

(1994) 07 MP CK 0030

In the Madhya Pradesh High Court

Case No : Writ Petition No. 692 of 1994

Govt. Nehru Degree College

APPELLANT

Vs

Ashok Kumar Verma and Others

RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1995) 1 LLJ 287

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

Bench : Single Bench

Advocate : K.N. Gupta, G.A, for the Appellant; H.N. Upadaya, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.—The petitioner Government Nehru Degree College, Sabalgarh District, Morena is aggrieved against the award given by the Presiding Officer, Labour Court No. 1, Gwalior. By this award dated February 27, 1993, the Labour Court came to the conclusion that respondent No. 1 had completed 240 days of continuous service in one calendar year and as the case fell u/s 25F of the Industrial Disputes Act, 1947 it found no other option but to quash the order of termination. While doing so, back wages were also given.

2. So far as interpretation of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for short) is concerned, it is settled that every termination which may be brought about in any manner would be covered by the term retrenchment. In The State Bank of India Vs. Shri N. Sundara Money, a Bench of three Judges consisting of Chandrachud, J., (as he then was), Krishna Iyer, J., and Gupta J., considered the question whether Section 25F of the 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 an act of employer. Krishna Iyer, J. who spoke for the Court observed: (P.482-483):

"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 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 volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient... Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened 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 the other ending or limiting it. 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 provisions."

3. The other decisions on the subject are *Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others*, and *Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others*, In the latter case, the striking off the name of a workman from the rolls by the management was held to be termination within the meaning of the term retrenchment as occurring in Section 2(oo) of the Act.

4. Reference may now be made to the decision in *Rolston John Vs. Central Government Industrial Tribunal-cum-Labour Court and others*, In this case, the concerned workman was appointed as Mechanic-cum-Operator by the Management. His services were terminated under the standing orders as he had overstayed the leave period. The contention of the workman was that even this would amount to retrenchment. The Supreme Court took note of the contention of the workman and also noticed the earlier decisions on the subject. It was observed that "According to the appellant, termination of service for whatsoever reason amounts to retrenchment and where it is not followed by the procedure under law, it is illegal and the appellant is, therefore, entitled to be reinstated and given all other consequential benefits. In support of the contention, the learned counsel also relied on decisions of this Court in *State Bank of India v. N. Sundara Money (supra)*, *L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another*, *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, *H.D. Singh Vs. Reserve Bank of India and Others*, *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*,

It was concluded:

"We have considered the argument of the counsel on both sides on the question of law raised. In the light of the decisions, which have been referred to above, we have to hold that the termination of the services of the appellant under Clause 24(e) of the Standing Orders constitutes "retrenchment" u/s 2(oo) of the Industrial Disputes Act and the Tribunal was wrong in concluding that the termination in the instant case does not attract Section 2(a) of the Industrial Disputes Act. The position being so, we have to accept the contention of the appellant that the Award is not in accordance with law."

5. In view of the above statement of law, no fault can be found with the decision given by the Labour Court holding that the termination of an employee without complying with the provisions of Section 25F of the Act was not in accordance with law.

6. The other grievance of the petitioner is that the Labour Court should not have accorded full back wages. A perusal of the award given by the Labour Court makes it clear that back wages have been given from the date of filing the application before the Labour Court by the Respondent No. 1. It has been specifically mentioned in the award that back wages are not to be allowed prior to the approaching the Labour Court. The learned counsel for the respondent No. 1 has clearly stated that his client has not insisted on back wages from a date earlier than his approaching the Labour Court. This also appears to be the intent of the order passed by the Labour Court.

7. In this view of the matter, this petition is without merit and the same is dismissed.