

(1983) 01 DEL CK 0023
In the Delhi High Court
Case No : Civil Writ 1034 of 1974

Management of Kanti Weekly

APPELLANT

Vs

D.D. Gupta and Others

RESPONDENT

Date of Decision : 10-01-1983

Acts Referred:

Citation : (1983) ILR Delhi 112 : (1983) RLR 237 : (1985) 2 SLJ 582

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : S.N. Bhandari, for the Appellant; Umesh Mishra and Yudhister Kumar for the LR's of Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

Avadh Behari Rohatgi, J.—This is a petition under Article 226 of the Constitution by the management of M/s. Kanti Weekly against its workman, Syed Sabeer Hussain, Respondent No. 3. The management has impugned the award of the Labour Court dated 28th May, 1974.

2. These are the facts. The workman, Syed Sabeer Hussain, was a peon in Kanti Weekly. According to the management he was getting Rs. 104 per month as his salary. On 28th February, 1973 a notice of retrenchment was sent by registered A.D. post to the workman stating that his services will not be required from 1st April, 1973 and that his earned wages and retrenchment compensation will be paid to him on the 31st March, 1973 which would be his last working day. The court has found as a fact that it was delivered to the workman on 3rd or 4th March, 1973. As regards compensation the management sent a crossed cheque of Rs. 396.29 on 27th March, 1973 by registered A.D. post. The court found that it was received by the workman on 2nd April 1973. The workman did not accept the cheque. He returned it to the management on 3rd April, 1973. On 4th April, 1973 the management received it back. Thereafter the workman raised an industrial dispute. The government referred the following question to the Labour Court for adjudication :

"Whether the retrenchment of Sh. Syed Sabeer Hussain is illegal or unjustified and if so to what relief is he entitled and what directions are necessary in this respect?"

3. By its award the Labour Court held that the retrenchment of the workman was illegal and that he continued to be in the service of the management and on this finding it ordered the workman to be reinstated with full back wages and continuity of service. Against this award of the Labour Court the management has brought the present writ petition.

4. Mr. Bhandari, learned counsel for the management has, in the forefront of his arguments, raised the question of jurisdiction of the Labour Court to determine the dispute. He says that the question of retrenchment was within the jurisdiction of the Industrial Tribunal because it is covered by entry No. 10 of the third schedule to the Industrial Disputes Act, 1947 (the Act). Entry No. 10 is in these words :

"Retrenchment of workman and closure of establishment."

5. He has in support of his contention cited Management of Hamdard (Waqf) Laboratory, Lal Kuan, Delhi v. Raunak Hussain and Anr. ILR 1971 308(1) and Sahu Minerals & Properties Ltd. v. Presiding Officer, Labour Court and Ors. 31 F.L.R. 162 (2). In my opinion, this contention is not well founded. Entry No. 10 deals with the case of retrenchment of the workman where the retrenchment is connected with the closure of an establishment. If there is a closure of an establishment and as a result the workmen are retrenched the question will fall within the jurisdiction of the Industrial Tribunal. But if it is a case of retrenchment of a workman unconnected with the closure of the establishment then it is a case of discharge or dismissal of the workman simpliciter and would fall within the jurisdiction of the Labour Court. The matters within the jurisdiction of Labour Court are enumerated in the second schedule to the said Act. Item No. 3 reads :

"Discharge or dismissal of workman, including reinstatement or grant of relief to, workman wrongfully dismissed."

6. The workman's case was that he had been wrongfully dismissed. The Government referred the question of his retrenchment to the Labour Court. In my opinion" the Labour Court had jurisdiction to determine this question.

7. The word "retrenchment" by itself is not determinative of the jurisdiction of the Industrial Tribunal. It is directly connected with "closure of establishment". When a legal text requires interpretation because there is a reasonable doubt as to its meaning or scope, the first step is to determine the meaning of the words used, according to the rules of grammar and syntax, not in isolation but in their context and taking into account the subject discussed. As stated by R.E. Paul, "the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes." (Taxation in the United States, 1954). The poet

Dryden says :

"As long as words a different sense will bear, and each may be his own interpreter.

Our airy faith will not foundation find :

The words a weathercock for every wind."

(Dryden : "The Hind and the Panther" II 462).

So the word "retrenchment" alone cannot be its "own interpreter". We have also to have regard to the words that follow. The words are known by the company they keep.

8. Mr. Bhandari next contended that the management is an industry. I have not allowed him to raise this point because it was not taken by the management before the Labour Court. This being a question of fact and evidence it cannot be raised in the proceedings under Article 226 of the Constitution for the first time.

9. The third contention of Mr. Bhandari is that the action of the management was perfectly legal in the matter of retrenchment of the workman's services and the court has wrongly found against it. Whether the action of the management is legal or illegal is the principal question to be decided in this writ petition. It is true that the labour court has found in favor of the management in so far as the justification of the action is concerned. The workman complained that the management was guilty of victimisation and unfair labour practice. His evidence was disbelieved. The Labour Court held that the action of the management was justified because it wanted to effect economy and with a view to minimise its expenses it was within the managerial discretion of the employer to organise his business in the manner he considered best. Therefore, the finding in so far as this question is concerned is that the management was not following a policy of unfair labour practice as was the case of the workman. That he was victimised on account of his trade union activities was also disbelieved by the court.

10. On the question of the legality of the action the Labour Court found three things against the management. One, that the management had not given one month's notice in terms of Section 25F of the Act, Secondly, that it did not offer compensation to the workman "At the time of retrenchment", as was obligatory u/s 25F. Thirdly, that sending a crossed cheque did not amount to payment of compensation. Having arrived at these three findings the Labour Court reached the conclusion that since the conditions of Section 25F were not fulfilled the action of retrenchment was illegal. As a consequence the court ordered the management to reinstate the workman with full back wages and continuity of service.

11. Mr. Bhandari has challenged each one of these three findings. In the first place he says that the notice of retrenchment to the workman was sent by registered post on 28th February 1973 which reached him on 1st March, 1973.

The finding of the Labour Court is that the notice of retrenchment reached the workman on 3rd or 4th March, 1973. The workman went into the witness box. He stated that he received the notice (M4) dated 28th February, 1973 on 3rd or 4th March, 1973, There was no evidence to the contrary. The Labour Court, Therefore, found as a fact that the notice reached the workman on 3rd or 4th March. 1973. If it is held, as it must be held, that the workman received the notice on 3rd or 4th March, 1973 it inevitably follows that it was not a notice of one month as retrained by Section 25F. This is the only interpretation that can be given to Section 25F. A clear one month's notice is required to be given to the workman if he is to be retrenched. If the notice reaches on 3rd or 4th March. 1973 he is entitled to complain, and justify in my opinion, that he has not got one month's notice. That this condition is mandatory no one disputes. This is the conclusion of the Labour Court on this part of the case and I cannot find any fault with it.

12. The second contention of Mr. Bhandari is that the court was in error in finding that retrenchment compensation was not offered validity and, Therefore, the retrenchment was illegal. The letter containing the cheque of Rs. 396.29 was sent by the management on 27th March, 1973 by registered A.D. post. The court on evidence found that it was received on 2nd April, 1973. The Act says that "at the time of retrenchment" compensation shall be paid by the management. The question is : Was compensation offered to the workman "at the time of retrenchment" ? In other words, the question is whether the offer of compensation was made on 27th March, 1973, as is the contention of Mr. Bhandari, or on 2nd April, 1973, as is the view of the Labour Court. In support of his contention Mr. Bhandari has referred me to *Industrial Chemicals Ltd., Madras v. Labour Court, Madras and Ors.* 1977 (2) LLJ 137 (3).

13. In *Delhi Transport Undertaking v. Industrial Tribunal, Delhi and Anr.* 27 F.I.R. 342 (4) it was said that it is not necessary that wages for one month should be actually paid, because in many cases the employer can only tender the amount before the dismissal and cannot force the employee to receive the payment before dismissal becomes effective. That was a case of Section 33(2)(b) and the Supreme Court held that the tender of the amount before dismissal will make the order of dismissal effective. With this proposition there can be no quarrel. That the amount has been actually paid and received by the workman is not the requirement of the law. The law requires that it must be tendered to the workman. Was the payment by means of a crossed cheque and transmitted in post in accordance with law? In other words, was it a valid tender to the workman ? Mr. Bhandari says that it was valid and all that the management was required to do was to put it in post. Whether it reaches the workman on 1st April, 1973 or on 2nd April, 1973 is not the concern of the management, he argues. He has referred me to the observations of Gupta J. at page 149 where in *Damadilal and Others Vs. Parashram and Others*, [relied upon in *Industrial Chemicals (supra)*] he said "it is well established that a cheque sent in payment of a debt on the request of the creditor, unless dishonoured, operates as a valid

discharge of the debt and if the cheque was sent by post and was not on presentation dishonoured the date of payment is the date when the cheque was posted." These observations, in my opinion, on which counsel heavily relies, have no bearing on the question at issue before me. *Damadi Lal* was a case under the Madhya Pradesh Accommodation Control Act, 1961. The question before the court was whether payment of rent by a cheque sent by the tenant to the landlord amounted to a lawful tender. That depended on the provisions of the Madhya Pradesh Act with which the supreme court was concerned. Here I am concerned with the words of Section 25F which uses the expression "at the time of retrenchment". The intention of the legislature is clear. If the workman has to go he must be paid compensation "at the time of retrenchment." If compensation is tendered to him after his services have come to an end it is not a valid tender or offer of compensation. Numerous cases have held this. I need not refer to all of them. It is sufficient to refer to a recent decision of the Rajasthan High Court in *Kanhaiya Lal K. v. Union of India* 1982 (1) S.L.J. 42(6). M.C. Jain, J. in that case has referred to a large number of decisions of the Supreme Court and other courts at pages 55--57 from which it appears, to me that the proposition is well established that if compensation is not paid "at the time of the retrenchment" then the conditions of Section 25F are not complied with.

14. So the issue of timing is very important. In their notice dated 28th February, 1973 the management had told the workman that in view of the growing deficit in the establishment the management has decided to abolish the post of peon and that his services will not be required from 1st April, 1973 and that his earned wages and retrenchment compensation etc. would be paid to him on 31st March, 1973 which was going to be his last working day. This clearly shows that the workman was to be retrenched from 1st April 1973. So 31st March, 1973 was "the time of retrenchment" of services and compensation ought to have been paid to him at that time. Assuming that it was 1st April, 1973 even then the delivery of the cheque to the workman on 2nd April 1973 was clearly out of time. It cannot be said that it was offered "at the time of retrenchment", to use the words of the statute.

15. Mr. Bhandari also referred me to a decision of Rangarajan J. in *Indian Compressors Makers Corporation v. Labour Court* 50 F.J.R. 1 (7). The question in that case was entirely different. What was argued before the learned judge was that the money order should have reached the workman before the retrenchment took effect. He rejected this argument on the ground that the offer of payment had been made by the management at the time of retrenchment and it was declined and thereafter the money order was sent on the same day. The learned judge held that the workman was playing a game of "hide and seek" and, Therefore, he was not entitled to argue that the payment had not been made at the time of retrenchment. It is not the finding of the Labour Court in this case that the workman was playing any game of "hide and seek". The postal authorities were the agent of the management and if the offer or tender is made to the workman on 2nd April, 1973 after the services had been terminated, I am

not prepared to hold that it was "at the time of retrenchment" that the offer or tender was made.

16. The third question viz. that the payment by crossed cheque is not a valid payment I need not discuss in view of my decision on the first two questions. Non-compliance with the provisions of Section 25F in two respects--in not giving one month's notice and in not giving compensation "at the time of retrenchment"--is fully established. These are, in my opinion, fatal flaws.

17. Lastly, Mr. Bhandari attacked the finding of the Labour Court in so far as the relief of reinstatement is concerned. He says that having found the action justified the Labour Court was not right in making the order of reinstatement of the workman. He submits that the post had been abolished and the order of reinstatement means that the management will have to create the post again in order to reinstate the worker. He relies in this connection on *Shankar Krishna Nikam v. Bhide and Sons* (1982) 45 FLR 280 (8) and *The Motor Transport Controller, Maharashtra State, Bombay and Others Vs. Provincial Rashtriya Motor Kamgar Union, Nagpur and Others*, . The question at issue is whether the court was right in ordering the reinstatement of the workman. Counsel says that it ought to have awarded compensation instead of reinstatement. I do not agree. If it is found that the order of retrenchment is non est, as it must be held, because the conditions of Section 25F have not been complied with there is no other course open to a court or a tribunal except to hold that the workman has continued to remain in service throughout as if no retrenchment notice had been given to him, as if no compensation had been tendered at the time of retrenchment. Having fought the litigation it would be unjust to tell the workman that though the retrenchment is illegal he is not entitled to reinstatement because the management has abolished the post. It is perfectly possible for the management to reinstate the workman in terms of the order of the court and then to dispense with his services after following the procedure laid down in Section 25F. This course for reasons best known to it the management has not chosen to follow. I cannot find any fault with the order of the court in ordering reinstatement having once come to the conclusion that the retrenchment was illegal.

18. Unfortunately this question does not survive for decision now because the workman had died. He passed away on 13-12-80. So all that can be done in the circumstances of the case is to make an order for payment of arrears of salary to the heirs of the workman from 1st April, 1973 to 13th December, 1980. Reinstatement is not possible. The workman has died. His heirs have come on the record. They are entitled to arrears of salary.

19. For these reasons the writ petition is dismissed with costs. The heirs of the deceased workman will be entitled to arrears of salary for the period I have indicated above.