
(1990) 07 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 251 of 1990

Rakesh Kumar

APPELLANT

Vs

The Forests Research Institute

RESPONDENT

Date of Decision : 11-07-1990

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15, 15(1)
Industrial Disputes Act, 1947 — Section 2, 25B, 25F

Citation : (1991) 1 ShimLC 62

Hon'ble Judges : P.C.B. Menon, C.J.;D.P. Sood, J

Bench : Division Bench

Advocate : Rajiv Sharma, for D.R.S, for the Appellant; P.A. Sharma, Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

P.C. Balakrishna Menon, C.J.—By this writ petition a daily rated workman under the Respondent, namely. The Forest Research Institute and Colleges, (Conifer Research Centre), Simla, seeks a declaration that his retrenchment from service as a daily rated workman is illegal and void and for a direction for issue of a muster-roll to him with all consequential benefits.

2. The Petitioner was appointed as a daily rated workman for cleaning the office and laboratories of the Respondent and also for watch and ward duties. According to him he was retrenched from service on 1st May, 1990 and the Respondent refused to issue muster-roll to him; his non-employment, according to him, amounts to retrenchment and the retrenchment is opposed to Section 25-F of the Industrial Disputes Act, 1947, (hereinafter to be referred to as the Act).

3. The Respondent has filed an affidavit-in-reply, alongwith a statement Annexure R-A to indicate the number of days that the Petitioner had worked each month after his engagement in January 1986. Annexure R-A shows that he had worked for 327 days in 1986; 330 days in 1987; 75 days in 1988; 332 days in 1989 and 107 days until the end of April 1990. He was not engaged from 1st

May, 1990 onwards. The number of days that the Petitioner had worked, as disclosed by Annexure R-A, would satisfy the requirement of Section 25-B of the Act and subject to the other objections raised by the Respondent, he is entitled to the benefits of Section 25-F of the Act. The Respondent does not dispute that if the Petitioner is a workman and the Industrial Disputes Act applies to the present case, the Petitioner is entitled to a notice under Clause (a) and retrenchment compensation under Clause (b) of Section 25-F of the Act. There is also no dispute that no such notice or retrenchment compensation was paid in the present case. According to the Respondent, the Petitioner could not be continued for the reason that there was no work for him from May, 1990 onwards.

4. The Respondent has raised a preliminary objection that the writ petition before this Court is barred u/s 15 of the Administrative Tribunals Act, 1985. This point is covered by the decision of a Division Bench of this Court in Jagdev Singh v. State of Himachal Pradesh and Ors. ILR 1987 HP 475. On the question of jurisdiction of this Court to entertain writ petitions relating to the service conditions of daily-rated workmen, the Division Bench held at page 48:

In view of the material which has been placed on the record of the case in relation to the daily-rated employees, there is hardly any basis to contend that those employees are covered by the provisions of Sub-section (1) of Section 15 and that, therefore, the jurisdiction powers and authority of this Court to determine the dispute, if any, in relation to matter such as their employment or termination, remuneration, seniority, the limited benefits to which they are entitled and such or similar matters is now lost and stands vested in the Tribunal. The main condition, which is required to be satisfied for the applicability of Sub-section (1) of Section 15, is that the case must relate to recruitment and matters concerning recruitment to any civil service or post or service matters concerning a person appointed to any civil service of the State or to any civil post under the State and concerning his service in connection with the affairs of the State. In view of the fact that no civil service or civil posts exist in which daily-rated workmen are appointed and also that no specific conditions of service governing all the daily waged employees are prescribed by the State Government, the condition precedent to the applicability of Sub-section (1) of Section 15 is not satisfied insofar as the daily-rated employees are concerned.

This decision of the Division Bench is binding on us and the correctness of the same is not under challenge before us. We, therefore, over-rule the preliminary objection relating to the maintainability of the writ petition.

5. It is next contended that the Respondent is a Research Institute and is not an industry within the meaning of Section 2(j) of the Act. We see no merit in this contention also in the light of the decision of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . In that case the Supreme Court held that the institution will be an "industry" within the meaning of the Act if it involves (i) systematic activity, (ii) organised by co-operation between employer and employee; and (iii) for the production and/or distribution

of goods and services calculated to satisfy human wants and wishes (not spiritual or religious). It has been pointed out that absence of profit or gainful objective is irrelevant; whether the venture is in public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relationship. It is further stated that all organised activity possessing the triple elements aforesaid, although not trade or business, may still be "industry" if the nature of the activity, viz, the employer-employee basis, bears resemblance to what we find in trade or business. The Supreme Court at page 588 considering the nature of Research Institutions stated thus:

Does, research involve collaboration between employer and employee? It does. The employer is the institution the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it magnificently on this gratified and grateful earth, thanks to conversion of his inventions into money a plenty Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries.

Following the above decision of the Supreme Court, the Rajasthan High Court in *Union of India v. Mahaveer Prasad* 1982 IFLR (44) 85, has held that the Central Arid Zone Research Institute, Jodhpur, is an "industry" within the meaning of the Act.

6. The Allahabad High Court in the *Indian Institute of Petroleum, Dehradun v. State of Uttar Pradesh and Ors.* (1985) 3 SLR 241, had held that the Indian Institute of Petroleum, Dehradun falls within the definition of "industry" under the Act.

7. The National Remote Sensing Agency which is a Research Institute is held to be an "industry" by the Andhra Pradesh High Court in *R. Sreentvasa Rao v. The Labour Court, Hyderabad and Anr.* 1990 Lab IC 174.

These decisions have applied the principles laid down by the Supreme Court in Bangalore Water Supply and Sewerage Board case (supra) to hold that the Research Institutions aforesaid are all "industry" within the meaning of the Act.

The Respondent is an institute engaged in research for development of forests and conifer trees in particular. Forests in the State of Himachal Pradesh are owned by the State Government as well as by Private owners. Timber and other forest produce are articles of trade and are being sold by the owners of the forests in the open market subject to such restrictions as are imposed by the Government. The research activities of the Respondent cannot, therefore be totally disconnected with trade or commerce. At any rate the Respondent is engaged in a systematic activity organised by the co-operation between the employer and the employee for the production of goods and services calculated to satisfy human wants and wishes. We are, therefore, clearly of the view that the Respondent falls within the definition of "industry" u/s 2(j) of the Act.

8. We find also no substance in the contention by the Respondent that the Petitioner is not a workman within the meaning of Section 2(s) of the Act. The definition of the expression "workman" in Section 2(s) of the Act does not exclude a daily rated workman. It has been held in a number of decisions that temporary or casual labourer also falls within the definition of workman u/s 2(s) of the Act. vide: *Elumalai v. Management of Simplex Concrete Piles* 1979 Lab IC 1460 (Mad); *The Management of Crompton Engineering Co. (Madras) Pvt. Ltd. v. The Presiding Officer and Ors.* 1975 Lab IC 1006 ; *Kunjan Bhaskaran and Ors. v. Sub-Divisional Officer, Telegraph Changanassery and Ors.* 1983 Lab IC 135; *Govindbhai Konubhai v. N.K. Desai, District Judge, Narol, Ahmedabad*, 1988 IFLR 415; *Dinesh Sharma and Ors. v. State of Bihar* 1982 Lab IC 25.

9. Lastly, it is submitted on behalf of the Respondent that there is no retrenchment within the meaning of Section 2(oo) of the Act in the present case when the Petitioner was not employed after 1st May, 1990 for the reason that there was no work, to be offered to him. The Supreme Court in *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, held at page 1257:

Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the section itself. The excepted or excluded cases are where termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, and termination of the service of a workman on the ground of continued ill-health.

10. One more clause of exception is added as Clause (bb) to the definition of the expression "retrenchment" in Section 2(oo) of the Act, by Act 49 of 1984, that is, termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned

on its expiry or of such contract being terminated under a stipulation in that behalf contained in the contract itself. The Respondent has no case that the termination of the employment of the Petitioner was for any of the reasons excepted u/s 2(oo) of the Act. The Supreme Court in a recent decision in *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, after considering the various decisions bearing on the point, stated at page 900:

Applying the above reasonings; principles and precedents, to the definition in Section 2(oo) of the Act, we hold that "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section.

11. We are, therefore, satisfied that the present case is a case of retrenchment falling within the meaning of the expression in Section 2(oo) of the Act.

12. As earlier stated, the retrenchment in the present case was without compliance to the requirements of Section 25-F of the Act for the reason that there was neither notice of retrenchment nor was retrenchment compensation paid to the workman. In regard to the consequences of retrenchment without compliance to Section 25-F of the Act, the Supreme Court in *Mohan Lal's case* {supra}, stated at page 1259:

Reverting to the facts of this case, termination of service of the Appellant does not fall within any of the excepted or to be precise, excluded categories. Undoubtedly therefore the termination would constitute retrenchment and by a catena of decisions it is well settled that where pre-requisite for valid retrenchment as laid down in Section 25-F has not been complied with, retrenchment bringing about termination of service is ab initio void. In *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, this Court held that failure to comply with the requirement of Section 25-F which prescribes a condition precedent for a valid retrenchment renders the order of retrenchment invalid and inoperative. In other words, it does not bring about a cessation of service of the workman and the workman continues to be in service. This was not even seriously controverted before us.

For the aforesaid reasons, we hold:

- (i) this writ petition is maintainable before this Court;
- (ii) the Respondent is an "industry" within the meaning of Section 2(j) of the Act;
- (iii) the Petitioner is a workman falling under the definition in Section 2(s) of the Act ;
- (iv) his non-employment amounts to retrenchment;
- (v) the retrenchment does not fall under the category exempted as per Section 2(oo) of the Act; and

(vi) the retrenchment is ab initio void for violation of Section 25-F of the Act.

13. A writ of mandamus will, therefore, issue directing the Respondent to treat the Petitioner as continuing in service as a daily rated workman without break from 1st May, 1990 and to pay the wages due to him for the period up-to-date. We make it clear that this judgment does not preclude the Respondent from effecting retrenchment of the Petitioner in accordance with law.

14. The writ petition is allowed as indicated above. The parties will suffer their respective costs.