
(1985) 12 PAT CK 0011
In the Patna High Court
Case No : C.W.J.C. No. 735 of 1985 (R)

Gangadhar Prasad and another

APPELLANT

Vs

State of Bihar and others

RESPONDENT

Date of Decision : 19-12-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25F(b)

Citation : (1985) PLJR 759

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Advocate : Debi Prasad, Amreshwar Sahay and Miss Indrani Choudhary, for the Appellant; S.K. Chattopadhyaya (G.P.I.) and Mrs. M.M. Pal, for the Respondent

Final Decision : Dismissed

Judgement

U.P. Singh, J.—The orders of termination of the services of the petitioners contained in Annexures 13 and 13-A have been questioned on the ground that the provisions of section 25-F of the Industrial Disputes Act (in short, the Act) has been violated. The short facts are that first petitioner was appointed as a temporary typist for two months initially in the year 1980 and was continued from time to time. Thus, he worked for a total period of 843 days with effect from 7.3.1980 to 17.7.1982. The second petitioner was appointed temporarily as correspondence clerk by respondent No. 2 initially for period of two months in the year 1979. It was extended from time to time and he worked for a total period of 1076 days with effect from 9.7.1979 to 15.7.1982. Both the petitioners were retrenched from service by two separate orders passed in the year 1982 (Annexures 5 and 10). This was challenged by way of writ petition (C.W.J.C. No. 897 of 1982) and after considering all the facts and circumstances of the case, the termination orders were quashed in January, 1984 on the sole ground that since the petitioners worked in the department continuously for more than 240 days, there was violation of the provisions of Section 25-F of the Act. The judgment of this Court is Annexure 12. The petitioners thereafter, joined their

duties in February, 1984. Thereafter the petitioners were served with the orders, Annexures 13 and 13-A stating there in that for termination of their services one month's notice as required u/s 25-F of the Act was being served. It was also stated therein that in accordance with Section 25-F (b) of the Act, retrenchment compensation would be paid on the date of retrenchment. Soon thereafter this writ application was filed and the operation of Annexures 13 and 13-A dated 28.1.1985 was stayed on 13.2.1985.

2. The principle is now well settled that the retrenchment compensation is to be paid on the date of retrenchment. I do not propose to unnecessarily deal with those cases enunciating the said principle. The only question which arises for consideration and which was, in fact, raised by the petitioner's counsel is that since the retrenchment compensation was not paid along with the notices. Annexures 13 and 13-A are bad in law. But the relevant consideration to be noticed is that before the period of one month as stipulated in the said notices could expire, the petitioners filed this writ application just within eleven days of the issuance of the said notices and stay was obtained on 13-2-1985. Therefore, the retrenchment compensation could not be awarded in accordance with Section 25-F (b) of the Act. The grievance of the petitioners therefore, that the impugned orders be quashed for non-compliance of Section 25-F (b) of the Act cannot be entertained. The fact is beyond dispute that the petitioners were given one month's notice in writing on 28-1-1985 stating reasons for retrenchment, the same was received by them on 1-2-1985 and the period of notice was yet to expire on 1-3-1985 whereas stay was obtained on 13-2-1985.

3. The expression "at the time of retrenchment" appearing in clause (b) of Section 25-F of the Act means that the workmen must be paid at the time of retrenchment and that is the crucial point of time. Since retrenchment in this case was to take effect from 1-3-1985 and before the period of notice could expire, the operation of Annexures 13 and 13-A was stayed, it is not open for the petitioners to contend that there was no compliance of the statutory conditions of Section 25-F (b) of the Act.

4. The next point of discrimination was then raised which was not raised in the earlier writ application finally disposed of by this Court in January 1984. This contention is equally without any force and must be rejected. The facts constituting discrimination have not been specifically pleaded. In the present case, the petitioners were temporarily appointed in different years under two separate orders. Their terms of appointment clearly stipulated that their services may be terminated without any notice. It has been clearly mentioned in Annexures 13 and 13-A that their appointment was not in accordance with law and it was not a valid and proper appointment. The question of the appointment of other 12 persons cannot be challenged as discriminatory. Those persons named in Paragraph 24 of this writ application were not even made party. In a supplementary affidavit it is stated in a very casual manner that one Lalan Pandey was also appointed who was retained. It is not even stated when he was

appointed and what was the discrimination. The contention is, therefore, rejected.

5. However, since the retrenchment compensation was intended to be paid under Annexures 13 and 13-A but could not be paid because of the stay order granted by this Court on 13.2.1985. I direct that the retrenchment compensation will be paid in accordance with Section 25-F of the Act within one month from the date of communication of this order. In the result, this application is dismissed and the stay order stands vacated, but there will however, be no order as to costs.