
(2011) 09 MP CK 0078
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2930 of 2011

Chedilal Dahiya

APPELLANT

Vs

Manager, Christukula Mission Higher Secondary School, Satna
and Another

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25, 25F, 33(2)(B)

Citation : (2011) ILR (MP) 2759

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajit Singh, J.—This petition, under Article 226 of the Constitution, is directed against the order dated 31.8.2010 passed in Case No. 37/2008/ID Act (Reference) by the Labour Court, Satna, whereby it has decided the reference against the petitioner holding that his termination was legal and proper.

2. In the year 1998 the petitioner was appointed as bus conductor in the Christukula Mission Higher Secondary School, Village Pateri, District Satna, of which respondent nos. 1 and 2 are Manager and Principal. On 1.2.2008, due to economic, managerial and administrative problems, the governing body of the school by a resolution decided to sell all the seven buses and to retrench drivers and conductors of the buses by paying them retrenchment compensation as per law. The buses were then sold to contractor Khurshid Alam Hashmi on 24.3.2008. Thereafter, respondent no.2 by letter dated 28.3.2008 terminated the services of petitioner with effect from 31.3.2008 by paying wages for the period of one month in lieu of one month's notice. The letter of termination was sent along with a cheque of Rs.30,349/- of the same date i.e. 28.3.2008 to the petitioner by registered post which he received on 2.4.2008. Rs.30,349/-included wages for one month and the amount of retrenchment compensation. Being

aggrieved, the petitioner raised an industrial dispute inter-alia on the ground that his termination was in violation of section 25-F of the Industrial Disputes Act, 1947 (in short, "the Act") and prayed for his reinstatement with back wages. The Labour Court, after appreciating the evidence on record by the impugned award, has held that the termination of petitioner was legal and proper. The Labour Court, however, directed the respondents to pay Rs. 10,000/- as cost to the petitioner because he received the termination order by registered post on 2.4.2008 though it was made effective from 31.3.2008.

3. The only submission made by the learned counsel for petitioner is that, although the services of petitioner were terminated with effect from 31.3.2008 he had been paid retrenchment compensation on 2.4.2008 and, therefore, the Labour Court committed an illegality in holding that the provisions of section 25-F of the Act were complied with. According to the learned counsel, since the petitioner had received retrenchment compensation after the date of his termination, there was no compliance of the mandatory provisions of section 25-F and this vitiates his termination order. To support his submission, the learned counsel has also placed reliance on a decision of the Supreme Court in *Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana)*, The learned counsel for respondents, in reply, defended the validity of the impugned award and relied upon *Management of Delhi Transport Undertaking Vs. Industrial Tribunal, Delhi and Another*,

4. The question is whether the retrenchment of petitioner is illegal because wages for one month and retrenchment compensation were actually not paid to him on the date of his termination.

5. Section 25-F of the Act reads as under:

25.F 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;

(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 continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

6. The expressions "the workman has been paid in lieu of such notice wages for the period of notice" in sub-clause (a) and "the workman has been paid at the time of retrenchment compensation" in sub-clause (b) of section 25-F of the Act do not mean that the wages for one month or the retrenchment compensation

should have been actually paid on the date of termination because in many cases the employer can only tender the amount before the termination but cannot force the employee to receive the payment before dismissal becomes effective. In the case of *The Management of Delhi Transport Undertaking (Supra)* retrenchment of an employee was assailed on the ground that one month's wages were not actually paid as per section 33(2)(B) of the Act before the order of dismissal. The Supreme Court held that it was not necessary that wages for one month should have been actually paid because the tender for wages was made before the termination became effective. In the decision of *Anoop Sharma (Supra)*, on which petitioner has relied, the employer was unable to prove that compensation was offered on the date of retrenchment nor the delay was explained in sending demand draft after three months of termination. This case, therefore, does not help the petitioner. The decision also does not depart the proposition of law laid down in *The Management of Delhi Transport Undertaking*. In the present case, wages for one month and retrenchment compensation were admittedly sent to the petitioner by registered post before the order of dismissal became effective which he received on 2.4.2008. Respondent no. 1 did everything within his means to pay the wages and retrenchment compensation to the petitioner before the order of dismissal became effective. There was, thus, no failure to comply with the provisions of section 25 of the Act. In fact, there has been sufficient compliance of the mandatory provisions.

7. It is also to be noted that the petitioner, after receiving the cheque of wages for one month and retrenchment compensation, immediately encashed the same. He is, therefore, stopped from complaining that his termination was illegal because of the non-compliance of the provisions of section 25-F of the Act.

8. For these reasons, we find no merit in the petition. It is accordingly dismissed but without any order as to costs.