Maheshwar Thakur Vs Union of India (UOI) and Others

Court: Calcutta High Court

Date of Decision: Feb. 18, 1978

Acts Referred: Industrial Disputes Act, 1947 â€" Section 2, 25F

Citation: (1978) 2 LLJ 379

Hon'ble Judges: G.N. Roy, J

Bench: Single Bench

Judgement

G.N. Ray, J.
The petitioner in the instant Rule was engaged as a casual porter on a daily rate of Rs. 2 vice Khudu Ram Misir expired. On

completion of six months as casual labourer, the petitioner was given a scale of Rs. 70-85. The selection test was held by the Recruitment

Selection Board for regular absorption of the porter but the petitioner was not selected by the said Board. The Assistant Personal Officer,

Headquarter thereafter issued a memo terminating the service of the petitioner with 30 days notice and it was stated in the said notice that the said

order of termination would take effect from May 14, 1968. Before the expiry of the said period of notice the petitioner challenged the legality and

validity of the order of termination in a writ proceeding before this Court whereupon a Rule being Civil Rule No. 4878 (W) of 1968 was issued.

The aforesaid Rule was ultimately discharged by this Court on January 18, 1973 and the petitioner preferred appeal to this Court against the said

judgment discharging the Rule being F.M.A. No. 191 of 1973. An interim order was passed in the said Rule, as a result of which the Railway

authorities could not give effect to the said order of termination. In terms of the interim order passed in the Rule and also in the appeal, the

petitioner was allowed to continue in service and was also allowed to receive his wages for the period the petitioner would serve the Railway

Department. It may be stated in this connection that during the continuance of the service of the petitioner in terms of the aforesaid interim orders

passed in the rule and the appeal, the petitioner was allowed to draw his salaries in the revised pay scale and was also given annual increment.

Ultimately on July 2, 1974 the said F.M.A. 191 of 1973 was dismissed on a finding that there was no defect in the said notice of termination dated

April 15, 1968. It appears that even after the disposal of the said appeal, the Railway authorities did not immediately issue any notice on the

petitioner but only on June 11, 1975, the impugned notice was issued to the effect that earlier on April 15, 1968 a notice terminating the service

was issued to the petitioner but because of the order of injunction granted by this Court in the writ petition, the petitioner was allowed to work but

as the Civil Rule and the appeal arising from the said Rule had been dismissed by this Court the petitioner''s service stood terminated by virtue of

the said notice of termination dated April 15, 1968 and the petitioner was directed to cease work with effect from the said date, i.e. June 11, 1975

(A/N).

2. In the instant Rule the legality and validity of this subsequent notice has been challenged. Mr. Ganguly, the learned advocate appearing for the

petitioner contended that the petitioner was a casual labour and after completion of service for more than six months continuously the petitioner

attained the status of a temporary worker in the Railway Administration. Mr. Ganguly contended that the Railway authorities were entitled in

appropriate cases to terminate the service of a temporary worker but they were bound to follow the mandatory provisions of Section 25F of the

Industrial Disputes Act for giving effect to any order of termination. Mr, Ganguly contended that in the instant case, no retrenchment compensation

in terms of Clause (b) of Section 25F of the Industrial Disputes Act having been offered by the Railway Administration there was no valid

termination of the service of the petitioner and the petitioner must be deemed to be in the service of the Railway Administration as before. For the

purpose of appreciating the contention of Mr. Ganguly the provisions of 25F of the Industrial Disputes Act are set out hereunder :

25F Conditions precedent to retrenchment of workmen-No workmen employed in an industry who has been in continuous service for not less than

one year under an employer shall be retrenched by the employer until-

(a) The workman has been given one month''s notice in writing indicating the reasons for retrenchment and the period of the notice has expired or

the workman has been paid, in lieu of such notice, wages for the period of the notice :

provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service ;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen day''s 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).

3. It thus appears that no employer shall be retrenched who had been employed in an Industry continuously for not less than a year, if the said

workman had not been given one month''s notice in writing indicating the reasons for retrenchment and the period of notice had expired or the

workman had been paid, in lieu of such notice wages for the period of the notice and the workman had also been paid at the time of termination

retrenchment compensation which should be equivalent to fifteen day''s average pay for every completed year of continuous service or any part

thereof in excess of six months. Mr. Ganguly fairly conceded that it had since been held by this Court in the earlier writ proceeding and also in the

connected appeal that the said notice of termination dated April 15, 1968 was valid and as such it was no longer open to the petitioner to challenge

the validity of the said notice in the instant Rule. But Mr. Ganguly contends that although the notice of termination as such was a valid one, the

mandatory requirement for giving effect to the said notice, namely, payment of retrenchment compensation as provided for in Clause (b) of Section

25F of the Industrial Disputes Act not having been complied with, the said notice though valid had lost its force and no effect can be given on the

basis of the said notice. Mr. Ganguly contends that in the facts and circumstances of the case, when admittedly no retrenchment compensation had

been offered to the petitioner even after the disposal of the earlier Civil Rule and the connected appeal or even at the time of issuing the impugned

notice there was no retrenchment in the eye of law and the petitioner must be deemed in service of the Railway Administration. In this connection

Mr. Ganguly referred to the decision of the Supreme Court in the case of The State Bank of India Vs. Shri N. Sundara Money, . In the said

decision the Supreme Court took into consideration the definition of "" termination "" as given in Section 2(oo) of the Industrial Disputes Act and also

the provisions of Section 25F of the Industrial Disputes Act. The Supreme Court held that in matters of interpretation the benignant mood of law

should be taken note of and when welfare legislation is taken into consideration, the Court should not turn on cold print glorified as grammatical

construction but on teleological purpose and protective intendment. The Supreme Court specifically held that the expression "" termination, for any

reason whatsoever appearing in Section 2(oo) of the Industrial Disputes Act is wide enough and it postulates not merely the act of termination by

the employer but the fact of termination however produced. It was held by the Supreme Court that on a plain reading of Sub-section (b) of Section

25F of the Industrial Disputes Act, it is quite clear that the requirement prescribed by it, is a condition precedent for the retrenchment of the

workman. The section provides that no workman shall be retrenched until the condition in question has been satisfied. The Supreme Court further

held that it is difficult to accede to the argument that when the section imposes in mandatory terms a condition precedent, non-compliance with the

said condition would not render the impugned retrenchment invalid. The Supreme Court held that failure to comply with the said provision renders

the impugned order invalid and inoperative. The Supreme Court held that for proper meaning of "" Retrenchment"" the key words ""Termination... for

any reason whatsoever"" should not be lost sight of. The Supreme Court further held that the expression for any reason whatsoever is very wide

and almost admitting of no exception. It was also held in the said decision that "" retrenchment"" is no longer terra incognita but an area covered by

an expansive definition. It means ""to end"" ""conclude"", ""cease"". Mr. Ganguly also referred to another decision of the Supreme Court in the case of

Messrs, Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and Ors. reported in AIR 1977 S.C. at page 31. In the said decision

the aforesaid decision of the Supreme Court made in the case of Sundara Money was also considered and approved. It may be stated in this

connection that two other decisions of the Supreme Court made in the cases of Hariprasad Shivshankar Shukla v. A.D. Divelkar, reported in AIR

1957 S.C. at page 121 and Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union, reported in 1957 I L J. 2351 AIR 1957 S.C. at

page 95 were also taken into consideration by the Supreme Court in the said case of Messrs. Hindustan Steel Ltd. because in the later Supreme

Court decision in Sundara Money''s case, a very wide and expensive definition of retrenchment was given. It appears that in M/s. Hindustan Steel

Ltd."s. case also the Supreme Court agreed with the view expressed in Sundara Money''s case to the effect that the definition of termination of

service was expensive and termination for any reason whatsoever was termination within the definition of Section 2(oo) of the Industrial Disputes

Act. It was further held in the said case of Hindustan Steel Ltd, that under special facts and circumstances it was held earlier by the Supreme Court

in the said cases of Hariprasad Shukla and Pipraich Sugar Mills Limited that it would be against the entire scheme of the Act to give the definition

clause relating to retrenchment such a meaning as to include within the definition termination of service of all workmen by the employer when the

business itself ceased to exist and accordingly there was no conflict between the decisions made in the said cases and in the case Sundara Money.

Mr. Ganguly contends that it is not the case that the concerned Railway Administration has ceased to exist and as such the wide definition of

retrenchment could not be made application in the special facts of this case. Accordingly there is no escape from holding that the termination of the

service of the petitioner is a retrenchment within the meaning of Section 25F of the Industrial Disputes Act and as such the mandatory provisions of

the said Section are got to be complied with.

4. Mr. S.K. Roy Choudhury appearing for the Railway Administration submitted that there are tow types of casual labourers one attached to a

project and the tenure of service of a casual labourer attached to a project is linked up with the project itself and such workers do not attain the

status of temporary staff at any point of time whatever may be their length of service in the project. But there are other types of the casual

labourers who are taken in the regular establishment and under the existing rules at the relevant time when the petitioner was engaged as a casual

porter the petitioner attained the status of a temporary labourer after completion of six months continuous service as a casual labour, Mr. Roy

Chowdhury placed relevant rules from the Railway Establishment Manual to show as to how and under what condition such temporary labourers

are to be absorbed in the regular stream and it appears that such labourer is to appear before a regular Recruitment Selection Board. It is the case

of the Railway authorities that the petitioner was given a chance to appear before the Selection Board but the petitioner having failed to qualify in

the said selection test, he was not given regular appointment. Mr. Roy Chowdhury contended that as the petitioner did not qualify in the selection

test, the petitioner could not be taken in the regular stream and as such the service of the petitioner had to be terminated under the relevant rules,

Mr. Roy chowdhury contended that in such circumstances it cannot be held that there was any retrenchment so far as the petitioner was

concerned. Mr. Roy Chowdhury also relied on two unreported decisions of this Court. One of such unreported decision was made in Civil Rule

No. 6378(W) of 1978 (Nakul Karmakar v. Union of India) A.K. Sen, J. by his judgment passed on February 23, 1973, observed that when a

casual labourer was placed before a Selection Board for permanent absorption and was adjudged unsuitable as a result whereof his service was

terminated under Rule 149, it could not be held that it was not a case of voluntary act of surplus employee and such termination was the result of

proved in eligibility for being kept in service and as such provision of Section 25F of the Industrial Disputes Act was not attracted in such type of

termination. The said view was also expressed by A.K. Sen, J. in another unreported case of this Court made in Civil Rule No. 2361 (W) of 1967

Santi Ram Mondal and Ors. v. Electrical Foreman, Eastern Railway, Sealdah, Calcutta. It will appear from the said decision that A.K. Sen, J.

relying on the decision of the Supreme Court made in the case of Hariprasad v. A.D. Divakar AIR 1957 S.C. 121, held that retrenchment as

defined in Section 2(oo) and as used in Section 25F had no wider meaning than the ordinary accepted concentration of the term, namely,

discharge of surplus labour or staff by an employer. Viewed from this angle, his Lordship proceeded on the footing that every termination did not

amount to retrenchment and decisions of different Courts to this effect were also referred to by his Lordship in his judgments, But after decision of

the Sundara Money''s case, the position has completely changed. In Sundara Money''s case which is the later decision of the Supreme Court it has

been categorically held as aforesaid that any type of termination of service for whatever reason is retrenchment within the meaning of Section 25F

Of the Industrial Disputes Act and if the mandatory provisions of the said Section 25F are not complied with, the order of termination becomes

invalid. Accordingly, it is of no consequence as to why or under what circumstances, the petitioner''s service had to be terminated by the Railway

Administration. The fact remains that the petitioner was in continuous service in the Railway for more than a year and his service had been sought

to be terminated for not being eligible in the selection test. In my view. Mr. Ganguly is quite justified in contending that when the initial notice of

termination was dated April 15, 1968 was issued the said notice per se was not invalid inasmuch as the time for offering the retrenchment

compensation had not then expired. Mr, Ganguly is also justified in his submission that because of the pendency of the said earlier Rule and the

appeal and passing of interim orders therein, there was no occasion on the part of the Railway Administration to offer Retrenchment Compensation

at that point of time or during the pendency of the said proceedings but after the discharge of the Rule and dismissal of the said connected Appeal

by this Court, when the Railway Administration again wanted to give effect to the said notice of termination issued in April 1968 the Railway

administration was bound to offer the retrenchment compensation in accordance with the provisions of Section 25F of the Industrial Disputes Act

and such retrenchment compensation not having been offered by the Railway administration the said notice though initially valid became inoperative

and void and no effect can be given to the said notice.

5. Accordingly, this Rule is made absolute but in the facts and circumstances of the case, I make no order as to costs. C R. 13915 (W) of 1975.

Ram Chandra Das v. Union of India.

In this Rule, the facts are similar to those in Civil Rule No. 12823 (W) of 1975 and as such both the said Rules were heard analogously. Mr. R. N.

Das, the learned Counsel appearing for the Railway Administration also made similar submissions as made by Mr. Roy Chowdhury in the other

Rule. In addition to the said submissions of Mr. Roy Chowdhury, Mr. Das contended that when and employee failed to pass a test it cannot be

held that there was termination of his service or that there was any retrenchment. At best, it may be called a lay-off within the meaning of Section

2(KKK) of the Industrial Disputes Act. Accordingly, mandatory provision of Section 25F of the Industrial Disputes Act is not attracted. I am

unable to accept this contention of Mr Das as, in my view, termination of service for any reason whatsoever in the instant case for not qualifying in

the selection test is retrenchment and as such the provisions of Section 25F of the Industrial Disputes Act are attracted. Accordingly, this Rule is

also made absolute for the reasons given in Civil Rule No. 12813 (W) of 1975.

There will be no order as to costs.