
(1991) 08 P&H CK 0085
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4970 of 1986

Lakshmi Pandit

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 23-08-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1993) 3 LLJ 133

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Abha Rathore, for the Appellant; NEMO, for the Respondent

Final Decision : Allowed

Judgement

J.L. Gupta, J.—The petitioner was appointed as a "T" Mate in the Construction Cell of the Haryana State Electricity Board (hereinafter referred to as the Board) on 19 May 1981. On 30 April 1982, the petitioner was informed that on account of reduction in workload his services will not be required after 30 July 1982. This was three months' notice. He was also asked to contact the Senior Accounts Officer for collection of his dues "on or before 30 July 1982".

2. Aggrieved by the action the petitioner served a notice of demand and since no settlement could be reached, the Government of Haryana referred the case for adjudication to the Industrial Tribunal, Faridabad. The claim of the petitioner was considered along with that of another workman. Vide its order of 20 May 1986, the Tribunal found that the termination of the services was justified and in order. Aggrieved by the award, the petitioner has filed the present writ petition. In response to the notice, a written statement has been filed through Sri S.P. Dhingra, Superintending Engineer.

3. Smt. Abha Rathore, learned counsel for the petitioner, has contended that the Board had failed to comply with the provisions of Section 25F of the Industrial Disputes Act, 1947, inasmuch as the retrenchment compensation had not been

paid "at the time of retrenchment" and no seniority list as contemplated under Rule 77 had been displayed on the notice-board. These two contentions have been raised even before the Tribunal. Section 25F reads as under:

"Section 25F. Conditions precedent to retrenchment of workman - 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:-

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation with the provisions of Section 25F of the Industrial Disputes Act, 1947 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".

4. Clause (b) postulates that no workman shall be retrenched until he has been paid the compensation "at the time of retrenchment". This section contains a mandate that the employer shall not retrench a workman unless retrenchment compensation has been paid prior to or at the time of retrenchment. In the present case the condition postulated in Clause (a) of Section 25F had been duly complied with. However, the retrenchment compensation was neither paid before nor even at the time of retrenchment. It is no doubt correct that the petitioner had been directed to contact the Senior Accounts Officer for collection of dues on or before 30 July 1982. It is also correct that the Senior Accounts Officer has been asked to arrange payment of the retrenchment compensation. It also appears from a perusal of Annexure R/3/A that the concerned authority had worked out the retrenchment compensation on 30 July 1982. However, the payment had actually not been made. The Tribunal has rejected the petitioner's claim in this behalf with the following observations:

"The oral testimony of the claimants that the Accounts Officer did not pay the dues and asked them to collect the same later on cannot be accepted because after receiving the termination letter, vide document exhibit-M3, no complaint was made by them to the concerned department that compensation was not being paid to them. They were given three months' notice on 30 April 1982, and were asked to collect their dues on or before 30 July 1982. This was a sufficient compliance with the provisions of Section 25F of the Industrial Disputes Act, 1947".

5. I am unable to sustain this finding. In the evidence recorded by the Tribunal, it

was stated on behalf of the respondent Board that the claimant had been offered specific amount in writing and that the offer had been" made much before 30 July 1982. Along with the written statement, a photostat copy of the office-noting has been produced as Annexure R/3/A. A perusal of this shows that the calculation for working out the retrenchment compensation had actually been made on 30 July 1982. Consequently, the claim made on behalf of the respondent-Board that the retrenchment compensation had been worked out and the "amount was offered much before 29 July 1982" cannot be correct. Furthermore, no offer appears to have been made on behalf of the Board to send the compensation to the petitioner even by money-order. In this situation, I am of the view that the mandatory provisions of Section 25F had not been complied with.

6. Even the provisions of rule 77, which require that the employer shall prepare a seniority list of all the workmen and cause a copy thereof to be pasted on the notice board, do not appear to have been complied with. In the writ petition it has been categorically availed that respondent 3 "did not display the seniority list of the workmen belonging to Mates before retrenching the petitioner." In the written statement it has not been averred that the seniority list had been actually displayed. Even if the provisions contained in Rule 77 is held to be directory, the respondents had not substantially complied with this provision.

7. In view of the above, the order of termination, Annexure-P2, as also the award at Annexure-P1 are set aside. The petitioner is entitled to be reinstated. Consequential reliefs shall follow. Since no one has appeared on behalf of the respondents to contest this petition, I make no order as to costs.