

(1986) 03 BOM CK 0058**Bombay High Court****Case No:** Writ Petition No. 1614 of 1985

Vasudeo Vithal Shanbhag

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision: March 11, 1986**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 10(1)

Citation: (1986) 52 FLR 571 : (1994) 3 LLJ 144**Hon'ble Judges:** S.P. Bharucha, J**Bench:** Single Bench**Advocate:** R.J. Kochhar, for the Appellant; H.L. Gokhale, For R1 and R2, for the Respondent**Final Decision:** Allowed

Judgement

S.P. Bharucha, J.

The petitioner was employed by the 3rd respondent on 4th December, 1967. It is the petitioner's case that his services were terminated orally on 8th December 1980, and that no payment was made to him of retrenchment compensation and notice pay as required by Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act). The petitioner preferred an application u/s 33-C(2) of the said Act for payment of notice pay, retrenchment compensation, full leave wages and earned wages. The 3rd respondent contested the claim. Three issues were raised before the Labour Court viz.,

- 1."Whether the applicant is a "workman" under the provisions of Industrial Disputes Act, 1947"
2. "Whether the application for notice pay and retrenchment compensation is maintainable u/s 33-C(2) of the Industrial Disputes Act, 1947"
3. "Whether the applicant is entitled to full leave wages and earned wages as claimed in the application ?"

The Labour Court concluded that there was a dispute about the retrenchment, and that it was thus clear that the application for claiming notice pay and retrenchment compensation was not maintainable u/s 33-C(2) of the said Act. In regard to the other claims the Labour Court awarded the petitioner the sum of Rs. 550.95.

2. The petitioner then made a demand for payment of retrenchment compensation and notice pay and thereafter approached the Assistant Commissioner of Labour u/s 10 of the said Act. On 9th May 1985 the Assistant Commissioner of Labour refused to intervene and make a reference on the following grounds:

1."You have raised the demand for payment of retrenchment compensation u/s 2-A of the Industrial Disputes Act, 1947, which demand is not legal and proper u/s 2-A of the Industrial Disputes Act, 1947.

2. "You have already approached the 7th Labour Court, Bombay, for recovery of retrenchment compensation (application No. 40 of 1981) and the 7th Labour Court, Bombay, had rejected your claim for retrenchment compensation for the services rendered by you in M/s. Audio Vision, Bombay-400 007".

3. Mr. Gokhale, learned counsel for respondents Nos.1 and 2, has not pressed the first of the aforesaid grounds. The second ground upon which the reference was declined suggests that the petitioner's claim for retrenchment compensation had been rejected by the Labour Court on merits. A perusal of the issues quoted above and the finding of the Labour Court that the petitioner's application for retrenchment compensation was not maintainable indicate that the Labour Court did not go into the claim for retrenchment compensation on merits or decide it on merits. The second ground, therefore, taken by the Assistant Commissioner of Labour, for rejecting the reference is not valid.

4. The Assistant Commissioner's order dated 9th May, 1985 is, accordingly, quashed and set aside. Respondents Nos.1 and 2 shall consider and decide upon the petitioner's claim for a reference afresh.

No order as to costs. Rule accordingly.