
(1972) 08 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition No. 644 of 1972

Bhanwar Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-08-1972

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G, 33

Citation : (1972) WLN 530

Hon'ble Judges : P.N. Shinghal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.N. Shinghal, J.—The petitioner has stated that he was appointed as a Mistry in the Power House and Pumping Sub-division of the Chambal Project at Kota on January 1, 1957. He was transferred to the Chambal workshop from April 1, 1964. He was then taken on the work-charged establishment as a Time Keeper with effect from July 9, 1964. He has stated that he became the President of Chambal Workshop Karamchari Sangh, Kota, and fought for the rights and privileges of the workers, which annoyed his superiors as well as the State Government. A retrenchment notice was served on him on April 26, 1967, but he made a representation and that notice was withdrawn. However another notice (Ex. P/2) of retrenchment was issued on January 16, 1968, on the ground that the work in stage II of the Project was nearing completion and the services of the petitioner were not required with effect from February 20, 1968. The petitioner made representations against that notice also, but to no avail. He has therefore challenged the order of his retrenchment in the present writ petition, on a number of grounds, and I shall refer to those of the grounds which have been selected by his learned Counsel for my consideration.

2. The respondent State has traversed the claim of the petitioner altogether and has stated that the petitioner was retrenched in accordance with the law. The petitioner has filed a rejoinder.

3. It has been argued by the learned Counsel for the petitioner that the petitioner was retrenched in breach of Rule 23 of the Raj. P.W.D. (B &R), including Gardens, Irrigation, Water Works and Ayurvedic Departments Work Charged Employees Service Rules, 1964, (hereinafter referred to as "the Rules"), in as much as persons who were junior to him in the same cadre were retained in service while he was retrenched by the aforesaid notice Ex. P/2 dated January 16, 1968. The learned Counsel has argued further that even if it had become necessary to retrench the posts of Time Keepers, the petitioner should have been retained in his employment by reverting him to his earlier lower post of Mistry. Then it has been argued that the authorities contravened the provisions of Section 25G of the Industrial Disputes Act, 1947, hereinafter referred to as "the Act" inasmuch as junior Mistris, who belonged to the same category as the petitioner, were retained while the petitioner was retrenched.

4. The question therefore is whether the petitioner could be said to belong to the cadre or category of Mistris even after his appointment as a Time Keeper? The petitioner has however not placed on record any data or facts on the basis of which it could be inferred that the posts of Time Keeper and Mistri were in the same cadre or category. Seniority list Ex. P/11 has however been placed on the record by the petitioner, and in that list the posts of Time Keepers, Mistris and Store Munshi have been mentioned as separate categories or separate cadre, and the seniority in each such category or cadre has been assigned separately. Moreover it may be said that the post of a Mistry requires qualifications and experience of a nature different from that of Time Keeper, and as the petitioner has not ventured to state how they were posts of the same category, the argument of his learned Counsel that this was so cannot be accepted. It may be that the posts were equivalent in so far as the emoluments were concerned, but that would not be sufficient reason to hold that they belonged to the same category. There is therefore no justification for the argument that persons who were employed as Mistris after the petitioner should have been retrenched and not the petitioner. In this view of the matter, B.N. Elias and Co. Private Ltd. Vs. Fifth Industrial Tribunal of West Bengal and Others, , on which reliance has been placed by learned Counsel for the petitioner, can be of no avail to him. It may also be mentioned that if the petitioner wanted to press his plea that the posts of Time Keepers and Mistris belonged to the same cadre or category, and that persons who were junior to him in that cadre or category should have been retrenched and not the petitioner, it was necessary for him to implead those Mistris as party respondents so that this Court could be in a position to hear and decide the controversy once for all. But this has not been done. So as the case stands, it is not possible to take the view that the petitioner belonged to the cadre or category of Mistris even though he was a Time Keeper. As the employer had a separate cadre or category of Time Keepers, and as the petitioner was the junior most in that cadre or category, it cannot be said that his retrenchment has been ordered in contravention of the relevant provisions of Rule 23 of the Rules or Section 25G of the Act.

5. An ancillary argument has been made that even if the retrenchment had become necessary, the petitioner, who had been promoted from the lower post of the Mistry to the higher post of Time Keeper, should have been reverted to the lower post under Rule 23 of the Rules. But, as has been stated, it has been urged by the petitioner's learned Counsel that the two posts were of equivalent status as being posts of the same category and, if so, there could be no question of promotion from one such post to another. Moreover it appears from the reply of the respondent State that the post of the petitioner was converted to that of Time Keeper at his own request, and there was no question of promotion at all. It follows therefore that the argument that he should have been reverted to the lower post of Mistry under the other provision of Rule 23 of the Rules is also quite untenable and cannot be upheld.

6. It has next been argued that the petitioner was retrenched in contravention of the provisions of Section 25F(b) of the Act inasmuch as the compensation referred to in that section was not paid to him at the time of his retrenchment, and the order of retrenchment should therefore be set aside. The argument has been supported by a reference to the decision in *Pepsu Transport Co. Private Ltd. Vs. State of Punjab and Others*,

7. I have already referred to the notice of discharge, which is on record as Ex. P/2 and is dated January 16, 1968. It was stated in that notice that the services of the junior-most surplus work charge staff mentioned in the list (attached to the Order) were no longer required with effect from February 20, 1968 and as such they were given one month's retrenchment notice with effect from 20.1.68. The notice, therefore, became effective from January 20, 1968, and the period of one month expired on February 19, 1968, so that the petitioner was retrenched with effect from February 20, 1968. The respondent State has stated in its reply that benefit of the retrenchment compensation was allowed to the petitioner and that information regarding the payment of the retrenchment compensation was displayed on the notice board vide S.D.O.'s letters dated February 19, 1968, February 24, 1968, February 28, 1968 and March 8, 1968, but the petitioner did not turn up to collect the compensation. A definite stand has therefore been taken that the retrenchment was made in accordance with Section 25F of the Act.

8. As has been stated, the petitioner has filed a rejoinder, but all that he has stated in this connection is that no notice regarding the retrenchment compensation was sent to him. He has thus not ventured to dispute or controvert the plea of the respondent State that the retrenchment compensation was allowed to him and that the offer was displayed on the notice board on or before February 19, 1968, but the petitioner did not turn up to collect it. It will be recalled that the petitioner was retrenched with effect from February 20, 1968, and as the employer offered to pay the compensation on February 19, 1968, it is quite clear that it carried out its responsibility of paying compensation at the time of the petitioner's retrenchment, and the petitioner is to blame if he did not

avail of that opportunity. As has been stated, the petitioner has given a halting reply by stating that no such notice was sent to him, but the fact remains that he has not had the courage to state that the notice referred to in the reply of the respondent was not displayed on the notice board on or before February 19, 1968, or that he did not have knowledge of that notice. His plea that the notice was not sent to him is of no consequence when there is no reason to think that the notice which was actually given served the purpose of informing the petitioner of the tender of the compensation by the employer before the date of his retrenchment from his employment.

9. It may be mentioned that their Lordships of the Supreme Court had occasion to consider a somewhat similar argument in *Strawboard Manufacturing Co. Vs. Gobind*, when they were required to examine the meaning of the proviso to Section 33(2) of the Act which provided, inter alia, that no workman shall be discharged or dismissed unless he had been paid wages for one month. Their Lordships took the view that it would be sufficient compliance with such a provision of the law if the employer tendered the wages to the employee, for that would amount to payment. Their Lordships stated that if such a view was not taken, a workman could always make the section un-workable by refusing to take the wages. The same reasoning is applicable to the present case, and I have no doubt that the State sufficiently carried out the requirement of Section 25F (b) of the Act by making a tender of the compensation in the notice which was displayed on or before February 19, 1968. I am further fortified in this view by the decisions in *Nowrosbad Colliery Majdoor Sangh v. F. Jeejeebhoy* (1970) 37 FJR 225 and observations on the point in *National Iron and Steel Co. Ltd. Vs. Third Industrial Tribunal, West Bengal and Others*,

10. I have gone through *Pepsu Transport Co. Private Ltd. Vs. State of Punjab and Others*, on which reliance has been placed by learned Counsel for the petitioner. It has been held in that case that mere sending notices calling upon the workman to receive payment before the due date might lead to harsh results because if the workman did not come to receive the compensation on the day fixed for the purpose, an obstinate employer may refuse to make the payment on the next day on the plea that the notice itself was equivalent to payment and his obligation to make the payment had ceased on the previous day. It has therefore been held further that if the workman does not come to receive the compensation on or before the due date, when called upon to do so, the employer should send the same to him on that date if possible, otherwise on the next day, and that only then it could be said that he had complied with the requirements of Section 25F(b) of the Act. With all respect, I am unable to subscribe to this view for there is nothing in Section 25F(b) to justify it.

11. No other point has been argued and as I find no force in this writ petition, it is dismissed with costs.