

(1996) 09 CAL CK 0017
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction Original Side W.P. No. 1872 of 1996

Purna Theatre

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10(1), 2, 25(D), 25(G)
West Bengal Industrial Disputes Rules, 1958 — Rule 77A

Citation : (1998) 1 CALLT 135 : (1997) LabIC 997

Hon'ble Judges : Dibyendu Bhusan Dutta, J

Bench : Single Bench

Advocate : Mr. Arunava Ghosh and Mr. Ronojit Talukdar, for the Appellant; Mr. Partho Bhanja Chowdhury, Mr. Shib Shankar Ray and Swarup Pal, Mr. Pronob Chattopadhyay and Mr. Satyabrata Majumdar, for the Respondent

Judgement

1. The Court : The instant writ application is directed against the Award dated 28.12.95 passed by the Third Industrial Tribunal, West Bengal.

2. The facts and circumstances leading to the Award may, in substance, be stated as follows :--

3. The respondent workman was employed in the petitioner company w.e.f. 31.3.78. He was dismissed from service by the Company w.e.f. 20.7.85. A reference was made u/s 10(1) of the Industrial Disputes Act for adjudication of the justifiability of the said dismissal on 18.7.86. The said reference resulted in an Award dated 10.1.91 directing reinstatement of the workman and payment of all back wages. The workman made representation with the management for payment of back wages in terms of that Award and before his dues were paid by the company he resumed his duties on 1.5.91. He was subsequently retrenched from service by the company w.e.f. 6.6.91 in terms of notice of retrenchment Issued by the company on 30th May, 1991. The retrenchment was effected on the ground of the workman being found to be surplus and on payment of wages

in lieu of notice, wages for the period from the date of his resumption upto the date of retrenchment and retrenchment compensation. The union lodged a protest with the management on 4.6.91 against the said retrenchment. It was followed by another protest by the workman himself on 8.6.91. For realisation of the back wages amounting to Rs. 57,467.30 in terms of the Award dated 10.1.91, the workman filed an application u/s 33C(2) before the First Labour Court being computation case No.67 of 1991. The said application was settled on 29.9.92 in terms of the Joint petition dated 11.9.92 for a sum of Rs. 39,000/- which was directed to be paid by the company by Instalment. Over the retrenchment, an Industrial dispute was raised and it was ultimately referred to the Tribunal on 20.10.92. Written statements were filed on behalf of the workman on 14.9.93 challenging the legality of the retrenchment on two grounds namely that the company did not follow the principles of "last come first go" as contemplated u/s 25G and that due retrenchment compensation had not been paid as contemplated u/s 25F(b) of the Act. As regards the plea of non-payment of due retrenchment compensation, the workman's specific case was that the amount which he received in terms of the notice of retrenchment dated 30.5.91 was adjusted by him towards his claim for back wages in terms of the settlement arrived at in connection with his application u/s 33C(2) with the result that no retrenchment compensation as contemplated u/s 25F(b) was received by him.

4. The company filed written statement on 9.11.93 justifying the retrenchment on both the counts.

5. Evidence, both oral and documentary was led on behalf of the workman and the employer in support of the respective cases and the Tribunal passed the Impugned Award holding that the retrenchment was illegal and that the workman should be deemed to be in continuous service with all service benefits. The Tribunal did not virtually accept the workman's plea of adjustment of retrenchment compensation money against part payment of his back wages. The Tribunal was also not oblivious of the fact that the workman did not in his written statement question the adequacy of the compensation money. Nevertheless, in course of hearing of arguments, the Tribunal went on his own to ascertain whether the amount that was paid by the company towards retrenchment compensation in terms of section 25F(b) was really the amount that was required to be paid under the said provisions. In so doing, the Tribunal calculated the amount required to be paid as compensation on the basis of evidence on record and the company's admission regarding the quantum of average pay. On such calculation, the tribunal found that the requisite amount works out to Rs. 7187.37, while according to the notice of retrenchment issued by the company, a sum of Rs. 6634.50 was paid as retrenchment compensation. The Tribunal thus concluded that the amount paid by the company towards retrenchment compensation fell short of the amount that was required to be paid in terms of section 25F(b) and accordingly, it held that the requirements of section 25F(b) were not complied with by the company in the instant case. Regarding the ground of compliance with section 25G, the Tribunal does not appear to have

recorded a specific finding as to whether or not the said provision was complied with. But from the trend of Award, it appears that the Tribunal drew adverse Inference against the company on this point because of the fact that the company did not maintain seniority list required to be maintained under Rule 77A of the West Bengal Industrial Disputes Rules, and was of the view that for this omission on the part of the company the retrenchment deserved to be nullified.

6. Mr. Arunava Ghosh, learned Advocate appearing for the petitioner company, raised the following points.

First, it was urged that the Tribunal fell into error of law in coming to a conclusion that there was non-compliance of re-quirements of section 25F(b) Inasmuch as such a plea was never put forward on behalf of the workman in his written statement nor was it substantiated by any evidence. Secondly, it was contended that when the workman did neither raise any plea of inadequacy of the retrenchment compensation nor adduce any evidence in this regard, the Tribunal should not have embarked upon an Inquiry for the purpose of ascertaining whether compensation money was adequate or not. Thirdly, it was contended that as there was neither any pleading nor any evidence regarding the shortfall an the payment of retrenchment compensation, the Tribunal could not go into that question at the stage of argument. Fourthly, it was urged that omission to maintain seniority list under Rule 77A does not render the retrenchment Illegal or bad in law, particularly when there was clear admission on the part of the workman in his evidence that he was the last person to be employed in the category of workman to which he belonged and as much the Tribunal's finding. If there be any, regarding the observance of the principles of "last come first go" as contemplated u/s 25G was perverse and was not based on evidence. Mr. Ghosh cited a number of decisions in support of his contentions.

The said decision are reported in (i) AIR 1930 57 (Privy Council) (ii) 1977 LAB IC 823 (Lachman Das and anr. v. M/s. Indian Express Newspapers (Bombay) Put. Ltd. and anr.), (iii) 1980 FLR 95 (The Pioneer Ltd. v. State of U.P. and Ors.), (iv) 1974 CLJ 251 (Collector of Customs v. Biswanath Mukherjee), (v) 1980 Lab IC 894 (Management of Beverage & Food Products Put, Ltd. v. Presiding Officer, Industrial Tribunal Gauhati and Ors.) (vi) 1979 SCC (L&S) 279 (Sankar Chakravarti v. Britannia Biscuit Co. Ltd. and anr.), (vii) 1983 LAB IC 1285 (Bengal Coal Co. Ltd. v. Sew Pujan Harijan), and (viii) The Chancellor and Another Vs. Dr Bijayananda Kar and Others,

7. Mr. Partha Bhanja Choudhury. learned Advocate appearing for the respondent workman, challenged the maintainability of the writ application and made his submissions in justification of the impugned Award so far as it is based on the ground of non-compliance with the requirements of section 25F(b). Regarding the ground of non-observance of the principles of "last come first go" as contemplated u/s 25G. Mr. Choudhury did not virtually advance any argument in Justification thereof. The evidence on record clearly reveals the fact that the respondent workman was employed in the category of messenger cum bearer

and there is unequivocal admission on the part of the workman himself that Chabtlal also belonged to that category of workman and was senior to him, Mr. Choudhury was frank enough to concede that compliance with the provisions of Rule 77A of the Industrial Disputes Rules might entail a penalty for the employer but could not legally invalidate the retrenchment in question. Now, the Tribunal has not expressly recorded a clear finding on the question of compliance or non-compliance with the requirements, of section 25G. Even if it be assumed that the Tribunal found that the requirements of section 25G were not complied with, it must be held that such a finding would be perverse and not bases on evidence and would not accordingly be sustainable in law. Mr. Choudhury justified the Impugned Award solely on the ground of non-compliance with the requirements of section 25F(b). His contention is that the rules of pleadings do not strictly apply to the Industrial adjudication. The pleadings, according to him. were such that it could not take the employer company by surprise. If the prerequisites for a valid retrenchment are not complied with as contemplated u/s 25F(b), the retrenchment is void ab initio. According to Mr. Choudhury, the conditions laid down in clause (b) of section 25G are mandatory conditions and non-compliance thereof would at once go to the root of the retrenchment rendering the retrenchment void ab initio. It is a question of law based on facts which were not disputed before the Tribunal and as such, Mr. Choudhury submits that the Tribunal was justified in examining the question as to whether the mandatory, requirements of section 25F(b) were complied with or not Mr. Choudhurl further submits that on the company's own showing, the amount offered towards retrenchment compensation fell short of what was required to be paid under the law and there was no legal scope for the company to make up the shortfall even if it were specifically pointed out to the company that the amount paid by the company fell short of the amount required to be paid u/s 25F(b), inasmuch as the payment of the requisite money compensation was a condition precedent of a valid retrenchment and tf the condition precedent remained unfulfilled at the time when the retrenchment takes effect, the retrenchment would not be validated by subsequent fulfilment of the said condition precedent. Being a question of law, the Tribunal, according to Mr. Choudhury. was within its jurisdiction to examine the question and to hold the retrenchment to be legally void and inoperative on the basis of the result of such examination. Mr. Choudhury cited several decisions in support of his contentions.

The said decisions are reported in (1)1981 LAB. 1C 806 (Mohan Lal v. The Management of M/s. Bharat Electronics Ltd.), (ii) 1964 (1) LLJ 737 (Tandur and Navandgl Stone Quarries (Private), Ltd., and Their workman). (iii) 1991 LAB. IC 814 (M. Arunagiri v. Data India Ltd. & Ors). (iv) 1994 (69) FLR 31 (Girish Kumar Jain v. Union of India and Ors.) (v) 1965 (II) LLJ 824 (B.N. Ettas & Co. (Private), Ltd. v. Fifth Industrial Tribunal, West Bengal, and Ors.) (vi) Somu Kumar Chatterjee and Another Vs. District Signal Tele-Communication Engineer and Another, (vii) 1975 LAB 1C 94 (Ramendra Narayan Deb v. 8th Industrial Tribunal. West Bengal & Ors.) and (viii) 1981 (1) LLJ 363 (Ramani Mohan Industrtaes

Private Ltd. v. 2nd Industrial Tribunal).

8. Let me now chronologically find out the ratio decidendi from the decisions cited on behalf of the petitioner company as well as the respondent workman.

9. In AIR 1930 Privy Council 57, it was held that no amount of evidence could be looked into upon a plea which was never put forward.

10. In 1977 LAB IC 823, the stand taken by the petitioner from the very beginning was that the termination of the service was mala fide and by way of an unfair labour practice and they never took the stand that the termination was by way of retrenchment. The Division Bench of the Delhi High Court, following the principle laid down by the Privy Council in AIR 1930 Privy Council 57, held that the petitioners could not be allowed to take such a stand and the labour court of its own accord could not have so held that the termination of service was by way of retrenchment in the absence of such a stand being taken by them.

11. In 1980 (41) FLR 95, the employers in their written statement before the Labour Court did not set up any plea that the services of respondent-workman had been terminated on the ground of his having attained the age of superannuation. This question was for the first time raised during the course of arguments and the Labour Court held that in the absence of any pleadings the employers were not entitled to raise this question at that stage. The Division Bench of the Allahabad High Court was of the view that the Labour Court rightly rejected the contention on the ground of absence of pleadings. It was held that strict rules of pleadings are not applicable before the Labour Court nonetheless a party cannot take the other party by surprise at the stage of argument.

12. In 1974 CLJ 313, the following principles of law were enunciated on the question of perversity of a Tribunal's finding vis-a-vis a writ petition under Article 226 of the Constitution. The finding of the Tribunal would be perverse if--(a) it comes to the finding on no evidence; (b) the Tribunal has based the finding on materials not admissible and excluded relevant materials; (c) the Tribunal has not applied its mind to all the relevant materials and has not considered the same in coming to the conclusion; (d) the Tribunal has come to the conclusion on the material which is irrelevant or which is partly relevant and partly irrelevant; (e) the Tribunal has disabled itself in reaching a fair decision by some considerations extraneous to the evidence and the merits of the case; (f) the Tribunal has based finding on conjectures, surmises and suspicion; (g) the Tribunal has based the finding upon a view of facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found and (h) if the Tribunal in conducting the enquiry has acted in flagrant disregard of the rules of procedure or has violated the principles of natural justice, where no particular procedure is prescribed. In view of the aforesaid tests of perversity, Mr. Arunava Chosh submitted that the Tribunal's finding on the question of non-compliance with the requirements of section 25G was perverse.

13. In 1980 LAB IC 894, neither directly nor Indirectly any ground was taken by the workman that the application u/s 33(2)(b) was not filed simultaneously with the order of dismissal. The workman took other crucial objection as contained in proviso to section 33(2)(b) namely that the employer had not paid any wages required under the said proviso. He, however, made no grievance that the application had not been filed simultaneously with the order of dismissal. In the written statement. As such, the management had no idea that it was to adduce any evidence to satisfy the mind of the Tribunal to explain why the petition could not be filed between 24.10.72, the date of dismissal, and 2.11.72, the date on which actually the application for approval was presented. Before the High Court, the petitioner however came up with a very cogent explanation for the delay or at least there was a cause shown for the delay which requires due consideration by the Tribunal that was Illness of the Managing Director said to be the competent authority to sign the application. At the argument stage, a point cropped up that the application for approval was not made simultaneously with the order of dismissal and as such it was not maintainable. The single Bench of the Gauhati High Court observed: "it is true that proceedings before the Industrial Tribunal are not governed strictly according to the procedure followed by the court. However, the Tribunals are quasi-Judicial authorities..... They are bound to act quasi-judicially. They have duty "to act fairly" and conduct proceedings conformably with the "audi alteram Partem" rule. It is also equally true that pleadings of the parties ought to be construed liberally as the Advocates are not even permitted to appear unless permitted by the presiding Officer with the consent of the other side. However, a party has a "right to know" the case of his adversary enabling him to meet the challenges. Written statements are called for enabling the party to set out his case as well as to give the adversary an opportunity to meet the objection..... Naturally when no such objection had been taken the, petitioner adduced no evidence explaining the delay. Ordinarily, when no such objection is taken. It is assumed that the adversary has no grouse or objection. Therefore, when the objection was taken at the hearing the petitioner was taken by surprise. The petitioner has rightly contended that opportunities should have been granted to it by the Tribunal before the determination of the point not urged in the written statement The petitioner could have satisfied the Tribunal that it has sufficient cause for not presenting the application prior to the 2nd day of November, 1972..... the question as to the delay came up suddenly during the course of argument, the petitioner was taken by surprise. The petitioner argued the case but had not had any material to bear up its plea Even If the question of delay is taken at the hearing, the Tribunal ought to allow the party to produce evidence in support of its plea. If any. Only on his refusal or failure to adduce evidence the learned Tribunal can proceed to determine the case." The High Court ultimately held that the purported determination was invalid because of the fact that the ground on which the application was rejected had not been raised or pleaded by the respondent.

14. in 1979 Supreme Court Cases (L&S) 279 at page 296, the Supreme Court

observed; "parties are arrayed before these quasi-judicial Tribunals either upon a reference u/s 10 or section 33. There is thus a lis between the parties. There would be assertion and denial of facts on either side. With the permission of the Tribunal and consent of the opposite side, parties are entitled to appear through legal practitioners before these quasi-judicial Tribunals. The system adopted by these Tribunals is an adversary system, a word as understood in contradistinction to Inquisitorial system. The Labour Court or Tribunal would then proceed to decide the lis between the parties..... While it may not be bound by the rules prescribed in the Evidence Act, it is nonetheless a quasi-judicial Tribunal proceeding to adjudicate upon a lis between the parties and must decide the matter on the evidence produced by the parties before it. It would not be open to it to decide the case on any extraneous considerations." The Supreme Court further observed at page 297 : "obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence is led. A contention to substantiate which evidence is necessary has to be pleaded. If there is no pleading raising a contention there is no question of substantiating such a non-existing contention by evidence. It is well-settled that an allegation which is not pleaded, even, if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained it would be tantamount to granting an unfair advantage to the first mentioned party. We are not unmindful of the fact that pleadings before such bodies have not to be read strictly, but it is equally true that the pleadings must be such as to give sufficient notice to the other party of the case it is called upon to meet. The rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question of proving something which is not pleaded. This is very elementary."

15. The decision reported in 1983 LAB I C 1285 does not appear to have any relevance to the facts and circumstances of the case.

16. In (1994) 1 Supreme Court Cases 169, facts regarding two letters were not specifically pleaded in the petition but a mention about these letters was made in an application of summoning of records, the High Court's decision to quash the appointment was based on these two letters. The Supreme Court held that the said decision was invalid because the Vice Chancellor, who was not before the High Court, did not get opportunity to give his own explanation or that of the syndicate about these letters.

17. These are all about the decisions that were referred to on behalf of the petitioner company.

18. I now come to the corresponding citations that were made on behalf of the workman.

19. In Mohan Lal Vs. Management of Bharat Electronics Ltd., the Supreme Court

held that it is well settled that where pre-requisite for valid retrenchment as laid down in section 25-F has not complied with, the retrenchment is ab initio void, and that where there is an Ineffective order of retrenchment, there is neither termination or cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits, namely, back wages in full and other benefits,

20. In 1964 (I) LLJ 737, the Supreme Court observed that in industrial adjudication, tribunals are reluctant to apply the law of pleadings, in all its strictness. Hence, the fact that all aspects of the question in reference to the character of the labourers' employment was not set out by them in their written statement, could not affect the credibility of the evidence let in by them at the trial before the Industrial Tribunal.

21. In 1991 LAB I C 814. the Division Bench of the Madras High Court held that the plea relating to non-compliance of section 25F being based on a question of law without dispute over facts could not be refused to be considered when the same is sought to be raised.

22. In 1994 (69) FLR 31, the question fell for examination as to whether section 25-F has or has not been complied with and the Rajasthan High Court found that the compensation which was required to be paid u/s 25F(b) fell short. The High Court held that if the amount payable u/s 25F(b) falls short, the order of retrenchment cannot be sustained as there has been non-compliance with the provisions of section 25F(b) and since the retirement was effected without complying with the provisions of section 25F(b), the same was held to be non est.

23. In 1965 (II) LLJ 824, certain workmen were retrenched without being paid retrenchment compensation immediately. The retrenchment compensation was paid within one month of the retrenchment. The dispute in regard to the retrenchment was referred for adjudication and the concerned workmen received the compensation in final settlement. The tribunal found that the retrenchment was justified, but in view of the fact that the retrenchment was effected without complying with the statutory provisions contained in section 25F(b), it directed the payment of one month's wages by way of compensation. The Calcutta High Court followed the Supreme Court decision in the State of Bombay v. Hospital Mazdoor Sabha (1960 LLJ page 251 and 255) and held that the requirement of section 25F(b) is a condition precedent to the retrenchment and that where the compensation money has not been paid prior to the time of retrenchment becomes invalid and inoperative.

24. In 1970 (II) LLJ 179. the Division Bench of the Patna High Court held that the conditions prescribed u/s 25F(b) are obligatory and conditions precedent and that non-payment of compensation at the rate prescribed u/s 25F(b) before retrenchment renders the retrenchment illegal and bad in law. It was further held that subsequent payment of compensation could not validate an illegal retrenchment.

25. The decision reported in 1975 LAB 1C 94 does not appear to be of much relevance in the facts and circumstance of the present case.

26. In 1981 (1) LLJ 363, our High Court held; "The provision of section 25F is mandatory. If there is any non-compliance with the said provision, the order becomes illegal. If the order becomes illegal, then the position is as if there is no such order at all and in such a case such retrenchment cannot be given effect to at all in any manner whatsoever. If the retrenchment is in violation of section 25F, the employee concerned remains an employee and the question of awarding some compensation regarding his wages without granting reinstatement cannot and does not arise."

27. Undisputedly, the condition prescribed in Clause (b) of section 25F is a condition precedent to the retrenchment and the law is well settled that this condition precedent is a mandatory condition, non-compliance with which at once goes to the root of the retrenchment and renders it illegal, Inoperative and void ab initio. Clause (b) of section 25F requires the workman to be paid by the employer, at the time of retrenchment, compensation which shall be equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months. The admitted fact remains that the respondent workman joined the services under the petitioner company on 31.3.78 and his service was terminated by way of retrenchment w.e.f. 6.6.91 with the result that he had put in 13 completed years of continuous service and a marginal fraction of a year, which is not in excess of six months. Now, "average pay" as defined in section 2(aaa) means "the average of the wages payable to a workman.

(i) in the case of monthly paid workman. In the three complete calendar months,

(ii) in the case of weekly paid workman, in the four complete weeks, and

(iii) in the case of daily paid workman. In the twelve full working days, preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.

28. As per statement of calculation furnished by the employer in the notice of retrenchment that was Issued to the workman, the workman was offered Rs. 1105.75 towards one month's wages in lieu of notice as required under Clause (a) of section 25F. According to the written statement of the workman, at the time of his retrenchment, he used to draw wages at the rate of Rs. 1105.75 per month. From the Impugned Award as well, it Will transpire that the company accepted the fact in course of hearing of arguments before the Tribunal that the sum of Rs. 1105.75 represents the "average pay" of the workman. There is thus no escape from the conclusion that 15 days average pay of the workman for 13 completed years of his continuous service would amount to Rs. 7187.37 which

far exceeds the sum of Rs. 6634.60 which was admittedly offered by the company at time of retrenchment towards the retrenchment compensation. In other words, it is thus apparent on the face of the materials on record that the retrenchment compensation paid by the company to the workman at the time of retrenchment fell short of the amount that was required to be paid u/s 25F(b). This, undoubtedly, is a conclusion from which there is hardly any escape and Mr. Ghosh appearing for the company could not place anything before this court so as to warrant a conclusion that the figure which the tribunal arrived at in determining the compensation money required to be paid u/s 25F(b) did not represent the correct figure. The statement of calculation disclosed in the notice of retrenchment does not specify the basis of calculating the retrenchment compensation and arriving at the figure Rs. 6634.50. It is also the settled principle of law that the rules of pleadings do not strictly apply to an industrial adjudication. The pleadings, however, must be such as to give sufficient notice to the other party of the case, it is called upon to meet, the question whether the payment of Rs. 6634.50 as retrenchment compensation was made in compliance with the requirements of section 25F(b) was evidently a question of law which is, however, based on facts which were not in dispute in the instant case. Soon after the retrenchment, the workman in his representation dated 8.6.91 addressed to the management complained of violation of the provisions of section 25F, without, however, specifying in so many words that the said violation was committed by reason of the fact that the amount paid fell short of the amount required to be paid. It is true that in the written statement the workman took the stand that due retrenchment compensation had not been paid by the employer on the ground that the amount that was paid as per notice of retrenchment was received by the workman in adjustment against the part payment of his back wages that were made payable under the terms of the earlier Award dated 10.1.91 directing his reinstatement. Here also the workman did not specifically take the stand that there was a shortfall in the retrenchment compensation payable u/s 25F(b). But then, it was well within the knowledge of the employer what was the average pay of the workman and how many completed years of continuous service were put in by the workman before the impugned retrenchment was effected. If the company made payment of the compensation which falls short of the amount required to be paid it must have done so at its risk because even if they arrived at the figure on a mistaken calculation such mistake could only be rectified before and not after the retrenchment was effected. Law is again settled on the point that a retrenchment which is void ab initio or Illegal or Invalid or Inoperative by reason of non-compliance with the requirements of section 25F(b) could not be rendered valid, legal and operative by subsequent compliance with those requirements. The condition laid down in section 25F(b) is a condition precedent which has to be fulfilled at the time of retrenchment. It is also a mandatory condition which cannot be given a go by. Relying on the Rajasthan High Court Judgment reported in 1994 (69) FLR 31, it can be held that the payment of an amount which falls short of the amount required to be paid as retrenchment compensation within the meaning of section

25F(b) cannot be considered to be a payment in strict compliance with the requirements of section 25F(b). Had the workman pleaded the factum of shortfall in the amount of compensation specifically in his written statement, even then the company would have had no scope to make up the shortfall in the proceeding before the Tribunal and thereby render the retrenchment valid. Payment of an amount which fell short of the amount required to be paid as compensation money u/s 25F(b), in my view, goes to the root of the retrenchment and the Tribunal, which was required to decide the question of legal justifiability of the Impugned retrenchment, was well within its jurisdiction in examining the question of compliance of the requirements of section 25F(b) and in doing so simply discovered the defect which was already there and could not then be repaired.

29. Thus, regard being had to the principles of law discussed above in the light of the facts and circumstances of the instant case, I have no hesitation to hold that the Impugned retrenchment was effected without complying with the mandatory requirements of section 25F(b) of the Industrial Disputes Act and that the Tribunal was well within its jurisdiction in recording a finding to that effect. Such a retrenchment must, accordingly, be held to be void ab initio and consequently, the respondent must be deemed to be in service and entitled to all consequential benefits. I, therefore, find no justification for quashing the Impugned Award. In such view of the matter, the petitioner is not entitled to any relief and the instant writ application fails. The writ application is, accordingly, dismissed without, however, any order as to costs.

30. Application dismissed