
(1984) 04 PAT CK 0038

In the Patna High Court

Deshraj Sood

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 24-04-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25, 25F, 25J

Citation : (1985) 1 LLJ 74 : (1984) PLJR 612

Hon'ble Judges : Uday Sinha, J; Satya Brata Sanyal, J

Bench : Division Bench

Judgement

Satya Brata Sanyal, J.—The main question in this writ petition is whether a person losing lien on his appointment under certified standing order is entitled to the benefit of Section 25F of the Industrial Disputes Act (hereinafter to be referred to as "the Act")? In short, whether automatic termination of service under the standing order is also termination within the meaning of Section 2(oo) of the Act?

2. I shall narrate facts which are only germane for this purpose. The petitioner was employed as Burner in the Cement Factory of Rohtas Industries Limited at Dalmianagar. He was appointed in the year 1949. Because of his ill-health, he went on sick leave. It is said that he applied for extension of leave as he was not cured of his ailment. The management vide its letter dt. 1st August, 1970, intimated to the petitioner that he was granted leave till 14th July, 1970 and thereafter he was absenting himself without leave. As the petitioner remained absent beyond the period of leave originally granted and subsequently extended and had not returned to his duties within ten days of the expiry of the leave, he had lost lien on his appointment under Clause 38(d) of the Standing Orders of the company. On an industrial dispute being raised, the appropriate Government made a reference u/s 10(1)(d) of the Act and the reference came to be registered as Reference No. 25 of 1972. One of the terms of the reference is

Whether the termination of service of Shri Deshraj Sood; Burner, Rohtas Industries Limited, Cement Factory is proper and justified? If not, whether he is

entitled to reinstatement and or any other relief.?

The Presiding Officer, Industrial Tribunal, inter alia, held that in cases of automatic termination of service under the standing order the concerned worker is not entitled to the benefit of Section 25F of the Act. The Tribunal, however, gave a direction to the management to give a fresh appointment to the petitioner and the said appointment shall come into force from the date of the publication of the award. Payment of bac kwages was refused.

3. Mr. Tara Kishore Prasad, learned Counsel appearing for the petitioner, raised only one point. Assuming that the petitioner lost lien on his appointment by virtue of Clause 38(d) of the Standing Orders the termination of service of the petitioner on 1st August, 1970 (Annexure "2") is void ab initio for infraction of the provisions of Section 25F read with Section 2(oo) of the Act. The order being void ab initio the petitioner would be deemed to be continuing in service, there being no cessation of the relationship of employer and employee.

4. Mr. R.P. Katriar, learned Counsel appearing for the Management contended that Section 25F of the Act is not at all attracted in a case where there is automatic termination of service. The termination has been brought about by operation of the standing order certified under the Industrial Employment (Standing Orders) Act. The name of the petitioner had to be removed from muster roll as a matter of course as the employer had nothing to do in terminating the relationship. As such provision of Section 2(oo) of the Act has no manner of application. Learned Counsel further contended that the terms and conditions of service under the Standing Order which require to be certified under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter to be referred to as "the Standing Orders Act") are statutory terms of contract of service. The definition u/s 2 of the Act is for the purpose of this Act. Therefore, it cannot obliterate the provisions of the Standing Orders Act or add fresh terms and conditions of service. The learned Counsel further urged that in cases of loss of lien. Section 25F of the Act is impossible of compliance. For complying with Section 25F, the service of the person automatically losing lien, has to be extended by one month, which would be wholly contrary to the provisions of Standing Order.

5. It is true that, in cases of loss of lien, the service of the concerned person stands automatically terminated.

(See National Engineering Industries Ltd. Vs. Hanuman, Section 2(oo) defines "retrenchment" meaning termination by the employer of the service of a workman for any reason whatsoever other than those excepted therein. In the case of The State Bank of India Vs. Shri N. Sundara Money, while interpreting Section 2(oo) it was held "termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced." Retrenchment was held to mean "to end, conclude, cease." In the said case their Lordships were considering the case of a person whose service came to an

automatic end on expiration of nine days. It was observed "automatically may be, but cessation all the same." According to their Lordships the key words are "termination for any reason whatsoever". In the case of Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others, their Lordships were considering the case where under the Standing Order of the company under certain contingencies, the name of the worker was automatically struck off the rolls. It was held that striking of the name of workman from the rolls amounts to retrenchment within the meaning of Section 2(oo) of the Act requiring mandatory compliance of Section 25(a) and (b) of the Act. These are peremptory conditions precedent. Even in a case of loss of lien bringing in automatic termination- of an employment, the name of the workman has to be struck off from the rolls. I am not impressed with the argument that for application of the provisions of Section 2(oo) of the Act the order of termination must be by an overt act by the employer. Assuming it to be so, overt act could also be the striking off the name of the concerned person from the register of employment. The expression "retrenchment" appearing in Section 2(oo) as held by the Supreme Court, is of widest amplitude and even if the termination is effected not by any voluntary action on the part of the employer, such termination also becomes retrenchment within the meaning of Section 2(oo) of the Act. Apart from the aforesaid two Supreme Court decisions, the same was the meaning attributed to the word "retrenchment", in the case of Santosh Gupta Vs. State Bank of Patiala, where termination of service was brought about for failure to pass the test, which could only have enabled the person to be confirmed. In the case of Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another, discharge of a probationer required compliance of Section 25F of the Act. Non-compliance of the said provision rendered the termination void. So far as this Court is concerned, it has been held in the case of Mahabir v. D.K. Mital 1980 Lab. IC 119 that order of compulsory retirement under Rule 2046 of the Railway Establishment Code amounts to retrenchment.

6. The case of loss lien under the standing order also came to be considered by several High Courts in India after the decision of the Supreme Court in the aforesaid cases. I may refer to some of them. In the case of Pepsu Road Transport Corporation v. Presiding Officer, Patiala 1981 2 SLR 445 it was held that loss of lien in terms of Standing Order 17(4) amounts to retrenchment attracting the provisions of Section 25F of the Act. Same was the view expressed by Calcutta High Court in the case of Naresh Chandra Das v. 7th Industrial Tribunal 1982 II L.L.J. 4 where it was held that if termination is effected not by voluntary action on the part of the employer, such termination also becomes retrenchment within the meaning of Section 2(wj). (i.N. Ray, J. did not follow a previous Division Bench decision of the said Court in the case of Dabur (S.K. Burman) Private Limited Vs. State of West Bengal and Others, as in the view of his Lordship in Sunder Monev's case (supra), the interpretation of Section 2(oo) has been given in no uncertain terms. In Dahur's case (supra) Anil K. Sen, J, observed that the distinguishing feature in Sunder Monev's case (supra) is this

an employer terminates employment not merely by passing an order as service runs. He can do so by writing a composite order, one giving employment and the other ending or terminating it.

According to his Lordship where on a provision in the Standing Order, the employee himself brings in termination of his service by his own default, it cannot be said that it would amount to retrenchment. I regret, "am unable to subscribe to the views of Anil K. Sen, J., even though I have great regard for his opinion. In the case of *Sunder Money* (supra) Krishna Iyer, J., who spoken for the Court also observed:

A separate subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post - appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision.

In my opinion Clause 38(d) of the Standing Order, which contains terms and conditions of service provides a pre-emptive provision "producing termination " of service on the happening of an event. Whether the termination is caused by default of the workman is irrelevant, failure to pass test is also default of the workman as in *Santosh Gupta's* case (supra), which Anil K. Sen, J. had no occasion to notice, being a later decision of the Supreme Court. Loss of lien by workman on consecutive absence for a period of eight days without leave under the certified standing order, was held to be retrenchment within the meaning of Section 2(oo) of the Act is also the view of a Bench of Kerala High Court (See *H.M.T. Limited Vs. Labour Court*, respectfully agree with the views expressed in the case of *Naresh Chandra Das* (supra) and that of Kerala High Court in the case of *H.M.T. Ltd.* (supra), being founded upon the decision of the Supreme Court, referred to above.

7. Learned Counsel for the respondents submitted that none of the cases, referred to above, including the Supreme Court decisions considered the questions raised before us namely the definition given to the word "retrenchment" under the Act is for the purpose of the said Act only. The said definition cannot obliterate the provisions of other Acts. While elaborating his argument, learned Counsel submitted that Standing Orders Act required to define with sufficient precision the conditions of employment under an employer and to make the said conditions known to workman employed by them. under Sections 3 and 4 of the Standing Orders Act, the Standing Orders are required to be certified. After the amendment of the Standing Orders Act, 1946, the legislature has imposed upon the certifying officer and the appellate authority the duty to adjudicate upon the fairness or reasonableness of the provisions of any standing order. Referring to the case of *Rohtak Electric Supply Co. Ltd. v. State of UP*. II L.L.J. 330 counsel contended that scheme of Industrial Disputes Act and Industrial Employment (Standing Orders) Act in essence are different and there is no conflict between the two Acts. If that be the law, the learned Counsel submits, the interpretation sought to be put by this Court brings the two Acts in

conflict. In my opinion Section 25J of the Act is a complete answer to the submissions of learned Counsel for the management. The said section is prefixed with the words "effect of laws inconsistent with this chapter." It provides that Chapter V A of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act except where the provisions of other Acts are more favourable than those provided under the Act. There is, therefore, no force in this argument.

8. The second submission of the learned Counsel which is also said to have not been considered by any of the previous decisions, is that Sections 25(a) and 25(b) of the Act can never be complied with in cases of automatic termination of lien, the same being condition precedent to retrenchment. It is submitted that compliance with that provision of the Act would automatically extend the service of the workman at least by one month, contrary to the provisions contained in the standing order. I do not find force in this argument of the learned Counsel as well. It is true that Sections 25(a) and 25(b) of the Ad are conditions precedent to retrenchment. I will just now indicate that even in cases of automatic termination of lien it is capable of compliance. Section 25(a) is in two parts: one month's notice in writing indicating the reason for retrenchment and the expiration of the period of said notice or the workman has been paid in lieu of such notice, wages for the period of the notice. The said sub-section has been held to have been enacted to provide compensation to soften the rigour of hardship resulting" from an employee being thrown out of employment. If the core of the section is to provide some compensation to permit the workman to find out an alternative employment. I see no difficulty in making payment of one month's salary in lieu of such notice, as indicated in the first part of Section 25F(a). In that event the question of extending the-service by one month does not at all arise. The word "or" in Section 25F(a) indicates that there can Incompliance of the said sub-section by complying with any one of the alternatives provided in the said sub-section. Further, the standing order specifies the date of termination by operation of hen clause. I do not find any difficulty in tendering the notice pay and retrenchment compensation as envisaged u/s 25f(b) at the time of informing the concerned workman that by his unauthorised absence he has lost lien on his appointment and his services stand terminated and/or his name has been struck out from the employment register. Learned Counsel concedes that on the happening of the conditions laid clown in the standing order, which bring about cessation of employment the name of the workman has to be struck out from the register of employment and the workman has to be notified about it. In the instant case, the workman has been informed vide Annexure "2" on 1st of August, 1970 that he has lost lien on his appointment. The workman could have easily been tendered along with the said letter the notice pay as well as the retrenchment compensation. The certified standing order of the company has been subjected to the benefit conferred under Chap. V A of the Act, as envisaged u/s 25j." It would, therefore, follow that

before the said action could be taken on the basis of the standing order, the provision of Section 25F can and have to be complied with. Mode of compliance indicated above would be in my opinion compliance of the condition precedent.

9. Comparing the weight of the rival arguments as also keeping in view the decisions of the Supreme Court, and for the reasons indicated above, I am of the firm view whether the termination of service is brought about by voluntary or involuntary action, whether that result is produced by overt act or by operation of the provisions of standing order the termination would be retrenchment within the meaning of Section 2(oo) of the Act since the fact of termination is only relevant, howsoever produced is irrelevant for the applicability of Section 25F of the Act. Once the termination does not fall in any one of the excepted categories enumerated in Section 2(oo), the termination of service even if it be according to automatic discharge from service under an agreement or by efflux of time or by the default of the workman it would be retrenchment attracting the compliance of Section 25F(a) and (b) of the Act. See also: L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another, .

10. The next question is as to what relief the petitioner is entitled to. Learned Counsel for the management relied upon various authorities that in a case of this nature the petitioner is not entitled to any backwages of his reinstatement. He particularly relied on Sunder Money's case (supra) where in fact Sunder Money (supra) was given a fresh appointment without any benefit of continuity of service. However, in Sunder Money's case their Lordships clearly stated that the direction given in the said case is under special circumstances and not by way of laying down any general proposition of law. I think, the question on this issue is no more open in view of the decision of the Supreme Court in Mohan Lal Vs. Management of Bharat Electronics Ltd., and Karnataka State Board (supra), in the aforesaid cases, it was held that termination without compliance with the provisions of Section 25F renders the termination void ab initio and in-operative. There is no question of granting reinstatement because there is no cessation of service. A mere declaration follows that he continues to be in service with all consequential benefits. In a case of reinstatement the question of weighing the facts and circumstances of the case arises for grant of compensation and/or "backwages. The said question, according to their Lordships, does not cover a case of an ineffective and inoperative order in retrenchment as there is "neither termination nor cessation of service but it needs a bare declaration. In that view of the; matter, I do not find substance in the argument of the learned Counsel of the management that the petitioner should be denied backwages and other consequential relief of continuity of service. The petitioner shall, therefore, be entitled to continue in service with all benefits from 1st August; 1970, the date when he was intimated that he had lost lien on his appointment.

11. In the result, the award so far as the petitioner is concerned, is quashed. The petitioner shall be deemed to be in service irrespective of the letter dated 1st August, 1970. He shall be paid his arrears of salary within six months from

today. The writ petition is accordingly allowed. But there will be no order as to costs.

Uday Sinha, J.

I agree.