

(2005) 08 JH CK 0064

In the Jharkhand High Court

Case No : L.P.A. No. 459 of 2003 and Cross Appeal No. 1 of 2005

Bihar State Scheduled Caste Co-operative Development Corporation Ltd. and Another and Ashok Kumar Gupta and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2005) 4 JCR 31 : (2006) 2 LLJ 374 : (2005) 107 FLR 582

Hon'ble Judges : Altamas Kabir, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : Rajiv Kumar Singh, for the Appellant; Rajesh Prasad Choudhury, Ram Niwas Roy for the Respondent Nos. 7 to 15/Cross-Objectors and A. Allam and Pankaj Kumar for the State of Bihar, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal the instance of the Bihar State Scheduled Caste Co-Operative Corporation Limited and its Managing Director has been filed against the judgment and order dated 18th June 2003, passed by the learned Single Judge on the writ application filed by the respondent Nos. 7 to 15 herein, being W.P. (S) No. 2734/2002. In the writ application, the writ petitioners had questioned the manner in which their services had been terminated without due compliance with the provisions of Section 25-F of the Industrial Disputes Act, 1947.

2. Admittedly, the petitioners had been appointed in "AJAVINI" at different points of time in different capacities. An Engineering Cell was opened in "AJAVINI" but ultimately, a decision was taken to abolish the said Cell. Accordingly, pursuant to a decision dated 25th July, 2000, the Administrator "AJAVINI" abolished the Engineering Cell on the ground that no fund for the work was being allotted to the said Cell. An order was passed to take steps for adjusting the employees against the sanctioned posts as per seniority and suitability in Government

services. A decision was also taken to terminate the services of those, who were appointed on daily wages or illegally appointed.

3. Consequent upon such decision, the services of the writ petitioners were terminated by orders dated 26th March, 2002 and 10th April, 2002. While the services of the writ petitioners were so terminated with immediate effect, in the forwarding portion, there was an order to pay one month's salary in lieu of one month's notice and 15 days' wages for each completed year of service, as per Section 25-F of the Industrial Disputes Act, 1947. It is also admitted that no individual notice u/s 25-F of the aforesaid Act was issued to any of the writ petitioners and besides being given one month's notice pay and compensation equivalent to 15 days' wages of one year, the writ petitioners were deprived of 15 days' wages for each year of completed service as contemplated in Section 25-F of the Industrial Disputes Act, 1947.

4. On the basis of challenge thrown by the writ petitioners to the manner in which their services had been terminated, the learned Single Judge was of the view that such termination was unlawful, since the provisions of Section 25-F of the Industrial Disputes Act, 1947, had not been complied with by the appellants herein and consequently, the writ application was allowed with a direction that the writ petitioners should be reinstated but with 50% of the wages for the intervening period. The learned Single Judge also observed that while it would be open to the appellants herein to pass appropriate orders in accordance with law, they should take into consideration the fact that the writ petitioners had completed about 18-22 years of service under the appellants and thereby instead of terminating their services, it should be considered whether they could be adjusted/absorbed against any other equivalent post or not.

5. As indicated hereinabove, the said order of the learned Single Judge is the subject-matter of challenge in the instant appeal.

6. The legal position as indicated by the learned Single Judge cannot be faulted, since there has been no compliance with the provisions of Section 25-F of the Industrial Disputes Act, 1947. However, it has also to be kept in mind that it had been the intention of the authorities of the appellant to take recourse to the provisions of Section 25-F of the Industrial Disputes Act, 1947, but while executing the said orders, they failed to abide by the provisions in full. As has been pointed out by the learned counsel appearing for the appellants, in each of the letters of termination of services of the writ petitioners, there was an intention that the provisions of Section 25-F of the Industrial Disputes Act, 1947, should be given effect to, while passing the impugned orders of termination of service. Unfortunately, although, there was an intention to comply with the said provisions, in reality the appellants failed to do so. It is such failure which has led the learned Single Judge to allow the writ application and to direct that the writ petitioners be reinstated in service. The learned Single Judge, however, was not unaware of the fact that it was within the competence of the appellants herein to pass fresh orders in accordance with law and accordingly, while making such an

observation, the learned Single Judge also directed the appellants herein to see whether the writ petitioners could be adjusted and absorbed against other equivalent posts.

7. During the course of hearing, it was pointed out by the learned counsel appearing for the appellants that with the abolition of the Engineering Cell of the appellant Corporation, there is, in fact, no work available where the writ petitioners could be adjusted. It was, however, submitted that the appellant-Corporation was in no condition to either reinstate the writ petitioners or to adjust them against any similar vacancies.

8. On behalf of the writ petitioners, it was forcefully contended that since the provisions of Section 25-F of the Industrial Disputes Act, 1947, had not been adhered to by the appellants herein, the question of termination of services of the writ petitioners could not or did not arise and such termination must be held to be illegal. It was urged that the learned Single Judge had rightly pointed out, upon relying on the decision of the Supreme Court in the case of Gammon India Limited Vs. Niranjan Dass, , that the retrenchment itself was void ab initio.

9. We have carefully considered the submissions made on behalf of the respective parties and while there is no denial of the fact that there has been no compliance with the provisions of Section 25-F of the Industrial Disputes Act, 1947, by the appellants, there was, however, an intention to do so as would appear from the orders of termination of the services of the writ petitioners. During the course of hearing of the appeal, we had expressed our minds that the appellant-Corporation should calculate the dues of each of the writ petitioners-workmen, if the provisions of Section 25-F of the Industrial Disputes Act, 1947, were to have been complied with fully and effectively, when their services were terminated. A chart has been prepared and submitted on behalf, of the appellants, which discloses the amount that would be payable to each of the nine writ petitioners after deducting amounts already paid and adding interest @ 6% per annum in the event the provisions of Section 25-F of the Industrial Disputes Act, 1947, had been applied, when the termination letters were issued, upto the month of August, 2005.

10. We have considered the chart, which gives the details of the manner in which the amounts have been computed and we are of the view that having regard to the fact that the Engineering Cell of the appellant-Corporation has been abolished and it had been the intention of the said appellants to apply the provisions of Section 25-F of the Industrial Disputes Act, 1947, the authorities should be given such an opportunity. Technically speaking, the order of the learned Single Judge cannot be faulted, but having regard to the fact that it had been disclosed in the order of termination of the services of the writ petitioners that the provisions of Section 25-F of the Industrial Disputes Act, 1947, should be adhered to, we are inclined to accept the submissions made on behalf of the appellants that they should be given the option of paying the amounts as were required to be paid u/s 25-F of the Industrial Disputes Act, 1947, to each of the

writ petitioners.

It has been pointed out on behalf of the writ petitioners- respondents that subsequently, it had also been decided to pay the writ petitioners only one month salary for the entire period of service.

11. Even if such an instruction was subsequently issued as pointed out on behalf of the writ petitioners, the initial decision had been to abide by the provisions of Section 25-F of the Industrial Disputes Act, 1947, and we feel that the appellant-Corporation should be given the opportunity to pay to the writ petitioners the amounts as would have been payable when the services of the writ petitioners were terminated and/ or retrenched. Since, however, this order is being made in the appeal, we are also of the view that such dues should be made available to the writ petitioners till the month of August, 2005, as has been calculated and indicated in the chart submitted on behalf of the appellant-Corporation, which is made part of the records.

12. The appeal is accordingly allowed to the aforesaid extent that the appellants would be entitled to treat the services of the writ petitioners as having been retrenched with compensation payable upto the month of August, 2005, together with interest @ 6% per annum as has been indicated in the chart. If at all the appellant-Corporation has any plans to make fresh appointments in respect of the posts to which the writ petitioners had been appointed, they should also consider the cases of the writ petitioners and the fact that they have rendered 18-22 years of service therein. There will be no order as to costs.

The cross-appeal preferred by the writ petitioners is also disposed of by this order.