

(1995) 03 P&H CK 0132
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 554 of 1980

Atlas Cycle Industries Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1995) 110 PLR 416

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : R.S. Mittal and Arun Jain, for the Appellant; Ashish Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—This petition under Article 226 of the Constitution is directed against the award dated August 30, 1979 of the Presiding Officer, Labour Court, Rohtak whereby termination of services of Ishwar Singh respondent (for short, the workman) was held not justified and he was directed to be reinstated with 40 per cent back wages.

2. The case as set up by the petitioner-management is that the workman applied, for two days leave from 5.6.1975 to 6.6.1975 and the same was sanctioned. On the expiry of this leave he did not report for duty and remained absent even thereafter, for more than 8 days and according to the management, he lost his lien on his appointment in terms of clause 9 (iii) of the Certified standing orders applicable to petitioner's establishment, it is further alleged that as per the Standing Orders the name of the workman was kept on Badli list. The workman claimed that his services had been terminated wrongfully and in violation of the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter called the Act). He raised an industrial Dispute u/s 2-A of the Act and the same was referred for adjudication to the Labour Court- respondent. The management contended before the Labour Court that the workman had

automatically lost the lieu on his appointment in terms of the Standing orders and that his services had not been terminated and, therefore, the reference was bad. On a consideration of the entire evidence led by the parties, the Labour Court came to the conclusion that the services of the workman had been terminated and that management did not comply with the mandatory provisions of Section 25-F of the Act. The termination was thus held to be void and the workman was directed to be reinstated with 40 per cent back-wages.

3. I have heard counsel for the parties at length Mr. R.S. Mittal, Sr. Advocate shall engaged the impugned award on the ground that the reference made to the Labour Court was illegal because the management did not terminate the services of the workman but he automatically lost lien on his appointment in terms of the Standing orders applicable to the establishment. I find no merit in this contention. As already observed, the case of the management is that the workman over-stayed his leave without permission and his services automatically stood terminated. It is also the case of the management that his name was removed from the wages register and put on the list of Badli workers. This act of the employer did put an end to the employment of the workman and, therefore, it amounts to retrenchment within the meaning of Section 2(oo) of the Act. It has been so held by the Supreme Court in *D.K. Yadav v. JMA Industries Ltd.* J.T. 1993(3) S.C. 617; *The State Bank of India Vs. Shri N. Sundara Money*, and *Hindustan Steel Ltd. v. The Presiding Officer Labour Court, Orissa* and Ors. AIR 1977 S.C. 31 since the workman had been retrenched it was incumbent upon the employer to have complied with the provisions of Section 25-F of the Act which admittedly has not been done. It is not even the case of the management that any compensation was offered or paid to the workman or that any notice was given to him as envisaged by that provision. In my opinion, the Labour Court was right in holding that the termination of the workman was neither justified nor in order.

4. The other ground on which the award of the Labour Court was challenged was that there existed a settlement between the parties which laid down procedure for the settlement of individual disputes and that since the workman had followed that procedure and referred his case to the settlement Board which decided the matter against the workman, it was not open to him to challenge his termination u/s 10(1) of the Act. I am afraid the petitioner cannot be allowed to raise this plea for the first time in the present petition under Article 226 of the Constitution. Admittedly, no such case was set up before the Labour Court nor was such a case set up in the written statement filed before the Labour Court and if such a plea had been taken, it would have been open to the workman to contend that the alleged settlement stood terminated in terms of the provisions contained in the Act or that the same was not binding between the parties for any other reason. If such a plea is now allowed to be raised for the first time, it would materially prejudice the workman. The mere fact that the petitioner has given the details in the writ petition is no ground for this Court to hold that the settlement was in fact subsisting between the parties and that the workman had

got his dispute settled in terms of the procedure laid down therein. This plea is based on a question of fact regarding subsistence of the settlement and, therefore, I do not permit the petitioner to challenge the reference and the impugned award on this ground.

5. No other point was raised.

6. In the result, I find no merit in the writ petition and the same stands dismissed with no order as to costs.