the provisions of Sections 25-F and 25-O of the I.D. Act, committed serious error in not granting reinstatement and instead awarding a paltry sum of Rs. 20,000/- as compensation.

5. Learned Counsel appearing for the 1st respondent submits that the Labour Court having taken note of the fact that the 1st respondent reduced the size of workers from 600 to 350 by introducing V.R.S., directed the 1st respondent to pay compensation of Rs. 20,000/- in lieu of reinstatement and the award passed by the Labour in the given facts and circumstances of the case cannot be said to be unjustified.

6. The question which arises for consideration in this writ petition is, whether the Labour Court is justified in ordering compensation in lieu of reinstatement?

7. While retrenchment, in violation of Section 25-F, would render termination illegal and ab initio void, it would not automatically result in reinstatement of the workman with full back wages. Industrial Tribunals/Labour Courts, for just and valid reasons, have the discretion to award compensation in lieu of reinstatement. The Supreme Court in [Workmen of Coimbatore Pioneer "B" Mills Ltd. Vs. Presiding Officer, Labour Court, Coimbatore and Ors](#), on refusing to direct reinstatement, increased the compensation, payable to the workmen in lieu of reinstatement, from two months"

wages, as directed by the Division Bench of the Madras high Court, to four months' wages. In [Gujarat State Road Transport Corpn., and another Vs. Mulu Amra](#), the Supreme Court directed payment of lump-sum compensation of Rs. 75,000/- in lieu of reinstatement, since the workman had been dismissed more than 14 years prior to the date of its order. In [Rolston John Vs. Central Government Industrial Tribunal-cum-Labour Court and others](#), the Supreme Court held that retrenchment of the workman was in contravention of Section 25-F of the I. D. Act and void and ineffective. However, keeping in view the facts and circumstances of the case, the Supreme Court did not consider it appropriate to grant the relief of reinstatement and directed that, in full and final settlement of all claims of the workman and in lieu of reinstatement and consequential benefits, the employer shall pay compensation of Rs. 50,000/- to the workman and on such payment the matter would stand concluded between the parties. In *Rattan Singh v. Union of India*, (1997) 11 SCC 396 the Supreme Court held that protection of Section 25-F of the I.D. Act could not be denied to the daily rated worker. While setting aside the order of termination of services of the workman, on the ground of violation of Section 25-F of the I.D. Act, the Supreme Court was not inclined to direct reinstatement since nearly 20 years had elapsed from the date on which the services of workman were terminated and directed that a consolidated sum of Rs. 25,000/- be paid to the workman as compensation, in lieu of back wages and reinstatement, and in full and final settlement of all claims of the workman. In *Sain Steel Products v. Naipal Singh* 2001 (4) ALD 61 (SC) : AIR 2001 SC 2401 the Labour Court, on finding that termination of the services of the workmen was without complying with Section 25-F of the I. D. Act and was therefore illegal, directed reinstatement of the workmen with back wages at the minimum rate of wages till the date of his reinstatement. The Supreme Court, while confirming the award of the Labour Court, considered the fact that the workman had not been in employment for more than 25 years, it would not be proper to put him back into service and instead some reasonable compensation could be paid to the workman in lieu of back wages and reinstatement. A sum of Rs. 50,000/- was directed to be paid as compensation in lieu of reinstatement.

8. Learned Counsel appearing for the petitioner submits that the petitioner is entitled for Rs. 8,40,633/- in lieu of reinstatement. Learned Counsel placed on record a calculation sheet indicating the wages, special packages, arrears under Wage Board, Bonus, 45 days wages per year and gratuity for the period from September, 2002 to April, 2009. He also placed reliance on the judgment of the Supreme Court in *Chandu Lal v. Pan American World Airways* (1985) 2 S.C.C. 727. Much emphasis has been laid on Para.10 of the judgment, which reads as hereunder:

10. The quantum of compensation has now to be ascertained. Ordinarily, the appellant would have gone back into service with full back wages. Admittedly he has been out of employment from March 1974. If he had gone back into service he would have been entitled to back wages of a little more than 11 years. In computing compensation this aspect has to be kept in view. If he was restored to service he

would have been assured of employment for a further term of ... years. Keeping this as also other relevant aspects in view, we quantify the compensation payable to the appellant at Rs. 2 lacs. In almost similar circumstances in respect of two employees working under the Lufthansa German Airlines, compensation of Rs. 2 lacs for each worker was fixed by this Court in Civil Appeal No. 650 of 1982 disposed of by us on April 9, 1985. Counsel for the appellant has undertaken to file a statement showing the spread-over of the compensation from the date of the order of termination of service till the end of the present financial year, within a week from today. After the statement is filed the same be placed for further directions.

9. Learned Counsel appearing for the 1st respondent submits that the calculation sheet placed on record by the petitioner has no basis and it is merely a guess work.

10. The Labour Court recorded a finding on Issue No. 1 that retrenchment of the petitioner/workman is not in accordance with Sections 25-F and 25-O of the I.D. Act. Having recorded the said finding on Issue No. 1, the Labour Court proceeded to order for payment of compensation instead of reinstatement. It is pertinent to note from the evidence of MW.1 that the 1st respondent establishment downsized the number of workers from 600 to 350 while introducing V.R.S. The petitioner worked in the 1st respondent establishment from 1992 to 2002 i.e. for about 10 years. He received Rs. 60,000/- as retrenchment compensation. Nearly seven years have elapsed from the date of retrenchment as on this day. In the given facts and circumstances of the case, the award of compensation in lieu of reinstatement is justified. What would be the compensation? again is a question, which needs to be examined. The Labour Court awarded Rs. 20,000/- as compensation in lieu of reinstatement. The petitioner served in the 1st respondent establishment for about 10 years and he received Rs. 60,000/- as retrenchment compensation. Keeping in view the facts and circumstances of the case, I am inclined to increase the compensation from Rs. 20,000/- to Rs. 1,00,000/- in lieu of reinstatement.

11. Accordingly, the Writ Petition is disposed of enhancing the compensation to Rs. 1,00,000/- (Rupees one lakh only) from Rs. 20,000/- (Rupees Twenty thousand only) as awarded by the Labour Court in lieu of reinstatement. The 1st respondent is directed to pay the said amount to the petitioner within four weeks from the date of receipt a copy of this Order, failing which, the said amount shall carry interest at the rate of 9% p.a. from the date of the order. No costs.