

(1976) 03 AP CK 0019
In the Andhra Pradesh High Court

National Insurance Co. Ltd.	Vs	APPELLANT
M. Viswanath and Another		RESPONDENT

Date of Decision : 23-03-1976

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1976) 2 APLJ 20 : (1979) 1 LLJ 16

Hon'ble Judges : Kondiah, J

Bench : Single Bench

Judgement

Kondiah, J.—The petitioner-company seeks to quash the award of the Industrial Tribunal, Central, Hyderabad, dated 26th August, 1975, in Industrial Dispute No. 8 of 1970 directing M. Viswanath, the 1st respondent herein, to be reinstated as an accountant in the company.

2. The services of the 1st respondent, who was working as an accountant in the petitioner-company, have been terminated by the company with effect from 2nd September, 1968. The Government of India referred the question of the validity and justification of his dismissal to the Industrial Tribunal, the 2nd respondent herein. The case was registered as Industrial Dispute No. 8 of 1970 wherein it was held that the dismissal was not justified as it was in contravention of the provisions of Section 40 of the Andhra Pradesh Shops and Establishments Act. It was, however, held that he was not entitled to reinstatement but was awarded a compensation of Rs. 4,887-50 together with a sum of Rs. 425 in lieu of reinstatement on the ground that the petitioner-company had lost confidence in him. The respondent-employee filed Writ Petition No. 5429 of 1972 questioning the validity of the award in so far as his prayer for reinstatement is concerned. The petitioner-company did not contest the correctness of the finding of the Tribunal that the order of dismissal was vitiated by the omission to issue a proper and requisite notice as contemplated by Section 40 of the Andhra Pradesh Shops and Establishments Act, but supported the award in so far as its decision not to reinstate the employee but only directing payment of compensation, as the

company lost confidence in him. As the learned Judge thought that the approach by the Tribunal to assess and consider the entire material relevant for the issue of reinstatement or in the alternative to direct compensation to be paid, was erroneous, he set aside the award to that extent and remanded the matter to the Tribunal for deciding that aspect in accordance with law. Aggrieved by the decision of the learned single Judge, the petitioner filed Writ Appeal No. 6 of 1975, which is said to be still pending. Pursuant to the order of this Court in the writ petition, the Tribunal heard and disposed of the matter and passed the impugned award on 26th August, 1975, directing reinstatement and payment of one-third of back-wages. Hence this writ petition.

3. Sri B.K. Seshu, the learned Counsel for the petitioner, contended that the order of reinstatement of the employee is erroneous, illegal, unjust and improper as the petitioner-company lost confidence in the employee and the opinion of the company employer is bona fide and based on sufficient material. This claim of the petitioner is opposed by Mr. M. Panduranga Rao, the learned Counsel for the respondent-employee, contending inter alia that the order of termination of his client's services is illegal and void as it is violative of Section 40 of the Andhra Pradesh Shops and Establishments Act, that the petitioner has not established that the post held by the employee requires trust and confidence and the employee has acted in breach of such trust and confidence, that the termination of the respondent's services is also violative of Section 25F of the Industrial Disputes Act and that there is no merit in this writ petition as the Tribunal has rightly directed reinstatement of the employee.

4. Upon the respective contentions advanced by the parties, the following questions arise for decision: (1) whether on the facts and in the circumstances of the case the termination of the services of the respondent-employee by the petitioner-company is violative of the provisions of Section 40 of the Andhra Pradesh Shops and Establishments Act; and (2) whether on the facts and in the circumstances of the case the respondent-employee is entitled to be reinstated into service or, in the alternative, for the award of compensation.

5. I shall first advert to the question whether the order of termination of the respondent-employee's services is violative of the provisions of Section 40 of the Andhra Pradesh Shops and Establishments Act, the material portion of which reads thus:

No employer shall without a reasonable cause and except for misconduct, terminate the service of an employee who has been in his employment continuously for a period of not less than six months without giving such employee, at least one month's notice in writing or wages in lieu thereof and a gratuity amounting to fifteen days' average wages for each year of continuous employment.

6. The employer must give one month's notice in writing or pay wages in lieu thereof and a gratuity amounting to fifteen days' average wages for each year of

continuous employment if he desires to terminate the services of an employee who has put in a continuous service of not less than six months. No such notice need be given in the case of misconduct and for any other reasonable cause. One month's notice in writing or payment of wages in lieu thereof is a condition precedent for the termination of the services of an employee by an employer. Any termination of the services of an employee in contravention of the provisions of Section 40 is illegal, unenforceable and invalid. See *National Iron and Steel Co. Ltd. and Others Vs. The State of West Bengal and Another, and Andhra Bank Ltd. v. Labour Court, Hyderabad* (1975) 31 F.L.R. 220 (A.P.)

7. I am unable to agree with Mr. Panduranga Rao that any order of termination of services of an employee made in contravention of Section 40 of the Andhra Pradesh Shops and Establishments Act is null and void and non est. No authoritative decision in support of his contention that it is null and void has been brought to my notice. However, he seeks to have recourse to some of the decisions of the Courts considering the scope and content of Section 25F of the Industrial Disputes Act, which, according to the learned Counsel, is analogous to Section 40 of the Andhra Pradesh Shops and Establishments Act. I have carefully examined the provisions of Section 40 of the Andhra Pradesh Shops and Establishments Act, 1956 and Section 25F of the Industrial Disputes Act applicable to retrenchment of a worker. Both the sections are not exactly similar in language, nor can they be considered to be in *pari materia*. The conditions laid down in Section 40 of the Andhra Pradesh Shops and Establishments Act and Section 25F of the Industrial Disputes Act are different. Section 25F applies to an industry to which the provisions of the Industrial Disputes Act apply. The requirement of one month's notice in writing contemplated in Section 25F of the Industrial Disputes Act before the retrenchment of an employee is a condition precedent without which there can be no valid and enforceable order of retrenchment. This view gains support from the use of the word "until" in Section 25F. To put it differently, until and unless one month's notice in writing as required in Section 25F is given, there can be no valid order of retrenchment in the eye of law. Any order of retrenchment passed in contravention of Section 25F must be held to be a nullity and non est. It is also pertinent to notice that Section 25F requires the reasons for retrenchment to be indicated in writing. The reasons must be found in the very order of retrenchment. It is a statutory requirement. No such requirement of giving reasons is contemplated u/s 40 of the Andhra Pradesh Shops and Establishments Act. Nor the use of the word "until" is found in Section 40. In the case of misconduct or for any other reasonable cause, the employer, u/s 40 of the A.P. Shops and Establishments Act is competent to terminate the services of an employee without giving one month's notice as contemplated therein. On a close and careful reading of the very provisions of both the sections, I have no hesitation to hold that both the sections are not of the same wording and language and they are intended to be applied by the Legislature to meet different situations and one cannot be applied to the case of the other, nor can both be treated alike. Hence, the decisions

arising u/s 25F of the Industrial Disputes Act would not, in my opinion, be applicable to a case arising u/s 40 of the Andhra Pradesh Shops and Establishments Act.

8. Even assuming for the sake of argument that Section 25F is analogous to Section 40 of the A.P. Shops and Establishments Act and the decisions arising u/s 25F can be applied to the case on hand, I am unable to agree with Mr. Panduranga Rao that the order of termination of an employee's service, if it violates Section 40, is null and void. In *Workmen of Subong Tea Estate Vs. The Outgoing Management of Subong Tea Estate and Another*, , it was held that the retrenchment of a worker in violation of Section 25F of the Industrial Disputes Act was invalid, and on a consideration of the facts of that case, a specific direction was given by the Tribunal to reinstate the employee, and the same was affirmed by the Supreme Court.

9. In *K.V. Gopinath v. Senior Superintendent, R.M.S. (1970) Lab. I.C. 375*), the learned. Judge, Mathew, J. (as he then was), took the view that an order terminating the services under Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965, was invalid where the condition precedent was not fulfilled. This decision has been subsequently affirmed by the Supreme Court. In the afore said two cases, it was not held that the order of retrenchment or the termination of services of the employee, as the case may be, is null and void, but it was found to be invalid and inoperative.

10. In *State of Bombay v. Hospital Mazdoor Sabha* 1960 I L.J. 251 : (1960) 17 F.J.R. 423, the Supreme Court held at page 427, that any order passed in violation of Section 25F of the Industrial Disputes Act is invalid and inoperative, no decision of any High Court or Supreme Court to the effect that an order violative of Section 25F of the Industrial Disputes Act is null and void and non est has been brought to my notice.

11. However, Mr. Panduranga Rao, after careful research, brought to my notice some English decisions to which I shall presently refer. In *Ridge v. Baldwin* [1963] 2 All E.R. 66, it was held that any order of termination of service of an employee passed in violation of a mandatory provision of a statute is void. To the same effect is the decision in *Vine v. National Dock Labour Board* [1956] 3 All E.R. 939, wherein it was held that where the order of termination of service is violative of a regulation, the result is that the purported dismissal of the employee is a nullity.

12. In *Ambalal Shivlal Vs. Vin D.M. and Others*, , a Division Bench of the Gujarat High Court expressed the view that when an order of retrenchment does not comply with the conditions laid down in Section 25F of the Industrial Disputes Act, the order is not voidable, but it is void, and it was observed thus:

...In our judgment when an order of retrenchment does not comply with the conditions laid down in Section 25F, the order is not voidable but it is void. That being so, the order of retrenchment is null and void. It follows that till

compensation amount is paid by the employer, the relationship of master and servant between the employer and the employee continues and the only legal right which the employee has is to receive his wages on the basis that he continues to be in service. (at p. 310 of 26 F.J.R.)

13. In *Somu Kumar Chatterjee and Others Vs. The District Signal Telecommunication Engineer Construction, N.F. Railway and Others* cases, it was held by the Patna High Court that where there is non-compliance of Section 25F, the retrenchment is ab initio void.

14. The High Court of Kerala in *Melby D' Cruz v. Travancore Minerals Ltd.* 1967 II L.L.J. 637 and in *Nanoo Asan Madhavan Vs. State of Kerala and Others*, the Delhi High Court in *Adaishwar Lal v. Labour Court, Delhi* (1970) Lab IC 936 and the Rajasthan High Court in *Rajasthan State Electricity Board" v. Labour Court, Jaipur* (1965) 28 F.J.R. 344, opined that the retrenchment of a worker in contravention of Section 25F is only illegal and invalid. They did not go to the extent of holding that such an order is nullity and non est. To the same effect is the decision of Supreme Court in *State of Bombay v. Hospital Mazdoor Sabha*; (supra).

15. In *The State Bank of India Vs. Shri N. Sundara Money*, the Supreme Court reiterated the view taken by it earlier in *State of Bombay v. Hospital Mazdoor Sabha*, (supra) relating to the scope and impact of Section 25F of the Industrial Disputes Act holding that any order of retrenchment passed in violation of Section 25F would be invalid and inoperative. In neither of the aforesaid two Supreme Court decisions it has been held that the order of retrenchment of a worker in contravention of the provisions of Section 25F is null and void or non est, and in view of the preponderance of authority referred to above, I am unable to agree with the view taken by the Gujarat High Court and Patna High Court that any order passed in violation of Section 25F is null and void or non est.

16. For all the reasons, I hold that the impugned order passed by the petitioner-employer terminating the services of the respondent-employee is violative of Section 40 of the Andhra Pradesh Shops and Establishments Act and is, therefore, invalid and illegal.

17. This brings me to examine what follows from such an illegal or invalid order of termination of the services of the respondent-employee. The stand taken by Mr. Seshu, learned Counsel appearing for the petitioner-company, is that the employer has bona fide opined that from the conduct of the employee, the employer has lost confidence in him and it is just and proper not to force upon the employer the employee by ordering reinstatement, but it would be just and proper to direct reasonable compensation which would meet the ends of justice. Mr. Panduranga Rao, the learned Counsel for the employee, strenuously contended that his client has served for more than ten years and his opportunities for securing another proper job are very meagre and he has already suffered a good lot and Tribunal has rightly directed reinstatement and

the writ Court should not interfere with the discretion exercised by the Tribunal and the writ petition must be dismissed. According to the respondent's counsel, the order of termination does not appear to be so simple but it should be construed to be a kind of punishment and this Court has the power to go behind the order of termination. Before examining the legal aspect, it is profitable to refer to the facts found or admitted.

18. From the very order of the Tribunal, it is noticed that the divisional manager of the petitioner-company had to tender an apology to one Kailash Motors, its customer, for the conduct of the respondent-employee. The Tribunal observed thus:

It can nevertheless be said that the management of the Insurance Company was exposed to risk of losing a valuable client on account of the claimant not keeping good relations with them?.I have already noted above the company stood exposed to the risk of losing a valuable client. It might be that the claimant was justified in his stand but in judging the question of loss of confidence it is the opinion formed by the employer about the suitability of the employee for the job assigned to him that is relevant even though erroneous. But if the opinion formed by it is bona fide, such an opinion is final. In the light of the correspondence referred to above wherein the divisional manager had to apologise to the Kailash Motors it can only be said that the opinion formed by him about the claimant's performance is a bona fide one; though when the whole matter comes up for judicial scrutiny the stand of the management may not be justifiable. But it can be repeated that as to the suitability of the employee the judgment of the employer, if bona fide, is not subject to review by industrial adjudication. This position has to be reached in the light of the judgment of the Supreme Court reported in *Air-India Corporation v. V.A. Rebello* 912 I L.L.J. 501 : (1972) 41 F.J.R. 436.

19. The Tribunal, therefore, has found on facts that the petitioner-company had bona fide formed an opinion that the company had to lose a valuable client to whom the company had to submit its apology for the conduct of the respondent-employee. The submission of Mr. Panduranga Rao that the opinion of the company that they had lost confidence in the employee is not bona fide cannot be acceded to. I see no reason to differ from the conclusion arrived at by the Tribunal in this regard. Having found that the management of the insurance company was exposed to the risk of losing a valuable client on account of its employee not keeping good relations with the customer, the Tribunal erred in thinking that the stand taken by the management may not be justified in the judicial scrutiny and the management did not treat the earlier performance of the claimant as unsatisfactory.

20. The law on the subject relating to the confidence of the employer in an employee and the powers of the employer to terminate the services of the employee in whom the employer loses confidence may very well be noticed at this stage. Though there is a catena of cases on this aspect, suffice to refer to

the view in the leading and recent decisions of the Supreme Court which govern the field. In *Eastern Electric & Trading Co. v. Baldev Lal* (1975) 48 F.J.R. 56, the dismissal of an employee by the employer on grounds of misbehaviour with a customer was upheld by the Supreme Court. Therein, the business of the company with the customer was lost on account of the insistence of the employee to get any repair work done by the customer with the employee. The learned Judge, Alagiriswami, J., speaking for the Court, while considering the conduct of the employee, observed at page 58 thus:

...No commercial firm can tolerate an employee who insults its customers because they do not make use of the services of that employee privately. The employer whose business with the customer is lost because of the behaviour of one of his employees can have no use for the services of that employee. We are not, therefore, able to uphold the view of the Industrial Tribunal that the penalty is not in tune with the incidents and clearly showed the mala fide intention of the company to victimise him.

21. The learned Judge proceeded to observe :

The question of punishment is essentially one for the management to decide. In *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , this Court elaborately considered the various decisions of this Court regarding the principles governing the jurisdiction of the Tribunal when adjudicating disputes regarding dismissal and discharge. From those decisions they deduced on broad principles of which the ninth is:

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

We cannot certainly agree that in this case the punishment was so harsh as to suggest victimisation.

22. The next case that requires consideration is *Chembur Co-op. Industrial Estate Ltd. v. M.M. Chatre* 1975 11 L.L.J. 357, Therein, the employee was charged with the offence that he had removed a letter received from the architects of the society. The question that fell for decision was whether the employee, in the circumstances, had forfeited the confidence of his employers, and whether he is entitled for reinstatement or compensation. The Supreme Court, on a consideration of the facts and circumstances, thought it just and proper to order only payment of compensation and did not direct reinstatement of the employee. The learned Judge Alagiriswami, J. speaking for the Court, observed at page 359:

However, the facts relating to the removal by the 2nd respondent of a letter from the architects show that he had clearly forfeited the confidence of his employers. We do not, therefore, think that we would be justified in ordering reinstatement

of the 2nd respondent.

23. The decision of the Supreme Court in *L. Michael and Another Vs. Johnson Pumps Ltd.*, may also be noticed. Therein, the learned Judge, Krishna Iyer, J. speaking for the Court, while considering the question relating to the loss of confidence in an employee, observed at page 144 thus:

“It is clear that loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and motivations. The Court is concerned with the latter and not with the former, although circumstances may exist which justify a genuine exercise of the power of simple termination. In a reasonable case of a confidential or responsible post being misused or a sensitive or strategic position being abused, it may be high risk to keep the employee, once suspicion has started and a disciplinary enquiry cannot be forced on the master. There, a termination simpliciter may be bona fide, not colourable and loss of confidence may be evidentiary of good faith of the employer .

24. Applying the aforesaid principles of law enunciated by the Supreme Court to the facts of the present case, I have no hesitation to hold that the employer-petitioner has, on a fair appraisal of the conduct of the respondent- employee, bona fide arrived at an honest opinion that the company would not be benefited any longer by the services of the respondent- employee as they had lost confidence in him and their opinion is based on an objective satisfaction of the facts and circumstances, but not vitiated by any mala fides nor can it be said to be arbitrary or whimsical. No employee in whom the employer lost confidence can be forced upon the employer as the choice is and must be with the employer about the confidence and satisfaction of the services of the employee and the same cannot be substituted either by the Tribunal or by the Court. This should not be understood to mean that the Tribunal or the Court has no power or competency to interfere in appropriate cases where the employer's opinion is not based on any material or it is perverse or it is mala fide or arbitrary. Normally, this Court or the Tribunal would not interfere with honest and bona fide opinion, supported by material, of the employer. In the circumstances, I hold that the respondent-employee cannot be forced upon the employer-petitioner by directing reinstatement. On a consideration of the entire facts and circumstances, the ends of justice will be met by directing payment of compensation as awarded by the Tribunal. Mr. Seshu, appearing for the petitioner-company clearly stated before me that the company would not receive back or claim any amount already paid relating to compensation, nor is there any victimisation in so far as the employee is concerned. In the circumstances, the order of the Tribunal directing reinstatement of the respondent-employee is hereby quashed, but the direction relating to payment of compensation and one third of the back-wages is affirmed.

25. In the result, the writ petition is allowed in part as indicated above, and there will be no order as to costs.