
(2022) 01 TEL CK 0008

In the Telangana High Court

Case No : Writ Petition No. 5561, 5562, 5569, 19616 Of 2003

P.Bakkaiah

APPELLANT

Vs

General Manager, Nalgonda

RESPONDENT

Date of Decision : 05-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25(4), 25F

Citation : (2022) 01 TEL CK 0008

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Advocate : M Rama Rao, V Brahmaiah Chowdary

Final Decision : Dismissed

Judgement

1. These Writ Petitions are filed by the petitioners under Article 226 of the Constitution of India seeking a Writ of Mandamus declaring the award

dt.30.01.2002 in I.D.No.178 of 1998, I.D.No.175 of 1998, I.D.No.177 of 1998 and I.D.No.171 of 1998 on the file of the Labour Court-III, Hyderabad,

as arbitrary, illegal and contrary to the evidence on record and to pass such other order or orders as this Court may deem fit and proper in the

circumstances of the case.

2. Brief facts are that the petitioner in each of the Writ Petitions was an employee and was appointed as Casual Labour by the respondent bank in the

year 1991/1992. Their services were terminated in the year 1995. Since they have completed more than 240 days of continuous service in all the

calendar years, the petitioners challenged the termination orders by filing Industrial Disputes before the Labour Court. It was submitted that the

termination orders were illegal as the respondent has opened new branches at

various other places and was in need of employees to be posted in those branches and since the petitioners were fully qualified, they should have been considered on regular basis in clear vacancies instead of being terminated as excess staff. Questioning the same, the petitioners had filed W.P.No.10230 of 1995, in which this Court held that the termination of the petitioners without following the rules and procedure is not proper. In accordance therewith, the petitioners were continued in service till 31st July, 1995 and thereafter, they were again terminated with effect from 31.07.1995. Challenging the same, the petitioners again filed W.P.No.22092 of 1995 and vide orders dt.21.08.1997, this Court allowed the Writ Petition and directed the respondents to continue the petitioners in service. However, the respondent filed W.A.No.1212 of 1997 before this Court and vide orders dt.07.12.1997, the order in W.P.No.22092 of 1995 was set aside and liberty was given to the petitioners to avail alternative remedy as available. Consequent thereto, the petitioners filed Applications before the Labour Court and the Labour Court has passed the orders holding that the petitioners, who were given notice under Section 25(4) of the Industrial Disputes Act, 1947, were terminated thereafter by paying salary in lieu of one month's notice. Challenging the said awards, these Writ Petitions are filed.

3. Learned counsel for the petitioners, Sri M. Rama Rao, submitted that if the petitioners were to be retrenched by the respondent bank, the mandatory provisions of Section 25-F of the Industrial Disputes Act were to be followed. He submitted that the Labour Court has taken note of the fact that the petitioners were in service till 31.07.1995, but however has held that the notices were refused by the petitioners and also that cheque numbers were mentioned in the notices. He submitted that when the respondent bank was not able to service notice on the petitioners, the respondent ought to have followed alternative mode of service of notice i.e., by sending through registered post with acknowledgement due or by publishing in newspapers. Instead, it was resorted to sending the notices by Messengers. It is submitted by the learned counsel for the petitioners that the Labour Court had erroneously relied upon the entries in the Tapal Register to hold that the notices were sent by the respondent bank, but the said Tapal Messenger was not examined by the Court. Therefore, according to him, there is total non-application of mind by the Tribunal and about non-following

of the procedure by the respondent bank before retrenching the petitioners. Therefore, he prayed that the petitioners be treated as the employees of

the respondent bank and be awarded the wages for the period of removal till the date of reinstatement. In support of his contentions that where notice

could not be served on the petitioners, alternative modes of service have to be adopted, he placed reliance upon the following decisions:

(1) S. Ramachandra Alse Vs. Dy. General Manager, Syndicate Bank, Hyderabad and another 1999 (3) ALT 716 (S.B.).

(2) The Cawnpore Tannery Ltd., Kanpur Vs. S. Guha and others AIR 1967 Supreme Court 667.

(3) Union of India and others Vs. Dinanath Shantaram Karekar and others AIR 1998 Supreme Court 2722.

(4) Ramesh Kumar Vs. State of Haryana AIR 2010 Supreme Court 683.

4. Learned counsel for the respondent, Sri V. Brahmaiah Chowdary, on the other hand, relied upon the contentions made by the respondent bank

before the Labour Court which have been mentioned in the award. He submitted that while retrenching the petitioners, sufficient notice along with pay

for a period of one month was given to the petitioners but they refused to accept the same and therefore, the notices were sent by personal

Messengers and since they refused to take such notices and the cheques, it is to be presumed that the notices were legally or properly served on the

petitioners.

5. Having regard to the rival contentions and the material on record, the question before this Court is whether the respondent bank has followed due

procedure while retrenching the petitioners from service. It is not disputed that there was excess staff in the bank and the petitioners were the extra

staff and therefore, the respondent bank had resorted to retrenchment of the excess staff. In such circumstances, the respondent bank was required

to follow the due procedure under Section 25-F of the Industrial Disputes Act. According to the respondents, they have issued notices/orders along

with one month salary in lieu of the period of notice, but the petitioners have refused to acknowledge the same and therefore it was constrained to post

same in the Notice Board of the bank. The contention of the petitioners that the petitioners have worked till 31.07.1995 and therefore the question of

posting the notice in the Note Board does not arise and therefore the respondent

bank has not followed the due procedure. However, it is seen that though the petitioners were retrenched from service from 29.07.1995, it is only by virtue of the interim order of this Court that they continued up to 31.07.1995 and since they were aggrieved by the termination orders, it cannot be ruled out that they would have refused to receive the notices of retrenchment under Section 25-F of the Industrial Disputes Act. The Labour Court has brought out that the notices were duly issued along with the cheques and therefore held that the respondent bank has duly followed the procedure. Merely on the principle of probability, this Court cannot disturb the finding of fact by the Labour Court. The decisions relied upon by the learned counsel for the petitioners are to the effect that where the mode of service of notice prescribed under the Act fails, the respondent employer ought to have resorted to alternative mode of service of notice. In this case, since the petitioners and the respondent are the employer and employees and the employees though were present physically refused to take notices, the notices were put up in the Notice Board of the respondent bank. Since the petitioners were working till 31.07.1995, the display of the notices in the Notice Board of the bank is sufficient service of notice on the petitioners. Therefore, the judgments relied upon by the learned counsel for the petitioners do not come to the rescue of the petitioners as there is no violation of any of the procedures by the respondent bank. It is further submitted by the learned counsel for the respondent that all the petitioners have subsequently been employed with the respondent bank after they have applied to the respective posts pursuant to the Notifications issued by the bank. Another question to be answered is whether in the absence of clear vacancies, can the respondent bank be directed to engage the petitioners? It has been held in a number of cases that the employer cannot be compelled to continue to employees without there being a clear vacancy or there being expediency for work. Therefore, there is no merit in these Writ Petitions.

6. The Writ Petitions are accordingly dismissed. No costs.

7. Pending miscellaneous petitions, if any, in these Writ Petitions shall also stand dismissed.