
(2002) 01 RAJ CK 0138
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4662 of 2001

Manager, Jai Drinks Pvt. Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court No. 1 and Another

RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2002) 95 FLR 931 : (2002) 3 RLW 1801

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : Manoj Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Madan, J.—The case of the petitioner (for short "the Company") is that it has a bottling plant for bottling soft drinks at Jaipur. Non-petitioner No. 2 was in the employment of the Company's bottling plant as waterman, who was the only employee of the Company in this category. The Company has been bottling soft drinks under its franchisee agreement with Pepsi Foods Private Limited, which was terminated by Pepsi Food Pvt. Ltd. with effect from 3.12.1991. Despite stoppage of the production, the Company continued respondent No. 2 in its employment in the hope and expectation of revival of production activities but since the financial conditions of the company didn't improve, it had become difficult for the Company to continue respondent No. 2 in its employment as it had become difficult for it to pay him wages without work. Hence, it was decided to retrench him after having resorted to the provisions of Section 2(oo) and Section 25F of the Industrial Disputes Act, 1947 (for short "the Act"). He was accordingly offered one month's wages in lieu of notice and also the retrenchment compensation including the dues for September, 1992 apart from other dues. His services were accordingly terminated with effect from 26.9.92 and an amount of Rs. 22,613.60 was offered simultaneously by a bank cheque, which he accepted under protest.

2. It is the petitioner's case that the workman was asked by Company's cashier at the same time to execute a receipt on the date of his termination itself i.e. on 26.9.92. This receipt was signed by the workman in token of acceptance.

3. Shri Manoj Sharma learned counsel for the petitioner contended during the course of hearing that the cashier of petitioner's Company unfortunately instead of mentioning "retrenchment compensation" in the receipt mentioned a sum of Rs. 18,506.25 on account of gratuity. I have perused the receipt dated 26.9.92 (Ann. 2) in which apart from payment of amount on account of gratuity indicated in item No. 2 of the receipt, the other amounts which have been indicated are Rs. 1023/- on account of balance of salary till 26.9.92, Rs. 1801.30 against salary dues in lieu of the leave encashment and Rs. 1283.05 on account of one month's notice salary, totalling Rs. 22,613.60. Below there is endorsement by respondent No.2 in the following words:

"I have received this amount under protest and if anything remains outstanding, the same shall be payable."

4. According to the learned counsel, since the management became aware of this mistake, it had sent a communication on 28.9.92 (Ann. 3) to the workman indicating therein that in the aforesaid receipt the gratuity had been inadvertently mentioned instead of "retrenchment compensation", which is apparent from the letter dated 26.9.92 9 (Ann.1). On this basis, learned counsel has sought to build up his argument by contending inter- alia that the Labour Court has totally lost sight of this fact that in the impugned Award and hence the impugned Award deserves to be quashed and set aside. His further contention was that since no settlement could be arrived at between the parties on furnishing of failure report being sent to the Labour Department of the Government of Rajasthan, vide Notification dated 26.5.93 referred the dispute for adjudication to the Labour Court by drawing up the terms of reference as under:-

^^D;k Jfed jkes"oj iq= lq[kyky ?ftldk izfrfuf/kRo Jh ,e ,Q csx Je dY;k.k dsUnz] ea;d Vkdht ds ihN] LVs"ku jksM+] t;iqj }kjk fd;k x;k gS? dk eSustj t; fM?aDI izkfy- tokgj yky usg: ekxZ] t;iqj }kjk fnukad 26-9-92 dks le; ls iwoZ IsokeqDr fd;k tkuk mfpr ,oa os/k gS \\ ;fn ugha rks Jfed fdl jkgr dks izkIr dkjus dk vf/kdkjh gS \

5. I have heard the learned counsel for the petitioner at length and also perused the relevant material on record as also the findings of the learned Labour Court in the impugned Award. Prima facie, I am of the considered opinion that the finding of the Labour Court can neither called perverse nor illegal nor it can be said to be without jurisdiction. Apart from the findings recorded by the Labour Court, a positive finding has been recorded by the Labour Court to the effect that it was not a case of closure of petitioner's establishment and even if it is assumed to be a closure, the termination is not justified since retrenchment was done on the basis of stoppage of production; therefore retrenchment of the

workman was not justified as it was not established on the basis of the relevant evidence on the record. The workman admitted this fact in his evidence before the Labour Court that in fact at the time when his retrenchment was done, he was not paid any compensation except gratuity amount for September, 1992 but the other benefits, which were due and admissible to him at that time were not paid to him. The payment of Rs. 22613.60 was not disputed but he had received the same under protest and moreover, it was done in violation of the provisions of Section 25F of the Act. The Labour Court in para-8 of its Award had recorded another significant finding to the effect that the workman had nowhere conceded that he is not gainfully employed anywhere-else but has specifically stated in his claim petition, which was supported by an affidavit, that he is not gainfully employed elsewhere and hence, he is entitled to all consequential benefits as admissible to him as per the Rules. Consequently, the Labour Court directed that his termination with effect from 26.9.92 was illegal, being contrary to the Rules and he was accordingly directed to be reinstated in services of the petitioner-Company with all consequential benefits. Under the circumstances, it cannot be inferred that the petitioner Company had under bonafide mistake mentioned the word "gratuity" whereas the actual intention of the Company was to pay him the retrenchment compensation in compliance with Section 25F of the Act, which in fact is not the position as per the impugned Award.

6. The ratio of the decision in the matter of Managing Director. The Bombay Film Laboratories Ltd. v. L.G. Vasule and Anr. (1), relied upon by the learned counsel for the petitioner does not help in advancing the case of the petitioner in any manner since apparently it is neither a mistake of fact nor of law with regard to the mandatory requirements of the statute; rather the receipt dated 26.9.92 (Ann. 2) was prepared in full and final payment of the dues as admissible to the workman. Hence, it cannot be considered as a bonafide mistake on the part of the petitioner's management.

7. In the matter of B. Lawrie and Co. Ltd. v. Waman B. More and Anr. (2), which has also been relied upon by the learned counsel for the petitioner does not help in advancing the case of the petitioner in any manner as it was a case of short fall in payment of the amount which was actually found payable to the employee. In that context, the Bombay High Court held as under:-

"The employer will be entitled to some consideration if in his application for permission he were to bring these facts and contentions to the notice of the Tribunal and make an offer to deposit the disputed amount before the Tribunal either along with the application or within such time as the Tribunal may order with a further offer that the same may be paid to the employee as and when directed by the Tribunal."

8. Faced with the above situation, the learned counsel has further argued while placing reliance upon Section 7 of the Payment of Gratuity Act, 1972, that as per the said Act, it is the employer's obligation to determine the amount of gratuity and pay to the concerned employee since he is entitled for its payment upon a

written application being sent to the employer within such time as may be prescribed for payment of gratuity. According to the said provision, as soon as gratuity becomes payable, the employer is under obligation by giving a notice in writing to the person concerned and so also to the controlling Authority specifically mentioning the amount of gratuity so determined. This contention is devoid of merit for the reason that in the receipt (Ann. 2) the amount of gratuity has been specifically mentioned after determination by the employer. This by itself cannot be a ground for contending that the amount of gratuity had been specified in the aforesaid communication under bonafide mistake since it was very much in the knowledge of the employer that the services of the workman stood terminated on payment of retrenchment compensation, gratuity and other dues as has been indicated in Annexure-2.

9. As a result of the above discussion, I do not find any merit in the writ petition. It is accordingly dismissed in limine.