

(1987) 02 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 892 and 893 of 1983

N.V. Purnachandra Rao and Others

APPELLANT

Vs

Krishna District Cooperative Marketing Society Ltd. and
Others

RESPONDENT

Date of Decision : 05-02-1987

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G, 25J(2)

Citation : (1987) 2 LLJ 237

Hon'ble Judges : C. Sri Ramulu, J;A. Raghuvir, J

Bench : Division Bench

Judgement

Raghuvir, J.—The Krishna District Co-operative Marketing Society, Vijayawada, retrenched nine of its clerks on October 1, 1978. The nine affected employees questioned the order under the Andhra Pradesh Shops & Establishments Act, 15 of 1966, in appeal u/s 41(1) of the Act, later in Second Appeal u/s 41(3) of the Act. Finally the case of the nine employees came before this Court in two writ petitions - the one petition was by the Clerks which was dismissed, the other petition by the Management which was allowed. Hence two writ appeals by all the nine clerks.

2. In Writ Appeal No. 892 of 1983, filed by four employees, the question was whether the principle "Last come first go" was followed. In Writ Appeal No. 893 of 1983, filed by five employees, the issue is whether Section 25-F of the Industrial Disputes Act, XIV of 1947 is applicable. It is seen in the latter appeal if it is decided that Section 25-F of Act XIV of 1947 is applicable, all the nine clerks retrenched on October 1, 1978 were not dealt u/s 25-F. It is in such a situation the issue, whether or not Section 25-F of Act XIV of 1947 is applicable to the Co-operative Marketing Society, is determinative of the subjects in the two appeals.

3. The learned single Judge dismissing the writ petition of five workmen, on a consideration of the circumstances, held Section 25-F of Act XIV of 1947 is inapplicable, whereas in Pest Control India Ltd. v. Labour Court, Guntur (1984

(1) An. W.R. 277) a single Judge of this Court held Section 25-F, in analogous circumstances, is applicable. The question at issue is whether Section 25-F of Act XIV of 1947 is applicable to the instant case.

4. We see as to applicability of Section 25-F guidance is provided by the Parliament in Clause (2) of Section 25-F, which reads; "For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of Industrial Disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter."

5. In fact the decision in Pest Control India Ltd. v. Labour Court, Guntur (supra) the learned Judge did follow clause (2) of section 25J and held that Section 25-F is applicable, in that in para 13 it is held : "Sub-section (2) of Section 25J while suffice the provisions of any other law for the time being inforce in any State in so far as that law provides for the settlement of industrial disputes provides that "the rights and liabilities of employers and workmen in so far as they relate to lay off and retrenchment shall be determined in accordance with the provisions of this Chapter." That means with regard to lay off and retrenchment the provisions of Industrial Disputes Act will apply but that does not give rise to any inference that the jurisdiction of the Authority u/s 41 of the Act cannot be invoked by a retrenched employee. It is open to the Authority u/s 41 of the Act to go into the question whether the retrenchment of the employee is in accordance with the provisions of Sections 25-F & 25-G of the Industrial Disputes Act."

6. We see the clause of removal of doubts provides in emphatic terms "as to lay off and retrenchment" whenever an industry has dealt with a workman, Chapter-V(A) would apply which means Section 25-F would apply. The learned single Judge in the order under appeal did not notice this clause. Therefore, it is not necessary to consider aspects which he has dealt with in the order under appeal. We may at this stage point out that in the order under appeal the District Co-operative Society was accepted as an "industry" and the clerks who were retrenched as "workmen". We have not heard to challenge this aspect of the conclusion.

7. For the aforesaid reasons the impugned retrenchment of nine clerks on October 1, 1978 is not proper and, therefore, is set aside. This would not prevent the employer to follow Section 25-F of the Act XIV of 1947 and pass orders.

8. The two writ appeals are allowed. No costs.

Editor's Note : This judgment has been confirmed by the Supreme Court in SLP (Civil) Nos. 6887-88/87 dated : 3.8.87.