
(1995) 02 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3330 of 1987

Manohar Lal

APPELLANT

Vs

The Central Warehousing Corporation and Another

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 76
Industrial Disputes Act, 1947 — Section 25F, 25N

Citation : (1995) 110 PLR 539

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : S.D. Sharma, Surinder Sharma and Rajinder Sharma, for the Appellant; Jangh Bahadur Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—This order will dispose of Civil Writ Petitions 3330 and 9238 of 1987 as common questions of law and fact arise in them. For the sake of convenience, facts are being taken from Civil Writ Petition 9238 of 1987.

2. The petitioner was appointed as a Ware House Assistant Grade-II (WA-II) of 20.3.1979 on daily wages and was drawing a monthly salary of Rs. 300/-. He was posted in the office of Ware House Manager, Central Ware House, Abohar-I. His services were terminated with effect from 23.5.1987 as he was not found fit to be retained in the service of the Central Ware Housing Corporation (for short "the Corporation"). He was also given alongwith the order of termination a demand draft in a sum of Rs. 2000/- as one "months" pay in lieu of notice period and also compensation as provided u/s 25(F) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is this order that has been challenged in the present petition filed under Article 226 of the Constitution.

3. The argument of the learned counsel for the petitioner is that the impugned order of termination casts a stigma on the petitioner and, therefore, the same could not have been passed without holding a regular departmental enquiry in

accordance with the regulations of the Corporation. The other ground on which the order is being challenged is that the provisions of Section 25-F of (c) and 25-N have not been complied with and, therefore, the termination order is void abinitio and the petitioner would therefore be deemed to be in the service of the Corporation.

4. In the written Statement filed on behalf of the respondents, it is admitted that the services of the petitioner who was a daily wager were terminated because he could not pass the typing test in spite of the several opportunities that he availed of and, therefore, he was not found fit to be kept in the service of the Corporation. It is denied that the order is, in any way, stigmatic. It is further pleaded on behalf of the respondents that the provisions of Section 25-N of the Act are not applicable to the Corporation and that the provisions of Section 25-F were complied with before terminating the services of the petitioner.

5. I have heard counsel for the parties at length. It is not in dispute before me that the petitioner availed of several opportunities to pass the typing test but he could not do so. His case, however, is that passing of the typing test was not a condition precedent for being retained in service and that the passing of the same would have only entitled him to the increments which he could not otherwise get. On the other hand, it is the firm stand of the respondent that passing of the typing test was a condition of his appointment and he could not be retained in service as he did not pass that test. The petitioner has not produced his letter of appointment. I sent for the records from the respondents and there too the letter of appointment is not available. On 7.4.1988, the Assistant Labour Commissioner, Chandigarh, who was holding conciliation proceedings in pursuance to a dispute raised by the petitioner was informed by the Corporation that the letter of appointment of the petitioner was not traceable on the record. However, the petitioner has produced Circular No. 33 dated 3.6.1987 issued by the Corporation which throws some light on this aspect. As per this circular, the Corporation had granted exemption/relaxation from passing the typing test on those Ware Housing Assistants Grade-II who had been appointed from amongst group D employees under 20% quota and on compassionate grounds. The circular states that such Ware House Assistant Grade II who do not pass the test would continue in service and draw the initial pay as WA-II and the increments would be released to them only from the date of their qualifying the test. Obviously, the need to grant relaxation to Ware House Assistants Grade-II arose because it was necessary for this class of employees to pass the typing test before they could be retained in service. From this circular coupled with the categorical averment made in the written statement, it can safely be inferred that passing of the typing test was a condition for being retained in service and since the petitioner could not pass the test, the Corporation was justified in terminating his services on that score. The impugned order is not very happily worded, but it cannot be said that it casts a stigma on the petitioner. It is true that the impugned order says that "he is not fit to be retained in the service of the Corporation" but this is so because the petitioner had failed to pass the typing

test. The first argument of the learned counsel that the impugned order is stigmatic is, therefore, rejected. In this view of the matter, it was not necessary for the Corporation to hold a regular departmental enquiry.

6. It was then contended that the provisions of Section 25-N of the Act had not been complied with and, therefore, the order of termination could not be sustained. The counsel submitted that the Corporation is employing more than 100 persons and, therefore, the provisions of Chapter V(B) of the Act were attracted. This argument is also devoid of merit. Chapter V(B) has been made applicable to an Industrial establishment as defined in Section 25-L of the Act. It has not been shown that the corporation falls in any of the clauses of Section 25-L(a) so as to attract the provisions of this chapter. On the other hand, the Corporation has stated in its written Statement that it is not an industrial establishment as contemplated by Chapter V(B) and, therefore, the provisions of Section 25-N are not applicable. In view of the stand taken by the Corporation, it has to be held that the provisions of Section 25-N were not attracted to the case or the petitioner and it was not necessary for it to comply with those provisions.

7. Now coming to the alleged violation of Section 25-F(c) of the Act. It is not the case of the petitioner that clauses (a) & (b) of Section 25-F had not been complied with the Corporation before terminating his services. In other words, the petitioner had been paid wages in lieu of one months" notice and that he had also been paid retrenchment compensation equivalent to fifteen days of average pay for every completed year of continuous service. The only grievance made before me is that notice in the prescribed manner was not served on the appropriate Government within the stipulated period. My attention was drawn to Rule 76 of the Industrial Disputes (Central) Rules, 1957, under which a notice has to be sent to the Central Government in Form P. This rule provides that where the workman is given one months" wages in lieu of notice, the notice in Form P should be sent within three days on which the wages are paid. In the present case, what is alleged is that the notice was sent beyond the period of three days. It is urged that wages in lieu of one month notice were paid to the petitioner on 30.5.1987 and the notice was sent on 6.6.1987 whereas it should have been sent within three days from 30.5.1987. The corporation in its written statement has stated that the notice was duly sent to the Central Government. In my opinion, even if the notice was sent beyond the period of three days, it did not vitiate the retrenchment of the petitioner. The provisions of Clause (c) of the Section 25F are not that mandatory in nature so as to invalidate the retrenchment on their slightest infraction. It has been held by the Supreme Court in *Bombay Union of Journalists v. The State of Bombay* AIR 1994 S.C. 1617 that clause (c) of Section 25-F is not a condition precedent for effecting retrenchment. In any case, the petitioner has not been able to show what prejudice has been caused to him when the notice in the prescribed form was sent beyond the period of three days. In the circumstances, I find no reason to interfere with the order of retrenchment on this ground.

8. In the result, there is no merit in these petitions and the same stand dismissed with no order as to costs.