

(2014) 11 P&H CK 0092
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 860 of 2011

Jitesh Kumar

APPELLANT

Vs

The Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 25F, 25-F, 25-F(a), 25-F(b)

Citation : (2015) 1 SCT 742

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Deepak Sonak, Advocates for the Appellant

Judgement

Tejinder Singh Dhindsa, J.—Workman-Jitesh Kumar has filed the instant writ petition impugning the award, dated 5.4.2010, passed by the Presiding Officer, Labour Court, Ambala whereby the reference has been answered against him and his termination from service has been upheld. Learned counsel for the parties have been heard.

2. Perusal of the award would show that the Labour Court had framed the following issues on 10.11.2008:

- i) Whether the termination of services of the workman is liable to be set aside being wrong, illegal, null and void etc. and the workman is entitled to be reinstated in service with full back wages and all the benefits including the continuity of service? OPW
- ii) Whether the claim statement is not maintainable in the present form? OPM
- iii) Whether the workman has not come to the court with clean hands? If so its effect? OPM
- iv) Whether the workman has no cause of action to file the present claim statement? OPM

v) Relief.

3. While returning findings on Issue No. 1, Labour Court has held that since the workman had not been engaged in pursuance to any regular selection process and in compliance with the requirement of any statutory provisions, as such, the matter stood covered by the second part of the exception (bb) to Section 2(oo) of the Industrial Disputes Act, 1947 (for short "the Act") and the provisions of Section 25-F to H of the Act were not attracted. Having so held, the Labour Court in the impugned award has gone ahead and even recorded a finding that the workman was validly terminated from service after complying with the provisions of Section 25-F of the Act.

4. These two findings are clearly contradictory.

5. Insofar as compliance of Section 25-F of the Act is concerned, the Labour Court has taken cognizance of the notice of retrenchment dated 25.7.2007, Exhibit M14, and has held that the workman was given one month salary in lieu of the notice along with compensation as provided under law.

6. The retrenchment notice, dated 25.7.2007, has been placed on record and appended as Annexure P3 along with the instant petition. The same reads in the following terms:

"Ref. No. 2736/2007 REGD POST Dated: 25.7.2007

Jitesh Kumar Sharma son of Sh. Dev Parkash Daily wager, House No. 8886/5, Naya Bans Ambala City.

It is informed to you vide this notice that the Managing Committee of Sh. G.R.S.D. Senior Secondary School (Sargodha) Ambala City, has decided to terminate your service due to the following reasons:-

1. Your work and conduct is not good towards the Officers of the School. You have many times misbehaved with the Officers.
2. You have levelled allegation of bribery against the Principal and Management of the school to the Distt. Education Officer, Ambala, which were totally false.

Due to above mentioned facts you are given one month notice and your services are dismissed with immediate effect. In lieu of one month notice giving you one month salary vide cheque No. 921923 and salary for the period 1.7.2007 to 25.7.2007 through cheque No. 921922, which are enclosed.

Sd/- Manager Sh. GRSD, School, Sargodha Ambala City

1. Cheque No. 921922 dated 25.7.2007 Amount 1653/- SBOP A/City
2. Cheque No. 921923 dated 25.7.2007 Amount 2050 SBOP A/City

Copy to:

Principal, Sh. GRSD, Sen. Sec. School (Sargodha) Ambala City for information."

7. Contents of such retrenchment notice, dated 25.7.2007, have not been disputed by Mr. Ashwani Talwar, learned counsel appearing for respondents No. 2 and 3. Perusal of the same would reveal that two cheques were enclosed along with the retrenchment notice i.e. cheque bearing No. 921923 dated 25.7.2007 i.e. towards one month's salary in lieu of one month's notice and cheque bearing No. 921922 dated 25.7.2007 i.e. towards salary for the period 1.7.2007 to 25.7.2007.

8. Section 25F of the Act reads in the following terms:

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

9. The provisions of Section 25-F(a) of the Act are mandatory and the employer is to give one month's notice to the workman and likewise, as per provisions of Section 25-F(b) of the Act, the mandate is for the employee to be paid compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. The salutary purpose of the Section was examined by a three-Judges Bench of the Apex Court in *The State Bank of India Vs. Shri N. Sundara Money*, and thereafter followed in *Pramod Jha and Others Vs. State of Bihar and Others*, . It was held that the retrenchment compensation is not only a reward earned for his previous service rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Payment of tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind would result in nullifying the retrenchment.

10. As per retrenchment notice, dated 25.7.2007, the cheque of Rs. 2,050/- was enclosed towards one month salary in lieu of one month's notice. This could be taken towards compliance of Section 25-F(a) of the Act. The other cheque enclosed along with the retrenchment notice, dated 25.7.2007, was cheque bearing No. 921922 for an amount of Rs. 1,653/- i.e. towards salary for the period 1.7.2007 to 25.7.2007. There is no mention as regards any compensation

having been tendered to the workman at the stage of retrenchment towards compliance of Section 25-F(b) of the Act.

11. For the reasons recorded above, it is held that the finding recorded by the Labour Court in the impugned award, dated 5.4.2010, as regards compliance of Section 25-F of the Act suffers from perversity. The impugned award, as such, cannot sustain.

12. The writ petition is allowed. The award dated 5.4.2010, Annexure P2, is set aside and the matter is remanded back to the Labour Court, Ambala to decide Reference No. 6 of 2008 afresh strictly in accordance with law and after giving opportunity of hearing to the parties. Suffice it to observe that any discussion or observation made in this order shall not be taken as an expression on the merits of the case.

13. The Labour Court is expected to decide the reference afresh expeditiously and, in any case, within a period of six months from the date of receipt of a certified copy of this order.

14. Parties shall appear before the Labour Court, Ambala on the date to be fixed by the Presiding Officer of the Court. Petition disposed of in the aforesaid terms.