
(2013) 07 DEL CK 0183

In the Delhi High Court

Case No : Writ Petition (C) No. 1137 of 1999

Pradeep Kumar Gupta

APPELLANT

Vs

P.O. Labour Court and Another

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G, 31(2), 9A

Citation : (2013) 10 AD 143 : (2013) 203 DLT 478 : (2013) 137 DRJ 1 : (2014) 140 FLR 651 : (2013) 139 FLR 375 : (2013) 3 LLJ 592 : (2013) 4 LLN 193 : (2013) LLR 1192

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Vikas Manchanda, for the Appellant; Dinesh Madan, Advocate for R-2, for the Respondent

Final Decision : Allowed

Judgement

P.K. Bhasin, J.—The petitioner-workman joined M/s. Air France, respondent no. 2, in the year 1964 in its Telecommunication Department as a Teleprinter Operator, which post fell in category PLC-2 under Clerical Staff category, and subsequently he was re-designated as Teleprinter Operator Assistant in 1969 after being put into PLC-3 category. After serving respondent no. 2 almost two decades he was all of a sudden retrenched w.e.f. 25th February, 1983 on the ground that as a result of computerisation of the Telecommunication Department his services as a manual teleprinter operator became had become surplus. At that time the petitioner was offered money which according to respondent no. 2 was payable to him as per Section 25-F of the Industrial Disputes Act, 1947 ("the act of 1947" in short). The petitioner-workman protested against his retrenchment through the workers' Union of which he was a member since that retrenchment was brought about without serving him a notice u/s 9-A of the Act of 1947 and also because of breach of the provisions of Section 25-F, G and H of the said Act. However, since respondent no. 2-management did not re-call his retrenchment order the matter was taken to the Labour Department of the Delhi

Government where conciliation proceedings were held but failed. Thereafter the dispute about the termination of the services of the petitioner-workman, which he considered to be illegal, was referred for adjudication to the Labour Court on 6th august, 1984.

2. The sole term of reference to the Labour court was as under:

Whether the termination of service of Shri Pardeep Kumar Gupta is illegal and/or unjustified and if so to what relief is he entitled what directions are necessary in this report

3. The Labour Court after examining the evidence adduced by the parties gave its Award holding that the petitioner-workman was legally retrenched and he was given due compensation as per Section 25-F of the Act of 1947. The relevant portions from the impugned award, where the Presiding Officer noted the pleas of the workman and the management and the conclusions arrived at are as under: -

The workman alleged that the management passed the following order on 25.2.83:-

You are working as Tele Typist in our organization. Since the installation of new equipment, your services have become surplus to our requirement.

With this notice, the management allegedly terminated the services of the workman w.e.f. 25.2.83, the management handed over a cheque for Rs. 26902.37 including one month's wages in lieu of notice and 15 days average pay for each completed year of service as required u/s 25-F of I.D. Act. However, the workman alleged that the Management instead of paying his wages to him, told him that his other dues were being worked out and would be settled after he obtained a clearance from the Personnel Department. The workman was directed to leave his present permanent address with the Office for future reference, if any. The workman also alleged that the management changed his service conditions without complying with the provisions of section 9-A of I.D. Act, 1947. He pleaded that no notice u/s 9-A of I.D. Act was served on him or to the union and, therefore, change in the working in the establishment resulting into retrenchment of an employee was without compliance of mandatory requirements of section 9-A of I.D. Act. The workman also pleaded that principles of natural justice were violated by the management as no opportunity was given to him to clarify that his job had not become redundant with the installation of new machines because he was the only employee who knew how to handle the new equipment and because he had already been working on teleprinters and the telex machine which were already in operation with the management. He contended that he was senior to 14 other employees in his grade besides the employees at Bombay, Calcutta, Bangalore and Madras and no 7 days prior notice was displayed showing the seniority list to enable the workman to raise any objection to the seniority list and in this way also there was violation of principles of natural justice.... He also pleaded that in the

Communication Department where the workman was employed, there were 5 employees including the workman out of which one Shri Kundu died and his vacancy was lying unfilled. Shri V. Padmanabhan in that every section was transferred to Bombay Airport and he was junior to the workman by about 5 years. Another employee Shri Radhakrishnan who was junior to the workman by about six years was transferred to Bombay Telecommunication and both of them were still in the employment of the management. One Mr. Menon who was in Grade-V and in supervisory duty was demoted to Grade-III to take over the job of the workman besides commercial department work. The workman also contended that the management recruited employees in the same grade and on similar job, one in Accounts Department in Delhi, one in Bombay Airport and several others in Grade-II and Grade-III without giving an opportunity to the workman to continue those vacancies particularly in Grade-III, and, therefore, also the retrenchment of the workman is not justified.

... The management pleaded that it had given due notice pay and retrenchment compensation to the workman as per the provisions of section 25-F of I.D. Act, 1947. The management pleaded that the workman was the only Teleprinter Operator working with the management and his seniority could not be compared with other categories of staff in Grade PLC-3 and all categories of staff in PLC-3 grade were not interchangeable. The management contended that the workman was working as a Teleprinter Operator. When teleprinter was replaced by the computerized equipment, the services of the workman were no longer required because the computerized equipment worked automatically and no employee was required to operate it. No other person was employed to operate the computerised equipment. By installation of the computerized equipment, the service conditions of the workman had not been altered because the termination of service does not amount to change in the service conditions. The service conditions of other employees had not been altered because they were not affected by the introduction of computerised equipment. The management contended that there was no alternative service available to absorb the workman or where his services could be utilized and it was for this reason that the management decided to retrench him. The management pleaded that the Delhi Office was a separate industrial establishment and, therefore, there was no question of selection for the retrenchment. The management contended that seniority list was displayed on the notice board on 17.2.83 and copy thereof had been sent to the Labour Department. The workman was the only person in his category. The Management pleaded that Shri Kundu was in a different grade and he died more than a year before the retrenchment of the workman. Shri V. Padmanabhan was transferred to Bombay in August, 1977, i.e., about six years before the retrenchment of the workman and even otherwise Shri V. Padmanabhan belonged to a different category. With regard to Shri Radha Krishnan, the management pleaded that he had been transferred to Bombay in May, 1978 and he belonged to a different category. The management denied that Shri Menon was demoted to Grade-III to take over the job of the workman.

concerned. The management also denied that any person in the category of the workman concerned had been employed by the management. The management contended that full compensation as per the provisions of section 25-F of the I.D. Act had been paid to the workman.

xxx xxx xxx

My learned predecessor Shri Mohd. Shamim framed the following issues on 9.7.85 for adjudication of this reference:

1. Whether the statement of claim is liable to be rejected for the reasons stated in para 1 of the written statement.
2. As per the terms of reference.

Findings

Issue No. 2

The case of the workman is that at the time of termination of services he was paid Rs. 45426.47 whereas he was entitled to Rs. 101088.90 which amount fell short of Rs. 55662.43. His second grounse is that there were 14 persons junior to him in grade-III including Delhi and other places and there was package of transferring an employee from one place to another and he could have been transferred. And thirdly, that he was also competent to be posted on the computer.

Now I shall take up these points one by one.

The workman admitted that he was not getting any allowances apart from those mentioned in pay sheet Ex. WW-6. The perusal of Ex. WS-6 shows that the basic wages of the workman were Rs. 784/-, Rs. 2960/- as D.A., Rs. 28/- as D.A. arrear for November-December, House Rent Allowance Rs. 301/-, total Rs. 4017/- and an amount of Rs. 670/- was to be deducted towards income tax, Rs. 371.60 towards provident fund and Rs. 25/- towards medical plan and in this way he was paid Rs. 2975.40. The workman admitted that he was getting leave travel assistance and not leave travel allowance. He also admitted that leave travel assistant was allowed once in a year when an employee proceeded on more than six days sanctioned leave. There was no CCA paid to him and in fact no CCA was paid in the Company. His statement in examination in chief was, according to him, out of some misunderstanding. He admitted that his statement regarding meal allowance was dealt in para 5.5 under the head reimbursement of meal expenses in Ex. W-3. Reimbursement of meal expense for all staff members, i.e., PLC was Rs. 335/- p.m. for 11 months. He has not been able to produce any letter, settlement or document regarding free tickets up and down all over the world referred to his statement. He has not been able to give the name of the rule book or to refer to any agreement. Ex. W.3 is rule book but the workman has not been able to find that there was no rules entitling him to free tickets. There is no mention of the rate of discount in the air ticket.

He has also not been able to cite any rule or provisions/agreement authorising encashment of reduced air tickets facilities. He categorically admitted that these facilities are not encashable. He also admitted that he was income tax assessee and the income tax was used to be paid on his income. He also admitted that payment on account of reimbursement of meals was not treated as income.

Computed on this rate, the workman had been correctly paid the amount as per Section 25-F of I.D. Act.

xxx xxx xxx

The workman admitted towards the end of cross-examination that on the even of his retrenchment he alone was working in Delhi Telecommunication Department. Seniority in respect of other PLC grade-III workers at other places or in departments other than Telecommunication Department is irrelevant. So, there is no effect, whatsoever, of not showing seniority list on the notice board.

When an employee becomes surplus, it is not mandatory or obligatory on the management to transfer a worker from one place to another for the purposes of accommodating him.

xxx xxx xxx

Written arguments besides the above points and authorities are not relevant for the decision of this reference. I decide this issue against the workman holding the termination of services of the workman to be legal and justified.

Issue No. 1

When the workman loses on merits, issue No. 1 became redundant and no discussion is called for.

As a result of my findings on Issue No. 2, I give my award that the workman is not entitled to any relief.

4. The learned counsel for the petitioner had submitted that the decision of the management to computerize the telecommunication department and to dispense with the manual operation of teleprinting machine amounted to change in his service condition and which in turn necessitated his retrenchment and consequently notice u/s 9-A of the Act of 1947 was required to be served upon him but that was not served and consequently his retrenchment was illegal. On the other hand, learned counsel for the respondent no. 2-management contended this is a simple case of retrenchment of the petitioner which is the right of every employer subject of course to compliance of Section 25-F of the Act of 1947 which was duly complied with respondent no. 2 and the Labour Court has also accepted that position and so no fault can be found with the Award of the Labour Court. It was also submitted that retrenchment of a workman can never be considered as a change in his service conditions as contemplated in Section 9-A and, therefore, its non-compliance is inconsequential. It was also submitted that it is a case of closure of Telecommunication Department and so

for that reason also it cannot be said that there was change in service conditions of the petitioner.

5. In my view, I need not spend much time in resolving this dispute since the answer to the controversy regarding applicability of Section 9-A in almost similar fact situation was given by the Hon"ble Supreme Court in M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, In the said case the workman was working as a foreman in the composing department of the employer Company which was engaged in the publication of a Marathi Daily by the name of "Lokmat" at the time of termination of his services. Initially the composing was done by hand by the workman concerned but in the year 1981 the employer installed photo type composing machines thereby changing the old method of composing to new technique, as is the position in the present case also. Because of this change the services of the workman became redundant and, therefore, he was discharged from his services. In that scenario Section 9-A of the Act of 1947 also came to be considered and it was held that notice u/s 9-A was required to be given to the workman before introduction of new composing system. Relevant paras from the said judgment are being reproduced below:

39. Point No. 3: So far as this point is concerned, we have to turn to Section 9A of the I.D. Act. The relevant provision thereof reads as under:

Notice of change.-No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice

40. A mere look at the aforesaid provision shows that if an employer proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, such change has to be preceded by the procedure laid down in the said section.

41. When we turn to the Fourth Schedule of the I.D. Act, we find mentioned therein various conditions of service of workmen. The said schedule with all of its items reads as follows:

CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN

1-9 XXX XXX XXX

10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;

11. XXX XXX XXX

42. So far as item Nos. 1-9 and 11 are concerned, it becomes obvious that before any such change in conditions of service of the workmen is to be effected,

as a pre-condition for such proposed change, notice u/s 9A has to be issued; without complying with such a pre-condition of notice, proposed change would not legally come into operation. We are directly concerned with item no. 10 of this Schedule. It, therefore, becomes obvious that before any rationalisation, standardisation or improvement of plant or technique is to be resorted to by any management if by such an exercise retrenchment of workmen is likely to result, then before introducing such rationalisation, standardisation or improvement of plant or technique, as the case may be, a prior notice u/s 9A is to be issued to the workmen who can get an opportunity to show that they may not be retrenched because of the new scheme of rationalisation etc. which is in the offing and can suggest ways and means available to the management to avoid such proposed retrenchment of the workmen despite such introduction of a new scheme. Consequently, it must be held on the very wordings of Section 9A read with Item no. 10 of Fourth Schedule "that any management which seeks to introduce a new working pattern for its existing work force by any future scheme of rationalisation, standardisation or improvement of plant or technique which has a tendency to lead to future retrenchment of workmen" has to give prior notice of proposed change. Therefore, it must be held that notice u/s 9A must precede the introduction of rationalisation concerned.... In the present case, it is not in dispute between the parties that in the composing department of the appellant where the respondent was working, composing work was earlier being done by hand i.e. manually. That was the existing condition of service of the respondent. By substitution of that type of work by mechanical work having resort to photo type composition through machine, the then existing service condition of the respondent was bound to be affected adversely. Consequently, before introducing such a change in the condition of service of the respondent by installing photo type composing machine, introduction of which was directly likely to lead to retrenchment of the respondent, a notice u/s 9A was a must before commissioning such a photo type machine at the work place of the appellant....

45. As noted earlier, on the scheme of Section 9A read with item 10 of the Fourth Schedule, before introducing such a new scheme of rationalisation which had a likelihood and a tendency to affect the existing service conditions of the workmen, a notice u/s 9A was required to be issued prior to the installation of the photo composing machine....If such a notice was given to the respondent - workman and other workmen similarly situated they could have persuaded the appellant to resort to any other type of rationalisation or to absorb them on suitable jobs in the same premises in any other department of the appellant at Nagpur. That opportunity was never made available to the respondent....

49. In view of the aforesaid decision, it becomes obvious that if the proposed scheme of rationalisation has a likelihood of rendering existing workmen surplus and liable to retrenchment, then item no. 10 of Schedule IV would squarely get attracted and would require as a condition precedent to introduction of such a scheme a notice to be issued u/s 9A by the management proposing such an introduction of the scheme of rationalization....

50. ...It must, therefore, be held that the impugned termination or discharge of the respondent was violative of the provisions of Section 9A of the I.D. Act and he was discharged from service without the appellant's following the mandatory requirements of Section 9A of the I.D. Act. Effect of non-compliance of Section 9A of the I.D. Act renders the change in conditions of service void ab initio. This legal position is well settled in the case of Workmen of The Food Corporation of India Vs. Food Corporation of India, a three Judge Bench of this Court, speaking through Desai J., in para 19 of the report, laid down as under:

It is at this stage necessary to examine the implication of Section 9A of the I.D. Act, 1947. As hereinbefore pointed out, Section 9A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Section 9A which has no relevance here.

xxx xxx xxx

Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty u/s 31(2) of the I.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

6. The judgment in Lokmat's case (supra) applies squarely to facts of the case at hand wherein the services of the petitioner became surplus because of computerization of the Telecommunication Department which earlier was done by the petitioner manually and that decision of the management brought about change in his service conditions, which necessitated issuance of notice u/s 9-A prior to retrenchment. The plea of the management that it was a case of closure of Telecommunication Department cannot be accepted since only the technique was changed from manual teleprinting to computerised system. The job which the petitioner was performing manually came to be performed through computers. Admittedly, no notice u/s 9-A of the Act of 1947 was given by the respondent no. 2 and consequently the retrenchment of the petitioner was illegal. Unfortunately the Labour Court did not even deal with this important aspect of the matter though in the Award it was noticed that the petitioner-workman had raised this point. That makes the Award perverse justifying interference by this Court.

7. In view of the said conclusion regarding the applicability of Section 9-A I need not go into the controversy whether the department where the petitioner was working was a one-man department to which Section 25-G did not apply, as is the plea of the management. This writ petitioner is accordingly allowed and

consequently the Award of the Labour Court is set aside and retrenchment of the petitioner-workman is held to be illegal. Since he has already reached the age of retirement he shall now only be entitled to all his financial benefits upto the date of his retirement as if he had not been retrenched.