

(1998) 01 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No. 2032 of 1995

Karnataka Electricity Board, Bangalore

APPELLANT

Vs

Pyare Jan and Others

RESPONDENT

Date of Decision : 13-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 17, 25 B, 25 F, 25 F (a), 25 F (b)

Citation : (1998) 79 FLR 909 : (1998) ILR (Kar) 1827 : (1998) 3 KarLJ 462 : (1999) 1 LLJ 715

Hon'ble Judges : G. Patri Basavana Goud, J

Bench : Single Bench

Advocate : Sri B.C. Prabhakar, for the Appellant; Sri B.E. Kotian, High Court Government Pleader and Sri T.V. Narayana Murthy, for the Respondent

Judgement

1. The award of the Labour Court, Bangalore dated 7-7-1994 at Annexure-A, by which the reinstatement of two workmen, namely respondents 1 and 2, is directed with full back wages, with continuity of service and other consequential benefits, is sought to be quashed in this writ petition under Articles 226 and 227 of the Constitution by the employer Karnataka Electricity Board (KEB).

2. The services of respondents 1 and 2, working at the relevant time as temporary meter readers, came to be terminated with effect from 25-5-1986. The workmen raised an industrial dispute in that regard, and the Labour Court found on facts that Section 25-F of the Industrial Disputes Act, 1947 (Act, for short) had not been complied with in full. Hence the impugned award.

3. There was an attempt of complying with Section 25-F of the Act. But, apart from the fact that notice-period wages and compensation payable under clause (b) of Section 25-F did not come to be paid on the very day of termination which happened to be a Sunday on which day cash section admittedly had not been working, but also that the amount exactly due under clauses (a) and (b) of Section 25-F were not paid, there being short fall of cash as a result of wrong

calculation. The amount that was actually paid to the two workmen even subsequent to the date of termination was less than what was payable under clauses (a) and (b) of Section 25-F. As said earlier, even this amount was not offered simultaneously with the order of termination. The result was that the Labour Court had necessarily to hold that there was noncompliance of Section 25-F of the Act.

4. Learned Counsel for the petitioner Sri B.C. Prabhakar submits that that would be viewing compliance with Section 25-F in a highly technical manner. It has been repeatedly held by several High Courts, the decisions of which were referred to in the course of arguments, that Section 25-F, particularly dealing with the termination of services of the workmen, needs to be viewed very strictly, and no interpretation to the detriment of the workmen who are being sent out of service, could be permitted. Therefore, Section 25-F not having been complied with in the strict sense in which it ought to have been complied with, both with regard to clause (a) and clause (b) of Section 25-F, as rightly held by the Labour Court, it must be said that there was no compliance with Section 25-F. The result normally would be reinstatement with back wages.

5. The case concerned herein, however, should not have resulted in automatic reinstatement and payment of back wages as has been done by the Labour Court, for the reasons to be presently stated. The Labour Court, in my opinion, has acted mechanically in directing reinstatement and payment of back wages, losing sight of the circumstances in which two workmen came to be retrenched.

6. The undisputed facts are these: Two workmen concerned were given training and appointed temporarily as meter readers on daily wages of Rs. 17.00. It was purely for a period of three months which came to be extended, so that the workmen concerned eventually were able to complete the requisite period of continuous service as per Section 25-B of the Act. The object of extending their services and also of having given training to them before even being taken as temporary workers, was to undertake the process of regular selection in accordance with the rules and regulations of the KEB. Such regular selection was made in which both the workmen did participate. But, unfortunately, they did not succeed and therefore, did not come to be eventually selected in the selection process. They therefore had to give way to the persons regularly selected and appointed as meter readers. It was for this reason that the two workmen concerned had to be sent out of the organisation. There was no lack of bona fides on the part of the petitioner in terminating their services in this back ground. Their termination had to come about, the moment the regularly selected employees came to take their place. It was not as though this position had not been recognised by the workmen themselves. They knew that they were there temporarily. They also knew that they had to get themselves regularised only after applying therefore and passing the concerned tests and then getting selected. When they went through the process and still didn't get selected, there was no way but to go out of organisation. There was thus justification for the

termination, though in the process, the petitioner committed default in compliance with Section 25-F. The Madras High Court had to consider a similar situation wherein, for non-compliance with Section 25-F, the result should have been automatic reinstatement. The Madras High Court held that in lieu of reinstatement, there could also be compensation. The Madras High Court was considering this aspect in *Coimbatore Pioneer "B" Mills Limited v Labour Court and Others*. That is a decision of the Division Bench comprising of Justice V. Ramaswami and Justice Ratnavel Pandian, as their Lordships then were. This is what the Madras High Court said in this regard.

"Under Section 25-F of the Act, no workman employed in an industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until notice pay and compensation has been paid. Considering this provision, the Supreme Court has held in *State of Bombay v Hospital Mazdoor Sabha*, that Section 25-F(b) is mandatory, that the requirement prescribed by it is a condition precedent for retrenchment of the workman. Non-compliance with the said condition would render the retrenchment invalid and inoperative. On the finding of the Labour Court that the workers were not paid compensation on 19th October, 1970, and that there was no unconditional offer to pay retrenchment compensation, and the offer of payment was made only on 20th October, 1970, the provisions of Section 25-F have not been complied with by the management. But the more important question for consideration is whether, while holding that Section 25-F(b) had not been complied with, the labour Court had any discretion to award compensation in lieu of reinstatement under any circumstances. There could be no doubt that even if Section 25-F and the other provisions of Chapter V-A relating to retrenchment are strictly complied with, the justification of the retrenchment itself could be questioned. Unless the management proves as a fact that the retrenchment was bona fide and necessary, and the reasons for retrenchment are valid, and the retrenchment was not an unfair labour practice, the retrenchment would have to be held invalid if an industrial dispute is raised on the validity of such retrenchment. The justification of the retrenchment is thus de hors the complying with the provisions of Section 25-F of the Act. In fact, Chapter V-A is not the whole law relating to retrenchment. If the retrenchment is disputed and becomes an industrial dispute, it is decided as a dispute on a reference u/s 10(1). In fact, prior to the introduction of Chapter V-A of the Act, that was the position and it was never held that a retrenchment as such could not be a subject-matter of an industrial dispute. We are of the view that the provisions of Chapter V-A only put additional conditions for the validity of the retrenchment. Factually, therefore, the sequence of events must be; a case of justification for retrenchment and when the management, on the basis of such a case, retrenches workmen, it would have to comply with the provisions of Section 25-F. The provisions of Section 25-F come in an act of retrenchment or a factual non-employment when there is a justification for such non-employment. We are, therefore, unable to accept the contention of Mr. Dolia that the Court will have to address first as to whether the

act of retrenchment was in compliance with the provisions of Section 25-F before going into the question of the need or bona fides or justification of the retrenchment. This sequence of findings will have a bearing on the question of the relief that could be granted by the Labour Court. In a case where, to the satisfaction of the Court, it is established that there was need and necessity for retrenchment in the industry, and the management, for legal and valid reasons, decided to retrench, the Labour Court, in our view, would have to consider whether it will be just and reasonable to order reinstatement while it gave a finding that Section 25-F had not been complied with. We are aware that the Supreme Court, in clear and unmistakable terms, has held in the decision in *Hospital Mazdoor Sabha*, supra, that the noncompliance with the conditions of Section 25-F(b) relating to payment of compensation would render the impugned retrenchment invalid and inoperative. The decisions relied on by the learned Counsel for the workers in *Sridharan Motor Service v Industrial Tribunal, Madras*, and *India General Navigation and Railway Company Limited v Their Workmen*, do not in any way advance further than holding that an illegal action can never be justified. In fact, the decision of the Supreme Court in *Hospital Mazdoor Sabha*, was interpreted and understood in *Udaipur Mineral Development Syndicate Private Limited v M.P. Dave*, as holding that in such case, there is no termination of the relationship of employer and employee. But in none of these decisions cited it has been held that even if the Labour Court were to find that there was need for retrenchment and the retrenchment was bona fide, there was no option for the Labour Court but to order reinstatement in all cases of noncompliance of the provisions of Section 25-F of the Act. The decision in *Swadesamitran Limited v Their Workmen*, which was relied on by the learned Single Judge and the learned Counsel for the workmen before us, is, in our opinion, not an authority for this position. That was a case of noncompliance with the provisions of Section 25-G. In the case of noncompliance with the provisions of Section 25-G, certainly reinstatement could be ordered with justification. If instead of A, B has been retrenched, on direction of reinstatement of B, the management can, with justification, send out A. We have to understand the decision of the Supreme Court only in that light and with reference to the provisions of Section 25-G. We are, therefore, of the view that in such circumstances of noncompliance with the provisions of Section 25-F(b) where bona fides or the need for retrenchment is justified, the Labour Court will have a discretion with reference to the facts in each case, either to order reinstatement or direct payment of compensation in lieu of such reinstatement. The order of the Labour Court in such circumstances will be open to question if it is arbitrary or not based on valid or relevant criteria. In this case, the Labour Court, in the passage extracted earlier, has noted the reasons as to why it is not giving relief of reinstatement but directing the payment of compensation in lieu of such reinstatement. We are of the view that the reasons given in the order are valid reasons, and the order could not be termed in any way arbitrary. The learned Single Judge, in fact, had not found that if the Labour Court had any discretion, the discretion was not validly exercised or it was exercised arbitrarily. The learned Judge felt that the decision

in Swadesamitran Limited's case, supra, is clearly applicable to the facts of the case and that, therefore, the workers are entitled to be reinstated. As we have already held that that is a decision with reference to the provisions of Section 25G of the Act, and no decision of the Supreme Court has been brought to our notice which dealt with the provisions of Section 25-F in relation to the relief to be granted, we are of the view that the order of the Labour Court, therefore, is not liable to be interfered with either at the instance of the management or at the instance of the labour".

This decision of the Madras High Court was affirmed by the Supreme Court in Workmen of Coimbatore Pioneer "B" Mills Limited v Labour Court and Others.

7. There was, thus, a case of justification for retrenchment of the workmen and the need to comply with Section 25-F of the Act. Since Section 25-F was not fully complied with, and since the places of respondents 1 and 2 have already been now taken by the regularly recruited meter readers, I am of the opinion that in lieu of reinstatement, the appropriate relief to be granted should be a lump sum compensation. The workmen concerned were earlier drawing wages at Rs. 17.00 per day. Sri Narayana Murthy, learned Counsel for the workmen, submits that if the two workmen were to be reinstated now, they would be drawing around Rs. 1,500.00 per month. Of course, for the last two years, they are being paid Rs. 400.00 per month in compliance of Section 17-B of the Act. Taking into consideration all these facts, and also having regard to what would be the amount that each workmen would be getting by way of back wages if reinstatement is ordered instead of paying compensation, I am of the opinion that, leaving aside the amount that each workman has been getting for the last two years u/s 17-B of the Act, and as an overall settlement, a lump sum compensation of Rs. 60,000.00 to each of the two workmen, would be just and appropriate, which compensation shall be in lieu of reinstatement and all other monetary claims by the workmen against the petitioner employer.

8. Petition is allowed. The impugned award is modified. While setting aside the order of termination of respondents 1 and 2 from service, it is directed that, instead of reinstatement and back wages, each of the two workmen, namely, each of respondents 1 and 2, shall be paid compensation of Rs. 60,000.00 from which nothing shall be deducted. The said compensation shall be paid to each one of them within one month from the date a certified copy of this order is made available to the petitioner, either by its Counsel or by respondents 1 and 2 or their Counsel.