

(1970) 05 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1510 of 1969

Borhan Kumar

APPELLANT

Vs

Assistant Personnel Officer, Indian Oil Corporation, Refineries
Division, Barauni Unit and Others

RESPONDENT

Date of Decision : 06-05-1970

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25G

Citation : AIR 1971 Patna 174 : (1971) 1 LLJ 50

Hon'ble Judges : U.N. Sinha, J;C.P. Sinha, J

Bench : Division Bench

Advocate : Ranen Roy, J. Krishna and Ashok Kumar Sinha, for the Appellant; Lal Narain Sinha, General and Ramesh Chandra Sinha, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Sinha, J.—This application has been filed by the petitioner under Article 226 of the Constitution of India, praying that his retrenchment by notice dated the 28th October 1969 (Annexure 1) may be quashed. There is a further prayer to the effect that the Labour Commissioner and the State of Bihar, who are opposite parties, may be directed to refer the petitioner's dispute regarding his retrenchment for adjudication u/s 10 read with Section 12 of the Industrial Disputes Act, 1947. [The second relief claimed in the writ application was not, however, pressed at the time of the hearing].

2. The relevant facts are as follows:-- It is stated that the petitioner was appointed as a Helper in the Electrical Department of Barauni Oil Refinery in 1962. The Management had declared 955 workers as surplus, upon which an industrial dispute was raised by Barauni Tel Sodhak Mazdoor Union, and after some negotiation, the Management and the said Mazdoor Union referred their dispute for adjudication by Sri I. Prasad. Labour Commissioner, Bihar, u/s 10A of the Industrial Disputes Act, 1947. It is stated that the petitioner was not a

member of the said Mazdoor Union at that time. The terms of reference were as follows:--

"Whether the demand of the union for placing all the workmen of daily wage in regular pay scales of permanent cadre with protection of existing wage is justified? If so, on what terms and conditions and from what date or dates? If not, how many of them should be made permanent in regular pay scales and on what terms and conditions and also from which date or dates; how many of them should be kept on temporary nature of work on what terms and conditions; and how many are not required from which date or dates?"

The Arbitrator gave his award on the 13th September, 1969, which was published in the Bihar Gazette Extraordinary dated the 27th September, 1969. The Arbitrator had come to a finding that 199 workmen from various departments were surplus to the requirement. The following portion of the award has been quoted in the writ application:--

"As regards 199 workmen who are not required, their details departmentwise are as follows (this figure excludes those workmen who have already left their services up to 14th August, 1969):--

- (1) Mechanical Engineering Department 146
- (2) Electrical Engineering Department 58
- (3) Civil Engineering Department 9
- (4) Public Health 14
- (5) Production Department (excluding those two who have already left) 2

Total 229

Out of the above 229 workmen it is recommended that 30 workmen should be absorbed in the Pipeline Section and the remaining 199 workmen should be rendered surplus."

It is stated that on the 28th October, 1969 the Management hung up a list of 180 workmen proposed to be retrenched and the petitioner's name was included at serial No. 122. This is the notice which is sought to be quashed so far as the petitioner is concerned. It is alleged that the Management had not given any notice to the petitioner and to the authorities as required by Section 25F of the Industrial Disputes Act, 1947 (hereinafter to be called the Act) and Rule 78 of the Industrial Disputes (Bihar) Rules, 1961 (hereinafter to be called the Bihar Rules). It is further alleged that the Management did not prepare and exhibit any list of workmen showing categorywise the seniority amongst them, as required by Rule 79 of the Bihar Rules. It is alleged that the Management did not comply with the provisions of Section 25G of the Act and while the petitioner was being retrenched several persons junior to him have been retained in service.

It is stated in the writ application that it is not possible for the petitioner to give

the names of the juniors retained in service, but so far as he has been able to ascertain, four persons named in paragraph 12 of the writ application, junior to the petitioner, have been retained while the petitioner has been retrenched. As against these names it has been mentioned that they are Helpers in the Electrical Department. It is alleged that the petitioner individually and also through his Union, Barauni Refineries Employees' Union (Registered No. 1029) had protested against his illegal retrenchment, but no relief had been obtained from the Management. It is stated that the petitioner and his Union had also raised industrial dispute and had personally approached the Labour Officer of the area and also the Labour Commissioner, Bihar, who had refused to refer the dispute for adjudication u/s 10 of the Act. They had even refused to call for a conciliation meeting.

3. A counter-affidavit and a supplementary counter-affidavit have been filed on behalf of the Management represented by opposite parties Nos. 1 and 2. It is stated that the Management and the recognised Union had agreed to refer their dispute for voluntary arbitration and it is denied that the petitioner of the writ application was not a member of Barauni Tel Sodhak Mazdoor Union. It is denied that the requirements of all the clauses of Section 25F of the Act had not been complied with. It is stated that a general notice and a particular notice of the retrenchment had been hung up and had been sent to the workers concerned respectively. It is stated that the provision of Rule 78 of the Bihar Rules had been complied with and a copy of the notice in Form P has been given as Annexure C. On the main point of alleged contravention of Section 25G of the Act and Rule 79 of the Bihar Rules it has been stated thus in paragraphs 9 and 10 of the counter-affidavit;--

"9. That the statement made in paragraph 10 of the application is baseless. As per award, the retrenchment of workmen was to be effected on the basis of seniority of employees working on a particular job on the date of award and not category-wise. Thus in terms of the award, of Annexure B, the juniormost persons on a particular job if surplus to the requirement, were retrenched and as such, a category-wise list of seniority was not at all required to be exhibited under the Rule 79 of the Industrial Disputes (Bihar) Rules, 1961. The deponent respectfully submits that there was no necessity of exhibiting such a list although such a list was in existence.

10. That as stated in paragraph 9 above, the retrenchment in question was affected (sic) on the basis of seniority of employees working on a particular job and not according to the seniority in a particular category and as such, the statement made in paragraph 11 of the writ application is not correct. It is respectfully submitted that since the retrenchment in question was made as per award, Section 25G of the I.D. Act was inapplicable. The deponent further begs to submit that if the retrenchment would have been made category-wise, it would have gone against the award itself and might have rendered as liable for criminal prosecution under the I. D. Act."

It has also been stated that Section 25G of the Act has substantially been complied with, as the Management had followed the direction in the award to retrench jobwise and not categorywise and this amounted to the Management giving reasons for retrenching the petitioner, retaining junior employees. With respect to the four names of employees junior to the petitioner, mentioned in the writ application, who are said to have been retained in service, it is stated in the counter-affidavit that they have been retained because they were engaged on job Nos. 10, 4, 14 and 13, as indicated in the award, and they were not surplus as per award. It is mentioned that the petitioner of the writ application was not employed on any of the jobs mentioned in the award and thus he was surplus to the requirement and was accordingly retrenched.

It is stated that the Management had not received any representation of the petitioner for redress. Although the Management received a letter from the Barauni Refineries Employees' Union, that Union had not taken up the case of the petitioner for any remedy. It is also stated that the Management had no knowledge that the petitioner and his Union had approached the Labour Officer and the Labour Commissioner, Bihar for any relief. It is contended that the petitioner has no right to invoke the writ jurisdiction of this Court and his only remedy was to raise an industrial dispute. It is also mentioned in the counter-affidavit that the order of this Court dismissing in limine C. W. J. C. 1364 of 1969, filed by some other employees, on the 13th November, 1969 will operate as constructive res judicata against the present petitioner. It is mentioned in the counter affidavit that the petitioner is not entitled to any relief on the ground that there was a settlement on the 16th December, 1969 giving the retrenched "several far-reaching ex-gratia benefits".

In the supplementary counter-affidavit, certain further facts have been mentioned. It is stated that there was a conciliation proceeding held by Sri B. P. Varma, I.A.S., Joint Commissioner of Labour and Conciliation Officer, Bihar, on the 16th December, 1969, and in course of this proceeding, a settlement was arrived at between the Management and the said Mazdoor Union, to the effect that several far-reaching ex-gratia benefits will be given to the retrenched employees. A copy of the memorandum of settlement has been given as Annexure D of this supplementary counter-affidavit.

The principal terms mentioned in Annexure D are as follows:--

"1. The Management had retrenched 180 workmen on 28-10-69 and have already offered payment of retrenchment benefits in accordance with Section 25F of the Industrial Disputes Act, i.e.,

(a) One month's notice pay

(b) 15 days' pay for each completed year of service.

2. The Union agreed that the benefits mentioned in circulars No. Pl/E-2834 dated 16-5-68 and No. P/E-3994 dated 29-7-68 are applicable only to those surplus

workmen who voluntarily offer to be retrenched.

3. The Management, however, offered and the Union agreed that purely as a gesture of goodwill and without creating any precedent, all the 199 surplus workmen as per arbitration award dated 13-9-69 would be paid an ex gratia amount equivalent to 98% of the total of the following:--

(a) 18 days" wages in lieu of earned leave for each completed year of service.

(b) 9 days" wages in lieu of festival holidays for each completed year of service in addition to 3 paid National Holidays for which payment has already been made.

(c) Ex gratia payment to each employee on the following scale:--

(i) One month"s wages to workmen with service exceeding one completed year as defined in the Industrial Disputes Act, but not exceeding 1 1/2 years;

(ii) Two months" wages to workman whose service exceeds 1 1/2 years, but does not exceed 2s years;

(iii) Three months" wages to workman whose service exceeds 2 1/2 years but does not exceed 4 1/2 years.

This will be in addition to the statutory benefits as mentioned in Clause (1) of this agreement.

This ex gratia amount will be paid when the workmen concerned filed application individually.

4. Should the retrenchment made on 28-10-69 either be declared illegal or inoperative by any court of competent jurisdiction, the statutory retrenchment benefits and the ex gratia paid would be recovered from the workmen concerned in accordance with this agreement.

5. The ex gratia amount must be collected by the concerned workmen retrenched on 28-10-69 latest by 16-1-1970 and by other workmen to be retrenched in terms of the arbitration award dated 13-9-69 within 30 days of the date of their retrenchment failing which offer of payment of ex gratia payment would stand withdrawn."

It is stated in the supplementary counter-affidavit, further, that the petitioner of the writ application has already received payment of retrechment benefits in accordance with Section 25F of the Act and a copy of his receipt has been given as Annexure E. It has also been mentioned that the writ petitioner had received several ex gratia benefits also, thereby accepting the terms of the award as well as the retrenchment order.

4. The main point argued by Sri Ranen Roy appearing for the petitioner, is that in retrenching his client, the employer did not comply with the mandatory provisions of Section 25G of the Act, which runs as follows:--

"25-G. Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."

So far as the writ application has mentioned about contravention of Rule 78 of the Bihar Rules, I am of the view that this contention has been sufficiently rebutted by the employer in paragraph 8 of the counter-affidavit and in paragraph 3 of the supplementary counter-affidavit. The assertions made therein are supported by Annexure C of the counter-affidavit and Annexures C-1, C-2 and C-3 of the supplementary counter-affidavit. Sri Roy has, however, argued that there has been a non-compliance with Rule 79 of the Bihar Rules, inasmuch as the employer had not prepared a list of workmen in the category to which the petitioner had belonged according to the seniority of their service in that category, and, therefore, the petitioner's retrenchment was vitiated. It is argued that the petitioner's assertion that at least four helpers in the Electrical Department, junior to the petitioner had been retained in service, whereas the petitioner, also a helper in the Electrical Department, has been retrenched has been admitted. Thus, according to Sri Roy, two parts of Section 25G of the Act have been contravened, the substance of which is that the principle of "last come first go" has been ignored.

The learned Advocate-General appearing for the employer has answered this point by contending that categories of workmen have not been defined in the Act and that Section 25G gives statutory scope to the employer to retain a junior employee in the circumstances mentioned in the section itself. It is argued that the four persons mentioned in the writ application, who are said to have been retained, have been retained job-wise, according to the award itself, and when the award has been followed, it must be taken that the employer has given reasons for retaining employees junior to the petitioner. For this argument reliance is placed on the concluding portion of the award, which states thus:--

"The workmen employed (on daily or on monthly consolidated wage) either should be made permanent or kept on temporary basis, as the case may be, in order of seniority on that particular job out of the workmen employed therein.

The abovesaid workmen, however, should be made permanent from the date of award. The wages, however, of the workmen should be protected while absorbing them in the regular cadre on a permanent scale or employing them on a temporary basis.

I give my award accordingly."

Reference is made to paragraph 11 of the counter-affidavit, which states thus:--

"That the names and dates of appointment of the four workers mentioned in

paragraph 12 of the application are not denied. It would be worth-mentioning here that these four workers were engaged on job Nos. 10, 4, 14 and 13 as indicated in the award and on these jobs, they were not surplus as per award; whereas, the petitioner Borhan Kumar was not employed on any of the jobs mentioned in the award and thus he was surplus to the requirement and was retrenched accordingly."

It is urged that the four junior persons retained in service came within the direction given in the award, quoted above, for retention, and hence the employer has to follow the directions given in the award. On this point, it appears to me, that, the argument advanced on behalf of the petitioner has greater force than that advanced by the learned Advocate-General, based on the award itself. The concluding portion of the award must be taken to have given certain directions as regards persons who are to be retained according to the award. This portion has no reference to any principle of retrenchment or to any departure from the ordinary law of retrenchment embodied in Section 25G of the Act.

The contention raised in paragraph 9 of the counter-affidavit to the effect that a category-wise list of seniority was not required to be exhibited in this case, although such a list was in existence, cannot be held to be a valid contention and it is not possible to accept the argument that according to the award, retrenchment of workmen was to be effected on the basis of seniority of employees working on a particular job on the date of award and not category-wise, as mentioned in Paragraph 9 of the counter-affidavit. Similarly, it is not possible to accept as valid what has been stated in Paragraph 10 of the counter-affidavit, to the effect, that, if retrenchment had been effected category-wise it would have gone against the award itself. Thus, the main point raised in the case by Sri Roy must be decided in favour of the petitioner.

5. The second argument made by the learned Advocate-General is that no application for a writ lies against respondent-opposite party No. 2, as it is Limited Company in which all the shares are held by the Central Government in different names. Reliance is placed on the case of *Pramodrai Shamaldas Bhavsar Vs. Life Insurance Corporation of India*, . But in my opinion, this decision is not in point at all. It was held in that case that the relation between the Life Insurance Corporation of India and its employees was governed by the ordinary law of master and servant, except where it was abrogated by statutory provision or special contract and, therefore, no writ could be issued against the Corporation when it dismisses one of its servants. The instant case is of a wholly different nature as the petitioner desires that the employer must be kept within the bounds of law laid down by the Industrial Disputes Act, which governs it.

On behalf of the petitioner Sri Roy has referred to a decision of the Calcutta High Court, in the case of *Abani Bhusan Biswas Vs. Hindusthan Cables Ltd., Burdwan and Others*, . In this case, the Calcutta High Court held that even a Company may be compelled by mandamus to perform the duties imposed upon it by

statute. In my opinion, the contention raised by the learned Advocate-General to the effect that no application of writ against respondent No. 2 is maintainable in any circumstances, is not valid. It is next urged by the learned Advocate-General that the petitioner should have raised an industrial dispute instead of coming to this Court in its writ jurisdiction and hence the petitioner is not entitled to any relief in this case. But, in the writ application it has been mentioned that the petitioner had personally approached the Labour Officer of the area and also the Labour Commissioner, Bihar who had refused to refer the dispute for adjudication u/s 10 of the Act and they had refused to call any conciliation meeting and, therefore, it seems, that the petitioner had to come up to this Court and had filed this writ application on the 1st December, 1969.

At that stage, the petitioner had been compelled to come up to this Court, but the later history to be mentioned hereinafter, will deal with a subsequent chapter in this connection. This refers to an objection taken by the learned Advocate-General to the grant of a writ of mandamus on the ground, that there had been a conciliation proceeding later on, as evidenced by an agreement dated the 16th December, 1969 (Annexure D) by virtue of which the petitioner had taken ex gratia payment as mentioned earlier. This matter will have to be dealt with more fully as, in my opinion, on the conclusion arrived at on this point, the petitioner must fail in this Court. At this stage, I would like to refer to the argument of learned counsel for the petitioner that his client was a member of Barauni Refineries Employees' Union and this Union had protested against the retrenchment made by the employer, taking up the case of this petitioner also. In proof of this, Annexure 2, dated the 29th October, 1969 had been filed, which appears to be a protest made to the Company by Barauni Refineries Employees' Union. The petitioner's case that he had individually protested against his illegal retrenchment has been denied in the counter-affidavit filed on behalf of the employer and there is no reason to discard the statement made in this counter-affidavit. So far as Annexure 2 is concerned it is clear that the protest was on behalf of two other persons, namely, R.P. Sharma and Kameshwar Mahto.

Therefore, there is no clear proof that the petitioner was not a member of Barauni Tel Sodhak Mazdoor Union, which had taken part in the conciliation agreement evidenced by Annexure D. According to Annexure E, the petitioner had been paid what was due to him u/s 25F of the Act and this has been clarified by the supplementary counter-affidavit. Annexure E is a copy of the acquittance receipt, which had been signed by the petitioner himself. He had accepted the amount mentioned in it on the 28th October, 1969, the day the retrenchment order had been passed as mentioned in Annexure C, a notice given by the employer to the Government of Bihar, Department of Labour and Employment. I may mention at this stage that in the counter-affidavit filed by the employer, it had been mentioned that the petitioner had been given one month's pay in lieu of notice, which was denied in the petitioner's reply where he stated that no payment in lieu of notice was made to him either before or at the time when the retrenchment had been effected. In such circumstances, a supplementary

counter-affidavit had to be filed by the employer for showing that the petitioner had received retrenchment benefits in accordance with Section 25F of the Act. Annexure E is a copy of the receipt of such payment and it must be held that the petitioner has made wrong statement in this Court that he had not been paid retrenchment benefits according to the requirements of the Act.

So far as the ex gratia payment incorporated in the agreement (Annexure D) is concerned, Sri Roy has looked into the original document produced by the learned Advocate-General and it is now admitted that the petitioner had received Rs. 864/- on the 10th January, 1970, the ex gratia payment mentioned in paragraph 3 of Annexure D. If the petitioner was not a member of Barauni Tel Sodhak Mazdoor Union it is difficult to appreciate how he had taken this ex gratia payment, envisaged by the agreement (Annexure D). It is clear that the employer had paid this ex gratia amount to the petitioner in the absence of any knowledge of the writ application filed by him, as it is stated in the counter-affidavit that the notice of the writ application had been served upon opposite parties Nos. 1 and 2 on the 12th January, 1970, Sri Roy has faintly argued that his client had accepted the ex gratia payment on the footing of the terms mentioned in paragraph 4 of Annexure D. That is to say it is urged that if the retrenchment order is set aside, the petitioner will return the benefits taken by him. I do not think that this is a valid argument on the facts of the present case. The employer must have made this ex gratia payment to the petitioner without knowledge of the writ application filed by him, on the footing that the retrenchment order was being accepted by the retrenched employees on receiving the payments mentioned in Annexure D. Sri Roy had also urged at one stage, that Annexure D should have been signed by the Secretary and the President of the Union and in the absence of the President's concurrence this agreement was not valid.

This technical plea must be rejected when the petitioner had received ex gratia payment by virtue of this agreement, apart from receiving statutory benefits under the Act. Sri Roy has contended that no technical ground of estoppel is available to the employer when the employee complained of a retrenchment in contravention of the statutory provisions and reliance is placed on a decision of the Supreme Court in the case of *Workmen of Subong Tea Estate Vs. The Outgoing Management of Subong Tea Estate and Another*, . In my opinion that case is quite distinguishable as it had arisen on an industrial dispute, in which the award given was being challenged before their Lordships of the Supreme Court by the workmen. In that connection, Sri Sastri appearing for the employer had urged that the workmen having accepted the retrenchment compensation should not be permitted to question the validity of retrenchment. On this point, their Lordships of the Supreme Court stated thus:--

"Apart from the fact that such technical pleas are not generally entertained in industrial adjudication; we cannot overlook the fact that after retrenchment compensation was paid to the employees on 31st August, 1959, the next day

they complained that they had been forced to accept the said compensation, because they were virtually told that if they did not accept the compensation, they would not receive their wages for the month of August."

Therefore, their Lordships have not laid down as a matter of principle, that, there can never be a bar on the principle of estoppel or waiver by conduct against a petitioner of a writ application. Our attention has been drawn to a decision of this Court in the case of Somu Kumar Chatterji v. District Signal Tele-communication Engineer, C.W.J.C. No. 289 of 1968, D/- 23-5-1969 = (reported in 1970 Lab IC 629 (Pat)) and to two other decisions on this point mentioned therein. These decisions are B.N. Elias and Co. Private Ltd. Vs. Fifth Industrial Tribunal of West Bengal and Others, , and a decision of this Court in the case The Employers in relation to Hind Strip Mining Corporation Ltd. Vs. Raj Kishore Prasad and Others, . In the case of B.N. Elias and Co. Private Ltd. Vs. Fifth Industrial Tribunal of West Bengal and Others, there was an industrial dispute which had been referred to an Industrial Tribunal for adjudication and an award had been given. It had been argued before the Calcutta High Court in a writ application that since the workmen had received certain sums of money from the employer on acknowledgment of receipt in final settlement, they Were not entitled to any further payment or to urge that Section 25F(b) had not been duly complied with.

The High Court held that there cannot be any estoppel against a statute, particularly when the non-compliance went to the root of the thing. The High Court affirmed the view taken by the Tribunal to the effect that the rule of estoppel or waiver could not be applied against retrenched workmen who had no freedom to refuse payment in view of their financial position caused by retrenchment. This case is also distinguishable as u/s 25G of the Act, the employer had to follow the principle of "last come first go" in the absence of any agreement between the employer and the workmen. In the instant case, the agreement entered into on the 16th December, 1969, of which full advantage was taken by the petitioner, is a feature, which, in my opinion, should undoubtedly be taken into consideration, when the petitioner has come up to this Court for a writ in the nature of mandamus. In The Employers in relation to Hind Strip Mining Corporation Ltd. Vs. Raj Kishore Prasad and Others, also, an award had been given by the Industrial Tribunal, holding that retrenchment of certain workmen was not justified.

The Industrial Tribunal had held in that case that the workmen had accepted retrenchment compensation and provident fund money under protest, because they had been reduced to starvation level. In that sequence this Court held that when the Tribunal had held that the workmen were in starving condition and were forced to accept the retrenchment benefit, that should not be held to be a ground for preventing them in an industrial dispute from challenging the legality of the retrenchment. This case is also distinguishable on the ground mentioned in connection with the case of B.N. Elias and Co. Private Ltd. Vs. Fifth Industrial Tribunal of West Bengal and Others, . So far as C.W.J.C. No. 289 of 1968 : (1970

Lab IC 629.) is concerned, it had been argued in that case that the workmen were not entitled to question their retrenchment, having accepted retrenchment compensation.

The facts of the instant case are entirely different, as there had been a conciliation proceeding after the order of retrenchment had been passed and in that proceeding an agreement had been entered into and that agreement had been taken advantage of by the petitioner in receiving the ex gratia payment decided by the conciliation agreement, over and above receiving the statutory compensation earlier. The receipt of ex gratia payment by the petitioner on the 10th January, 1970 must be taken to be on the footing that he was acquiescing in the order of retrenchment. According to paragraph 5 of the agreement, ex gratia had to be collected by the workmen retrenched on the 28th October, 1969 latest by 16th January, 1970 and the petitioner accepted this amount on the 10th January, 1970. Having done so I do not think that the petitioner is now entitled to press this application for a writ of mandamus. I should add here that I am really not proceeding on any principle of estoppel against the petitioner at all, I am proceeding on the basis that having taken full benefits under the agreement dated the 16th December, 1969, the petitioner has disintitiled himself from getting an order compelling his employer to reinstate him.

I do not see why it cannot be held that the petitioner has, subsequent to the filing of this writ application, waived all the objections that he had raised earlier. Let us consider what will be the effect if the petitioner succeeds in having the retrenchment notice (Annexure 1) quashed against him on the grounds urged on his behalf. In pursuance of the agreement incorporated in Annexure D, dated the 16th December, 1969 many other employees must have taken the benefits mentioned in the agreement, and if the retrenchment order is set at naught against the writ petitioner, all actions taken under Annexure D are likely to be upset. Many of the retrenched employees may be satisfied with the benefits given under Annexure D and they may have no further complaint against the order of retrenchment, and if the retrenchment notice (Annexure 1) is now quashed against the petitioner, a serious uncertainty will follow. Neither the employer nor the other retrenched employees will know what course to adopt for future action. Although there is no force in the contention that this case is barred by constructive res judicata, raised in the counter-affidavit, in my opinion, a final curtain must be dropped over the impugned order of retrenchment on the facts and circumstances of the case.

6. For the reasons given above, the writ application fails and it is dismissed with cost, which is assessed at a consolidated amount of Rs. 100.

C.P. Sinha, J.

7. I agree.