

(1965) 07 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 317

Indian Hume Pipe Co. Ltd.

APPELLANT

Vs

Bhirmrao and Another

RESPONDENT

Date of Decision : 07-07-1965

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25H

Citation : AIR 1966 Bom 270 : (1965) 67 BOMLR 820 : (1966) ILR (Bom) 343 : (1966) MhLj 318

Hon'ble Judges : Chainani, C.J.;Wagle, J

Bench : Division Bench

Advocate : E.J. Mohair, for the Appellant; S.G. Kukdey, for the Respondent

Judgement

Chainani, C.J.

[1] The facts giving rise to this application are that the respondent No.1, hereinafter referred to as the respondent, had been employed by the petitioners sometime in 1960. After about two years service he was retrenched on 10-3-1962 and was paid retrenchment compensation in accordance with the provisions of S. 25F of the Industrial Disputes Act, 1947. At the time when the respondent was retrenched, a proceeding under S. 38A of the C.P. and Berar Industrial Disputes settlement Act, 1947, was pending before the state Industrial court. Under the award, which was made by that court in that proceeding, the respondent become entitled to a basic wage of 86 Np. In addition to deadens allowances of Rs. 1.75 on the date of his retrenchment. The respondent was re - employment order on 1st October 1962. According to the employment order issued to him, he was to be a paid a basic wage of 62 NP and deadness allowance of Rs. 1.75 np. Under the award 62 np. Was the basic wage fixed for new entrants. The respondent subsequently made an application to the labor court under S. 33C[2] of the Industrial Disputes Act. He contended I that application that he was entitled to receive the same wages from the date of his re-employment as were being paid to him on the date of his retrenchment hat is,

86 np per day, apart from the petitioner. The petitioners resisted various contentions. The principal contention of the petitioner was that as the respondents had been paid retrenchment compensation he was liable to be treated as a new entrant and accordingly entitled only to the basic wages of 62 np. Which is that wages fixed for new entrants by the award. This arguments was not accepted by he labor Court, which relied upon the decision of the Andhra Pradesh High Court in Indian Hume Pipe Co. Ltd. Vs. The Presiding Officer, Labour Court, Andhra Pradesh and Others, . The Labour court therefore made an order dissectioning the petitioner to pay Rs. 65 to the respondent. That order has been challenged before us in this application.

[2] Section 25H of the Industrial Disputes Act provides that where any workman are retrenched and the employer proposes to take into his employ any persons he shall, in such manner as may be prescribed, give an opportunity to the retrenched workman to offer themselves for re - employment and retrenched workmen who offer themselves re - employment shall have preference over other persons. This section, therefore imposes an obligation on an employer to give first impose an obligation preference to retrenched workman whenever he decides to increase the strength of his establishment and employ some persons. The employer must first offer the job to a retrenched workman before he can offer re - employment. According to the Oxford Dictionary, "re - employ" means "employ again" or "take back into employment", Re - employment therefore means taking back in employment, but it does not necessarily imply that the taking back into employment or service must be on the same terms and conditions, to which the employee was entitled provisory. Section 25H only gives a rights to worker to have preference in the matter of re - employment, but we do not find anything"s in the section or any others provisions in the act which also give him a right to secure employment on his previous terms and conditions of service. u/s 25F, when a worker is retrenched, he gets compensation for the loss of service. The amount of this compensation depends on the length of service put in by him. His previous service is therefore taken into consideration when the retrenchment compensation is paid. Thereafter the only, right available to him by reason of his having been previously employed is that conferred on him by section 25H and that is preference in securing the employment. It is arguments that a worker is entitled to be re - employed on his previous terms and conditions of service is accepted the position would be that if a worker is retrenched again he would be that if worker is retrenched again he would be entitled to have has previous service also taken into consideration

[3] It has been urged by Mr. Kukdey that a distinction should be drawn between retrenchment compensation and the wages payable to a worker. He has in fairness conceded that previous service of a worker cannot be taken into the consideration again if after being re - employed, he is retrenched, for the purpose of determining the compensation then payable to him. But he has argued that wages which a worker is entitled to draw at any time, depend also upon the length of service put in by him. He has urged that there is no reason

why the previous service of a worker should not be taken into consideration for the purpose of fixing his basic wage. In the absence of any difficult to accept the argument that while the previous service should be taken into consideration for one purpose, it should be ignored for another purposes.

[4] Reference has been made to the decision of the Andhra Pradesh High Court in *Indian Hume Pipe Co. Ltd. Vs. The Presiding Officer, Labour Court, Andhra Pradesh and Others*, . [of Lab LJ]; [at P. 59 of AIR] it has been observed.

"The word "re - employment" in our opinion, connotes employment on the same terms as before. The meaning given in the Oxford English Dictionary is to employ against to take back into employment. This implies employment on the same terms and condition of service. In our considered judgment, the obligations of employer to workman on the same condition as to employment etc., is implicit in the of re = employment.

With respect, we find ourselves unable to agree that the word "re - employment" necessarily connotes employment's on the same terms as before. All that section 25H provides for is preference to retrenched workman in securing employment's, but it does not say that the re - employment should be on the former terms and conditions of service. If that had been the intention of the legislature, it would have made a specific provision to that effect.

[5] In our opinion, therefore the view taken by the labour court is not correct. Accordingly, we set aside the order made by the Labour court and direct that the application made by the respondent to the Labour court should be dismissed. No order as to costs.

[6] Petition allowed.