

(1998) 11 P&H CK 0077
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1913 of 1982

Rajinder Singh C/o Amritsar Transport Workers Employees Union (Regd.) APPELLANT

Vs

State of Punjab and others RESPONDENT

Date of Decision : 03-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 11A, 2, 25F, 25G

Citation : (1999) 121 PLR 237

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : I.S. Bajwa, for the Appellant; H.S. Gill, D.A.G., for the Respondent

Judgement

V.S. Aggarwal, J.—Petitioner Rajinder Singh had been appointed as a conductor in the Punjab Roadways. His services were terminated on July 12, 1978 without any inquiry or charge-sheet. The industrial dispute was referred to the Labour Court, Amritsar u/s 10(1)(c) of the Industrial Disputes Act 1947. The respondent had contested the claim while the petitioner alleged that there was no inquiry or charge-sheet that had been served, the respondent's claim was that appointment of the petitioner was purely on temporary basis; his services could be terminated at any time without any notice; the same has been terminated in accordance with the said terms. The Presiding Officer, Labour Court on November 27, 1981 held that the termination order is challenged on the ground that his juniors were retained in the service and that there was a violation of Section 25G of the Industrial Disputes Act. The Labour Court held that Section 25G of the Industrial Disputes Act is not applicable, because service of the petitioner could be terminated at any time. Accordingly, the termination order was held to be justified.

2. The petitioner assails the said award of the Labour Court by invoking Articles 226 and 227 of the Constitution of India. It is alleged that services of the

petitioner were terminated, while persons junior to him were retained. So long as the persons junior to the petitioner were working in the same department, he had a right to be retained. He referred to Section 25G of the Industrial Disputes Act in this regard. In the reply filed in this Court, the defence is by and large identical. It is not disputed that the petitioner had worked with Punjab Roadways, Tarn-Taran; he was appointed on January 17, 1978 on temporary basis. The services of the petitioner were terminated on July 12, 1978. Section 25G of the Industrial Disputes Act was alleged to be not applicable.

3. First and foremost question as is apparent from the facts recorded above for consideration is as to whether the petitioner was retrenched from his service or not. The Supreme Court in the case *The State Bank of India Vs. Shri N. Sundara Money*, has considered this question and referred to the words "Termination ... for any reason whatsoever" held that it would be retrenchment, unless the case falls u/s 2(oo) of the Industrial Disputes Act. In paragraph 10, the Court held :-

"A break-down of Sec. 2(oo) unmistakably expands the semantics of retrenchment. "Termination ... for any reason whatsoever" are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated ? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effecutated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(oo). Without speculating on possibilities, we may agree that "retrenchment" is no longer terra incognita but area covered by an expansive definition. It means to end, conclude cease; In the present case the employment ceased, concluded, ended on the expiration of nine days - automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Sec. 25F(b) is inferable from the proviso to Section 25F(a). True the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient."

4. The said earlier decision has been approved in the subsequent decision of the said Court in the case *Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another*, The decision in the case *State Bank of India (supra)* was approved and it was held that when there is termination by the employer otherwise than as a punishment inflicted by way of disciplinary action and those expressly excluded by Clauses (a), (b) and (c) of Section 2(oo) of Industrial Disputes Act, it would be retrenchment. The Supreme Court held that :

"There has been a change in the law relating to retrenchment since the decision

of this Court in *The State Bank of India Vs. Shri N. Sundara Money*, wherein "retrenchment", as defined in Sec. 2(oo), was construed to mean termination howsoever produced and all termination except those specified in Cls. (a), (b) and (c) of Sec. 2(oo) were held to be retrenchment. The said view in *State Bank of India v. N. Sundara Money* (supra) was reiterated in the subsequent decisions of this Court in *Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others*, *Santosh Gupta Vs. State Bank of Patiala*, : *Hindustan Steel Ltd. v. Presiding Officer Labour Court* 1977 AIR SC 31 *Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another*, : *Mohan Lal Vs. Management of Bharat Electronics Ltd., Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another*, and *Gammon India Limited Vs. Niranjana Dass*, . The matter now stands concluded by the decision of the Constitution Bench of this Court in *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, wherein the decision in *State Bank of India v. N. Sundara Money*, (supra) and subsequent decisions have been approved and it has been held that retrenchment, as defined in Section 2(oo), means termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action and those expressly excluded by Cls. (a), (b) and (c) of the definition. In view of these decisions, it cannot be said that retrenchment means termination by the employer of the service of a workman as surplus labour and, therefore, the law that was laid down by this Court in *D. Macropollo and Co. (Private) Ltd. Vs. D. Macropollo and Co. (Private) Ltd. Employees' Union and Others*, *Parry and Co. Ltd. Vs. P.C. Pal and Others*, on the basis of the said restricted meaning of retrenchment cannot be held to govern the exercise of the power by the appropriate Government or the authority under sub-sec. (2) of 25N. It is significant that even according to these decisions existence of proper reasons was restriction on the employer's right of retrenchment earlier also. It is only the scope of the reasons which has undergone a change with this alteration in the law."

5. In the present case in hand the case of the petitioner does not fall under Clauses (a), (b) and (c) of Section 2(oo) and, therefore, it must be taken to be retrenchment. Reference in this connection can well be made in the case *Chief Engineer, Thermal Power House, Faridabad v. Presiding Officer, Labour Court, Faridabad* 1996 (3) SLR 353 in paragraph 3 the Court held :-

"Learned counsel appearing for the petitioners submitted since the service of the workmen were terminated on account of non-renewal of their contract of employment, therefore, their termination did not amount to retrenchment within the meaning of Section 2(oo)(bb) of the Act and the management was not obliged to comply with the provisions of Section 25F of the Act. There is no merit in this submission. Admittedly, the services of the workmen were terminated on August 31, 1982 and clause (bb) of Section 2(oo) of the Act on which reliance has been placed was introduced by Central Act 49 of 1984 with effect from

August 18, 1984. Amendment brought about in the definition of retrenchment does not operate retrospectively and, therefore, the case of the workmen-respondents is not governed by this clause. In the absence of this clause, the termination even though the efflux of time would be covered by the definition of retrenchment as it stood prior to August 18, 1984 and, therefore, the Labour Court was right in holding that the termination was illegal having been brought about in violation of the provisions of Section 25F of the Act."

6. In the present case also, the termination order is before Central Act 49 of 1984 and, therefore, it must follow that it was retrenchment contemplated u/s 2(oo) of the Industrial Disputes Act.

7. Taking advantage of the above facts, it was urged that the juniors of the petitioner had been retained. Reference in this connection was made to Section 25G of the, Industrial Disputes Act, 1947, which reads :-

25-G Procedure for retrenchment - Where any workman in an industrial establishment who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen, in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."

8. It is abundantly clear from the plain language of Section 25F that firstly there should be a retrenchment. The worker should belong to a particular category in the establishment and if the junior is retained, the reason must be recorded by the employer before retrenching the workman. There should be no agreement to the contrary.

9. This Section provides the procedure in effecting retrenchment and if there is no agreement to the contrary, ordinarily the last man to be employed must go first. It is not being disputed that juniors had been retained. Once that is the position, there can be no justification for retrenchment of the petitioner.

10. The learned Labour Court has relied upon the decision of this Court in Civil Writ Petition No. 3123 of 1979 decided on April 30, 1981. The perusal of the cited judgment reveals that this Court in the cited case was considering Section 11A read with Section 25H and 25G of the Industrial Disputes Act. The facts of the present case are totally different, because in the present case certain juniors had been retained. That was not so in the cited case State of Punjab v. Gurjit Singh. The respondent, therefore, cannot take advantage of the cited decision. The impugned award, therefore, cannot be sustained.

11. However, the impugned order had been passed 20 years ago. In these circumstances, the interest of justice certainly does not require that an order reinstating the petitioner should be passed. Adequate compensation would meet the ends of justice. Accordingly it is directed that respondent No. 3 shall pay Rs.

10,000/- as compensation to the petitioner. Order is made accordingly.