

(1993) 12 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.P. No. 1337 of 1993

Pramod Kumar Tiwari

APPELLANT

Vs

Hindustan Fertilizers Corpn. Ltd.

RESPONDENT

Date of Decision : 07-12-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F, 25FF, 25FFF

Citation : (1995) 1 LLJ 192 : (1994) 2 MPJR 52 : (1994) 39 MPLJ 337 : (1994) MPLJ 337

Hon'ble Judges : Shacheendra Dwivedi, J;S.K. Chawla, J

Bench : Division Bench

Advocate : K.N. Gupta, for the Appellant; T.C. Singhal, for the Respondent

Final Decision : Partly Allowed

Judgement

S.K. Chawla, J.

The services of a Laboratory Attendant appointed to a Project were terminated upon cessation of work of that project. He has now filed the present writ petition challenging his termination.

The petitioner Pramod Kumar Tiwari was appointed on a temporary post of Laboratory Attendant by Hindustan Fertilizer Corporation Ltd. (respondent herein) on Indo-British Fertilizer Education Project; vide order dated September 5, 1984 (Annexure P-3). The funds for this project were provided to Hindustan Fertilizer Corporation Limited by British Government under Education Programme for Agricultural Development. The appointment order (Annexure P-3) stipulated inter alia that the appointee would be on probation for a period of 6 months, which would be extendable at the discretion of the management. The petitioner on completion of probation period, was confirmed on his post by order dated July 10, 1989 (Annexure P-5) with effect from April 8, 1985. It was expressly stated in the confirmation order that petitioner's confirmation did not affect the purely temporary nature of his post. The exact wording contained in the confirmation

order may be reproduced : "His confirmation does not affect the purely temporary nature of post but only means that his services are liable to be terminated by one month's notice on either side or payment in lieu thereof. The petitioner continued in service, when by memorandum dated March 18, 1993 (Annexure P-7), his services were terminated with effect from March 31, 1993 on the alleged expiry of the "tenure" of Indo-British Fertilizer Education Project. The petitioner represented against his termination. The representation was accepted and the termination order (Annexure P-7) was cancelled vide order dated April 8, 1993 (Annexure P-9). It was stated in that order that the petitioner would continue to be on the roll of Indo-British Fertilizer Education Project till further order. The petitioner on April 19, 1993 made a representation (Annexure P-8) to Hindustan, Fertilizer Corporation Limited, stating that 244 employees of Indo-German Fertilizer Education Project (IGFEP) on closure of that project in 1985 were absorbed in FPARD/Marketing Division of Hindustan Fertilizer Corporation Limited and praying similar absorption in his favour. The representation did not apparently find favour with the management of the respondent and on August 24, 1993 a termination order was again given (Annexure P-1), stating that upon cessation of the work of Indo-British Fertilizer Education Project (IBEEP), the services of the petitioner, being on purely temporary basis, were no longer required and were being terminated with immediate effect. It was further stated that the petitioner was entitled to one month's salary in lieu of notice period, which he could collect from the Regional Office, Bhopal, M.P. It is this termination order (Annexure P-1) which is under challenge in this writ petition.

The petitioner's case is that he had completed more than 8 years of service. He had also been earlier confirmed. The impugned termination (Annexure P-1) without holding any kind of inquiry against him, was illegal, arbitrary and unconstitutional. Reliance was placed on the decision in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, laying down that order of termination of the service of a permanent employee by simply issuing a month's notice or pay in lieu thereof under Regulation 9(b) of Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952, without recording any reason in the order of termination and without giving any hearing to the employee is unreasonable, arbitrary, capricious and void. Secondly, the termination of the petitioner's service was, at any rate, "retrenchment" within the meaning of Section 2(oo) of Industrial Disputes Act, 1947. Since pre-requisites given in Section 25F *ibid* were not fulfilled, the retrenchment was invalid and inoperative. Reliance was placed on an Allahabad decision in U.P. Chalchitra Nigam Ltd. v. State of U.P. in 1991 1 CLR 478. Thirdly, it was contended that the petitioner was entitled to be atleast absorbed in some unit of Hindustan Fertilizer Corporation Limited, like 244 employees who were absorbed on closure of Indo- German Fertilizer Education Project into FPARD/Marketing Division of Hindustan Fertilizer Corporation Limited.

Having heard counsel for both the parties and perused the record, it is clear to us that the petitioner was not a permanent employee, albeit confirmed. He was

appointed on a temporary post on a Project, which was bound to be for a limited period of time. It is worthwhile to read the confirmation order (Annexure P-5). It was clearly stated therein as under:

" His confirmation does not effect the purely temporary nature of post but only means that his services are liable to be terminated by one month's notice on either side or payment in lieu thereof"

The only effect of the alleged confirmation order was that the petitioner could continue in service till the continuation of the Project and availability of the funds. In that sense, the petitioner's service continued to be temporary until the life of the Project.

The impugned termination (Annexure P-1) was not a punitive order. The principles of natural justice could not be attracted to that situation. The impugned termination expressly stated that termination was being done consequent upon cessation of work of the project in question, i.e., Indo-British Fertilizer Education Project. There was in our opinion no constitutional infirmity attached to the impugned termination.

The project could be said to be an "Industry" within the meaning of Section 2 of the Industrial Disputes Act, 1947, in as much as systematic activity was being carried on in that Project by co- operation between employer and workmen for rendering of temporal service; namely, to give education for agricultural development of the country. Provisions of Industrial Disputes Act 1947 were for that reason attracted to the present case. But was the impugned termination a "retrenchment" within the meaning of Section 2(oo), attracting the provision of Section 25F of the Act? In *Hariprasad Shivashankar Shukla v. A.D. Divikar*, AIR 1957 SC 121, the Supreme Court took the view that the word "retrenchment" as defined in Section 2(oo) did not include termination of services of all workmen on a bona fide closure of an industry or on change of ownership or management of the industry. It was explained that underlying assumption of "retrenchment" was that the undertaking was running as an undertaking and the employer continued as an employer, but if on account of transfer of the undertaking or on account of closure of the undertaking, the basic assumption disappeared, there could be no question of "retrenchment" within the meaning of the definition contained in Section 2(oo). The Parliament then stepped in and introduced Section 25FF and 25FFF by providing that compensation shall be payable to workmen in cases also of transfer of undertaking or closure of undertaking, as if the workmen had been retrenched. The result was that termination of the service of workman on transfer or closure of an undertaking is now treated as "deemed, retrenchment". To such "deemed retrenchment" falling outside the purview of Section 2(oo), the provisions of Sections 25FF or 25FFF, as the case may be, are attracted; but not the provision of Section 25F. Reference may be made to a decision of the Supreme Court in *Santosh Gupta Vs. State Bank of Patiala*,

In *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana*

and Others, (SC) the distinction between Sections 25F and 25FFF was clearly brought out. It was observed that u/s 25F a workman employed in an industrial undertaking cannot be retrenched by an employer until notice or pay in lieu thereof and compensation is paid as provided in Clauses (a) and (b) of Section 25F. In other words, these are conditions precedent for valid retrenchment u/s 25F. On the other hand, all that Section 25FFF provides is that the workman shall be entitled to notice and compensation in accordance with the provisions of Section 25F, if the undertaking is closed for any reason, as if the workman had been retrenched. Failure to comply with the provision prescribing conditions precedent for valid retrenchment in Section 25F render the order of retrenchment invalid and inoperative. But the legislature has not sought to place closure of an undertaking on the same footing as retrenchment u/s 25F. Payment of compensation and payment of wages for the notice period have not been made conditions precedent to retrenchment on closure under 2(oo) 25FFF. Section 25F lays down prohibition by employing the words "No workman employed in any industry....shall be retrenched". Section 25FFF lays down prohibition but speaks of entitlement of workman to receive notice and compensation. In other words, if these conditions are complied with simultaneously with the deemed retrenchment u/s 25FFF, the said termination is not rendered invalid and in-operative but the liability of the employer to make payment remains, which may be enforced.

Coming to the present case, the impugned termination (Annexure P-1) was on closure of the Project, i.e., of an undertaking . The petitioner did not raise any controversy either that there was no closure or that the Project question was not an undertaking. The expression "undertaking" as employed in Section 25FFF has been interpreted to mean a separate and distinct business or commercial or trade or industrial activity. (See Avon Services, (supra)). The expression "undertaking" is not intended to cover the entire industry or business of the employer. It should be a recognised sub-section or unit eligible for being styled as an undertaking. The idea is that if an indistinct mini-part of an industry having a separate existence, gets closed, the employer is expected to engage his workers into other wings of his industry; so that if he still terminates the services of those workers, he should comply with the provisions of Section 25F. It appears from various documents filed by the petitioner himself that the Project in question was an independent unit, as it was bound to be being financed solely from the funds of British Government under a definite programme. The Project was therefore an undertaking. The provisions of Section 25FFF were therefore squarely attracted. It further appears from the impugned termination (Annexure P-1) that one month's salary in lieu of notice period was offered to be paid to the petitioner. But in addition, retrenchment compensation at the rate of 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months, as provided in Clause (b) of Section 25F read with Section 25FFF, should have been paid to the petitioner on account of the termination. We can direct payment of that money, but the termination, in question being u/s

25FFF was not invalid or inoperative on account of non-payment.

This leaves for consideration the claim of the petitioner to be absorbed in Hindustan Fertilizer Corporation Limited. The claim cannot be said to be founded on any legal right. In the return filed by Hindustan Fertilizer Corporation Limited, even a factual controversy was sought to be raised. It was said that 244 employees who were absorbed on closure of Indo-German Fertilizer Education Project, were the employees of the Corporation itself, unlike the petitioner who was an employee on the Project in question. The claim for absorption is however founded on humanitarian ground. The petitioner had served for long 8 years and it was very hard that he was suddenly deprived of his job and thrown on the street. His case deserves to be sympathetically considered.

In conclusion, the petition is partly allowed. There is no case to interfere with the impugned termination (Annexure P-1). It is however directed that the respondent Hindustan Fertilizer Corporation Limited shall pay or tender for payment, one month's notice pay and requisite retrenchment compensation, indicated already, to the petitioner within one month from the date of this order. The petitioner shall within one month make a fresh representation to the respondent for absorption and the same shall be sympathetically considered and decided by the respondent within two months of the receipt thereof. No order as to costs.