

(1998) 09 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : O.W.P. No. 702 of 1987

Executive Engineer, Flood Control Division	APPELLANT
Vs	
Presiding Officer, Industrial Tribunal and Others	RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2000) 1 LLJ 1073

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : N.A. Baba, for the Appellant; Javeed Kawoosa, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.—In this petition, challenge is being made to an order passed by Industrial Tribunal-cum-Labour Court, Srinagar.

Respondent Kamini Tickoo was working as Typist with the appellant (sic) organisation. She came to be employed in the year 1979. She worked

upto February 27, 1982. Her services were brought to an end by passing verbal order. As there was no compliance of the Industrial Disputes Act,

1947 inasmuch retrenchment compensation was not paid in terms of Section 25F of the Act and as she had rendered more than 240 days of

service order of termination was held to be bad. She was held entitled to the payment of back wages. For this, reliance was placed on a decision

given by the Supreme Court of India in case reported as Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd.

and Others, .

2. In my opinion view expressed by the Industrial Tribunal-cum Labour Court Srinagar cannot be faulted.

3. The Supreme Court of India in the case of Des Raj and Ors Vs. State of Punjab and Ors, had held that Public Works Department is an

Industry. Telecommunication Department was held to be an industry in the case reported as G.M. Telecom v. A. Srinivasa Rao 1998 I LLJ 255

(SC). The respondent is thus a workman for the purposes of Industrial Disputes Act, 1947.

4. What happens when a workman completes 240 days of service in one calendar year. This aspect of the matter be examined.

5. Under the Industrial Law, it is well settled that if services of a workman who has completed more than 240 days of service in one calendar year

are terminated, he is entitled to reinstatement if his services are brought to an end without complying with Section 25F of the Act. As to how this

period is completed is totally irrelevant. As a matter of fact, where fit by arithmetical count, a workman is able to demonstrate that he had

completed this period the relief of reinstatement has to be granted. It would be apt to notice the decisions given by the Supreme Court of India. In

the case reported as Santosh Gupta Vs. State Bank of Patiala, wherein the earlier view expressed in the The State Bank of India Vs. Shri N.

Sundara Money, and Hindustan Steel Ltd. v. Presiding Officer, Labour Court, Orissa 1977 I LLJ I (SC) was approved.

The relevant observations are as under:

In State Bank of India v. N. Sundara Money (supra) a Bench of three Judges of this Court consisting of CHANDRACHUD J. (as he then was)

KRISHNA IYER J. and GUPTA J. considered the question whether Section 25F of the Industrial Disputes Act was attracted to a case where the

order of appointment carried an automatic cessation of service, the period of employment working itself out by efflux of time and not by any act of

employer, KRISHNA IYER J. who spoke for the Court observed;

Termination ... for any reason whatsoever are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is

has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires

either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong, this policy of comprehensive

definition has been effectuated. Termination embraces not merely the act of

termination by the employer but the fact of termination howsoever produced. True, the Section speaks of retrenchment by the employer and it is urged that some act of violation by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by efflux of time cannot be sufficient. Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So scanned, we hold that the transitive and intransitive senses are covered in the current context. Moreover an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order one giving employment and other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A preemptive 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.

6. In *Hindustan Steel Ltd. v. Presiding Officer, Labour Court, Orissa* (supra) the question again arose whether termination of service by efflux of

time was termination of service within the definition of retrenchment in Section 2(oo) of the Industrial Disputes Act. Both the earlier decisions of the

Court in *Hari Prasad Shivshankar Shukla v. A.D. Divikar* AIR 1957 SC 121 and *State Bank of India v. S. S. Sundara Money* (supra) were

considered. There was also a request that *N. Sundara Money's* case conflicted with the decision in *Hari Prasad Shivshankar Shukla v. A.D.*

Divikar and therefore, required reconsideration. Bench of three judges of this Court consisting of CHANDRACHUD J. (as he then was)

GOSWAMI J. and GUPTA J. held that there was nothing in *Hariprasad Shivshankar Shukla v. A.D. Divikar* which was inconsistent with the

decision in *N. Sundara Money's* case. They held that the decision in *Hariprasad Shivshankar's* case was that the words "for any reason

whatsoever" used in the definition of retrenchment would not include a bona fide closure of the whole business because it would be against the

entire scheme of the Act. The learned Judges then observed that on the facts before them to give full effect to the words for any reason whatsoever

would be consistent with the scope and purpose of Section 25 of the Industrial Disputes Act and not contrary to the scheme of the Act. In *Delhi*

Cloth and General Mills Ltd. v. Shambhu Nath Mukerjee 1978 1 LLJ 1 (SC). *S.*

GOWSAMI, SINGHAL, J. and JASWANT SINGH J. held that

the striking off the name of a workman from the rolls by the management was termination of the service which was retrenchment within the meaning

of Section 2(oo) of the Industrial Disputes Act.

The above view stands reiterated in later decisions in Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah

and Another, , Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Chandigarh and Ors. 1970 II LLJ

70 (SC). Thus once an employee completes more than 240 days of service and there is failure to comply with the provisions of Section 25F of the

Act then he is entitled to reinstatement and this relief can be granted even in a writ petition.

7. If above be the situation then respondent who had completed more than 240 days of service in one calendar year had some rights under the

Industrial Disputes Act also.

8. In this regard, it would again be pertinent to refer to another decision of the Supreme Court of India reported as Workmen of American Express

International Banking Corporation Vs. Management of American Express International Banking Corporation, , wherein it has been observed that

the paid holidays and Sundays are also to be counted for determining as to whether a person has completed 240 days of service in a calendar

year.

9. In the face of the above situation, it can again be said that a right did accrue in favour of the respondent No. 2, as her services were terminated

without compliance of provisions of Section 25F of the Industrial Disputes Act, therefore her termination would be bad.

10. With regard to the back wages Tribunal has rightly placed reliance on the decision given by the Supreme Court of India in the case reported as

Hindustan Tin Works Pvt. Ltd. v. The Employees of Hindustan Tin Works Pvt. Ltd. and Others (supra). Grant of back wages is normal. It is for

the employer to prove that the workman was not gainfully employed. Relevant observations are as under: -

Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was

gainfully employed during the enforced idleness. That is the normal Rule. Any

other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz. to resist the workman's demand for revision of wages the termination may well amount to unfair labour practice.

11. In view of the above, this petition is found to be without merit and is dismissed.