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**(2005) 12 MP CK 0005**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 1913 of 1997**

M.P. Electricity Board, Rampur

APPELLANT

Vs

State Industrial Court and others

RESPONDENT

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**Date of Decision : 14-12-2005**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 2(oo)(c), 25F

**Citation : (2006) 2 MPLJ 363**

**Hon'ble Judges : A.K.Shrivastava, J**

**Bench : Single Bench**

**Advocate : Brajesh Choubey, for the Appellant; Akash Choudhury, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

A.K. Shrivastava, J.

By this petition under Articles 226 and 227 of the Constitution of India, the petitioner (hereinafter referred to as "the employer") is challenging the validity of the impugned order dated 27-3-1996 (Annexure-P-XII) passed by the Labour Court, Jabalpur and the Order dated 12-3-1997 (Annexure-P-XHI) passed by the Industrial Court dismissing its appeal.

Respondent No. 3 (hereinafter referred to as "the employee") filed an application under sections 31(3) read with section 61 of the M.P. Industrial Relations Act, 1960 (in short "the Act of 1960") before the Labour Court challenging the order dated 22-8-1991 (Annexure-P-H) passed by the employer terminating his services on the ground that on account of accident he sustained injuries and became disabled up-to to the extent of 30%. The stand of the employee was that the action of the employer by issuing Order dated 22-8-1991 (Annexure-P-II) by which his services have been terminated is nothing but an order of retrenchment and since provisions of section 25-F of the Industrial Disputes Act, 1947 (in short "the Act of 1947") are not complied with the action of employer amounts to

illegal retrenchment and, therefore, the employee is to be reinstated with backwages.

The averments made in the application were refuted by the employer by filing a written statement. The Labour Court thereafter framed necessary issues and after recording the evidence came to the conclusion that the action of the employer terminating the services of the employee in pursuance to the order dated 22-8-1991 amounts to illegal retrenchment and eventually directed the employee to be reinstated with full backwages. The employer filed an appeal u/s 65 of the Act of 1960 before the Industrial Court which has also been dismissed by the impugned order Annexure-P-XIII. Hence this petition has been filed by the employer.

It has been vehemently contended by the Learned Counsel for the petitioner-employer that the orders passed by both the Courts below are erroneous inasmuch as they have ignored the provisions as envisaged u/s 2(oo)(c) of the Act of 1947. According to the Learned Counsel on account of accident the employee sustained injuries and on the ground of continuous ill health his services have been terminated and, therefore, the action of the employer terminating the services of the employee cannot be said to be illegal retrenchment and thus both the Courts below committed substantial error of law in passing the impugned orders.

On the other hand, Shri Akash Choudhury, Learned Counsel appearing for the employee argued in support of the impugned orders and has submitted that there is nothing on record in order to show that the employee is suffering from continuous ill health. In that regard he has also invited my attention to Annexure-P-X which is a certificate issued by the Chief Medical and Health Officer, Jabalpur which was also filed in the Labour Court and was exhibited. According to the Learned Counsel since there is nothing on record in order to show that the employee is suffering from "continuous ill health", the action of employer terminating the services of employee amounts to illegal retrenchment as the provisions of section 25-F of the Act of 1947 were not followed.

After having heard the Learned Counsel for the parties, I am of the view that this petition deserves to be dismissed.

Merely because the employee met with an accident and sustained disability up-to the extent of 30% cannot be stretched up-to the extent of "continuous ill health" as envisaged u/s 2(oo)(c) of the Act of 1947. In this regard I have perused AnnEx. P-X which is a certificate issued by Chief Medical and Health Officer who was also examined in the Labour Court by the employee and his statement has been placed on record as Annexure-P-IX. On going through this certificate it is gathered that the working capacity has been lost up-to the extent of 5% only and it was certified that the employee is fit to work as Assistant Lineman. The two Courts below after x-raying the evidence placed on record arrived at a finding of fact that no case of "continuous ill-health" is made out and, therefore,

the action of employer terminating the services of the employee amounts to illegal retrenchment. I have given my anxious and bestowed consideration to the reasonings assigned by both the Courts below and I found them to be quite cogent and in accordance to the law. Thus by this order I hereby extend my stamp approval to the reasonings assigned by both the Courts below. No illegality or perversity has been pointed out in the impugned orders passed by both the Courts below.

Resultantly, this petition is found to be bereft of any substance and the same is hereby dismissed with costs. Counsel's fee Rs. 1500/- , if pre-certified.