

(1992) 12 P&H CK 0062
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1856 of 1989

Haryana Seeds Development Corporation	APPELLANT
Vs	
Pohap Singh and Another	RESPONDENT

Date of Decision : 17-12-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 25FF

Citation : (1994) 2 LLJ 53 : (1993) 103 PLR 717

Hon'ble Judges : S.S. Sodhi, J;G.C. Garg, J

Bench : Division Bench

Advocate : A.K. Pathania, for the Appellant; R.K. Malik, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—The dispute in this appeal is whether the order dispensing with services of the writ petitioner-workman being no longer required on closure of a unit is justified.

2. The workman joined as a Chowkidar in the Haryana Seeds Development Corporation (for short "the Corporation") on September 3, 1984 on the terms and conditions contained in the letter of appointment Annexure P1. He satisfactorily completed the period of probation.

3. The Corporation has several plants including the one at Tohana where the workman was employed. Services of the workman and several other officials working at Tohana Plant were dispensed with on the closure of the said Plant. Aggrieved by the order of his termination, the workman filed a writ petition which has been allowed by the learned Single Judge. Hence, this appeal.

4. The stand of the Corporation is that the services of the workman and others were dispensed with as no longer required as the posts had been abolished on account of closure of the Tohana Plant, after getting prior approval of the State Government. The workman was one of the four junior-most Chowkidars at the time of dispensing with his services. He was relieved on January 11, 1988, vide

Annexure P-4.

5. Sanction for payment of retrenchment compensation and one month's pay in lieu of notice was accorded on February 26, 1988, Annexure P-5, which the workman, however, refused to accept.

6. Challenge to the validity of the termination order on the ground that the retrenchment compensation and pay in lieu of notice had not been paid to the workman either alongwith the termination order or at the time of relieving him, cannot be sustained on the facts of this case though it did find favour with the learned Single Judge. Section 25FFF of the Industrial Disputes Act, 1947 (for short "the Act") may be noticed at this stage which reads thus:

"25FFF. Compensation to workman in case of closing down of undertakings. (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure, shall, subject to the provisions of Sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under Clause (b) of Section shall not exceed his average pay for three months"

7. A Full Bench of this Court in *Sunder Singh and Another Vs. Beas Construction Board, New Delhi and Others*, . had occasion to consider this very matter and their Lordships answered the question in the following words:

"In my view, the observations of their Lordships of the Supreme Court reproduced above, leave no room for any doubt and on the strength of the said observations, I find no escape from the conclusion that in cases falling u/s 25FFF of the Act, payment of retrenchment compensation is not a condition precedent and that retrenchment compensation has not to be paid along with the discharge notice. The observations in *Raghubir Singh's case* 1978 52 FJR 451 (Punj.) on which reliance had been placed by the learned counsel for the petitioner, in my view, go contrary to the observations of the Lordships of the Supreme Court and in this situation, with respect I find that the view taken in *Raghubir Singh's case* does not lay down the correct law."

8. In *Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and Another*, , *M/s. Isha Steel Treatment, Bombay* was carrying on the business of metal processing. It had two units having independent location though at the same place. Considering the matter in terms of Section 25FFF of the Act, the apex Court observed (p.431):

"In the above decision this Court has held that the unity of ownership, supervision and control that existed in respect of the two mills involved in that case and the fact that the conditions of the service of the workmen of the two

mills were substantially identical were not by themselves sufficient in the eye of law to hold that there was functional integrality between the two mills. It held that it was a clear case of closure of an independent unit and not of a part of an establishment. The decision of the learned Single Judge of the High Court that the fact that the two units were situated at a distance of 200 meters, the fact that both the units are controlled by the same employer and that the business of heat treatment processing carried on in the two units was identical had left no room for doubt that the two units were really integral cannot be sustained.

.....

It is not the case of the workmen in the present case that the II Unit could not continue to function after the closure of the I Unit. As already mentioned, the II Unit is continuing to function as usual even now notwithstanding the stoppage of the activities at the I Unit."

9. Again in *Management of Hindustan Steel Ltd. Vs. The Workmen and Others*, it was observed as under: -

"The word undertaking as used in Section 25FFF seems to us to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer as was suggested on behalf of the respondents. Even closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by this Sub-section. It was further observed:

In *Workmen of the Indian Leaf Tobacco Development Co. Ltd. v. Management* 1970 I LLJ 343, closure of eight out of 21 depots of the company though not amounting to closure of its entire business was considered to amount to a closure within the contemplation of Section 25FFF. In *Parry and Co. Ltd. Vs. P.C. Pal and Others*, , it was observed that it was within the managerial discretion of an employer to organise and arrange his business in the manner he considers best and that if a bona fide scheme for such re-organisation results in surplusage of employees, no employer is expected to carry on the burden of such economic dead weight and retrenchment has to be accepted as inevitable, however unfortunate. The reasoning and ratio of these decisions support the appellant's argument."

10. By reference to *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others*, , learned counsel for the respondents cannot draw any benefit. In the present case, the entire unit of the Corporation located at Tohana was closed down and this stand of the Corporation was neither challenged nor shown to be wrong. In the face of the above, no exception can be taken to the order of retrenchment on the ground that the provisions of Section 25F of the Act had been not complied with.

11. Equally devoid of merit is the claim made on the ground that the juniors of the workman had been retained in service while he had been retrenched. No

person working as Chowkidar and junior to the workman had been retained in service while terminating the services of the workman. A reference to para 10 of the written statement would show that four Chowkidars working on regular basis in the establishment of the Corporation were rendered surplus due to closure of the unit at Tohana and the workman was one of the four junior-most Chowkidars who were retrenched simultaneously. The question of the workman being accommodated in another plant of the Corporation, therefore, does not arise. In respect of Dane Ram it is the case of the Corporation that he did not belong to the category of Chowkidars. He is only a daily wage worker and works as a sort of a waterman on a stop gap arrangement to store water in the office of the Corporation situated on the first and the top floors where there is an acute shortage of water. There is no similarity between Dane Ram and the workman and the workman can get no relief on that ground.

12. As regards the notice and challenge to the order of termination of the workman on the ground that the workman had not been given three month's notice as contemplated in the appointment letter Annexure P-I, suffice it to say that it has no merit. Once it is concluded that the provisions of Chapter V-A of the Act are attracted to the case in hand then only a statutory notice of one month is required and not of three months. In the present case, the Corporation is an industrial undertaking to which the provisions of Chapter V-A apply and thus, the workman was entitled to only a month's notice and not three month's notice.

13. For the reasons recorded above, the appeal succeeds and is allowed. Order of the learned Single Judge, dated July 31, 1989 is reversed and consequently the writ petition of the workman is dismissed. There will, however, be no order as to costs.