
(2009) 12 MAD CK 0037
In the Madras High Court
Case No : W.A. No. 1393 of 2006

Ananthan M.

APPELLANT

Vs

Presiding Officer, Principal Labour Court and Another

RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11A, 17B, 2, 25F

Citation : (2010) 1 LLJ 816 : (2010) 1 MLJ 1131

Hon'ble Judges : Elipe Dharma Rao, J;D. Hariparanthaman, J

Bench : Division Bench

Advocate : N.G.R. Prasad, S.C. and S.P. Srinivasan, for the Appellant; V. Selvanayagam, for the Respondent

Judgement

D. Hariparanthaman, J.—The writ appeal is directed against the order passed by a learned single Judge of this Court dated September 15,

2006 in W.P. No. 16768/1997.

2. The appellant was employed as Assistant Operator in Modern Rice Mill Thimmavaram, Chengalpet from March 5, 1970. The said Rice Mill

was taken over by the second respondent Corporation which is fully owned by the Government of Tamil Nadu. Thereafter, the appellant became

the employee of the second respondent Corporation from December 1, 1972. In the year 1975, he was transferred from Thimmavaram,

Chengalpet to Pollachi in Coimbatore District. He was promoted as an Operator on January 6, 1978. While so, he was again transferred from

Pollachi to Thalayuthu, Tirunelveli on February 14, 1983. He joined duty on March 28, 1983.

3. While he was serving in the Modern Rice Mill at Thalayuthu, Tirunelveli, he was issued with a charge memo dated January 26, 1985 making

some allegations. The crux of the charge was that he took various kinds of leave frequently, disrupting production in the Modern Rice Mill. The

charge memo was sent to his earlier address at Pollachi and the same was returned unserved. The second respondent sent telegrams in June 1985

directing him to join duty immediately. The appellant sent a reply telegram on June 28, 1985 seeking ten days time to join duty. Accordingly, he

reported for duty on July 8, 1985 and also gave a joining report. However, it is his case that he was not permitted to sign the attendance register.

That is, according to him, he was denied work. In these circumstances, the aforesaid charge memo dated January 26, 1985 was served to him at

Thalayuthu on July 11, 1985. He gave his explanation on August 10, 1985 and the same was acknowledged by the second respondent on August

13, 1985. He denied the charges. He stated that he took prior permission for his absence.

4. The second respondent sent a notice dated April 29, 1987 directing the appellant to appear for an enquiry on the aforesaid charge sheet on

May 11, 1987. The said notice was sent to his Pollachi address. However, the notice was returned unserved.

5. The appellant states that he gave his address for communication specifically in his explanation dated August 10, 1985 and the address for

communication as per his explanation dated August 10, 1985 was No. 18, Chinnamettupalayam, First Street, Kaladipet, Thiruvottiyur, Chennai 19.

6. It is an admitted case that the enquiry did not take place. But the second respondent issued paper publications on May 12, 1987, May 14,

1987, May 17, 1987, May 18, 1987, May 19, 1987 and May 28, 1987 directing the appellant to report for duty within seven days. It is also an

admitted case that no notice was sent to his address at Chennai directing him to report for duty, though the same was furnished in his explanation

dated August 10, 1985 and, instead only paper publication was made.

7. In these circumstances, the second respondent passed an order dated May 10, 1988 terminating the services of the appellant, invoking Clause

16(4) of the Standing Orders, certified under the Industrial Employment (Standing Orders) Act 1946. It is stated that the appellant stayed away

from duty from December 15, 1984 and that he is deemed to have left employment under Clause 16(4) of the Standing Orders referred to above,

since he remained absent for more than eight consecutive days. The said termination order was not communicated to the appellant and on the other hand, as per the said order, it was exhibited in the notice board at Thalayuthu, Tirunelveli.

8. The appellant made a representation on April 19, 1989 requesting to post him at the Modern Rice Mill at Chengalpet. He was issued with a reply dated May 15, 1989 informing him that he was terminated from service.

9. He made an appeal dated October 17, 1989 to the second respondent. The appeal was rejected by an order dated December 1, 1989. Again,

he made representations dated December 15, 1989, December 3, 1990, August 1, 1990 and August 22, 1990 and the same was rejected by an

order dated September 6, 1990. Thereafter, he sent a legal notice dated November 9, 1990 seeking reinstatement with backwages and other

benefits. The second respondent sent a reply dated November 21, 1990 stating that "...we are to inform that the threatened legal action is awaited

and will be fully met.

10. Therefore, he moved the Labour Officer, Circle - II, Chennai on November 30, 1990 u/s 2-A of the Industrial Disputes Act, 1947. The

conciliation talks were held on January 4, 1991, January 18, 1991, February 6, 1991, February 21, 1991, March 19, 1991, March 26, 1991,

April 10, 1991, April 19, 1991, May 3, 1991 and May 29, 1991 before the Labour Officer. Since the second respondent took a stand that the

Labour Officer at Chennai does not have jurisdiction over the termination order that was passed by the second respondent at Tirunelveli, the

appellant approached the Commissioner of Labour in his letter dated May 9, 1991 to transfer the conciliation proceedings to an appropriate

authority having jurisdiction over entire Tamil Nadu. Accordingly, the Commissioner of Labour transferred the conciliation proceedings to the

Assistant Commissioner of Labour (Headquarters) at Chennai, who has jurisdiction over the entire Tamil Nadu. The conciliation talks before the

Assistant Commissioner took place on June 13, 1991, June 27, 1991, July 12, 1991, August 5, 1991, August 14, 1991 and August 26, 1991.

The conciliatory efforts failed and the Assistant Commissioner submitted a failure report dated September 3, 1991.

11. Based on the failure report, the appellant approached the first respondent

Labour Court u/s 2-A(2) of the Industrial Disputes Act, 1947. The

Labour Court took it on file in I.D. No. 827/1991. The second respondent has filed a counter statement in 1992 in I.D. No. 827/1991. The

appellant was examined as WW1 for oral evidence and exhibits W-1 to W-32 were marked on his side as documentary evidence. One Mr.

Ulganathan was examined as management witness and Exhibits M-1 to M-18 were marked. After hearing both sides, the Labour Court passed an

award dated September 17, 1996, in I.D. No. 827/1991, holding that non-employment of the appellant was illegal in view of the decision of the

Honourable Apex Court in D.K. Yadav Vs. J.M.A. Industries Ltd., and that the second respondent was not justified in terminating the; services of

the petitioner without holding any enquiry after issuing charge sheet.

12. The second respondent filed writ petition in W.P. No. 16768/1997 to quash the aforesaid award. The learned single Judge passed an order

dated September 15, 2006 setting aside the award and remanding the matter to the Labour Court. The learned single Judge has held that the

Labour Court proceeded on the ground that the appellant joined duty on July 8, 1985, based on the report of the Conciliation Officer without

looking into other evidence; that the appellant has to prove that he was admitted in duty on July 8, 1985 as the burden lies on him to prove the

same, since it was his case that he joined duty on July 8, 1985. The learned single Judge has also held that there was considerable force in the

arguments advanced by the learned Counsel for the second respondent that when the appellant was removed from service with effect from

December 15, 1984, Section 2-A(2) of the Industrial Disputes Act was not in existence and that therefore, the order of the first respondent

Labour Court is vitiated for want of jurisdiction. The present appeal is against the said order of the learned single Judge remanding the matter to the

Labour Court.

13. Heard Mr. N.G.R. Prasad, learned senior counsel for the appellant and Mr. V. Selvanayagam, learned Counsel for the second respondent.

14. Before proceeding to decide the other aspects of the case, we feel it apt to decide the point of jurisdiction. It is submitted that the second

respondent, being a Government establishment, they should not take up such a technical plea to avoid adjudication on merits. The decision of the

Honourable Apex Court in S.K. Verma Vs. Mahesh Chandra and Another, is relied on for the said purpose and the relevant para is extracted

here-under:

2. There appear to be three preliminary objections which have become quite the fashion to be raised by all employers, particularly public sector

corporations, whenever an industrial dispute is referred to a Tribunal for adjudication. One objection is that there is no industry, a second that there

is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government, in all solemnity, refers an

industrial dispute for adjudication, a public sector corporation which is an instrumentality of the State, instead of welcoming a decision by the

Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimisation, etc., should attempt to evade decision on merits

by raising such objections and, never thereby satisfied, carry the matter often times to the High Court and to the Supreme Court, wasting public

time and money. We expect public sector corporations to be model employers and model litigants. We do not expect them to attempt to avoid

adjudication or to indulge in luxurious litigation and drag workmen from Court to Court merely to vindicate, not justice, but some rigid technical

stand taken up by them. We hope that public sector corporations will henceforth refrain from raising needless objections, fighting needless litigation

and adopting needless postures.

15. The learned Counsel for the appellant submits that when the appellant raised industrial dispute in 1991, Section 2-A(2) that came into force

with effect from November 1, 1988 was in operation. It is submitted that the appeal preferred before the second respondent against the order of

termination dated May 10 1988 was rejected by an order dated September 6, 1990. Therefore, when the appellate order was passed on

September 6, 1990, Section 2-A(2) already came into existence. Further, when the appellant filed an application u/s 2-A(2) in 1991, the

Conciliation Officer gave a failure report directing the appellant to approach the Labour Court and accordingly, he approached the Labour Court

and that therefore, the learned single Judge was not correct in holding that the Labour Court had no jurisdiction.

16. Section 2-A of the Industrial Disputes Act was introduced with effect from

December; 1, 1965 giving right to individual workman to approach the adjudication machinery without the help of any Trade union regarding his non-employment. Prior to introduction of Section 2-A, individual workman should have the support of a trade union or by a substantial number of workmen to take up the issue relating to his non-employment. This was drastically changed by introducing Section 2-A of the Industrial Disputes Act. Further change was effected by the Tamil Nadu Government by introducing Section 2-A(2) of the Industrial Disputes Act, dispensing with the reference by the Government u/s 10 of the Industrial Disputes Act to the Labour Court for adjudication of the Industrial Dispute regarding non-employment. Hence, after Section 2-A(2) was introduced, the Tamil Nadu Government stopped making reference of individual disputes relating to non-employment, if the dispute is raised by individual workmen u/s 2-A of the Industrial Disputes Act and the workmen approach the Labour Court based on the failure reports given by the Conciliation Officer. In this case, there is no order from the Government either declining or referring the dispute. On the other hand, as rightly contended by the learned Counsel for the appellant, the appellant approached the Labour Court as directed by the Conciliation Officer based on the failure report.

17. Further, the learned Counsel for the appellant is correct in stating that the learned single Judge proceeded as if the order was passed in 1984, though the order dated May 10, 1988 was passed terminating the service of the petitioner with effect from December 15, 1984 and the termination order merged with the appellate order dated September 6, 1990. By that time, Section 2-A(2) came into existence.

18. The learned Counsel for the appellant relied on a decision of the Honourable Apex Court in Ruston and Hornsby (I) Ltd. Vs. T.B. Kadam, for the proposition that Section 2-A(2) could be applied to non-employment, which took place prior to Section 2-A(2) coming into the force, if the same was taken up subsequent to the date of coming into force of Section 2-A(2). The following passage of the said judgment squarely applies to the facts of the case.

The first argument on behalf of the appellant is that the incident took place in December, 1963 and the order of dismissal was made on the January

7, 1964 and as Section 2-A of the Industrial Disputes Act came into force on December 1, 1965 the reference of this dispute u/s 10 of the

Industrial Disputes Act read with Section 2-A is bad. It is argued that this will amount to giving retrospective effect to the provisions of Section 2-

A. We are not able to accept this contention...

19. The learned Counsel also submits that when Section 11-A as well as Section 17-B of the Industrial Disputes Act are introduced giving certain

rights to workmen in the case of non-employment, the Honourable Apex Court held in those cases that both Section 11-A and 17-B are

applicable to pending cases without reference to the date of non-employment.

20. In these circumstances, we are of the considered view that the learned single Judge is not correct in holding that the Labour Court has no

jurisdiction u/s 2-A(2) of the Industrial Disputes Act to decide the non-employment of the appellant when the Conciliation Officer gave a failure

report directing the appellant to approach the Labour Court. We hold that the Labour Court has jurisdiction to entertain the dispute of the

appellant regarding his non-employment u/s 2-A(2) of the Industrial Disputes Act.

21. Let us examine the other issue. The learned Counsel for the appellant submits that the appellant produced Exhibit W-7 joining report before

the Labour Court and that the appellant categorically deposed before the Labour Court that he reported for duty on July 8, 1985. It is also

submitted that serving him the charge memo dated January 26, 1985 on July 11, 1985 at Thalayuthu, Tirunelveli, when the charge memo was

returned unserved as the same was sent to his Pollachi address, would establish that he reported on July 8, 1985 at Thalayuthu. It is further

submitted that the only management witness admitted during cross examination that he did not handle the file relating to the appellant though he was

working at Thalayuthu at the relevant point of time in 1985; that he was not aware whether the appellant gave the joining report or not; that he was

not aware whether the management agreed before the Conciliation Officer that the appellant reported for duty. Hence, it is submitted by the

learned Counsel for the appellant that the learned single Judge could not find fault with the first respondent in holding that the appellant reported to

duty on July 8, 1985.

22. In any event, the learned Counsel for the appellant submitted that whether

the appellant reported duty on July 8, 1985 or not is not much relevant. The relevant issue is whether the second respondent conducted enquiry before terminating the appellant. It is submitted that the second respondent made an endorsement before the Labour Court in I.A. No. 686/1993 in I.D. No. 827/1991 that the second respondent did not hold any enquiry, when the appellant filed the application in I.A. No. 686/1993 praying for direction from the Labour Court to the second respondent to produce the entire enquiry files relating to the appellant. When no enquiry was held, the second respondent could have established the charges before the Labour Court by letting in fresh evidence.

23. On the other hand, the specific case of the second respondent was that the appellant was not dismissed for the misconduct of unauthorised absence and he was terminated from service invoking Clause 16(4) of the Standing Orders. When the specific stand of the second respondent before the Labour Court in their counter statement that the termination was effected in accordance with Clause 16(4) of the Standing Orders, the issue as to whether the appellant reported on July 8, 1985 or not is not much relevant.

24. The learned Counsel further submitted that terminating the services of the appellant invoking Clause 16(4) of the Standing Orders on the ground that the appellant was deemed to have left the employment on his alleged absence for more than eight days, amounts to retrenchment u/s 2(oo) of the Industrial Disputes Act and since the mandatory conditions precedent for valid retrenchment prescribed u/s 25-F was not complied with by the second respondent, the termination became illegal and void abinitio. The learned Counsel submitted that though it was not specifically pleaded before the Labour Court that the termination amounts to retrenchment, the same being a legal issue, it could be canvassed before this Court even at the appellate stage. For the said purpose, he heavily relied on the decision of a Division Bench of this Court in *The President, Srirangam Co-operative Urban Bank Ltd. Vs. The Presiding Officer, Labour Court and K. Nagarajan*, . It is submitted that in an identical situation, the Division Bench held that the issue as to whether the termination amounts to retrenchment could be decided at the appellate stage though the same was not pleaded before the Labour Court.

25. The learned Counsel brought to the notice of this Court the following passage from the award passed by the Labour Court:

10. ... Admittedly the dismissal order is based on a provision of the standing orders, which has been held illegal by the judgment D.K. Yadav v.

JMA Industries Ltd. (supra)...

It is submitted that it was argued before the Labour Court that the termination of the appellant invoking Clause 16(4) of the Standing 1 Orders is

illegal in view of the judgment of the Honourable Apex Court in D.K. Yadav v. JMA Industries Ltd., (supra), and that the Labour Court held that

the termination of the petitioner without holding enquiry is opposed to the aforesaid decision of the Honourable Supreme Court in D.K. Yadav v.

JMA Industries Ltd., (supra). It is vehemently contended that the Honourable Apex Court has categorically held in D.K. Yadav v. JMA Industries

Ltd., (supra) that the termination of service of workmen invoking a similar Clause to that of 16(4) of the Standing Orders amounts to retrenchment

u/s 2(oo) of the Industrial Disputes Act and non-compliance of Section 25-F of the Act would render the termination illegal and"" inoperative. It is

submitted that the Honourable Apex Court referred to the Constitution Bench judgment in Punjab Land Development and Reclamation

Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, , for holding that termination of service of a workman

invoking a Clause similar to Clause 16(4) of the Standing Orders herein amounts to retrenchment.

26. On the other hand, the learned Counsel for the second respondent submits that the learned single Judge was correct in remanding the matter

before the Labour Court to look into the evidence in detail to render its findings.

27. We have considered the submissions made on either side. We have looked into the voluminous typed set produced by the appellant of almost

all the exhibits and also the pleadings as well as the evidence before the Labour Court. From the materials placed before us, we find that the

appellant sought transfer on July 8, 1985 (W-8) from Thalayuthu, Tirunelveli to Thimmavaram, Chengalpet for treatment of his wife who was said

to be admitted in a hospital at Chennai. There was also further representation dated September 30, 1985 (W-9) making a similar request. It is

also stated in the letter dated August 19, 1989, December 1, 1989, December

15, 1989, February 3, 1990 and August 1, 1990 that he sought transfer to Thimmavaram, Chengalpet for the purpose of treatment to his wife at a hospital in Chennai. Those letters are exhibits before the Labour Court. Particularly, in the letters dated February 3, 1990 (W-15) and August 1, 1990 (W-16), there is a reference to the various communications from the Head Office of the second respondent to the senior Regional Manager, Kancheepuram, under whose jurisdiction the Modern Rice Mill at Thimmavaram, Chengalpet was functioning as to the request of the appellant seeking transfer to Thimmavaram, Chengalpet. The senior Regional Manager also sent a reply in letter No. L.T.E3/10830/85 dated October 9, 1985 to the Head Office. Therefore, it is clear that the appellant was seeking transfer to Thimmavaram, Chengalpet and it seems that the second respondent also considered the same. However, there was no specific reply either accepting or rejecting his request, before issuing the termination order. On the other hand, a reply dated May 15, 1989 to his letter dated April 19, 1989 seeking transfer/posting at Thimmavaram, Chengalpet states that he was removed from service by an order dated May 10, 1988. As stated already, the termination order was not sent to the appellant and the same was only exhibited in the notice board as seen from the very order itself. It is also an admitted fact that the appellant gave his address in the reply dated August 10, 1985 (W-4) to the charge memo about his address for communication mentioning as No. 18, Chinnamettupalayam, First Street, Kaladipet, Thiruvottiyur, Chennai 19. But no communication was sent to the aforesaid address directing the appellant to report duty. On the other hand, notices were published in newspapers directing the appellant to report duty. The second respondent would resort to publication only after issuing notice to the address furnished by the appellant. It is also admitted by the second respondent that they did not proceed with the enquiry and on the other hand, they proceeded to take action under Clause 16(4) of the Standing Orders which is extracted hereunder:

16(4)(1). If a workman is absent without leave being sanctioned to him or is absent beyond the period of leave sanctioned to him, he shall be liable to be dismissed from service.

16(4) (2) If the workman remains absent beyond the period of leave originally granted or subsequently extended, he shall be deemed to have left

employment unless he (1) returns within eight days of the expiry of the leave and (2) has given a satisfactory explanation for his inability to return on expiry of leave.

16(4)(3) If any workman remains absent without leave or permission for more than eight consecutive days he shall be deemed to have left the

employment unless he gives satisfactory explanation for such absence in which case the period of absence shall be treated as leave without wages:

Provided that the absence of a workman due to a strike of workman in the establishment shall not be regarded as absence for purposes of this

standing order.

In case the workman has to leave the employment in the circumstances specified in this Standing Order, he shall be entitled to be kept on the

Badli"" list.

Though the termination order states that it was passed based on Clause 16(4) of the Standing Orders, it was in fact based on Clause 16(4)(3) of

the Standing Orders.

28. As rightly contended by the learned counsel for the appellant that in an identical situation, a Division Bench of this Court in President,

Srirangam Co-Operative Urban Bank Ltd. v. Presiding Officer, Labour Court, Madurai and Anr. (supra) held that the issue as to whether the

termination amounts to retrenchment would be gone into at the appellate stage since the same is question of law. The relevant passage in the

judgment President, Srirangam Co-Operative Urban Bank Ltd., v. Presiding Officer, Labour Court, Madurai and Anr. (supra) is extracted

hereunder:

2. In the light of the contentions urged on both sides, the following points arise for consideration;

(i) Whether the provisions of Section 25-F of the I.D. Act are attracted to the case having regard to the contention that the termination was due to

the fact that the Registrar of Co-operative Societies had not approved the appointment as the petitioner was not qualified.

(ii) Whether there was no termination of the services of the petitioner in the eye of law as the very appointment itself was void.

(iii) That the question of termination of services of the petitioner did not arise as the services of the petitioner was not capable of continuation

having regard to the fact that the petitioner did not possess the requisite qualification for appointment as clerk.

We may point out at the outset that all these contentions, on the basis of which the aforesaid points are raised are urged for the first time before this

Court. There was no such plea whatsoever raised before the Labour Court. However, we have allowed them to be urged. As the facts and

contentions relating to all three points overlap, we consider all the three points together.

29. The learned Counsel referred to Clause 23(2) of the Standing Orders and submitted that the termination is illegal as per the aforesaid Clause

23(2) of the Standing Orders.

23-2. In cases of retrenchment as defined in Section 2(oo) of the Industrial Disputes Act 1947 (Central Act 14 of 1947) the provisions of the said

Act shall apply:

Provided that no such notice shall be necessary in the case of Badli (substituted workmen) and apprentices and also if the retrenchment is effected

under an agreement which specified a date for the termination of service.

30. In any event, Clause 23(2) is in terms of Section 25-J of the Industrial Disputes Act as 25-J places Chapter V-A of the Industrial Disputes Act

in high pedestal and therefore, the provisions of Section 25-F read with 2(oo) should be complied with. Section 2(oo), 25-F and 25-J(1) of the

Industrial Disputes Act are extracted hereunder:

2(oo): "'retrenchment'" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a

punishment inflicted by way of disciplinary action but does not include:

(a) voluntary retirement of the workman; or 20

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman

concerned contains a stipulation in that behalf; or

((bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the

workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or)

(c) termination of the service of a workman on the ground of continued ill-health;

25-F. 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.)

25-J. Effect to laws inconsistent with this Chapter.- (I) The provisions of this Chapter shall have effect notwithstanding anything inconsistent

therewith contained in any other law (including Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of

1946)).

31. Taking into account cumulatively Section 23(2) of the Standing Orders and Section 2(oo) of the Industrial Disputes Act in the light of the

judgment of the Honourable Apex Court in D.K. Yadav v. JMA Industries Ltd., (supra) the termination of the appellant amounts to retrenchment

and admittedly the second respondent failed to comply with the mandatory provisions of Section 25-F of the Industrial Disputes Act, rendering

termination illegal. In this context, para 3 of the judgment of the Honourable Apex Court in D.K Yadav v. JMA Industries Ltd. (supra) is extracted

hereunder:

3. In Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh (supra) the

Constitution Bench considered the scope of the word "retrenchment" defined by Section 2(oo) and held in para 71 at page 91 that ""analysing the

definition of retrenchment in Section 2(oo) we find that termination by the employer of the service of a workman would not otherwise have

covered the cases excluded in Clauses (a) and (b) namely, voluntary retirement and retirement on reaching the stipulated age of retirement or on

the grounds of continued ill health. There would be no violational element of the employer. Their express exclusion implies that those would

otherwise have been included."" In para 77 at page 94 it was further held that right of the employer and the contract of employment has been

affected by introducing Section 2(oo)."" The contention of the management to terminate the service of an employee under the Certified Standing

Orders and under the contracts employment was negated, holding that the right of the management has been affected by introduction of Section

2(oo) and Section 25-F of the Act. The second view was that the right as such has not been affected or taken away, but only an additional social

obligation has been imposed on the employer to abide by the mandate of Section 25-F of the Act to tide over the financial difficulty which

subverses the social policy This Court relied on the maxim *Stat pro ratione voluntas populi*: the will of the people stands in place of a reason. In

paragraph 82 at page 95 this Court concluded that the definition in Section 2(oo) of the Act of retrenchment means ""the termination by the

employer of the service of a workman for any reason whatsoever except those expressly excluded in the Section."" Same view was taken by three

Benches of three Judges of this Court in *The State Bank of India Vs. Shri N. Sundara Money, , Punjab Beverages Pvt. Ltd., Chandigarh Vs.*

Suresh Chand and Another, and Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others, and two Benches of two

Judges in *L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another*, and *H.D. Singh Vs. Reserve Bank of India and Others*,

took the same view. Therefore, we find force in the contention of Sri R.K. Jain, the learned senior counsel for the appellant, that the definition

"retrenchment"" in Section 2(oo) is a comprehensive one intended to cover any action of the management to put an end to the employment or an

employee for any reason whatsoever.

Hence, the termination of appellant is opposed to the decision of the Honourable Apex Court in *D.K. Yadav v. JMA Industries Ltd. (supra)* and

also the judgment of the Division Bench of this Court in *President, Srirangam Co-Operative Urban Bank Ltd., v. Presiding Officer, Labour Court,*

Madurai and Anr. (supra).

32. The second respondent terminated the service of the petitioner by an order

dated May 10, 1988 (M-18) and the same was only exhibited in

the notice board as seen from the very order itself. It is submitted that the second respondent ought to have served the termination order through

post as contemplated under Clause 23(3) of the Standing Orders and the same is extracted hereunder:

23-3. The order of termination of service of a workman shall be made unless the workman is informed in writing of the reasons for the termination

of his services and is given an opportunity to show cause against such termination. A copy of the said order shall be communicated to the

workman.

As rightly contended by the learned Counsel for the appellant that Clause 23(3) of the Standing Orders was not complied with and the termination

order was not communicated and instead exhibited in the notice board. There is a considerable force in their submission.

33. Further, we hold that the termination is illegal, for want of enquiry, if it is based on misconduct of alleged absence and the termination is illegal if

it is based on Clause 16(4) of the Standing Orders for noncompliance of Section 25-F of the Industrial Disputes Act. In this regard, the decision of

the Honourable Apex Court in M.C.D. Vs. Praveen Kumar Jain and Others, is relied on by the appellant which squarely applies to the facts of this

case and the relevant passage is extracted hereunder:

...If it is a simpliciter discharge order it is violative of Section 25-F of the Industrial Disputes Act and if it is a penalty order, as contended by the

appellant, it would fail on merits as not having followed the procedure of departmental enquiry. In either view of the matter, the impugned order

must be held to be rightly set aside by the Labour Court and the said decision was also rightly confirmed by the High Court.

34. It is categorically held by the Honourable Apex Court that the employer either should have proceeded with the enquiry if the termination is

based on allegations or the employer should have complied with the mandatory provisions of Section 25-F if the termination was not for

misconduct and the termination was retrenchment. The said principle applies squarely to this case.

35. Hence, as rightly contended by the learned Counsel for the appellant that more than 25 years the appellant is litigating for employment and in

the meantime, he reached the age of superannuation in 2005 and that therefore, the learned single Judge was not correct in remitting the matter to the Labour Court.

36. In the aforesaid circumstances, we are inclined to interfere with the order of the learned single Judge and accordingly, we set aside the same.

While setting aside the order of the learned single Judge, we are inclined to interfere with the award also by reducing the award of full wages to

50% of wages, since it has now been well settled that backwages is not automatic. The appellant did not make any representation during 1986,

1987 and 1988 complaining that he was not permitted to do the work. He also did not pursue his request to transfer to Thimmavaram, Chengalpet

in the said period. Hence, we are reducing the backwages. In all other respect, the award is confirmed. However, reinstatement does not arise as

the appellant has already reached the age of superannuation. In these circumstances, the second respondent is directed to pay him 50% of

backwages and other benefits after adjusting the amounts that were paid during the pendency of the writ proceedings by way of interim measure.

The second respondent is also directed to settle the terminal benefits. The second respondent is granted eight (8) weeks time to make payment.

37. The writ appeal is disposed of with the above directions. No costs.