
(2015) 07 BOM CK 0143

In the Bombay High Court

Case No : Writ Petition Nos. 3959 and 5036 of 2014

Executive Engineer, Public Works Division No. 1

APPELLANT

Vs

Ganesh Kashiram Ingole

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25-F, 25F(a), 25-F(a), 25G

Citation : (2016) 1 ABR 150 : (2016) 1 ALLMR 704 : (2015) 147 FLR 654 :
(2015) 3 LLJ 641 : (2015) 3 LLN 341 : (2015) LLR 1083 : (2016) 1 MhLj 227

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : B.P. Maldhure, Asstt. Govt. Pleader, for the Appellant; C.A. Joshi,
Advocates for the Respondent

Judgement

A.S. Chandurkar, J—Since both these writ petitions raise challenge to the same order, they are being decided by this judgment.

Rule in both writ petitions made returnable forthwith and heard finally with the consent of the learned Counsel for the parties.

2. The petitioner in Writ Petition No. 5036/2014 was working as a Chaukidar for the period from 23-5-1983 till 30-4-1987. On 26-3-1987, a notice was issued by the respondent under provisions of Section 25F of the Industrial Disputes Act, 1947 (for short, the said Act). As per said notice, the services of the petitioner were to come to an end from 30-4-1987. The petitioner was informed that he was entitled for retrenchment compensation for the period of service rendered. In the notice, it was further stated that he should come and collect the amount of retrenchment compensation before 30-4-1987 when his services would come to an end. Said notice was also published on the notice board and it was in respect of the workmen from Sr. Nos. 107 to 129 of the seniority list maintained by the respondent. The petitioner being aggrieved filed complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 claiming that the termination of services was illegal as

there was non-compliance with provisions of Section 25F, 25G and 25N of the Act of 1947.

3. The respondent filed its written statement and took the stand that the services of the petitioner had been terminated after following the due procedure. It was denied that there was breach of any of the provisions of the Act of 1947 as alleged.

The petitioner examined himself vide Exhibit-26 and stated that he had not been paid any retrenchment compensation nor was any notice as required under provisions of Section 25F of the Act of 1947 issued. In his cross-examination, he stated that notice dated 26-3-1987 had been issued before retrenchment and that all formalities were completed by issuance of said notice.

4. The Labour Court after considering aforesaid evidence found that the respondent had not given any evidence of the fact that all necessary formalities had been completed before terminating the services. It, therefore, came to the conclusion that the respondent had committed an unfair labour practice and hence directed reinstatement with continuity in service. It was also directed that back wages be paid from 30-4-1987 till his reinstatement.

The respondent filed a revision application before the Industrial Court and after hearing both sides, the Industrial Court held that no evidence had been led in the matter of compliance with the provisions of Section 25F of the Act of 1947. On that basis, it held that the retrenchment was not legal and proper. It, therefore, confirmed the finding in that regard recorded by the Labour Court. However, in so far as back wages were concerned, said direction was set aside on the ground that there was no evidence to show that the petitioner was not in gainful employment after his services were terminated. Hence, while maintaining the order of reinstatement, the direction for back wages was set aside.

5. The petitioner is, therefore, aggrieved by the denial of back wages and hence, has filed Writ Petition No. 5036/2014. The employer being aggrieved by the order of reinstatement has challenged the same by filing Writ Petition No. 3959/2014.

6. Smt. B.P. Maldhure, Assistant Government Pleader appearing for the petitioner in Writ Petition No. 3959 of 2014 submitted that both the Courts erred in directing reinstatement of the workman. It was submitted that retrenchment notice dated 26-3-1987 had been duly issued by which the workman was offered retrenchment compensation after calculating the same in terms of Section 25F(a) and (b) of the Act of 1947. She submitted that the workman in his deposition had clearly admitted that such notice was issued and that all necessary formalities had been completed in that regard. She, therefore, submitted that once retrenchment compensation was duly offered to the workman, there was substantial compliance with the provisions in question and the retrenchment would be in accordance with law.

Without prejudice, it was then submitted that back wages had been rightly denied to the workman as there was no evidence that he was not gainfully employed during the relevant period. It was further submitted that even if it is found that there was violation of the provisions of Section 25F of the Act of 1947, at the most, some monetary compensation could be granted to the workman considering the fact that the service rendered by him was for less than four years. In that regard, reliance was placed on the judgment of the Supreme Court in *Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh*, (2013) 2 AD 553 : (2013) 136 FLR 908 : (2013) 2 JT 231 : (2013) 2 LLJ 141 : (2013) 1 LLN 318 : (2013) LLR 225 : (2013) 2 SCALE 126 : (2013) 5 SCC 136 : (2013) 2 SCC(L&S) 369 : (2013) 2 SCT 30 as well as judgment of learned Single Judge dated 17-9-2013 in Writ Petition No. 3413/2003 (*Plantation Officer and another vs. Devidas Udabhanji Lokhande*).

7. Shri. C.A. Joshi, the learned Counsel appearing for the workman on the other hand submitted that the finding that the employer had engaged in unfair labour practice was recorded on the basis of the evidence available on record. He submitted that mere issuance of notice dated 26-3-1987 was not by itself sufficient and that it was the duty of the employer to see that the workman actually received the amount of retrenchment compensation. He submitted that the workman could not be directed to come and collect the amount of compensation and, therefore, the notice issued by the employer did not amount to complying with provisions of Section 25F of the Act of 1947. He further submitted that the employer did not lead any evidence whatsoever and, therefore, compliance with provisions of Section 25F of the Act of 1947 had not been duly proved.

As regards claim for back wages, it was submitted that the Labour Court had rightly granted the same and the Industrial Court was not justified in reversing said direction. He submitted that the complaint had been filed in the year 1995 and, therefore, the law as then prevailing on the aspect of grant of back wages and pleadings would be applicable. He further submitted that in the cross-examination of the workman, the statement as made that he was not in need of service has been read out of context by the Industrial Court. He, therefore, submitted that once the termination was found to be bad in law, the workman was entitled for full back wages. He placed reliance upon the judgment of the Supreme Court in *Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana)*, (2010) 125 FLR 629 : (2010) 4 JT 229 : (2010) 4 SCALE 203 : (2010) 5 SCC 497 : (2010) 3 SLR 663 and submitted that the mandatory provisions of Section 25F of the Act of 1947 were required to be complied with.

8. I have carefully considered the respective submissions and I have gone through the documents filed on record. The record indicates that on 26-3-1987 a retrenchment notice (Exhibit-27) came to be issued by the employer in which it was stated that the services of the workman were being put to an end on

30-4-1987 on the ground that the same were not required. It was then stated that on the basis of service rendered for the period from 1-5-1984 to 30-4-1987, the requisite amount of compensation has been duly calculated. Similarly, the average wages and increase thereon has also been duly mentioned. It is then stated that the workman should collect aforesaid amount from the concerned office and that said notice was being issued in the prescribed manner with a copy being forwarded to the State Government for publishing a notification in the Official Gazette. Perusal of the aforesaid notice, therefore, indicates that:

(a) there is a notice of one month as the notice is dated 26-3-1987 seeking to retrench the services on 30-4-1987;

(b) the reason for retrenchment is mentioned by stating that there is no need of the services rendered by the workman concerned;

(c) the amount of retrenchment compensation has been duly calculated which includes wages for the period of notice along with compensation equivalent to 15 days average pay for every completed year of continuous service; and

(d) it is also stated that the notice would be published in the Official Gazette and the same was also issued in the prescribed manner.

9. A plain reading of the said notice, therefore, indicates that all the necessary ingredients of a notice of retrenchment as prescribed by Section 25F of the Act of 1947 have been duly stated therein.

10. It is now necessary to consider whether the workman was retrenched after being given due notice under aforesaid provisions. The workman who examined himself vide Exhibit-26 in his examination-in-chief stated that no notice was issued under provisions of Section 25F of the Act of 1947 and that he was not paid any retrenchment compensation. In his cross-examination, however, he has stated that he was issued notice dated 26-3-1987 (Exhibit-27) before his retrenchment. In his cross-examination, he has stated thus:

"I was issued notice dated 26-3-1987 before my retrenchment. All the formalities were completed by way of this notice dtd. 26-3-1987 before my termination, it is at Exh. 27."

Though the employer did not examine himself, the retrenchment notice was exhibited in the deposition of the workman as he admitted its issuance before the retrenchment and that all formalities were completed by way of said notice. The finding recorded by both the Courts that there was no compliance with provisions of Section 25F of the Act of 1947 is based on the reasoning that service of said notice was not duly proved and that the amount of retrenchment compensation was not received by the workman. In view of the clear admission of the workman reproduced herein above, the finding that service of notice dated 26-3-1987 was not proved is, therefore, a perverse finding recorded ignoring the material evidence on record.

11. It is now necessary to consider the legal position in this respect. In *Management of Delhi Transport Undertaking Vs. Industrial Tribunal, Delhi and Another*, AIR 1965 SC 1503 : (1963) 7 FLR 138 : (1965) 1 LLJ 458 : (1965) 1 SCR 998 , the Supreme Court while considering the proviso to Section 33(2)(b) of the Act of 1947 by which payment of wages of one month before discharge was mandatory held that in such cases even if there is no actual payment, tender of the amount due and payable would amount to sufficient compliance. It was observed in aforesaid decision as under:

"The proviso does not mean that the wages for one month should have been actually paid, because in many cases the employer can only tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective. In this case the tender was definitely made before the order of dismissal became effective and the wages would certainly have been paid if Hari Chand had asked for them. There was no failure to comply with the provision in this respect."

In *Pramod Jha and Others Vs. State of Bihar and Others*, AIR 2003 SC 1872 : (2003) 97 FLR 110 : (2003) 2 JT 386 : (2003) 2 LLJ 159 : (2003) 2 SCALE 536 : (2003) 4 SCC 619 : (2003) SCC(L&S) 545 : (2003) 2 SCR 512 : (2003) 1 SLJ 67 : (2003) 2 UJ 1081 : (2003) AIRSCW 1340 : (2003) 2 Supreme 439 , it has been held by the Supreme Court that payment or tender of retrenchment compensation should be made available before retrenchment and if same is paid or is tendered after the time when the retrenchment has taken effect, the same would vitiate the retrenchment. In para 10, it has been observed thus:

"10 The underlying object of section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice, on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment."

12. It can, therefore, be seen that if the amount of retrenchment compensation

is offered to the workman in question prior to the date of retrenchment, the same would amount to sufficient compliance with provisions of Section 25-F of the Act of 1947. In the case of Anup Sharma (supra) relied upon by the counsel for the workman, the letter by which retrenchment compensation was offered was dated 25-4-1998. The same was not accepted by the workman. A demand draft of aforesaid amount was sent by post after almost three months. The stand of the employer that retrenchment compensation was offered to the workman and the same was refused to be accepted was not believed by the Labour Court. The High Court however reversed said finding. In that background the Supreme Court held that the finding recorded by the Labour Court for not accepting the case of the employer did not deserve to be interfered with. Said decision does not assist the case of the workman herein.

The Supreme Court also referred to its earlier decision in National Iron and Steel Co. Ltd. and Others Vs. The State of West Bengal and Another, (1967) 14 FLR 356 : (1967) 2 LLJ 23 : (1967) 2 SCR 391 . In said case, a notice for termination of service dated 15-11-1958 was issued and the services were put to an end on 17-11-1958. The workman was asked to collect the dues on 20-11-1958 or thereafter. It was in that context that the Supreme Court held that the workman could not be asked to leave the employment and collect his dues thereafter. It was in that background that it was held that the provisions of Section 25-F of the Act of 1947 had not been complied with. Ratio of aforesaid decision also cannot apply to the facts of the case in hand.

13. Thus, when the evidence on record is considered along with the legal position as settled by the decisions of the Supreme Court in Delhi Transport Undertaking (supra) and Pramod Zha (supra), it cannot be said that there has been non-compliance with provisions of Section 25-F of the Act of 1947. The amount of retrenchment compensation as calculated in terms of Section 25-F(a) and (b) of the Act of 1947 was duly tendered to the workman prior to the date of retrenchment which was 30-4-1987 and issuance of notice dated 26-3-1987 having been duly admitted by the workman, the finding that there was non-compliance with the provisions of Section 25F of the Act of 1947, therefore, cannot be sustained. The amount of retrenchment compensation having been offered to the workman and he not having collected the same, the aspect of the workman not having actually received said amount is of no consequence as the act of not collecting the amount of retrenchment compensation was on the workman's own volition.

14. Both the Courts, therefore, completely misdirected themselves while coming to the conclusion that there was violation of provisions of Section 25-F of the Act of 1947. There being an error of law apparent on record and the finding regarding non-compliance of provisions of Section 25F of the Act of 1947 being perverse, a case for interference has been made out. Reinstatement has been directed only on the ground that there has been non compliance with provisions of Section 25-F of the Act of 1947. Same therefore cannot be sustained.

15. In view of aforesaid discussion, as the order of reinstatement cannot be sustained, the prayer for grant of back wages would not survive.

16. Hence, the following order is passed:

ORDER

(1) The judgment dated 19-11-2013 passed in Revision (ULP) No. 60/2005 is set aside. The complaint as filed by the workman stands dismissed.

(2) Writ Petition No. 3959/2014 is allowed in aforesaid terms.

(3) Writ Petition No. 5036/2014 stands dismissed.

(4) Rule accordingly. No costs.