

(1971) 09 DEL CK 0042

In the Delhi High Court

Case No : Civil Writ Appeal No. 500 of 1971

Management of Band Box (P) Ltd.

APPELLANT

Vs

Suresh Kumar and Another

RESPONDENT

Date of Decision : 14-09-1971

Acts Referred:

Citation : (1971) ILR Delhi 465

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : Anand Prakash, M. Kapoor, D.R. Sethi, D.D. Verma and J.C. Talwar, for the Appellant;

Judgement

S. Rangarajan, J.

(1) The petitioner company terminated the services of the first respondent who was working as a Mechanic, under an order dated 9-8-1967 which reads as follows: -

"This is to write that during the off season we have decided to reduce the strength of Mechanics as there is not enough work for two whole time mechanics. You being the junior of the two mechanics, we hereby give you notice that your services shall stand terminated with effect from tomorrow. You are directed to settle your dues when you will be paid your service compensation and one month's pay in lieu of notice besides your earned wages due up to date and wages in lieu of unavailed earned leave, if any due."

It is stated that the letter was personally handed over to him by an officer of the petitioner company S.C. Das on the same day and that the workman refused to accept it after knowing its contents. It was thereupon posted to him by registered post with the following note added to it:-

"IT is reported that when this letter was offered to you by Shri S.C. Das, you refused to take it after knowing its contents although it is not understood why.

Anyway, it is now being sent by registered A.D. post in order to effect service of the notice personally upon you. Accordingly you will be relieved from the day next of receipt by you of this letter."

The workman accepted the said letter only on the 19th August, 1967. He did not collect his dues from the Accounts Officer of the company, including his retrenchment compensation and one month's pay, immediately on receipt of the letter, according to which he was to be relieved from duty the next day after the receipt of the letter.

(2) The workman complained to the Mercantile Employees Association on August, 1967. which wrote a letter on 20-8-67 to the company demanding reinstatement of the workman and alleging not only victimisation but non-compliance with section 25-F of the Industrial Disputes Act. There is no averment in the said letter, however, that the workman had gone at any time to the Accounts Office to collect his retrenchment compensation, notice pay and other dues, as required by the said letter.

(3) The Mercantile Employees Association filed a complaint against the termination of the services of the worker and made a demand for his reinstatement from 20-8-1967 before the Conciliation Officer at Delhi. The petitioner wrote to the workman on 23-8-1967 pointing out that he had not come forward to collect his dues and advised him to do so at any time during working hours, failing which the amount would be remitted to him by money order at his cost.

(4) It is alleged that before the money order could be sent the workman had complained to the Conciliation Officer. No money order was later on sent in view of the case filed by the workman before the Conciliation Officer. The Lt. Governor referred the dispute concerning not only Suresh Kumar (respondent No. 1) but also two others to the Additional Industrial Tribunal by his order dated 29-11-1968 in the following terms:-

"WHETHERS/Shri Suresh Kumar, Hari Ram and Gian Chand are entitled to reinstatement? If so, what other directions are necessary in this regard?"

(5) Even in the statement of claim filed by the Mercantile Employees Association (copy of which is Annexure Vi to the Writ Petition) the workman had acknowledged receipt of the letter dated 10-8-1967 on 19-8-1967, but did not say that he had gone to collect the payment of his dues including retrenchment compensation and notice pay from the petitioner. All that was stated was that a mere offer in the letter was not compliance with the statutory obligation as it did not amount to payment or tendering of the amount. In the statement filed by the petitioner it was averred that all the retrenchment dues were duly offered but the workman had declined to claim the same inspire of written reminders to him; even when he came later to collect the bonus he declined to collect his retrenchment dues on the ostensible plea that he had raised an industrial dispute before the Conciliation Officer. Averments were also made on the merits, about

termination, to the effect that when during the monsoon that dry cleaning business is always very lean; it was found that there was not enough work turn two mechanics and as the respondent No. 1 was the junior of the two mechanics in the employment of the petitioner he was retrenched from service with effect from 9-8-1967. It was denied that the off season in a dry cleaning establishment was only from April to August, it went on up to the end of October depending on weather conditions. It was alleged that winter had not earnestly set in even up to middle of December, 1968; the tempos which were being attended to by the Mechanics were disposed of in December, 1967, January and April, 1968; three new vehicles were purchased in 1968 while one had been purchased in the previous year. I his obviated the necessity of maintaining the Repair Department which was in the course of winding up altogether.

(6) Before the Additional Industrial Tribunal S.C. Das was 17 examined on the side of the petitioner in the course of which he proved a chit (Ex. M.-11) which was brought by the worker to him. That chit was issued by D.C. Chadha, Labour Law Adviser of the company, on 7-5-1968 to B.S. Bhandari of the petitioner company suggesting that the worker had been sent to him by R.N. Roy (the President of the Mercan tile Employees Association) that he may bs paid his bonus for the present and that he did not want his retrenchment and other dues as yet since it may prejudice his case before the Conciliation Officer. He admitted that no voucher was prepared regarding the retrenchment compensation, notice pay and outstanding wages, since it would be done only after the workman was ready and willing to accept them. These payments were to be made by the Head Office at Connaught Place; the retrenchment notice dated 9-8-1967 was tendered to the worker in the factory at Motiakhan.

(7) The workman stated before the Tribunal that he refused to take delivery of the retrenchment letter because he wanted the contents thereof to be explained to him, though he read English up to the 8th class. He added further that when he asked for retrenchment compensation it was not paid to him on the ground that it would be given to him if he withdrew the case before the Conciliation Officer. He went to collect the bonus twice; when he went for the first time he was not paid bonus and was not offered retrenchment compensation. He was advised by Roy to get his bonus even if the retrenchment compensation was not paid; hence he got a letter from D.C. Chadha and collected the bonus due to him.

(8) The Additional Industrial Tribunal found that the retrenchment notice was not actually served on the worker on 9-8-1967 but that he received the letter sent by registered post on 19-8-1967. It was found that there was non-compliance with section 25-F of the Industrial Disputes Act, 1947 since the amount of compensation etc. due to the workman was never paid or tendered on the day he was retrenched or discharged. Accordingly he did not feel the need to go into the question whether the cause of termination of service was due to a valid reason or not and consequently the workman was ordered to be reinstated with full back wages and continuity of service.

(9) The two submissions made by Dr. Anand Prakash on behalf of the petitioner company were: (1) that the Additional Industrial Tribunal did not correctly construe section 25-F of the Act and (2) it failed to discuss the question whether even if there was no compliance with section 25-F such compensation alone, but not reinstatement, should be ordered. Section 25-F of the Industrial Disputes Act, 1947 reads as follows: -

"25F.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 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)",

It is also necessary to read section 33(2) of the Act:

"(2)During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, (or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman),- (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

Dr. Anand Prakash relied upon a Division Bench decision of the Madhya Pradesh High Court in *Nowrozabad Mazdoor Sangh v. F. Jeejeebhoy*, Vol. 37 (1970) *Factories Journal Reports* 2250. In that case the workmen concerned were informed by letter dated 17-1-1965 that they would be retrenched with effect from 27-1-1965 and that they would be paid one month's wages in lieu of the notice on 27-1-1965 at the company's cash office during the office working hours. Upholding the award of the Arbitrator appointed under an agreement u/s 10A of the Industrial Disputes Act, 1947, the Division Bench held that payment, for the purposes of section 25-F, includes an offer, provided it is definite, unequivocal and genuine. It was explained that what is done should not be a mere pretext or show of an offer. Dr. Anand Prakash also relied upon a few

decisions u/s 33(2) of the Act. In *Strawboard Manufacturing Co. Vs. Gobind*, the other to pay wages for one month, at the same time action was taken to terminate the services of the workman was described as a question of fact depending upon the circumstances of each case. It was, however, pointed out that the employer's conduct should show that the dismissal or discharge, making should be part of the same transaction, but did not involve the notion of a split-second timing.

(10) In *Delhi Transport Undertaking v. Industrial Tribunal, Delhi*, 1965 1 L.L.J. 458, the Supreme Court held that the memorandum issued on 30-10-1961 informing the worker (a bus conductor) of the order of dismissal and that he would be paid one month's wages as required by section 33(2)(b) of the Act with the direction that he should report immediately to the Accounts Officer at the Head Office to receive the payment and to surrender his uniform etc. was sufficient compliance of section 33(2)(b) of the Act. The Supreme Court hearing an appeal against the award of the Tribunal interfering with the finding of the Tribunal; held that there was no tender of wages as required by the Act. The proviso to section 33(2)(b) was interpreted to mean not that the wages should have been actually paid (because in many cases the employer can only tender the amount before dismissal but cannot force the employee to receive payment before the dismissal becomes effective) but that it was sufficient that the tender was definitely made before the order of dismissal became effective. Hidayatullah, J. (as his lordship then was) who spoke for the Supreme Court further pointed out that the wages should have been certainly paid if the workman had asked for the same and that there was no failure to comply with the provisions in that respect.

(11) In *Tata Iron and Steel Co. Ltd. Vs. S.N. Modak*, , the Supreme Court held that the proviso to section 32(2) would be satisfied if the employer either pays or offers the salary for one month before passing an order of discharge or dismissal and applies to the specified authority for approval of the action at the same time or within such reasonable short time thereafter as to form part of the same transaction.

(12) A Division Bench of the Madras High Court held in *Presidency Talkies Pvt. Ltd. Vs. Presiding Officer, Labour Court, Madras and Another*, that if the employee spurns the offer of one month's wages the management would have fulfilled its obligation by making the offer. If the management had to "secure the acceptance of the offer as a condition precedent every application u/s 33(2)(b) could be defeated by the same device on the part of the workman by not accepting the offer of wages. It was further pointed out that the offer should have been made simultaneously with the application or prior thereto depending on the facts of each case. The decision of the Supreme Court in *Straw Board Manufacturing Co.* was followed.

(13) Shri D. D. Vernia, learned counsel for the workman, pointed out the distinction in the phraseology between section 25F and section 33(2)--in the

former it is "until" and in the later "unless". I am unable to attach any significance to the difference because the concise Oxford Dictionary also refers to one of the meanings of "until" as "unless". The object for both the situations, whether u/s 25F or section 33(2), is clearly to ensure that there would be no retrenchment in the petitioners case or discharge or dismissal in the latter without paying, in lieu of one month's notice, wages for the period of the notice. The requirement of such payment u/s 25F" is not different from section 33(2). All that need be ensured is bona fide offer to the worker as part of the same transaction of either retrenching him or discharging or dismissing him.

(14) In another decision of the Supreme Court, namely. National Iron and Steel Co. Ltd. and Others Vs. The State of West Bengal and Another, , section 25F of the Act was held violated when by notice dated 15-11-1958 the services of the concerned workman were retrenched with effect from 17-11-1958, but he was asked to collect his dues and one month's wages in lieu of notice on or after 20th November, 1958. Mitter, J. observed in that context; "If he was asked to go forthwith, he had to be paid up to the 473 time he was asked to go and could not be asked to collect his dues afterwards.". An earlier decision of the Supreme Court in Bombay Union of Journalists v. State of Bombay, 19641 L.L.J. 351, was referred to. Gajendragadkar, J. (as his lordship then was) pointed out that section 25F was put in the negative form and was coupled with the condition that no retrenchment can be effective until the three conditions specified by clauses (a), (b) and (c) are satisfied and that the provision in the negative form coupled with the use of the word "until" indicates that the conditions must be first satisfied before retrenchment can be validly affected. Clauses (a) and (b) were obligatory and hence were conditions precedent which had to be satisfied before a workman could be retrenched. The object was to redress partially the hardship resulting from retrenchment by these two clauses.

(15) It was not disputed by Dr. Anand Prakash that clauses (a) and (b) were conditions precedent and that their violation would render a retrenchment invalid. Such a contention is not open in view of the State of Bombay and others v. Hospital Mazdoor Sabka and others, 1960 1L.L.J. 251; where Gajendragadkar, J. speaking for the Supreme Court observed that retrenchment effected without complying with the provision of S. 25F(b) of the Act by way of an application u/s 25(1) of the Act (since repealed with effect from 10-3-1957) was not valid. Dr. Anand Prakash, however, urged that all that the management could do in such cases is to make an offer of payment on retrenchment or dismissal and that if the workman does not come forward to collect the payment the employer could not be held to contravene section 25F or section 33. Otherwise, he urged, a workman can by his willful default in collecting his payment make the action of the employer itself invalid and later on complain that the management was guilty of contravention of section 25F or section 33, as the case may be, section 31 of the Act having prescribed a penalty for an employer contravening section 33. It is, Therefore, contended that the workman in this case refused to avail the offer of the employer who could not be held responsible for non-payment and that the

approach thus suffers from an error of law apparent on the face of the record since the Tribunal had not considered whether the employer had made an offer of payment

(16) The fact that a letter had been written by the management to the workman on the 9th of August, 1967 intimating that his services were terminated with effect from the next day hardly admit of any doubt; the note concerning the workman having refused to receive the letter is supported by the fact that the same was sent by registered post A.D. informing the workman that he would be relieved on the day next of receipt of the letter, the letter was received by him on the 19th August, 1967. The workman should have presented himself to the Accounts Officer of the company on 20th August, 1967 to receive his retrenchment compensation, one month's pay in lieu of notice, the earned wages due up to that time and wages in lieu of un-availed earned leave, if any. The fact that the same was not sent by money order later on could hardly be a ground from which it can be interred that the offer of payment was not bona fide. The letter dated 9-8-67 was personally offered to the workman, the person offering it need not have with him the retrenchment compensation etc. to tender to the workman because the payment was to be made the head office in Connaught Place. From the fact that when the said letter was offered to the workman, the representative of the company did not have the money with him to be paid to the workman, the Additional Industrial Tribunal was not justified in drawing the inference that there was no compliance with section 25F. In view of the conciliation proceedings having commenced the bonus etc., but not the retrenchment compensation, was paid to the workman when the President of the Association intervened, later. But this has no bearing at all on the question whether the offer made by the management was a genuine offer and whether there was sufficient compliance with section 25F. According to the note in the letter dated 9-8-67 the workman had been told that he would be relieved from the date next of receipt of the said letter. Unless it is made out that the workman presented himself on 20-8-67 turn receiving payment and still it was not made to him, there could be no challenge on the ground that section 25F was not complied with.

(17) The Industrial Tribunal failed to approach the case from the correct legal standpoint. This is an error patent on the face of record and hence the order of the Additional Industrial Tribunal directing reinstatement of the workman has to be and is hereby quashed.

(18) Shri D. D. Verma, learned counsel for the workman, relied upon the expression employed in the above said letter dated 9th August, 1967 directing the workman to "settle his due" as not sufficiently clear or precise. He referred to the definition of "settlement" by means of section 2(p) of the Act as one arrived at in the course of conciliation proceedings, including a written agreement between the employer and workman arrived at otherwise than in the course of conciliation proceedings that such agreement had been signed by the parties

thereto in such manner as may be prescribed and a copy thereof sent to the appropriate government and the Conciliation Officer. It is obvious that the expression "settled" was not used in the said letter in the sense conveyed by section 2(p). The word "settle" was obviously used, and also understood, in the ordinary dictionary sense, to finally arrange with the management concerning the service compensation, one month's pay, earned wages and wages in lieu of un-availed earned leave, if any.

(19) The reference being whether the workman was entitled to reinstatement no question of giving any directions in this regard would arise if he is not entitled to reinstatement. If there was no breach of section 25F the workman could not ask for being reinstated.

(20) Since I hold, in view of the above discussion, that there was no violation of section 25F of the Act, the workman is not entitled to reinstatement. The award of the Addl. Industrial Tribunal answering the above reference in favor of the workman (1st Respondent) is. Therefore, quashed.

(21) I must, however, notice the further contention on behalf of the management that even if there was any breach of section 25F of the Act the Tribunal should not in any event have ordered reinstatement and that it must have atleast discussed the question of whether compensation to any extent could be awarded to the workman instead of ordering reinstatement especially because the reasons for the retrenchment were stated to be as mentioned above. But it is needless to discuss this question in the view I take of the matter. In the above view there has been no breach of section 25F of the Act.

(22) In the result the Writ Petition is accordingly accepted and the award of the Additional Industrial Tribunal ordering reinstatement is quashed. There will be no order as to costs in the circumstances.