

(1992) 08 KL CK 0058
In the High Court Of Kerala
Case No : O.P. No. 10304 of 1992

Koodaranji Service Co - op. Bank

APPELLANT

Vs

M.M. Lissy

RESPONDENT

Date of Decision : 17-08-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 23, 25B, 25F

Citation : (1992) 2 KLJ 792

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : M.C. Sen, for the Appellant;

Final Decision : Dismissed

Judgement

K.A. Nayar, J.—The challenge in this petition is against Ext. P3 award of the Labour Court, Kozhikode. First respondent has been appointed as Clerk on daily wages, and working under the petitioner for the past 6 years. The dispute related to the termination of her employment with effect from 1-4-1989. She was employed as Clerk in the service, co-operative bank of the petitioner and was working continuously from 2-3-1983 to 1.4.1989. Her service was terminated on the basis of Instruction issued by the superior authorities under Co-operative Societies Act. It is that termination which became the subject matter of Industrial Dispute No. 5/91, which was adjudicated by the third respondent culminating in the award dated 21-1-1992 produced in this Original Petition as Ext. P3. On a perusal of Ext. P3, it is seen that it was" an admitted case that the first respondent was working as a Clerk on daily wages from 2-3-1983 without any break. She was paid daily wages at Rs. 10/- initially, which was increased to Rs. 15/- for sometime and thereafter to Rs. 20/-until her appointment was terminated on 1-4-1989. Admittedly, she had continuous service of 6 years. It is also stated that the service of the first respondent is terminated only because the Co - operative Department has deprecated the appointment of persons on dally wages in co - operative banks and directed to dispense with their service.

Termination was done without complying with the provisions of Section 25F of the Industrial Disputes Act. Admittedly, Industrial Disputes Act will be applicable in this case. First respondent was in continuous service for nearly about 6 years. Such employment cannot be terminated without complying with the provisions of Section 25F, which has not been done in this case. The effect of the termination order is, therefore, rightly held by the Labour Court as non est. Since provisions u/s 25F has not been complied with, the termination will have no effect and in law, she will be deemed to be in service. It is on that basis award is passed directing the management to re - instate the worker as a Clerk with back wages and to continue her services.

2. Petitioner referred to the decision reported under Eranalloor Service Co - operative Bank Ltd. v. Labour Court (1986 KLT 801). In that case, the employee was appointed without the necessary qualification and contrary to the provision of section 80 of the Kerala Co - operative Societies Act. It is on that ground the appointment was held to be void by this Court and, therefore will not spell in the realm of retrenchment attracting the provision of section 25F of the Industrial Disputes Act. That decision has no application in this case as there is no case that the first respondent in this case was not qualified to be appointed as a clerk. Counsel also referred to the decision reported in Urakam Service Co-operative Society v. Sujatha (1988 (2) KLT SN 25 p. 15). In that case the society was directed to terminate the services of an employee by the Deputy Registrar as the appointment was made in violation of the rules. The Labour Court found that the termination of the employee was bad and illegal and that he was entitled to be reinstated. The correctness or authority of the Registrant order was not in challenge before any forum. The society had not challenged the action of the Registrar under Rule 188. The employee never questioned the Registrar's act before any competent forum. In those circumstances, the Court held that it must be assumed that what the public officer did in exercise of his statutory power was valid and proper.

3. In this case there is no violation of the rules alleged before the Labour Court. The service of the first respondent was terminated only because the Co - operative Department deprecated the appointment of persons on daily wages in co - operative banks and directed to dispense with their services. The management could have terminated the appointment in compliance with the provisions of section 25F of the Industrial Disputes Act. But that has not been done in this case. Since the employee in question is admittedly entitled to the benefit of section 25F of the Industrial Disputes Act her employment can be terminated only in compliance with that provision. As the provisions of section 23 has not been complied with, it is to be held that the purported termination has no legal validity. Therefore, Ext. P3 award passed by the Labour Court directing the management to reinstate the workman with backwages and continuity of service cannot be faulted.

4. The wider literary meaning given to the word "retrenchment" by the Supreme

Court in *Sundermanl's* case had been approved by the five Judge Bench of the Supreme Court in *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, . By giving such meaning, the rights of the employer in respect of workmen whose services have been terminated have not been affected or taken away, but only an additional social obligation has been imposed on the employer so as to give retrospective benefits to the affected workmen. Therefore, a termination, even if authorised by the higher authority or at the instance of the higher authority, will nevertheless be a retrenchment and if it is not made in accordance with the law or is defective in any sense, the retrenchment will not be effective and the consequential termination will be invalid. The workmen will not be concerned with the indoor management of the establishment. Whether the appointment had been done properly or whether the procedure has been complied with are matters within the knowledge of the employer and if the workman puts in one year's service as required in section 25B of the Industrial Disputes Act, he gets a right to continue unless the employment is validly terminated. If the termination is not valid or if there is a defective retrenchment, there will be no termination or cessation of employer and employee relationship and, therefore, a declaration that the workman will continue in service in the form a reinstatement with backwages will ordinarily follow when the dispute reaches before the Industrial Tribunal or Labour Court. In the decision reported in *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, , it is held by the Supreme Court that where the prerequisites of a valid retrenchment as laid down in section 25F had not been complied with, the retrenchment bringing about termination of service will be ab initio void. Originally, the word "retrenchment" was confined to discharge of surplus labour or staff. But there has been a change in law relating to retrenchment after the decision of the Supreme Court in *The State Bank of India Vs. Shri N. Sundara Money*, . The law has been summarised by the Supreme Court in the decision reported in *Workmen of Meenakshi Mills v. Meenakshi Mills* (J.T. 1992 (3) SC 446 as follows:

...There has been a change in the law relating to retrenchment since the decision of this court in *The State Bank of India Vs. Shri N. Sundara Money*, wherein "retrenchment" as defined in section 2(oo), was construed to mean termination howsoever produced and all terminations except those specified in clauses (a) (b) and (c) of section 2(oo) were held to be retrenchment. The said view in *State Bank of India v. Shri N. Sundara Money* (supra) was reiterated in the subsequent decisions of this Court in *Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others*, ; *Santosh Gupta Vs. State Bank of Patiala*, ; *Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others*, *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court New Delhi* (1981 (1) SCR 759), *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, ; *Management of Karnataka State Road Transport Corporation v. M. Boraiah & Am.* (1984 (1) SCO 244); and *Gammon India Limited Vs. Niranjan Dass*, . The matter now stands concluded by the decision of the Constitution Bench of this

Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, wherein the decision in State Bank of India v. N. Sundara Money (supra) and subsequent decisions have been approved and it has been held that retrenchment, as defined in section 2 (oo), means termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action and those expressly excluded by clauses (a), (b) and (c) of the definition.

In view of this, all termination, will be retrenchment if it is not excluded by clauses (a), (b) and (c) of the definition. Hence I find no vitiating circumstances in the award.

Original Petition is, therefore, dismissed.