

(2010) 09 MP CK 0056
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4779 of 2000

Rajesh Kushwaha

APPELLANT

Vs

M.P. Rajya Beej Avam Farm Vikas Nigam and Another

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2011) ILR (MP) 665

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Yadav, J.—Controversy raised in the present petition lies within the narrow compass as to whether the Petitioner, a workman, could have been terminated from service which he rendered as a workman for 10 years without following the provisions contained u/s 25F of the Industrial Disputes Act (hereinafter referred to as the Act of 1947).

2. The Respondents/M.P. Rajya Beej Avam Farm Vikas Nigam is an industry as defined u/s 2(j) of the Act of 1947 as the same is engaged in activities as defined thereunder. "Industry" under the Act of 1947 is defined as:

(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

3. The Petitioner was engaged as semiskilled worker on daily wages on the muster roll since 1989 and uninterruptedly continued to discharge his work in the said capacity till 1993.

4. That in the year 1995 the Petitioner was considered for regular appointment on the post of Junior Production Assistant but the same was rejected on the ground that the Petitioner was not eligible for such a regular appointment.

5. Thereafter, vide order dated 08-07-2000 services of the Petitioner were terminated on the ground that the same are no more required and the Petitioner was paid towards one month notice.

6. It is this order of termination which is being assailed by the Petitioner in the present petition on the ground that the same is illegal and discriminatory because the Respondents have permitted other daily wage workers engaged much after the Petitioner and that there was non-compliance of Section 25F of the Industrial Disputes Act, 1947 before terminating the Petitioner from service.

7. During the course of hearing it was submitted by the Learned Counsel for the Petitioner that the Petitioner having rendered more than 240 days of service was entitled for the protection as is granted u/s 25F of the Act of 1947. It is urged that the Petitioner though has worked for more than 10 years was not granted any retrenchment compensation and was terminated from service only on notice pay.

8. Learned Counsel for the Petitioner places reliance on the judgment rendered by the Supreme Court in Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana), . It is urged that the services of the Petitioner have been terminated without following the procedure laid down u/s 25F of the Act of 1947, the same is therefore liable to be set aside and the Petitioner be reinstated with full back wages.

9. The Respondents while refuting the contentions put forth on behalf of the Petitioner, raises an objection that the Petitioner if the claims himself to be workman and Respondents as an industry, has a remedy available under the Act of 1947 before the Labour Court; wherein, the dispute can be sorted out in accordance with the provisions therein. It is further contended that the Petitioner was engaged purely on daily wages and though worked for about 10 years, did not acquire any status in the Respondents' establishment nor any lien on any post as the Petitioner was not engaged against any vacant regular post. It is submitted that the Petitioner was daily wage worker and since his services were no more required the same were rightly dispensed with by tendering notice pay.

10. Having considered the submissions put forth by the respective counsel and in view the facts of present case and the law laid down in Anoop Sharma (supra) this Court is of the considered opinion that the petition deserves to be allowed.

11. True it is that, there exists an alternative remedy under the Act of 1947 but the same would be when there are disputed facts to be adjudicated calling for recording evidence of the employee and the management.

12. In the instant case since it is not in dispute that the Petitioner was initially engaged in the year 1989 and continuously discharged his duties till 2000 when his services were terminated by the impugned order dated 08-07-2000 and that there is non-compliance of Section 25F of the Act of 1947 coupled with the fact that the Respondents being engaged in the business activities are an "industry"

under the Act of 1947.

13. In *Anoop Sharma* (supra) it was observed by their Lordships:

16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity—*State of Bombay v. Hospital Mazdoor Sabha*, *Bombay Union of Journalists v. State of Bombay*, *SBI v. N. Sundara Money*, *Santosh Gupta v. State Bank of Patiala*, *Mohan Lal v. Bharat Electronics Ltd.*, *L. Robert D'Souza v. Southern Railway*, *Surendra Kumar Verma v. Central Govt. Industrial Tribunal cum Labour Court*, *Gammon India Ltd. v. Niranjana Dass*, *Gurmail Singh v. State of Punjab* and *Pramod Jha v. State of Bihar*.

18. This Court has used different expressions for describing the consequence of terminating a workman's service/ employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as *ab initio* void, sometimes as *illegal per se*, sometimes as nullity and sometimes as *non est*. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

19. The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25-F must accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he is asked to go was considered in *National Iron and Steel Company Ltd. v. State of West Bengal*. The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that

there was sufficient compliance of Section 25-F was rejected by this Court by making the following observations:

9. The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25-F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date 15-11-1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on 20-11-1958 or thereafter during the working hours. Manifestly, Section 25-F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25-F, we need not consider the other points raised by the Learned Counsel.

20. In SBI v. N. Sundara Money the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F(b).

21. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar in the following words: (SCC pp.624-25, para. 10)

10... The underlying object of Section 25-F is two fold.

Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period.

Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment.

Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment

(Emphasis in original)

22. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25-F of the Act.

14. In view of above and the facts obtaining in present writ petition that the provision contained u/s 25F of the Act of 1947 was not followed, the petition is allowed. The termination order dated 08-07-2000 is hereby set aside. In the peculiar facts of present case the Petitioner is held entitled for 50% of the back wages from 08-07-2000 till reinstatement. Let the compliance be effected within a period of three months from the date of communication of this order.

15. The petition is allowed to the extent above. However, no costs.