

(2009) 05 RAJ CK 0114
In the Rajasthan High Court

Chief Manager, Rajasthan State Road Transport Corporation	APPELLANT
Vs	
Nannu Singh and Another	RESPONDENT

Date of Decision : 20-05-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 25F, 25H

Citation : (2009) 4 RLW 3137

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prem Shankar Asopa, J.—In this case, arguments were heard on 6.3.2009 and the order was reserved.

2. Counsel for the respondent-workman on application u/s 17B of the Industrial Disputes Act, 1947 (hereinafter to be referred as the "Act of 1947") submits that is applicable even in cases of fresh employment and re-employment on finding the violation of Section 25H of the Act of 1947.

3. In this case, violation of Section 25H was found by the Labour Court, Bharatpur in para No. 11 and after holding retrenchment valid, necessary directions of re-employment was issued in para 12 of its award dated 26.5.2008.

4. Counsel for the petitioner-RSRTC submits that provisions of Section 25F of the Act of 1947 are mandatory and any violation of the same, the retrenchment is declared illegal and usually consequential order is to be passed of re-instatement of the workman with continuity of service with back-wags. Here, in the instance case, order of termination was held not violative of Section 25F but the further action of the petitioner management of recruiting new employee was held unjustified and violative of Section 25H of the Act of 1947 and Rule 78 of the Industrial Rules which are not mandatory, therefore, the order of the re-instatement of workman was not passed.

5. I have considered the aforesaid aspect of the matter, I think it appropriate to quote Section 17B, 25F and 25H of the Industrial Disputes Act, 1947.

17B. Payment of full wages to workman pending proceedings in higher courts.-Where, in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a -High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be]

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 2 * [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 3* [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

25H. Re-employment of retrenched workmen.-Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2* [to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workman] who offer themselves for re-employment shall have preference over other persons.

6. The para Nos. 11, 12 and 13 of the award dated 26.5.2008 made by the Labour Court is as follows:

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crk;k x;k gS A fnukad 22-5-91 ds vkns" k ds voyksdu ls ;g Li"V gS fd vko;"drk ugh gksus ds dkj.k mls lsok ls gVk;k x;k gS] blfy, tgka rd Jfed dk 11-11-91 ls lsok lekIr dh oS/krk dk iz'u gS] vko;"drk ugh gksus ds vk/kkj ij ,d ekg ds uksfVI dk osru fn;s tkrs gq, lsok ls Ik`Fkd fd;k x;k Fkk] tks mfpr o oS/k ik;k tkrk gS] ijUrq lsok ls Ik`Fkd fd;s tkus ds i"pkr Hkh fuxe us pkydks dh le; le; ij HkrhZ dh xbZ gS vkSj pkydksa dh la[k dk cuk fu;kstd ds lk{kh us Lohdkj fd;k gS ijUrq bu uohu Jfedksa dh HkrhZ djus ls iwoZ izkFkhZ Jfed dks bl IEcU/k esa dksbZ uksfVI ugh fn;k tkuk /kkjk 25 ,Pk vkS|ksfxd fookn vf/kfu;e ,oa fu;eks ds fu;e 78 dh Li"V vogsyuk gS A vr% Jfed ukuwflag ds IEcU/k esa Hkh mldh "kkjhfd {kerk dks /;ku eas j[krs gq, pkyd ds in ij fu;qfDr ds IEcU/k esa fopkj fd;s tkus dk vf/kdkjh gSA

12- mijksDr foospu ds vk/kkj ij izkFkhZ vf/kfu;e dh /kkjk 25 ,p dk ykHk izkIr djus dk ik= gS A tgka rd fookn 9 o"kZ i"pkr mBk;s tkus dk iz'u gSA bl IEcU/k esa vkS|ksfx fookn vf/kfu;e esa fdlh Jfed }kjk fookn mBk;s tkus ds IEcU/k esa dksbZ le;kof/k fuf"pr ugh dh xbZ gS rFkk ekuuh; mPpre U;k;ky; us vius u;kf;d n`"Vkur 2001?90? ,y-,y-vkj- ?,llh? 754 ?liu dqekj iafM+r cuke ;w-ih- LVsV bysfDV?fIVh cksMZ ,oa vU;? esa ;g fl)kUr izfrikfnr fd;k gS fd U;k;ky; dsoy nsjh ds vk/kkj ij fdlh fookn dks lekIr ugh dj ldrh gS fQj Hkh U;k;ky; Jfed dks vuqrks" k iznku djrs le; nsjh ds IEcU/k esa fopkj dj ldrh gS A blh izdkj dk er 1994 ,y-,y-vkj- 538 jkt- ?vf/k"kkllh vfHk;Urk flapkbZ foHkkx fMohtu izFke t;iqj cuke gjukjk;.k? esa Hkh ,slk gh fl)kUr izfrikfnr fd;k x;k gS A bl izdj.k esa Jfed us /kkjk 33, ds v/khu dk;Zokgh 1991 ls 1994 rd dh gS blfy, esjh jk; es dsoy nsjh ds vk/kkj ij fookn dks lekIr fd;k tkuk U;k;ksfpr ugh gksxkA

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2- vizkFkhZx.k }kjk izkFkhZ dh fnukad 11-11-91 ls lsok ls Ik`Fkd fd;k tkuk Hkh mfpr gS ijUrq izkFkhZ dh lsok lekIr ds mijkUr uohu Jfedksa dh HkrhZ dj fy;s tkus rFkk mldks dk;Z ij ugh cqykuk vuqfpr gksus ds dkj.k izkFkhZ iqu% lsok es fy, tkus dk vf/kdkjh gS D;ksfd vizkFkhZ }kjk /kkjk 25 ,oa vk|ks-fo-vf/k- ,oa fu;e 78 vkS|ks-fo-vf/k- ds vkKkid fu;eks dh ikyuk ugh dh xbZ gS A vizkFkhZ fu;eksa dh ikyuk djrs gq, izkFkhZ dh "kkjhfd o ekufld fLFkfr dh mi;qDr dh tkap dj miyC/k fjdR LFkku ij fu;qfDr fn;s tkus gsrq volj iznku djus dh dk;Zokgh djsa A iapkV dh izfr izdk"ku gsrq izsf"kr gks A

7. Since the words neither the reinstatement nor the re-employment have been defined under the Sections of the Act of 1947, therefore, the term is to defined as per the dictionary meaning of Advanced Law Lexicon which are as follows:

Reinstatement-An order made by the employment tribunal directing an employer who has been found to have unfairly dismissed an employee restore him to his former job. The employee is to be treated as if he had not been dismissed and is therefore entitled to recover any benefits (such as arrears f pay) that he has lost during his period of unemployment. However, pay in lieu of notice ex gratia payments by the employer state unemployment or supplementary benefits, and

other sums he has received because of his dismissal or any subsequent unemployment will be taken into account. An employer cannot be forced to comply with an order for re-instatement; if he fails to do so, compensation will be awarded to the employee on the usual principles together with an additional sum."

Re-employment- Re-employment is different from retention in service. Retention in service means continued employment in the service in which the employee has been serving, is a quite different thing from re-employment of an employee after he has retired.

The re-employed has been used where a person who retires is re-employed it is different from retention and reinstatement and Industrial Disputes Act it has been used where although termination has held to be valid but still the employer is under obligation to provide an opportunity to re-employment in case of fresh recruitment.

8. Perusal of the meaning of word reinstatement would reveal that it is a resultant situation arising out the intervention of statutory authority or courts consequent upon declaration of the retrenchment illegal and restoration of the employee with the former job as if he has not been dismissed but in case of re-employment there is no need to declare retrenchment illegal and further an opportunity of re-employment be provided at the time of fresh recruitment after retrenchment of employee concerned.

9. After considering the aforesaid definitions, I come to the conclusion that the retrenchment held to be valid by Labour Court and Section 17B of the Act of 1947 is not applicable in the case of order of re-employment u/s 25H of the Act of 1947.

10. Now, I come to the merit of the case, in para 12 of the award, the Labour Court came to the conclusion that the new workman has been employed after retrenchment of the petitioner without providing him opportunity of re-employment, therefore, the said action of the employer is violative of Section 25H of the Act of 1947.

11. The submission of the RSRTC in this behalf is that the finding about reinstatement is perverse, therefore, the writ petition is liable to be dismissed.

12. I have considered the aforesaid submissions and I am of the view that the Labour Court has rightly come to the conclusion that the. new employees have been recruited after the retrenchment of the petitioner and pass the award to the extent of re-employment.

13. Accordingly, the application u/s 17B of the Act of 1947 is held to be not maintainable and the writ petition is dismissed.