

(2001) 04 JH CK 0004
In the Jharkhand High Court
Case No : CWJC No. 1771 of 1999 (R)

Metallurgical and Engineering Consultants (India) Ltd.,
(MECON) APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 24-04-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2001) 04 JH CK 0004

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : M. Prasad, Amitabh and S. Piprewal, for the Appellant; SC, 1, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhya, J.—The writ petition has been preferred by the Management of Metallurgical & Engineering Consultants (India) Ltd. (commonly known as "MECON") against Notification No. 394, dated 23rd March, 1996, whereby, a reference was made by respondents State of Bihar, as also the award dated 31st October, 1998 passed by the learned Presiding Officer, Labour Court, Ranchi in Reference Case No. 4/96. By the impugned award, learned Presiding Officer decided all the three issues in favour of workman and thereby while he held the reference as maintainable, there being relationship of master and servant between the Management of MECON and the concerned workman, also held the order of termination as illegal in violation of Section 25F of ID Act. 1947.

2. As the case can be disposed of on short point, it is not necessary to discuss all the facts, claim and counter-claim of parties, except the relevant one, as referred hereunder.

3. One Shri Umang Sharma claimed to be workman of MECON and alleged oral termination of service made by the Management of MECON since 6th January,

1994. There being failure of conciliation, the matter was referred to State of Bihar. whereinafter, by the order of the Governor of Bihar, the impugned Notification No. 394, dated 23rd March. 1996 was issued for adjudication of following terms of reference :--

"Whether the termination of services of Shri Umang Sharma, workman of M/s. MECON, Ranchi by the Management is proper ? If, not what relief the workman is entitled to ?

4. The Management has challenged the Notification of reference on one of the grounds that the appropriate Government when made reference treated Shri Umang Sharma as workman of M/s. MECON, without any basis, though there was no master and servant relationship existed between the Management of MECON and Shri Umang Sharma.

The aforesaid question was also raised by the Management before the learned Presiding Officer and challenged the maintainability of reference. For the said reason, one of the issues was framed, as to whether the reference was maintainable or not ? The other two issues were, Whether termination of service of the concerned workman is proper and justified ? and Whether the concerned workman is entitled to any relief ?

5. Shri Umang Sharma, who claimed to be the workman stated in his written statement that he was a patient of epilepsy since childhood and was under regular treatment. He worked on voluntary basis in the SAIL's Township Health Centre from October 1992 to March 1993 on the advise of the Medical Officer of the Health Centre, in absence of sufficient staff. He was allowed Job to keep the records, its maintenance and existence. He claimed to have performed duty with satisfaction of the higher authorities, who being pleased offered him a regular job from April 1992 for a monthly consolidated salary/wages of Rs. 1,000/- plus annual bonus and continued for about 21 months up to 5th January. 1994. It was mainly alleged that the Management, all on a sudden and abruptly asked not to come to the Hospital from 6th January, 1994 and no action was taken on appeal preferred by him before the Chairman, MECON and other concerned authority.

The Management's objection that he was not their workman, was taken into consideration and learned Presiding Officer by impugned award dated 31st October, 1998, answered the issue in favour of Umang Sharma, declaring him as the workman of MECON.

6. The learned counsel for MECON placed reliance on the finding in respect of Point No. 1 of award to suggest that the conclusive finding that Shri Umang Sharma is a workman of Management is absent and not based on the evidence on record. However, it is not necessary to look into the aforesaid issue, as it is mentioned that the case can be disposed of on some other point as discussed hereunder.

7. The Issue No. 2 (Point No. 2) related to legality and propriety of termination of

service, which was framed as "whether termination of service of the concerned workman is proper and justified ?

It was the case of the so-called workman Umang Sharma that he was given an engagement for about two years, which was not extended on the ground that the engagement was not in accordance with procedure.

8. The learned Presiding Officer by impugned award dated 31st October, 1998 while took the aforesaid fact that the service of workman ceased on completion of terms of engagement, held the termination as illegal for non-compliance of Section 25F of ID Act, 1947.

9. From Paragraph 16 of impugned award, dated 31st October, 1998, it will be evident that the Management specifically took plea that the concerned workman had not made out case if non-compliance of Section 25F. It was also accepted by the learned Presiding Officer that specific plea of non-compliance of Section 25F was not mentioned in the written statement. Even in absence of such specific plea, Point No. 2 was answered in favour of workman, merely because the workman alleged that the termination cannot be sustained in law.

10. From the provision of Section 25F, it will be evident that the legality and propriety of termination/retrenchment can be answered only if specific pleading made to determine the condition precedent to retrenchment of a workman. There should be specific pleading based on facts that the workman is employed in an Industry; continued service in the Industry for not less than one year; the fact relating to one month's notice in writing indicating the reason for retrenchment; expiry of period of notice; the fact relating to payment of retrenchment compensation, etc. and in absence of such pleading, no specific finding can be given.

11. In the aforesaid background, the impugned award dated 31st October, 1998 cannot be upheld, the Issue No. 2 (Point No. 2) as decided, being not based on facts and against the pleading made by the parties. There being nothing on the record to suggest that the workman was not given one months notice/salary and retrenchment compensation in terms with Section 25F of ID Act, the termination/retrenchment of Umang Sharma cannot be alleged to have been in violation of Section 25F of the ID Act, 1947.

12. For the reasons aforesaid, the impugned order, dated 31st October, 1998 passed in Reference Case No. 4/96 being bad in law, the same is set aside.

13. The writ petition is allowed.

14. Petition allowed.