

(1956) 11 MAD CK 0019
In the Madras High Court
Case No : Writ Petition No. 934 of 1956

C.B.R. Ratnam and Co.

APPELLANT

Vs

D. Ekambaram and Another

RESPONDENT

Date of Decision : 26-11-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Industrial Disputes Act, 1947 — Section 2, 25F, 25I

Citation : AIR 1957 Mad 724 : (1957) ILR (Mad) 832 : (1957) 2 LLJ 266 :
(1957) 70 LW 229

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Single Bench

Advocate : N. Suryanarayanan, for the Appellant; O. Radhakrishnan, for Special Govt. Pleader, for the Respondent

Judgement

Rajagopala Ayyangar, J.—An order of the Government directing recovery of arrears of land revenue amounting to Rs. 829-2-6 from the petitioner is challenged in this writ petition as ultra vires and beyond their jurisdiction.

2. The petitioner is C. B. R. Ratnam and Co., which is a proprietary concern carrying on business as mechanical engineers. One D. Ekambaram, the first respondent in this writ petition was a foreman employed in the petitioner's firm. He ceased to be so employed on and from 12-12-1955. This Ekambaram complained about this by his letter of even date stating that the employer had improperly terminated his services and also asking for reasons as to why his services were dispensed with.

3. A few days later he brought this improper discharge from service to the notice of the Labour Officer and requested him to take up this for conciliation and get him reinstated. The Labour Officer issued notice to the petitioner and held an enquiry into the workman's Complaint, While these matters were pending the workman filed an application before the Government on 6-1-1956 stating that he had been retrenched by the proprietor and was therefore entitled to

compensation for such retrenchment u/s 25-F of the Industrial Disputes Act, 14 of 1947. In this application he prayed that a sum of Rs. 960 computed by him as per the provisions of the Act and payable to him by way of retrenchment compensation might be collected from the petitioner as arrears of land revenue and made over to him. The enquiry before the Labour Officer went on and in the course of this the petitioner here urged two matters : (1) that the claim by the workman on the footing that he had been working for a continuous period of twelve years was incorrect and (2) that the workman was constantly absenting himself from duty without leave and that he turned up for work on 10-12-1955 and that then an explanation was then called for as regards his absence, he left the employment voluntarily stating that he would seek remedy through labour tribunals. On this latter ground it was Contended that the employee was not one whose services had been terminated on account of retrenchment so as to give rise to a claim for compensation for retrenchment under the relevant provisions of the Industrial Disputes Act. The Labour Officer completed his enquiry and evidently submitted some report to the Government about which the employer was not informed. The Government thereupon passed an order on 10-7-1956 which after reciting the application from the workman dated 6-1-1956 and the report from the Commissioner of Labour, Madras, dated 8-5-1956 went on in its operative portion to state:

"The Government after careful consideration are satisfied that the amount of Rs. 829-2-6 is payable to the workman as compensation u/s 25-F of the Industrial Disputes Act, 1947, and that the management of C. B. R. Ratnam and Co., 18 Wallers Road, Mount Road, is liable to pay the said compensation."

"As the management has failed to pay the compensation the Government hereby direct the Collector of Madras to take necessary action in pursuance of Section 25(1) of the Industrial Disputes Act for the recovery of the said sum of Rs. 829-2-6, due to the said workman from the said management as arrears of land revenue or as a public demand and to disburse the amount so received to the said workman." It is the legality of this order that is challenged in this writ petition.

4. The provision in regard to the payment of compensation in the event of retrenchment was introduced by Central Act 43 of 1953, amending the Industrial Disputes Act of 1947. This amending Act introduced a new chapter. Chapter V-A dealing with "lay-off and retrenchment". Section 25-A to 25-E dealt with compensation in the event of layoff and Section 25-F to Section 25-H with conditions subject to which a workman might be retrenched and the compensation payable to him in that event. In relation to the question involved in the present petition the material provision is Section 25-F which is in these terms:

"Conditions precedent to retrenchment of workmen : No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until (a) the workman has

been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months and,

(c) notice in the prescribed manner is served on the appropriate Government." The expression retrenchment used in Section 25-F is defined in a newly introduced Section 2(oo) reading :

"Retrenchment means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action."

It will thus be seen that Section 25-F read in the light of the definition of "retrenchment" creates a statutory liability in an employer to pay compensation to his workman in the event of his being retrenched as defined. Section 25-I enables the local Government in the event of the sum not being paid by the employer to recover this retrenchment compensation from the employer as an arrear of land revenue and make over the sum so recovered to the workman. Section 25-I runs :

"Any money due from an employer under the provisions of this Chapter whether by way of compensation or by way of wages may without prejudice to any other mode of recovery be recovered in the same manner as an arrear of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money."

We have thus two provisions which came into play on a retrenchment as defined (1) a statutory pecuniary liability on the employer to pay his workman sums determined on the basis of the calculations set out in the statute, and (2) a provision for recovery of such sums if unpaid by the local Government.

5. What, however, is lacking is provision of any machinery for determining the questions which would obviously arise in cases of disputes : (i) was the workman who makes the claim "retrenched" so as to give rise to the statutory liability; (ii) the determination of the facts which underlie the computation of the amount of compensation u/s 25-F(b). There might be disputes between the employer and the workman as regards both these matters. For instance in the present case it is the contention of the employer that the workman was not discharged but that he voluntarily terminated his own employment by refusal to attend. If this were made out it is not suggested that the workman would be entitled to any compensation. Again in regard to the quantum of compensation it was the case of the petitioner that the workman was not in his services during prolonged

periods during the 12 years. If this again were established by him, the quantum of compensation payable would be much less than what is sought to be recovered under the order impugned.

6. I have set out the terms of Section 25-I and it is clear that the rights of the Government to order recovery springs into existence and they could step in, only on there being an ascertained liability which the employer has not discharged by payment. They are not, however, vested with any power to ascertain (a) whether the workman is a retrenched workman and (b) the quantum of compensation if these are matters of dispute. In the absence of any specific provision in this regard I am aware of no rule of construction by which I could hold that Government were impliedly vested with jurisdiction to determine these matters and ascertain the sum. In my opinion the very terms of Section 25-I of the Act precludes such a construction for to repeat what I have said the section proceeds on the basis of a predetermined or ascertained liability. If the Government were not this judicial or quasi-judicial authority, neither the learned Special Government Pleader who appeared for the State nor the learned counsel for the respondent workman was able to point out any other machinery provided by the Act for the adjudication of these matters in the event of there being a dispute. It is certain that the Labour Officer who conducted the enquiry and ascertained the facts on the basis of which the sum now sought to be recovered from the petitioner was arrived at had no jurisdiction under the terms of the Industrial Disputes Act to adjudicate upon this question. This would be so whether the Labour Officer were treated as functioning as "a conciliation officer" under the Act or as exercising a delegated power from Government to ascertain the amount of retrenchment compensation due to the workman u/s 25-F. In my judgment there is a lacuna in the enactment and the Court can do no more than leave that to be made good by appropriate legislation.

7. The learned Special Government Pleader invited my attention to a decision of the Bombay High Court reported in K.N. Joglekar and Others Vs. Barsi Light Railway Co. Ltd., , where Chagla C. J. delivering the judgment of the Bench upheld an order passed u/s 15 of the Payment of Wages Act directing the employer to pay retrenchment compensation. I see nothing in the decision which helps the respondent in this case. In that decision a point was raised as regards the jurisdiction of the authority under the Payment of Wages Act to determine these matters but counsel for the employer expressly agreed before the Court that he was not interested in disputing that jurisdiction but was content to contest the adjudication on the merits as to whether in the event which took place, there was retrenchment so as to give rise to the statutory liability to pay compensation. Learned Counsel also referred me to a decision of the Punjab High Court in Mehra and Co. Tea Factory, Amritsar Vs. Khanayia Lal Pala Ram and Others, . That also was a case relating to the decision of an authority under the Payment of Wages Act. If in the present case an application were made to the authority under the Payment of Wages Act for the ascertainment of the amount due to the workman as retrenchment compensation it will be time enough to

consider whether that enactment could be resorted to, to obtain an adjudication as regards the liability to pay of and if so the amount of retrenchment compensation. It is sufficient for the present purpose to say that where a contention is raised that retrenchment compensation is not payable under the terms of Section 25-F and if payable, the amount would be not that claimed by the workman, neither the Labour Officer nor the State. Government have power to adjudicate upon these matters and ascertain the sum due and in the absence of any sum so ascertained by a competent authority the State Government have no power to order recovery of retrenchment compensation u/s 25-I.

8. In passing I might mention that the workman on whom rights are conferred by Section 25F is not wholly without remedy. If a statutory right is created in favour of a person, but this is made dependent on the existence of certain stated facts but the statute enacts no special machinery for the ascertainment of the statutory conditions on which the right arises, such a matter could certainly be brought up before an ordinary civil Court for its determination. The statutory right created in the workman would certainly be a "civil right" within the meaning of Section 9, C. P. Code attracting the jurisdiction of an ordinary civil Court, and as such a Court would under this section be deprived of its jurisdiction only if these were barred expressly or by implication, in the absence of any special machinery, there would be no bar to its jurisdiction. If the workman succeeds and a decree is obtained, the amount due to him u/s 25-F having been ascertained he can then approach the Government, to exercise its powers u/s 25-I and recover the sum due to him as an arrear of land revenue without having to proceed under Order 21, C. P. C, to realise the fruits of this decree. Of course this was not what Act 43 of 1953 intended, and the procedure certainly entails great hardship upon the workman.

9. I have pointed out that resort has also been had to the provisions of the Payment of Wages Act but as to this course being available I express no opinion since it does not arise for consideration before me.

10. The result is that the order of the Government directing recovery of the sum named in their order from the petitioner as an arrear of land revenue must be held to be one without jurisdiction. The writ petition is allowed and the rule is made absolute, and the order of the Government, G. O. Ms. No. 3263 (Industries, Labour and Co-operation Department) dated 10th July 1956 is set aside. There will be no order as to costs.