
(1966) 02 P&H CK 0001
In the Punjab And Haryana At Chandigarh

Muller and Phipps (India) (Private) Ltd.	APPELLANT
Vs	
Their Employees' Union and Others	RESPONDENT

Date of Decision : 24-02-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2, 25H

Citation : (1966) 2 ILR (P&H) 918 : (1967) 2 LLJ 222

Hon'ble Judges : S.B. Capoor, J

Bench : Single Bench

Judgement

S.B. Capoor, J.—By this writ petition under Articles 226 and 227 of the Constitution of India, Muller & Phipps (India) (Private), Ltd., challenges the order of the labour court, Delhi (respondent 3 to the petition), whereby on as Industrial dispute sponsored by Muller & Phipps (India) (Private), Ltd., Delhi Branch Employees' Union (respondent 1 to the petition), the labour court; by its award (copy annexure Q to the petition) directed that K. C. Sub (respondent 2) be deemed to be re-employed with the petitioner-company from 21 May 1962, and shall also be entitled to the wages he was drawing at the time of retrenchment and also other benefits from 2.1 May 1962, onwards.

2. The material facts are not disputed.

3. Respondent 2 was, in the year 1955, taken into the employment of the petitioner-company as a salesman. There was some retrenchment in the petitioner-company and, respondent 2 was retrenched with effect from 28 January 1958, and some other salesmen were also retrenched in that year on the ground that they were surplus to the requirement. In September 1961, the petitioner-company required a salesman and promoted its clerk, S.C. Goyal, to the post of salesman. On 21 May 1962, the petitioner-company took back in its employment one S.L. Mongia, a salesman who had been retrenched in the year 1958, but was senior to respondent 2, and it was not till the year 1964 that the petitioner-company, for the first time, made an offer to respondent 2 to come

back as a salesman. The communication in this respect is annexure A dated 25 June 1964, and it was mentioned in the opening paragraph that the company had a vacancy of a salesman likely to be filled up in the near future and since K. C. Sud was retrenched by the company, he was given notice to send his application to be considered on preferential basis to fill that vacancy. This offer was obviously made in terms of Section 25H of the Industrial Disputes Act, 1947 (14 of 1947). Respondent 2 was also asked to state where he had been employed since he was retrenched and whether as present he was gainfully employed in any business. This respondent, by his letter (copy annexure B) dated 2 July 1964, stated that he had already submitted his application dated 16 November 1961, and his claim for re-employment in the post of a salesman was, under the provisions of the Act, with effect from 16 November 1961. It was also asserted that there was no provision in the Act under which the respondent was obliged to reply to the queries made in the second paragraph of the communication (copy annexure A). These queries were not answered in the further correspondence between the petitioner-company and respondent 2 except that in a letter dated 10 August 1964, he said that since his retrenchment from the petitioner-company he was not employed anywhere and was depending upon an investment made in the year 1947. Thereafter, respondent 2's cause having been espoused by respondent 1, the Delhi Administration, by its order dated 2 January 1965 (copy annexure K), referred that dispute to the labour court, the term of reference as given in the schedule being :

whether K. C. Sud is entitled for re-employment u/s 25H of the Industrial Disputes Act, 1947, as claimed by him and if so, what directions are necessary in this respect?

4. On the allegation made by the parties, the labour court framed the following issues:

- (1) Whether the dispute is an individual dispute ?
- (2) Whether the applicant was a workman?
- (3) Whether legally the applicant cannot claim any relief u/s 25H ?
- (4) Relief as in the reference.

5. All the points were found by the labour court in favour of the workman.

6. Section 25H of the Act may be reproduced:

Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen to offer themselves for re-employment, and the retrenched workmen who offer themselves for re-employment shall have preference over other persons.

7. Sri Niran De, on behalf of the petitioner-company, has raised the following points:

(1) The dispute in question was not an Industrial dispute inasmuch as respondent 2 had, shortly after his retrenchment, ceased to be a member of the union (respondent 1) and it was long after the year 1958 that this Industrial dispute was raised.

(2) The case of a person taken into employment by the employer u/s 25H of the Act is one of re-employment and not of reinstatement and hence the labour court was not justified in a direction that the workman shall be entitled to the wages and other benefits which he was drawing at the time of retrenchment.

(3) Respondent 2, according to the finding of the labour court, was a partner in certain retail businesses which engaged in the sale of medicine. As such he was engaged in a business competitive to that of the petitioner company, and since all that Section 25H lays down is that the retrenched workmen shall have preference over other persons, the petitioner-company was not obliged to take back into its employment the person who was engaged in such competitive business.

(4) And the petitioner-company was entitled to fill up the vacancy arising in September 1961, by promoting its clerk, S.C. Goyal, and the reference in Section 25H was to the employer "taking into his employment" and not to promotions of persons already in his employment. S.L. Mongia was senior to respondent 2 and the next appointment of a salesman, who was junior to respondent 2, was made on 9 July 1962, so that, in any case, the impugned order could not have operation from the date earlier to 9 July 1962.

8. As regards the first point, the rules of the union (respondent 1) have been placed on record by the petitioner-company (vide annexure L) and according to Rule 4 (a) only employees of the Muller & Phipps (India), Ltd., Delhi branch, were eligible for ordinary membership. It follows, therefore, that after being retrenched from such employment respondent 2 could not continue as an ordinary member of the union of the employees and if Sri Das suggestion in this connexion is taken to its logical conclusion it would mean that the cause of a retrenched employee for re-employment u/s 25H could not be espoused by his fellow workmen and hence the retrenched employee, for contravention of 3. 25H so far as he was concerned, would not be in a position to raise any dispute. This contention, on the face of it, is untenable. "Industrial dispute" under Section 2(k) of the Act is defined as follows:

industrial dispute" means any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

9. This definition has been interpreted by the Supreme Court in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, and *S. K. Das, J.*, speaking for the majority of the Court, observed that the expression "any person" in Section 2(k) of the Act must be read subject to such limitations and

qualifications as arise from the context; the two crucial limitations are:

(1) the dispute must be a real dispute between the parties to the dispute (as Indicated In the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other; and

(2) the person regarding whom the dispute is raised must be one in whose employment or non-employment or terms of employment or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest.

10. Now, it cannot be said that the union had no direct and substantial Interest In the re-employment, u/s 25H of the Act, of respondent 2, who had been earlier retrenched from the employment of the petitioner-company, and, as such, he was a workman under Clause (k) of Section 2 of the Act. The union, according to the list of members annexed to annexure L, consisted of 27 member-employment of the petitioner-company, and, as stated on behalf of respondents 1 and 2 the petitioner-company had only 31 employees at the date of the reference. The union was, therefore, certainly a representative union. Accordingly, it would not be correct to say that the union could have sponsored the dispute in the instant case only if Sud was, at the time the dispute arose, a member of the union. The first contention advanced on behalf of the petitioner-company is, therefore, repelled.

11. Point (2).?When questioned, Sri De admitted that there was very little difference in the grade which respondent 2 had and the pay which he was drawing at the time he was retrenched and the grade and pay which would be given to him If the impugned order was implemented. So far as this question was concerned, the second point is only academic and Sri De did not press it in the course of his arguments.

12. Point (3).-It was stated at the bar that respondent 2 is a partner In two retail shops ?Cheap Stores and Novelty Stores?which are engaged in the sale of general merchandise. According to Sri Do's contention, medicines are also sold in these stores and this business must be regarded as competitive to that of the petitioner-company, because it was possible that at these stores the sale of medicines manufactured by rival companies may be pushed at the expense of the sale of medicines manufactured or sold wholesale by the petitioner-company. It is acknowledged that the petitioner-company does not engage in the retail also of medicines and so, strictly speaking, It cannot be said that there is any direct competition between the business of the petitioner company and that of the two stores in which respondent 2 is a partner. That was the approach of the labour court, which further observed that since it was admitted time the company was also supplying their goods to the concerns in which the workman was a partner, it may be actually said that the business of the company was promoted by the workman rather than that he entered into competition with that business. I

cannot see anything fundamentally wrong with that approach and, in the circumstances, it must be held that the excuse put forward by the petitioner-company for not giving re-employment to respondent 2 viz., that he refused to answer in detail the queries made by it in Para. 2 of the letter dated 25 June 1964 was not justified.

13. Point (4) As regards the last point, Sri De has very fairly conceded that if the above points are found against the petitioner-company it would follow that it committed a breach of Section 25H of the Act, find it has now to be seen what was the date of that breach. The labour court in the impugned order was of the view that salesman is a separate cadre from that of clerks, which is a junior cadre to the former and that the whole purpose of Section 25H would be foiled if the management is given discretion to make promotions from lower cadres to vacancies which should u/s 25H be filled by the retrenched employees. Hence it held that the vacancy which arose in September 1961, and was filled by the promotion of S.C. Goyal, a clerk, should actually have been offered to the seniormost retrenched salesman, viz., 3. L. Mongia, and in the vacancy filled up by S.L. Mongia, respondent 2 should have been fixed up in employment. That is how it was held by the labour court that respondent 2 should be deemed to be re-employed from 21 May 1962. Learned Counsel for the petitioner-company objected that Section 25H would not be attracted in the case of promotion to the disputed vacancy from a lower cadre and in this connexion emphasis was placed on the words in Section 25H, viz., "the employer proposes to take into his employ any person." However, the concluding words of Section 25H are: "the retrenched workmen who offer themselves for re-employment shall have preference over other persons," and this must be deemed to include preference over persons in the lower cadre who are for the time being in the employment of the employer. Rule 78 of the rules made under the Industrial Disputes Act lays down the procedure for the re-employment of the retrenched workmen and requires the employer to display the vacancies on a notice board at least ten days before the date on which the vacancies are to be filled and also to give notice by post of these vacancies to all the retrenched workmen eligible to be considered therefor. If the Interpretation sought to be given on Section 25H by learned Counsel for the petitioner is accepted, the rules, as well as the statute itself, could easily be circumvented by an employer who, for some ulterior motive, did not want to offer re-employment to a retrenched workman. This interpretation is, therefore, not acceptable.

14. The matter may be looked at from another angle. Suppose that the vacancy of salesman in which Goyal was fitted in, arose while respondent 2 and Mongia were still in service and had not been retrenched. It was presumably open to the employer to fill up that vacancy by promotion, but then the promoted person would have ranked as junior to Mongia and respondent 2, and, in the event of retrenchment, he would have been the first to go. The management clearly contravened Rule 78 by not offering the vacancy, in which Goyal was fitted in to its retrenched salesman and if respondent 2's re-employment is to take place

from 9 July 1962, as argued by learned Counsel for the petitioner-company, the effect would be that not only respondent 2 but Mongia also would become junior to Goyal. Such a result would be, on the face of it, inequitable. I cannot, therefore, find in the impugned order any infirmity which could be rectified in exercise of the extraordinary jurisdiction of this Court. The writ petition is, therefore, dismissed with costs.