
(2008) 02 MP CK 0109
In the Madhya Pradesh High Court

Ayukt Indore Nagar Palika Nigam

APPELLANT

Vs

Jagdish

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 25H

Citation : (2008) 118 FLR 466 : (2008) ILR (MP) 1125 : (2009) 2 MPJR 171

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.K. Maheshwari, J.

This petition is filed invoking the jurisdiction under Article 227 of the Constitution of India, assailing the propriety, tenability and validity of the order dated 9.2.2007 passed by the labour Court, Indore in case No. 4444/2004 MPIR, whereby the direction of re-engagement of respondent from the date of passing of the order without back wages has been issued. Appeal preferred by petitioner against the said order was also rejected by the Industrial Court on 21.8.2007.

Shri Anand Agrawal, Counsel appearing for petitioner has strenuously urged that because the order of retrenchment of respondent was not passed in accordance to law, however, he cannot derive the benefit of Section 25H of Industrial Disputes Act, 1947. It is submitted that the benefit of Section 25H is only available where the employees is legally retrenched, otherwise the said workman is not entitled to get the benefit of Section 25H. If a workman has not been retrenched legally then the protection of 25H can not be made available to them.

To advert the argument of Shri Anand Agrawal, it is necessary to refer the facts of the case. The respondent was working as daily wager in the Municipal Corporation since 1.11.1939 and retrenched w.e.f. 1.3.2001 under the Government instructions after about 12 years. It was further contended that at

the time of his retrenchment neither any show-cause notice was issued nor one month salary was paid, the principle of last come first go was not observed and the retrenchment compensation was also not paid to him however, respondent was illegally retrenched. It is further said that on 2.2.2004/56 employees were engaged by Corporation without offering an opportunity for his re-engagement though he is ready to serve, however, prayed for reinstatement with consequential benefits.

Petitioner had filed the reply before the labour Court and it was said that the application under Sections 31(3), 61 and 62 of MPIL, Act was filed before the Labour Court after about 3 years from the date of retrenchment, therefore, it is time barred. It is further said that petitioner is a Government undertaking and fully owned and controlled and supervised by the State Government. Under the GAD policies daily wages employees were directed to be removed, therefore, respondent was rightly retrenched. In the reply filed before Labour Court petitioner has not denied the engagement of other 56 employees on 2.2.2004.

Learned Labour Court has framed various issues and after recording the evidence, it was held that petitioner Indore Municipal Corporation is an industry and the respondent is a workman, however the provisions of Industrial Disputes Act are applicable over them. It was also held that the provision of 25H-F of I.D. Act has not complied with by giving one month's notice or salary in lieu thereof, the retrenchment compensation was not paid observing the principle of last come first go. It was also held that on 2.2.2004, petitioner Corporation has engaged 56 persons on daily wages without offering employment to respondent, thus, cause of action accrues to him on 2.2.2004, to seek the benefit of Section 25H of the I.D. Act. Therefore, application filed by respondent before the Labour Court is within the limitation. On these findings direction was issued to petitioner Corporation to re-engage the respondent without back wages.

Petitioner Corporation had preferred an appeal before the Industrial Court, which was also dismissed vide order dated 21.8.2007 and the findings recorded by the Labour Court has been upheld after making reference to various judgments of the Supreme Court.

In this back ground argument as advanced by Shri Anand Agrawal requires adjudication. The crux of argument is of the non-availability of protection 25H of I.D. Act to petitioner, however for ready reference, Section 25H is being reproduced herein below:

25H. Re-employment of retrenched workmen:

Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

Chapter 5-A of the Industrial Disputes Act deals with lay off and retrenchment wherein Sections 25H-F and 25H are enumerated. Section 25H-F deals with the condition precedents for retrenchment to the workmen. Plain reading of it, makes clear that prior to passing an order of retrenchment one month notice or wages in lieu such notice ought to have been paid. It is further specified that the payment of retrenchment compensation and principle of last come first go ought to be complied with. In the said chapter the protection of re-employment to the retrenched workman is engrafted u/s 25H. It makes further clear that if a retrenched workman offer himself to get employment before the employer while they are employing other persons, employer shall give an opportunity in the manner as may be prescribed and the workman shall have preference over others. Thus the connotation of retrenched workman does not merely indicate the legally retrenched workman. It also covers the workmen who were retrenched without following mandatory provisions of 25H-F. By reading the aforesaid, makes it further clear that the benefit of Section 25H is available to all the retrenched workmen and not only to those who were legally retrenched. However the word retrenched workmen covers the ordinary meaning of retrenchment as per the definition of Section 2(oo) of the I.D. Act. The said observation find support from the judgment of Hon'ble Supreme Court in the case of Central Bank of India Vs. S. Satyam and others, wherein while interpreting the provisions of Sections 25H and 25H-F the Apex Court has observed as under:

10. The next provision is Section 25H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25H-F. It does not require curtailment of the ordinary meaning of the word-retrenchment" used therein. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman.

In view of the foregoing discussion and looking to the facts of the present case the respondent was initially engaged on daily wages in 1989 and retrenched illegally w.e.f. 1.3.2001, however, order of re-engagement without back wages passed by learned Labour Court upheld by the Industrial Court to extend the benefit of Section 25H of Industrial Dispute Act, cannot be said to be illegal Or irrational, warranting interference by this Court.

In view of the interpretation of Section 25H as discussed herein above, I do not find any infirmity to the findings of the Court below extending the benefit of Section 25H of I.D. Act to the respondent, therefore, orders passed by the Labour Court and Industrial Court are upheld. Accordingly the petition filed by the petitioner is dismissed. In the facts and the circumstances of the case, no order as to costs.