

(1966) 03 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 105 of 1964

H.R. Dharma Singh

APPELLANT

Vs

Divisional Superintendent, Southern Railway, Hubli and
Another

RESPONDENT

Date of Decision : 24-03-1966

Acts Referred:

Constitution of India, 1950 — Article 311
Industrial Disputes Act, 1947 — Section 25 F, 25 F (b), 33 C (2)

Citation : AIR 1967 Kar 131 : (1966) 12 FLR 450

Hon'ble Judges : Ahmed Ali Khan, J; A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : G.S. Ullal, for the Appellant; K. Nanjundaiah, for the Respondent

Judgement

1. This Writ Petition has for its source an application made by the petitioner to the Labour Court u/s 33C(2) of the Industrial Disputes Act. The Petitioner was an employee in the Southern Railway, Hubli from March 4, 1957. His services were dispensed with on November 21, 1958, and, according to the allegations in the application presented by the Petitioner, the termination of his employment in that way contravened the provisions of Section 25F of the Industrial Disputes Act. So the petitioner asked the Labour Court to direct the employer to pay him a sum of Rs. 5,905.50. This amount consisted of the pay and dearness allowance which the petitioner claimed for the period between November 21, 1958 and June 1961, and a sum of Rs. 232.50 which was described as compensation for three years. In the amount claimed by the Petitioner, he also included a sum of Rs. 155 which was described as one month's pay, dearness allowance and house rent.

2. The employer denied that the petitioner had been unlawfully retrenched although other contentions were also raised along with it. But the labour court found no difficulty in coming to the conclusion that there was no proper retrenchment since the procedure prescribed by Section 25F of the Industrial Disputes Act was not observed. The labour Court was of the view that the

Petitioner had not been given a month's notice in writing, that he was not paid at the time of retrenchment the compensation to which Section 25F(b) refers and that no notice in manner prescribed in clause (c) of that Section was served on the appropriate Government. Having reached this conclusion, the labour Court proceeded to direct the employer to pay a sum of Rs. 270 as the compensation claimable by the Petitioner u/s 25F.

3. In this Writ Petition, the petitioner asks us to quash this Order made by the labour court and to declare the petitioner to be entitled to his salary for the period between October 1, 1957 and the date of the presentation of the writ petition.

4. It was contended that once the Labour Court denounced the retrenchment as invalid, it had no option but to order reinstatement which would have entitled the petitioner to his salary which is claimed in the writ petition. It is now clear from the decision of the Supreme Court in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, that this contention cannot succeed.

5. It is true that although Sub-section (1) of Section 33C confers power on the labour court to direct payment of the money due to a workman under a settlement or an award or under the provisions of Chapter VA, Sub-section (2) empowers the Labour Court to direct payment of sums of money not necessarily claimable under a settlement or award or under Chapter VA. So, as pointed out by the Supreme Court, the scope of Sub-section (2) is wider than that of Sub-section (1). The Supreme Court, however, made no enumeration of the claims which could succeed under Sub-section (2), but made it very clear that one of the claims which could not succeed under Sub-section (2) was a claim for salary on the ground that there was an illegal dismissal or demotion.

6. On the same principle it becomes clear that in a case like this where the termination of the petitioner was found to be illegal by the Labour Court, no Order could be made by the Labour Court under Sub-section (2) for the payment of any salary or pay which the petitioner might claim in a proceeding such as an industrial dispute in an application presented by him under Sec. 33C(2). What is manifest from the pronouncement of the Supreme Court in the case of *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, is that a claim of that description is entirely outside the orbit of Section 33C(2) under which the petitioner made his application and is wholly outside Sub-section (1) as well. So it was not possible for the labour court to direct the employer to pay him the salary for the period subsequent to the date on which there was an illegal retrenchment. Any claim in that regard, as observed by the Supreme Court could only be made the subject matter of an industrial dispute.

7. But Mr. Ullal contended that we should say that the petitioner's services were terminated in violation of the provisions of Article 311 of the Constitution. There are two reasons for which we should repel this argument. The first is that no foundation was laid for any such contention at any stage. The second is that on

the material before us, it is not established that the petitioner had acquired any right to the post held by him.

8. But there is one matter upon which there was no adjudication by the Labour Court although it was its duty to make that adjudication. One of the claims made by the petitioner in his application was that he should be paid the amounts attributable to the revised pay scales prepared by the Central Pay Commission. Mr. Nanjundiah appearing on behalf of the Railway administration tells us that the Railway administration has no objection to make available to the petitioner the benefit of that pay scale for the period preceding November 21, 1958 and that is all that the petitioner could claim in his application which he presented to the labour court.

9. So while maintaining the order made by the Labour Court awarding to me petitioner a compensation of Rs. 270 as retrenchment bonus, we now remit the matter to the labour court go that it might now make an adjudication concerning the claim to the amount due to the petitioner arising out of the revised pay scale prepared by the Central Pay Commission which the Railway administration is prepared to give him. The labour court should now proceed to quantify that amount after hearing both sides and this is the only matter which the labour court should now proceed to adjudicate upon.

10. Mr. Ullal says that the petitioner should be at liberty to pursue such other remedies as are available to him in respect of his other claims, if any. It is obvious that nothing that we have said in the course of this Order could preclude him from having resort to any such remedy.

11. In this Writ Petition, there will be no direction in regard to costs.

12. Order accordingly.