
(2006) 03 DEL CK 0063
In the Delhi High Court
Case No : LPA 234 of 2004

Management of Brahmaputra Board APPELLANT
Vs
Ashok Kumar and Another RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 25F

Citation : (2006) 88 DRJ 602 : (2006) 110 FLR 1026 : (2006) 3 LLJ 461

Hon'ble Judges : Markandeya Katju, C.J.; S.N. Dhingra, J

Bench : Division Bench

Advocate : Rakesh Kumar, for the Appellant; Santosh Kumar, for the Respondent

Judgement

Markandeya Katju, C.J.—This Writ Appeal has been filed against the impugned judgment dated 28.1.2004 of the learned Single Judge.

2. Heard learned counsels for the parties and perused the record.

3. The writ petition has been filed against the impugned award of the Labour Court, Delhi dated 10.7.2003. It appears that the workman had raised an industrial dispute u/s 10 of the Industrial Disputes Act, as to whether his service has been illegally terminated. He had admittedly worked from 1982 up to the date of the termination order dated 3.2.1994. He alleged that the termination was in violation of Section 25F of the Industrial Disputes Act.

4. The Labour Court found that the termination was in violation of Section 25F of the Act, and hence it awarded reinstatement with back wages.

5. The appellant filed a writ petition before this Court against the award but that was dismissed by the judgment of the learned Single Judge dated 28.1.2004

6. It has been observed by the learned Single Judge that no evidence was adduced by the management to show that the workman had taken his dues as alleged in the written statement filed by the petitioner.

7. It appears that before the Labour Court, the management filed its written statement but thereafter its representative stopped appearing and no evidence was led on its behalf before the Labour Court. In our opinion, making a plea in the written statement is not sufficient, particularly when it is rebutted. Evidence has to be led in support of the plea but that was not done in the present case before the Labour Court. Hence in our opinion, the Labour Court rightly set aside the termination of the service of the petitioner.

8. A perusal of the termination order dated 3.2.1994, copy of which is Annexure P6 to the writ petition, shows that the retrenchment compensation was not paid at the time of the termination order. Rather, the written statement of the workman before the Labour Court copy of which is Annexure P11 to the writ petition, shows (vide ground IV) that after the termination order dated 3.2.1994, the management sent an Ors. letter dated 21.2.1994 which was received on 22.2.1994 enclosing cheque towards retrenchment compensation and notice pay . Thus, while the termination was on 3.2.1994, retrenchment compensation and notice pay was actually paid to the petitioner on 24.2.1994. This was clearly illegal because it is well settled that payment or offer of retrenchment compensation and notice pay is a condition precedent to the retrenchment and subsequent payment will not validate an illegal or void retrenchment. This is because payment of retrenchment compensation and notice pay is a condition precedent to the retrenchment vide State of Bombay and Ors. v. Hospital Mazr Sabha and Ors. 1960 (1) LLJ 251 ; Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, ; Bombay Union of Journalist and Ors. v. State of Bombay and Anr. 1964 (1) LLJ 351, etc.

9. Even if the workman receives the compensation subsequent to the order of retrenchment, he will not be estopped from challenging the illegality and validity of the order of retrenchment as being violative of Section 25F as there can be no estoppel against the statute vide Workmen of Subong Tea Estate Vs. The Outgoing Management of Subong Tea Estate and Another, ; B.N. Elias and Co. Private Ltd. Vs. Fifth Industrial Tribunal of West Bengal and Others, ; Somu Kumar Chatterjee and Anr. v. District Signal Tele-communication Engineer and Anr. 1970 (2) LLJ 179; R. Sankaran v. Addl. Labour Court 1977 (10) LIC 1338, etc.

10. It was stated in the writ petition that the matter was earlier before this Court and this Court had remanded the matter to the Labour Court, but the appellant had no notice of the hearing of the case before the Labour Court after the remand. However, a perusal of the order of this Court dated 17.5.2002 in CWP No.4689/2001 shows that while remanding the matter to the Labour Court this Court had directed the parties to appear before the Labour Court on 8.7.2002. Hence the Appellant cannot complain that it had no notice about the date of hearing before the Labour court, particularly since the High Court itself fixed the date of hearing.

11. We see no reason to differ from the impugned judgment of the learned Single Judge except that instead of granting full back wages, in our opinion 50% back wages should be granted. Any amount already paid shall be adjusted. With this observation, this appeal is disposed off.