
(2000) 04 AHC CK 0035
In the Allahabad High Court
Case No : C.M.W.P. No. 15533 of 1999

Hindustan Lever Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-04-2000

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 6N, 9A

Citation : (2000) 85 FLR 926 : (2000) 3 LLJ 722

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—The petitioner-company, in the present Writ Petition has called in question the impugned award dated October 30, 1998 published on March 6, 1999 passed by the Industrial Tribunal III, U.P. Kanpur in Adjudication Cases No. 36/93 to 50 of 1993 and 5 of 1994.

2. I have heard Sri Sudhir Chandra, learned senior Advocate for the petitioner, Sri K.P. Agarwal assisted by Km. Suman Sirohi for the workmen and learned Standing Counsel.

3. The relevant facts that lie within a narrow compass are that in the year 1974, the petitioner-company after discussions with the workmen/trade unions offered a scheme of voluntary separation known as "voluntary separation scheme" (in short VSS). Notice of the said scheme was notified on October 10, 1974. The scheme offered substantial benefits in excess of those provided u/s 6-N of the U.P. Industrial Disputes Act, 1974 to the workmen. In response, about 80 workmen resigned during the period October 1974 to February, 1975 under the said scheme and all dues etc. were received by them in full and final settlement in terms of the scheme aforesaid. It is urged that about five years of the separation from the petitioner-company 27 workmen in their individual capacity raised disputes u/s 2-A of U.P. Industrial Disputes Act, 1947. Some workmen did

not pursue their cases in conciliation and as such the conciliation was got confined and only 22 workmen remained pursuing their matters. The cases were referred to the Industrial Tribunal by the State of U.P. on November 27, 1981 and before the Tribunal, six more workmen did not pursue their cases and the present dispute relates to only 16 workmen. Aggrieved by the reference, the petitioner-company filed writ petition before this Court being number 2952 of 1982. In this writ petition, preliminary issue challenging the appointment of the Presiding Officer of the Labour Court was raised. The writ petition was tagged with bunch of writ petitions (leading Writ Petition No. 9761 of 1981). All those writ petitions were dismissed by a common judgment and order dated April 8, 1985 holding that the appointment of the Presiding Officer of the Labour Court was proper. While dismissing the aforesaid bunch of writ petitions, the Court held as under:

"We have confined our judgment to the challenge to the appointment of various Presiding Officers. We make it clear that it will be open to the petitioner to raise all or any of the contentions which are also subject matter of these writ petition either before the Labour Courts concerned or after the final award has been given by them."

4. It has been averred in Para 8 of the writ petition that the Tribunal by means of its order dated January 21, 1986. framed the following additional issues:

1. Is the case one of legal voluntary retirement/resignation as contended by the Management, if so what is it's effect?

2. If the answer to (1) above is in the negative, is removal/termination/non-continuance in employment valid or not, if not it's effect?

5. The case of employer was that in pursuance of the Voluntary Separation Scheme (hereinafter called VSS) introduced as many as 80 workmen out of 400 offered the VSS. The workmen received payments under this scheme. After a period of five years late in 1979, they decided to file claim for reconciliation proceedings which resulted in the reference. The workmen claimed that it is a case of termination of service by the employer. The preliminary issue was decided in favour of the employer holding that the present is the case of retirement under VSS. It is obvious that the workmen were not duped or forced under VSS. On the other hand, their admission that they knew about the details of the VSS through Union Leader Sri R."P. Vidhani, their admission of signatures on the letters of acceptance of VSS and also admission of their signatures on the resignation letters submitted by them, their admission that they did not make any complaint about having been forced to resign to labour department, police department, or any other authority, their acceptance of benefits under the VSS in more than one instalment spread over a period of time and, encashment of the cheques of the benefits are enough evidences of the voluntariness of the workmen in their resignation and retirement. Nothing illegal could be proved in the VSS. The plea that voluntary retirement" scheme is illegal ab initio is not

sustainable because voluntary retirement is specifically recognised by law and the legislatures have chosen to specifically exclude voluntary retirement of workmen from the definition of retrenchment. The retirement resulting from the acceptance of the VSS and resignations in pursuance of the same are voluntary and legal and fall outside the scope of retrenchment and the different preconditions to retrenchment will not apply to retirement under the VSS. The formal acceptance to resignation at his own initiative, the nature of resignation under VSS, being different as they are normally understood that they did not have right to seek adjudication u/s 2-A of U.P. Industrial Disputes Act, 1947. Thus, the additional issue was decided against the workmen. The order regarding decision of the issue was passed on September 17, 1991.

6. Thereafter, the workmen filed an application on October 15, 1991 before the Industrial Tribunal praying therein that in view of the order dated September 17, 1991, reference should be decided on merits of termination. On the application, the employer were invited to lead further evidence. After hearing the arguments on the applications filed by the workmen and the employer, no evidence was led on merits of termination, but the award was made on October 30, 1998. It is necessary to point out here that while deciding the award finally, the Tribunal has upset its own finding given while deciding the preliminary issue and held that there was violation of Section 9-A of Industrial Disputes Act, 6-N and 6(2) of Standing Orders and that discrimination and victimisation with delinquent is proved beyond doubt, that the pronouncement of Hon'ble Supreme Court and High Court are applicable to the effect that on the occasion of violation of rules by the employer and in the event of non-exhausting the obligatory provisions by the employers then the workmen will be entitled for its benefits alike the chronological reference has already been cited and discussed. The relevant portion of the award of the learned Tribunal is quoted as under:

"On going through the aforesaid note of discussion out of three, two are most significant on reading the correct findings, firstly the provisions of Certified Standing Orders of the company in which there is no such scheme named and styled as Voluntary Separation Scheme. Therefore, as per Hon'ble Supreme Court and High Court this doctrine has been established to the effect that if there is not any term of such type, being laid down in the Standing Orders then it would not be called as an expressed term of contract of employment and as such scheme could not become a term of employment between the employer and its employees and such scheme should have been inexpedient and the dispute arose would be covered under the provisions of Sections 2-A read with 4-K as much as in the decision of preliminary issue my predecessor that is why maintained that the dispute of delinquent workmen are maintainable under the aforesaid provisions of labour legislation and that the workmen concerned are the workmen within the scope and ambit of industrial dispute and the authority under the adjudication is fully empowered to adjudicate the dispute because of breach of certified standing orders.

So far as the change of service condition by the employers is concerned there is not a single paper or evidence through which it could be proved that the employers have ever got approval from the competent authority in this behalf before promulgating such scheme i.e. voluntary separation scheme which is mandatory.

Moreover, no permission of their action of termination of service of delinquent by the opposite party was sought u/s 6-E (2) (b) which is also in the nature of statutory and mandatory."

7. The Tribunal has made an award in favour of the workmen holding for their reinstatement w.e.f. November 1, 1974 with full backwages is based on the following grounds:

(i) In the Certified Standing Orders of the company, there is no such scheme named and styled as VSS, so it would not be called as an expressed term of contract of employment and as such, the scheme could not become a term of employment between the employers and the employees.

(ii) In view of the first point, the dispute arose in the present case would be covered under the provisions of Section 2-A read with Section 4-K as such, as in the decision of the preliminary issue, it has been held that the dispute of the delinquent workmen are maintainable under the aforesaid provisions of labour rules and the authority under the adjudication is fully empowered to adjudicate the case of breach of Certified Standing Orders.

(iii) The employers had not got approval from the competent authority which is mandatory.

(iv) No permission of their action of termination of services of the delinquent has been sought.

8. Since the other points are related to the first point, hence, if the first point is discussed, the other point would automatically be cleared.

9. The Standing Orders are no doubt the terms of contract of employment but in case, any scheme of voluntary retirement is prepared, the same would not be and cannot be treated a contract between the employer and the workmen during their engagements. Since, it was a voluntary offer to give up the job by accepting the voluntary retirement under the scheme, which could have been a separate contract between the employers and the workmen, there was no need to include that scheme in the Standing Orders, Learned Tribunal has not taken into consideration the findings given by it while deciding the preliminary issue to effect that the workmen have accepted the amount in instalments and they had not raised any objections nor have made any complaint to the authorities in that regard. In view of this, the principle of estoppel would apply and the workmen were estopped from raising objection after they had enjoyed the benefits of the scheme happily accepting the same and that too after a period of five years. It is thus apparent, that they had raised objections due to greed. Three clauses of the

Voluntary Separation Scheme are quoted hereinafter as under:

1. The first instalment subject to maximum of Rs. 25.000/- would be paid and the remaining amount of compensation if any, will be paid twelve months after the payment of first instalment.

2. The compensation payable under the scheme will be in addition to the Provident Fund and Retirement gratuity, if any, payable to the concerned employees under the service conditions applicable to them and barring this the employees concerned will have no other claim against the company.

3. The scheme will remain open upto and including October 26, 1974. The employees desirous of resigning under this scheme should apply to the Factory Manager on or before October 26, 1974 in the prescribed form for the purpose.

10. With regard to violation of Section 6-N and 9-A of the Industrial Disputes Act, 1947, it is necessary to peruse the definition of retrenchment given in Section 2 (s) of U.P. Industrial Disputes Act, 1947 which is reproduced as under:

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, but does not include-

(i) voluntary retirement of the workmen; or

(ii) retirement of the workmen on reaching the age of superannuation if the contract of employment between the employer and workman concerned contains a stipulation in that behalf."

11. Since according to the definition of retrenchment, the retrenchment does not include the voluntary retirement of the workman, it cannot be said that the voluntary retirement scheme was in fact retrenchment and as such, permission was liable to be obtained and provisions of Section 6-N of the Industrial Disputes Act, 1947 were liable to be followed. In the voluntary retirement, no provision which is meant for the retrenchment was liable to be followed. It was not a case of Section 9-A also as Section 9-A of Central Act, condition of service was not going to be changed. It was a contract for voluntary retirement with mutual agreement. Hence, during the course of service, conditions were not being changed and it was not to be followed by the workmen compulsorily, it was an offer only and an offer was not liable to be included in the form of compulsory obedience viz, including in the Standing Order or change of service conditions.

12. In view of the discussion made above, the writ petition succeeds and is allowed. The impugned order of reference dated November 27, 1981 and the impugned award dated October 30, 1998 published on March 6, 1999 passed by respondent Nos. 1 and 2 respectively in Adjudication Cases No. 36/93 and 5 of 1994 are quashed.

13. There, will be no order as to costs.