
(2006) 05 P&H CK 0205

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 5906, 6953 and 7175 of 2004

Ombir Singh and Others

APPELLANT

Vs

Haryana Breweries Ltd. and Another

RESPONDENT

Date of Decision : 05-05-2006

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 77, 78

Industrial Disputes Act, 1947 — Section 12(5), 25(O), 25F, 25FFF, 25FFF(1)

Citation : (2007) 112 FLR 256 : (2006) 144 PLR 634 : (2007) 2 SLJ 504

Hon'ble Judges : J.S. Narang, J;Arvind Kumar, J

Bench : Division Bench

Advocate : Ramesh Goyat and Sukhdeep Parmar, for the Appellant; P.K. Mutneja and Sukhwinder Singh, for the Respondent

Final Decision : Dismissed

Judgement

Arvind Kumar, J.—These are the three sets of writ petitions field by workman namely Ombir Singh (C.W.P. No. 7175 of 2004), Dharam Parkash (C.W.P. No. 6953 of 2004) and Ashok Kumar Bhal (C.W.P. No. 5906 of 2004). Since common question of law and fact is involved in all these three petitions, we propose to disposed of by this common judgment.

2. The petitioners were the workmen of respondent No. 2-Haryana Breweries Limited, G.T. Road, Murthal, Sonapat, Haryana (hereinafter referred to as the management). Pursuant to notification dated 5.6.1996 issued by the Haryana State regarding imposition of prohibition policy in the State, the management closed its unit situated at Murthal (Haryana) w.e.f. 4.12.1996 and the necessary permission in this regard was accorded by the Haryana Government u/s 25O of the Industrial Disputes Act, 1947 (for brevity, the Act) on the following terms and conditions:

i) that the affected workers will be entitled for the compensation as per the provisions of the Industrial Disputes Act, 1947.

ii) that in the event of restarting the unit of the same premises, the workers who were in the employment prior to date of permission will be given preference in the matter of employment.

3. Thereafter, the petitioners were paid closure compensation, as per their entitlement, in the month of December, 1996. On coming to know that juniors to them have been retained in service by the management, the petitioners raised an industrial dispute u/s 2A of the Industrial Disputes Act, 1947 (for brevity, the Act) challenging their termination on the ground that their services have been terminated but juniors to them are still working with the management, which is in contravention of provisions of Section 25G of the Act. Their services were terminated on 4.12.1996 and they were paid compensation on 9.12.1996/30.1.1997 (in the case of petitioner Ombir Singh), 7.12.1996 (in the case of petitioner Dharam Parkash) and on 16.12.1996 (in the case of petitioner Ashok Kumar Bahl), violating the provisions of Section 25F of the Act. Conciliation Proceedings were initiated but to no avail and accordingly Labour-cum-Conciliation Officer, Sonapat submitted failure report to the Government u/s 12(5) of the Act. In the meantime, the management got published a notice in the newspaper on 15.5.1998 about reopening of the factory during May-June, 1998 and also invited ex-employees to apply within ten days. It was also mentioned in the notice that if any ex-employee fails to reciprocate the offer, it shall be deemed that they are unwilling to accept the same. It was further clarified that the names of ex-employees who would be required to report would be put on the Notice Board within five days. The petitioners went to the factory premises of the management and applied for consideration of their name of re-employment but they were not taken back. During this process, a development took place. The industrial disputes raised by the petitioners were referred by the appropriate government to the Labour Court for adjudication. The petitioners submitted their claim statement. Violation of Section 25H of the Act was also claimed. The management contested the reference by filing written reply to it. The parties were given the opportunity to lead evidence to substantiate the pleas to corroborate the issues struck upon the pleadings. The claim of the petitioners have been dismissed vide impugned awards dated 22.10.2003, which have been made the subject matter of challenge in these writ petitions wherein they have also claimed violation of Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 (for brevity, Rules of 1957).

4. Respondent No. 2-management filed the written statement in all the three writ petitions separately, but with similar pleadings. The stand is that after lifting of prohibition policy, the factory was sought to be re-started, as such, as per condition No. 2 imposed by Haryana Government while according sanction for closure of factory, two advertisements were issued in two leading newspaper, namely Punjab Kesari and The Tribune on 15.5.1998 and 16.5.1998 respectively, inviting all ex-employees to give applications for re-employment. The employees who submitted the applications were re-employed accordingly. But the petitioners failed to submit their applications within stipulated period, as such,

they were not re-employed. After 4.12.1996 the factory was completely closed down and as such there was no occasion for the management to retain workers including the petitioners, when there was no work in the factory. Thus, there was no violation of the provisions of Section 25G of the Act. Management's further stand is that since the present case of closure and not of retrenchment, provisions of Sections 25G and 25-H are not attracted at all. Moreover, on account of closure of factory, there was no occasion for the management to comply with Section 25G of the Act. Similarly, an opportunity of (re-employment) was offered to the ex-employees by means of advertisement, hence there was no violation of even Section 25-H of the Act. Their further stand is that they have complied with the order of closure in letter and the spirit and that the Labour Court has rightly applied its mind to the facts of the case and has rightly dismissed the claim.

5. Arguments have been heard.

6. There was a closure w.e.f. 4.12.1996 in the Haryana Breweries Limited, G.T. Road, Murthal, Sonapat on account of prohibition policy of Government of Haryana. Necessary permission as envisaged u/s 25O of the Act was obtained from the appropriate Government vide order dated 4.11.1996 (Annexure P-1). It is not in dispute that the closure compensation, as envisaged u/s 25-O(8) of the Act *ibid* was paid to each employee including the present petitioners. The quantum of compensation paid to them was also not disputed by the present petitioners. Their grievance is that they were not paid the closure compensation on 4.12.1996 itself, but subsequently, as per the dates, referred to above, which is in violation of the provisions of Section 25-F of the Act.

7. A bare perusal of Sub-section (8) of Section 25O of the Act shows that the liability of the employer to pay compensation and the entitlement of the workman to receive compensation arises upon closure of the undertaking. However, from the language of the said provisions, it is clear that the payment of compensation is not a condition precedent to closure as contained in Section 25-F of the Act. In Annexure P-1, i.e. the permission accorded by the Government to close down the management unit, a rider was imposed that the affected workers will be entitled for the compensation as per the provisions of the Act *ibid*. There was no stipulation in the condition that the payment of compensation would *facte* a condition precedent to the closure. No doubt Sub-section (8) of Section 25-O of the Act corresponds to Sub-section (1) of Section 25-FFF of the Act, stipulating that where an undertaking is closed for any reasons whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of Sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25-F of the Act, as if the workman had been retrenched. The Legislature has not sought to place closure of an undertaking on the same footing as retrenchment u/s 25-F of the Act. By Section 25-F, a prohibition against retrenchment until the conditions prescribed by that Section are fulfilled,

is imposed. However, by Section 25-FFF(1) termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice is not prohibited.

8. We are of the view that it was not mandatory for the management to make payment of closure compensation itself on 4.12.1996. It is not the case of the petitioners that the payment has been unduly delayed. Admittedly, it was paid in the same month i.e. December, 1996. It is neither their case that the amount was received under protest nor it reflects from the receipts regarding full and final payment. Therefore, it cannot be said that there was any violation of above referred provision of Act.

9. Further, the averment of the present petitioners is that upon their termination some of the workers, junior to them, had been retained in service, by the management, violating the provisions of Section 25-G of the Act. This plea does not stand to reason. There was a closure in the unit pursuant to the permission granted by the appropriate Government and in that situation where was the need or requirement to continue with the workers. However, it needs to emphasize that even if there was a complete closure on account of the prohibition in the State, a skeleton staff in the capacity of caretaker staff is supposed to be retained by the management. In these circumstances, the management is within their right to avail the services of such persons who had the working knowledge of different activities irrespective of their seniority. Such like arrangement are made for the purpose of utility, convenience and suitability. The question of seniority or juniority does not arise in such a situation. Therefore, there cannot be said to be any violation of Section 25-G of the Act.

10. While granting permission to close down the management, condition No. (ii), as reproduced above, was imposed by the appropriate Government. The argument of counsel for the petitioners is that Rule 78 of the Rules of 1957 stipulates that in the event of re-opening of the unit, each ex-employee is required to be informed through registered post. Mere advertisement in the newspaper violates the said Rule and also the condition imposed in the permission of closure dated 4.11.1996. The argument is again not convincing. The condition referred to above does not stipulate that each employee should be informed through a registered post on reopening of the unit. Further, the management had decided to re-open the unit during May-June, 1998 i.e. after one and a half year of its closure. During the intervening period, many of the workers would have joined elsewhere to earn their livelihood, obviously with change in their addresses. In that situation it would not be practically possible to intimate each and every ex-worker through registered post. Therefore, there cannot be any violation of any rule in the decision taken by the management to give a public notice to the ex-employees in the newspaper. Admittedly, a publication was made in the newspaper "Dainik Tribune" and "Punjab Kesari" dated 16.5.1998 and 15.5.1998 respectively inviting the ex-employees to apply within 10 days, otherwise it shall be deemed that they are not willing to accept

the same and would be presumed not interested in the offer of joining the organization. It was also made clear that the names of the ex-employees, who would be required to report, would be put up on the Notice Board within five days. The publication was in the notice of the employees. There cannot be any prejudice if they were not informed through registered post. The petitioners, claimed that pursuant to the above-said advertisement, they had approached the management. However, there is no cogent evidence led to show that they had ever approached the management for consideration of their names for re-employment. Ombir and Dharam Parkash petitioners have not placed any application by virtue of which they offered themselves to be considered for re-employment. Dharam Parkash petitioner though claims that he made an entry at Sr. No. 40 of the Register but no entry of register has also been proved to show that in fact he had visited the management for the above-said purpose. The petitioner Ashok Kumar though claims that he moved an application (Annexure P-8) dated 23.5.1998. However, he had not taken any such plea in the statement of claim dated 25.8.1999. Therefore, in backdrop of these facts, evidently, there is no violation of the provisions of Section 25-H of the Act by the management.

11. Moreover, Rules 77 and 78 of Rules of 1957, so referred for the first time in the present writ petition, in the given circumstances are of no help to the petitioners.

12. In this view of the matter, we are of the opinion that these writ petitions are totally devoid of any merit. There is no illegality in the impugned awards dated 22.10.2003. It needs no interference. The writ petitions are accordingly dismissed. No cost.