
(1992) 07 P&H CK 0100

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11180 of 1991

Pawan Kumar

APPELLANT

Vs

Haryana Land Reclamation and Development Corporation

RESPONDENT

Date of Decision : 15-07-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Factories Act, 1948 — Section 2

Industrial Disputes Act, 1947 — Section 10, 25F, 25L, 25N

Citation : (1993) 105 PLR 79

Hon'ble Judges : R.S. Mongia, J

Bench : Single Bench

Advocate : M.M. Kumar, Pawan Kumar and Ashok Sehgal, for the Appellant; H.L. Sibal and Gobind Goyal, for the Respondent

Judgement

R.S. Mongia, J.—By this judgment of mine, I propose to dispose of two writ petitions (C.W.P. Nos. 11180 and 12634 of 1991), as common questions of law and facts are involved in both the cases.

2. Pawan Kumar, petitioner in the former writ petition, had joined as a Clerk-cum-Typist on 4th April, 1989, with the Haryana Land Reclamation and Development Corporation Limited, Chandigarh (hereinafter referred to as the Corporation); whereas petitioner Anil Singla in the other writ petition, had joined as Clerk-cum-typist with the Corporation on 17th May, 1990. Vide order, dated 18th July, 1991, the Managing Director of the Corporation passed an order of retrenchment of certain members of the staff, including both the petitioners. The order was made effective from 19th July, 1991. The copy of the said order has been attached as Annexure P-1 in Pawan Kumar's case; whereas it has been attached as Annexure P-6 with Anil Singla's case. The reason given for passing the order of retrenchment is that the Corporation had incurred certain losses and to prevent further losses as well as to restore economic viability, 11 Clerks-cum-Typists were being declared surplus. It may be observed here that retrenchment compensation due u/s 25F of the Industrial Disputes Act, 1947 (hereinafter

called the I.D. Act), was also tendered along with the order of retrenchment. It is this order of retrenchment that has been impugned by the petitioners in both these writ petitions.

3. The Motion Bench, while admitting the writ petition of Pawan Kumar on 8th August, 1991, had stayed the operation of the impugned order, dated 18th July, 1991, by passing the following order:-

"In the meantime, operation of the impugned order dated 18th July, 1991, Annexure P-1, shall remain stayed. Resultantly, the petitioner shall be permitted to continue in service meanwhile."

By virtue of the above order, Pawan Kumar is continuing in service with the Corporation.

4. As far as Anil Singla's case is concerned, the same was admitted to be heard with the case of Pawan Kumar. However, stay was not granted to him, because of the undertaking given by the learned counsel for the Corporation. The Motion Bench had passed the following order regarding stay:-

"The learned counsel for the respondent undertakes to pay entire wages and accord other reliefs in case the Writ Petition of the petitioner succeeds. Under these circumstances no interim relief is called for at this stage."

5. The sole contention of the learned counsel for the petitioners is that the provisions of Section 25N of the I.D. Act are applicable to the Corporation and the termination of the services of the petitioners are in violation of the provisions of the said Section, and, therefore, the order of retrenchment is liable to be quashed and they are entitled to be reinstated in service with all consequential benefits.

6. Chapter V-B of the I.D. Act contains special provisions relating to lay-off, retrenchment and closure in certain establishments. Section 25K of the I.D. Act tells us regarding the application of Chapter V-B. The said Section is in the following terms: -

"25K. Application of Chapter V-B.-(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final."

Section 25L of the I.D. Act gives the definition of Industrial establishment" for the purpose of Chapter V-B which is as under:-

" 25L. Definitions.- For the purpose of this Chapter.-

(a) Industrial establishment" means-

(i) a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in Clause (j) of Sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in Clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

Section 25N of the I.D. Act lays down the conditions, which are precedent to retrenchment of workman. The said Section is reproduced below: -

" 25-N. Conditions precedent to retrenchment of workman.- (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until.-

(a) the workman has been given three months" notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice, and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under Sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3) Where an application for permission under Sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workman concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under Sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of Sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under Sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication;

Provided that where a reference has been made to a Tribunal under this Sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under Sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding, anything contained in the foregoing provision's of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of Sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under Sub-section (3) or where permission for retrenchment is deemed to be granted under Sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."

7. Before adverting to the arguments of the learned counsel for the parties, I may dispose of a Preliminary Objection raised on behalf of the respondent Corporation that the petitioners should have raised an industrial dispute u/s 10 of the I.D. Act. The workman can raise an industrial dispute only after permission is granted by the appropriate Government, u/s 25N of the I.D. Act, to retrench a particular employee. Here the point raised by the petitioners is that Section 25N of the I.D. Act is applicable to the Corporation; whereas according to the Corporation, Section 25N is not applicable and only Section 25F of the I.D. Act is applicable to the facts of the case. Whether Section 25N is applicable to the respondent-Corporation, to my mind, cannot be raised as a dispute under the I.D. Act as it is only after a permission is granted by the appropriate Government u/s 25N of the I.D. Act regarding retrenchment that a workman may raise an

industrial dispute. In this regard, Para 56 of the Supreme Court judgment in *Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another*, may be referred. Otherwise also, interpretation of the definition of "Industrial Establishment" is involved in the case, which requires consideration by this Court. Even if it is assumed that there is remedy under Industrial Disputes Act, on the facts of this case I find that the same is not efficacious. Consequently, I overrule the Preliminary Objection.

8. The primary difference in the provisions of Section 25F and Section 25N is that under the former section, one month's notice is required before retrenching a workman; whereas in the latter section three months' notice is required and prior permission of the appropriate Government has to be obtained by the employer for retrenching a workman or workmen. Further, u/s 25N of the I.D. Act, the workman has to be employed in any "Industrial Establishment". It would be seen from Section 25L(a)(i) quoted above, that for the purpose of Chapter V-B, "Industrial Establishment" means a Factory as defined in Clause (m) of Section 2 of the Factories Act, 1948. Section 2(m) of the Factories Act defines "Factory" in the following terms: -

" (m) "factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and any part of which a manufacturing process is being carried on with the aid of power, or is so ordinarily carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the year preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952) a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place.

Explanation- For computing the number of workers for the purposes of this Clause all the workers in different relays in a day shall be taken into account,"

It would be seen from the definition of "Factory" under the Factories Act, that it means- (a) any premises including the premises thereof, where 10 or more workers are working (or were working on any day of the preceding twelve months), with the aid of power or 20 or more workers, where the work is carried out without the aid of power; and, (b) in any part of such premises, including the precincts, a "manufacturing process" has also been defined in section 2(k) of the Factories Act. Section 2(k) of the Factories Act is in the following terms:-

"(k) "manufacturing process" means any process for-

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article

or substance with a view to its use, sale, transport, delivery or disposal; or

(ii) pumping oil, water or sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letterpresses, lithography, photogravure, or other similar process, or bookbinding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage;"

9. The whole case of the Corporation is that it is not an "Industrial Establishment" as defined u/s 25L of the I.D. Act. and, therefore, the petitioners not being employed in an Industrial Establishment, the question of applying the provisions of Section 25N of the I.D. Act would not arise; whereas according to the petitioners, the Corporation is an Industrial Establishment u/s 25L of the I.D. Act. Accordingly, the whole controversy revolves around this aspect of the matter.

10. The main objects of the Corporation as mentioned in its Memorandum of Association, are as under:-

" MAIN OBJECTS

(1) To undertake, assist , aid, finance, execute and promote measures for land development, conservation and improvement of soil and water resources such as :-

(a) Reclamation of land including reclamation of saline and alkaline soils and revine and gullied areas.

(b) Farm drainage, both surface and sub-surface.

(c) Prevention of mitigation of soil erosion.

(d) Protection of land against damage by floods or drought.

(e) Planting and Preservetion of trees, shrubs and grass on uncultivable land and fixation of sand dunes.

(f) Improvement of pastures including regulation of grazing.

(g) Land levelling, Land shaping and grading.

(h) Water management including conservation, irrigation, use of sprinklers, gated pipes and water harvesting.

(2) To carry on the business of farmers, graziers, planters, quarry owners, contractors for the construction of works and any other operations or business which may seem calculated directly or indirectly to develop the land for agricultural purposes or the purpose akin to agriculture.

(3) Construct, carry out, support, maintain, improve, manage, work, operate, control and superintend works and conveniences which may seem directly or indirectly conducive to the development, management, conservation and use of land and water resources and to contribute or otherwise aid or take part in the constructions carrying on, support maintenance, improvement, management, working, operating, controlling and superintending the same.

(4) To purchase, take on lease the machinery, tools and plant and maintain appliances, for carrying the development, improvement, and exploitation of the land either for making it culturable or utilising it for Agricultural purposes."

In the retrenchment Notice (Annexure P-1 in Pawan Kumar's case) it has been mentioned as under :-

" The Corporation is engaged in the business of land Levelling, Land Reclamation, Production of quality Seeds and sale of gypsum and various fertilizers, pesticides, insecticides etc. and is also having number of tractors and other allied Farm machinery engaging number of employees of various categories on regular as well as adhoc/DPL basis. Gypsum is usually sold by the dealers while other business is carried out by the employees of the Corporation.

With a view to increasing sales of fertilizers, pesticides and weedicides the Corporation opened a large number of new sale points on temporary basis to achieve this objective and inducted considerably new employees to carry out mechanical and technical work to man the sale points, to monitor activities as well as to assist the officers in subordinate capacity....."

11. The learned counsel for the petitioners submitted that it is apparent from the definition of "Industrial Establishment" as given in Section 25L(a)(i) of the I.D. Act, that for the purpose of Chapter V-B of the I.D. Act, "Industrial Establishment" means a "Factory" as the word "Factory" is understood in the Factories Act. In other words, the "Industrial Establishment" under the I.D. Act would be a "Factory" as it is understood in the Factories Act. According to the learned counsel, in the Factories Act, the "Factory" is that where apart from a particular number of workers are working, another condition has to be satisfied, i.e. in any part of the premises of that Factory a "Manufacturing Process" is being carried on. What do we understand by "Manufacturing Process" in the Factories Act is also given in Section 2(k) of the said Act. The argument of the learned counsel for the petitioners proceeded that first a meaning to the word "Factory" in the Factories Act, has to be assigned which meaning has to be transplanted in Section 25L of the I.D. Act. The expression "Manufacturing Process" occurring in the definition of "Factory" in the Factories Act will have to be assigned the meaning as given in Section 2(k) of the Factories Act. However, the argument of the learned counsel for the respondents, is that according to Section 25L(a)(i), only the definition of the word "Factory" given in Section 2(m) of the Factories Act has to be bodily lifted and transplanted in the I.D. Act and the expression "Manufacturing Process" occurring in the definition of "Factory" has to be assigned

dictionary meaning or as understood in common parlance and the wide definition of the expression words "Manufacturing Process" as given in Section 2(k) of the Factories Act, has not to be imported in the I.D. Act for understanding the meaning of "Factory".

12. The learned counsel for the respondent-Corporation also submitted that if the intention of the Legislature was to import the definition of the expression "manufacturing process" from the Factories Act to the I.D. Act, a specific provision in the I.D. Act would have been inserted for that purpose. To buttress the argument, the learned counsel brought to my notice the Employees State Insurance Act, wherein Industrial Establishment has been defined in Section 2(12) and it has been specifically provided that the expression "Manufacturing Process" would have the same meaning as assigned to it in the Factories Act. It may be observed here that none of the learned counsel were able to cite any judgment of any High Court or the Supreme Court of India in support of their respective contentions.

13. After hearing the learned counsel for the parties, I am of the view that there is a force in the contentions of the learned counsel for the petitioners. According to Section 25L(a)(i) of the I.D. Act, the "Industrial Establishment" under the Act, would be the same as a "Factory" is understood in the Factories Act. In other words, the Court has to find out what is the meaning of "Factory" under the Factories Act. Naturally, while finding out the meaning of the "Factory" under the Factories Act, whatever expressions are used in the definition of "Factory" (under the Factories Act) have to be assigned the meaning as given in the Factories Act, itself. However, in case the expressions which are used in the definition of "Factory", are not assigned any specific meaning in the Factories Act, then to those expressions dictionary meaning has to be assigned or would be given the meaning as understood in common parlance. It is the meaning of the Factory as analysed in the Factories Act that has to be boldly lifted and transplanted in the I.D. Act. If to the expressions used in the definition of "Factory" the meanings are not assigned as given in the Factories Act itself, then the definition of "Factory" as understood in the Factories Act, would become different, as the expressions used therein are not given the same meaning as are required by the Factories Act. As far as the Employees State Insurance Act (In short E.S.I. Act), is concerned, I have perused the definition of the word "Factory" given in Section 2(12) of the said Act. It is slightly different than the one given in the Factories Act. If the definition under the E.S.I. Act had been that "Factory" means the same thing as under the Factories Act and there was no specific definition of "manufacturing process" under the E.S.I. Act, then while assigning the meaning to word "Factory" the expression "Manufacturing process" will have the same meaning as understood in the Factories Act. However, the E.S.I. Act gives its own definition of "Factory". Therefore, it was necessary for the legislature to provide as to what the different expressions in the definition of word "Factory" as given in the E.S.I. Act would mean. Having provided for a different Definition of "Factory" if the E.S.I. Act had remained silent as to what the expressions used in

the definition of "Factory" would mean then those expressions would have been given the dictionary meaning. Consequently, I hold that while giving meaning to the word "Industrial Establishment" in Section 25L(a)(i) in the I.D. Act, the meaning of the word "Factory" will have to be imported from the Factories Act, as understood by reading of Section 2(m) of the Factories Act, and by giving the expression, "Manufacturing process", the meaning as given in Section 2(k) of the Factories Act.

14. It is not disputed that more than 20 workers are working with the respondent Corporation. However, the argument of Mr. H.L. Sibal, learned Senior Advocate, appearing on behalf of the respondent- Corporation, is that no manufacturing process goes on in the Corporation, and, therefore, the Corporation is not a Factory. As has been held by me earlier, for judging whether respondent-Corporation is a Factory or not under the Factories Act, and, therefore, an "Industrial Establishment" in Section 25L of the I.D. Act, it has to be seen whether any manufacturing process, as understood by Section 2(k) of the Factories Act, is carried on in the premises or the precincts of the Corporation. It would be seen from the definition of expression "Manufacturing Process" given in Section 2(k) of the Factories Act (which has already been quoted in the earlier paragraph of the judgment) that it is in very wide terms that even making, altering, packing, breaking up any article or substance with a view to its use, sale, transport, delivery or disposal, are included in expression "Manufacturing Process." The respondent-Corporation is engaged in the business of land levelling, land reclamation, production of quality seeds and sale of gypsum and various fertilizers, pesticides, insecticides etc. and has a large number of tractors and other allied Farm machinery of the said purpose. The gypsum etc. is received in bulks and after the same is packed in packages of different sizes, the same are sold by the Corporation; It also lends tractors and other Farm machinery for reclaiming land. The quality seeds are produced and sold by it. One of the objects incidental or ancillary to the attainment of the main objects is to set up and maintain laboratories, workshops and stores for providing technical guidance, repair facilities and sales of stores, etc. concerning land development exploitation, management and conservation of land and water resources. The main objects including incidental or ancillary objects and the work carried out by the Corporation, as indicated above, would go to show that it is carrying on "Manufacturing Process," as envisaged by Section 2(k) of the Factories Act.

15. The learned counsel for the petitioners cited The Regional Director, Employees' State Insurance Corporation and Ors. v. M/s. Brooke Bond India Ltd., 2 and Anr. 1978 LAB. I.C. 1074 (a D.B. judgment of Calcutta High Court), wherein it was held that the Factories where tea and coffee are manufactured, are engaged in manufacturing process. The judgment has gone to the extent that even blending of tea involves manufacturing process. The Supreme Court in V. P. Gopala Rao Vs. Public Prosecutor, Andhra Pradesh, , while dealing with a case where in a Company's premises sun-cured tobacco leaves brought from the growers were subjected to the processes of moistening, stripping and packing

and then the leaves were tied up in bundles and stored in the premises and from time to time they were packed in gunny bags and then exported to the Company's factory at Bomaby, where they were used in manufacturing cigarettes, it was held that manufacturing process as defined in Section 2(k) of the Factories Act was carried on in the premises of the Factory. A Division Bench of Bombay High Court in *M/s. Kalpana Dresses. Bombay v. Employees "State Insurance Corporation 1976 LAB. I.C. 1791* even went to the extent that ironing of clothes with the aid of power is a manufacturing process under the Factories Act. Madras High Court in *Ekambaranatha Chettiar (S.) Vs. Inspector of Factories*, , held that stitching of old gunny bags falls within the definition of "Manufacturing Process".

16. From what has been observed above, I am of the considered view that the respondent-Corporation is carrying on manufacturing process as defined in Section 2(k) of the Factories Act, and, therefore, would be a "Factory" under the Factories Act and, consequently, an Industrial Establishment u/s 25L(a)(i) of the I.D. Act.

17. Faced with this, the learned counsel for the respondent argued that in accordance with the definition of "Factory" given in Section 2(m) of the Factories Act, it would only be a factory if a worker is employed in the premises, including the precincts, in any part of which a manufacturing process is being carried on. According to the learned counsel, where the petitioners are employed no manufacturing process goes on even if it is held that in some part of the premises, manufacturing is carried out. I am afraid, I cannot agree with this contention. A bare reading of the definition of the word "Factory" shows that it has to have premises, (which includes the precincts) where in any part thereof manufacturing process goes on and it is not necessary that the worker should be actually employed where the manufacturing process goes on. Take a case where a Clerk or an Accountant are working in the office and the actual manufacturing process goes on at some distance, but the Clerk or the Accountant are working in relation to that Factory or the product that it produces. The entire establishment would be a Factory and even a Clerk would be an employee of that establishment. In *The Works Manager, Central Railway Workshop, Jhansi Vs. Vishwanath and Others*, , it was held that the persons who were working as time-keepers, prepared paysheets of workshop staff, maintained leave account, etc. would be workers under the Factories Act. Apart from this, as observed earlier while dealing with the case of *Gopala Rao (supra)*, the entire area where the tobacco leaves etc. were processed as also the Head Office were deemed to be a Factory. In *Ardeshir H. Bhiwandiwalla Vs. The State of Bombay*, , while dealing with the definition of "Factory" u/s 2(m), it was held that even open land where the Salt Works were carried on, would be deemed to be premises and the processes carried out in salt works in converting sea water into salt water comes within the term "manufacturing process". In view of the discussion above, it is held that the petitioners were workers in the Industrial establishment.

18. Since I have held that the respondent-Corporation is an Industrial Establishment u/s 25L of the I.D. Act and the petitioners were working in that establishment, the provisions of Section 25N had to be complied with before retrenching them. Admittedly, in this case, Section 25N of the I.D. Act has not been complied with. I have no option but to quash the orders of retrenchment of the petitioners. Consequently, the writ petitions are allowed and the orders of retrenchment, dated 18th July, 1991, Annexure P-1 with C.W.P. No. 11180 of 1991 and Annexure P-6 with C.W.P. No. 12634 of 1991, qua the petitioners are quashed. Pawan Kumar, petitioner, has been continuing in service because of the stay order granted by this Court. Respondent-Corporation is directed to reinstate petitioner Anil Singla forthwith. Needless to mention that by virtue of the orders of the Motion Bench, dated 14th August, 1991 in his writ petition (already reproduced above) he would be entitled to all consequential benefits. However, taking into consideration the facts and circumstances of the case, I make no order as to costs.