

(1990) 05 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 2860 and 2903 of 1988

Ram Chandra Yadav and Another

APPELLANT

Vs

Rajasthan State Road Transport Corpn. and Another

RESPONDENT

Date of Decision : 09-05-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes (Central) Rules, 1957 — Rule 78
Industrial Disputes Act, 1947 — Section 25H

Citation : (1990) 60 FLR 267 : (1990) 2 LLJ 408

Hon'ble Judges : Shyam Sunder Byas, J; D.L. Mehta, J

Bench : Division Bench

Advocate : M.K. Shah, for the Appellant; R.R.L. Gupta, for the Respondent

Final Decision : Partly Allowed

Judgement

S.S. Byas, J.—Since common questions of facts and law are involved in these two identical writ petitions, they were heard together and are disposed of by a common order. The dispute between the employer and the employees relates to the re-employment of the retrenched workmen u/s 25H of the Industrial Disputes Act, 1947 (hereinafter to be referred to as "the Act").

2. The five petitioners Nahar Singh, Kaluram, Uma Kant, Ram Chandra and Hanuman Sahai were appointed as Conductors in Jaipur Region of the Rajasthan State Road Transport Corporation, Jaipur on daily wages somewhere in 1986 or 1987. By orders Annexure-4 (filed in D.B. Civil Writ Petition No. 2860/88 and Annexure-3 (filed in D.B. Civil Writ Petition No. 2903/88) each dated 7th September, 1987, the Corporation terminated the services of the petitioners. It was stated in these two orders that when the occasions arose in future, they will be re-employed according to their seniority i.e. to say in accordance with the provisions of Section 25H of the Act. The grievance of the petitioners is that the services of many Conductors were terminated by these orders Annexure-3 and Annexure-4. Later on, Conductors who were junior to the petitioners were re-

employed as Conductors by the Corporation and thus violated the provisions of Section 25H of the Act. Such Conductors who were re-employed have been named in the writ petitions. They are Yogesh, Lala Ram, Chhitarmal, Babu Lal Rajpal and Behari Lal who were taken back in service by order dated January 5, 1988. The respondent R.S.R.T.C. gave no opportunity to the petitioners to offer themselves for re-employment. The relief claimed is that the petitioners be also appointed as Conductors in the R.S.R.T.C.

3, In the returns filed by the respondents, all these facts have been admitted. The petitions are resisted or opposed on the grounds that the six persons, Yogesh, Lala Ram, Chhitarmal, Babulal, Rajpal and Behari Lal to whom re-employment was given by order dated December 31, 1987 are no more in service. Their services were terminated by the R.S.R.T.C. on April 26, 1988. Likewise services of Ram Awatar, Om Prakash, Virendra Kumar and Jagram were terminated by the same order dated April 26, 1988 and as such they are also no more in service. Abdul Gafiar did not join the duty. So far Kumar and Jagram were terminated by the same order dated 26th April, 1988. Khem Singh and Mustaq Ahmed are concerned, they filed civil suits challenging their termination of service and obtained stay orders from the civil courts to remain as Conductors. It was not denied by the respondents that the Conductors who were taken back in re-employment were junior to the petitioners. It was also not denied that no opportunity was given to the petitioners to offer themselves for re-employment.

4. We have heard Mr. Shah, learned counsel for the petitioners, and Mr. R.R.L. Gupta, learned counsel for the respondents.

There is no controversy between the parties that by order dated December 31, 1987 (Annexure 5 filed in Writ Petition No. 2860/88) that six Conductors who were junior to the petitioners were re-employed as Conductors by the respondent R.S.R.T.C. There is again no controversy that seven persons were again taken back in re-employment by order dated January 5, 1988 (Annexure-6 filed in Writ Petition No. 2860/88). The parties are again not on issue that no opportunity was given to the petitioners by the respondent R. S. R. T. C. to offer themselves for re-employment.

5. In view of this admitted position the pertinent question which arises for our consideration relates to the right of the retrenched workmen for re-employment u/s 25H of the Act.

6. It would be useful to read Section 25H of the Act which runs as under;

"25-H. Re-employment of retrenched workmen. -- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity (to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons."

A bare reading of the section makes it amply clear that it casts a statutory duty on the employer to give an opportunity to the retrenched workmen to offer themselves for re-employment whenever the employer intends to fill-up the vacancy. Section 25H so far as the employer is concerned admits no exception. In terms of Section 25H, he is bound to give an opportunity to the retrenched workmen to offer themselves for re-employment and if the retrenched workmen offer themselves for re-employment, the employer is bound to give preference to them over other persons. If this is not done and the appointments are given in violation of the provisions of this Section 25H, the retrenched workmen can raise the grievance.

7. We may notice a few judgments on the point.

In *Indian Hume Pipe. Co. Ltd. v. Bhimrao Baliram* (1965-I-LLJ-402), a Division Bench of the Bombay High Court took the view that Section 25H of the Act imposes no obligation on employer to give preference to the retrenched workmen when he intends to employ some persons.

In *Mutter & Phipps India Private Ltd. v. Their Employees' Union and Ors.* 1967 11 LLJ 222 SC, it was held by a learned Single Judge of the Punjab High Court that the provisions of Section 25H are mandatory and its provisions cannot be defeated by filling the posts by way of making the promotions.

The same view was reiterated in *Nawashahr Central Co-operative Bank Ltd. v. Labour Court, Jallundur and Anr.* Vol. 57 (1980) *Indian Factories Journal* 206 and the provisions of the Sections were extended even to the temporary employees whose services were retrenched.

8. It would be proper at this stage to refer to Rule 78 of the Industrial Disputes (Central) Rules, 1957 (for short "the Rules"). Rule 78 lays down the provisions as to how the vacancies are to be filled in and the re-employment of the retrenched workmen is to be made. Rule 78 reads as under:

"78. Re-employment of retrenched workmen--(1) Atleast ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter:

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the senior-most retrenched workmen in the list referred to in Rule 77, the number of such senior-most workmen being double the number of such vacancies:

Provided further that where the vacancy is of a duration of less than one month, there shall be no obligation on the employer to send intimation of such vacancy

to individual retrenched workmen:

(Provided also that if a retrenched workman, without sufficient cause being shown in writing to the employer, does not offer himself for employment on the date or dates specified in the intimation sent to him by the employer under this sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.)

(2) Immediately after complying with the provisions of Sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule:

Provided that the provisions of this sub-rule need not be complied with by the employer in any case where intimation is sent to every one of the workmen mentioned in the list prepared under Rule 77."

9. Reading of Section 25H of the Act and Rule 78 of the Rules together, the position which boils down in our opinion is that whenever the employer intends to fill-up vacancies arising in his industrial unit, he will have to follow the provisions of Section 25H. In accordance with the requirements of Rule 78 of the Rules, the employer will issue the notice etc. and thus give an opportunity to the retrenched workmen to offer themselves for re-employment and if they offer themselves for re-employment, they should be given preference over other persons. The provisions of Section 25H of the Act are explicit and express. They admit no exception. In no way, these provisions can be defeated by the employer.

10. In the instant case, as we have stated earlier, the provisions of Section 25H of the Act have been breached and violated by the respondent-R.S.R.T.C. The petitioners are, therefore, entitled to seek re-employment.

11. But the matter does not end here in view of the peculiar circumstances arising in this case. As per reply of the respondents, all those persons who were re-employed were removed from service and their services were terminated on April 26, 1988 by order issued on the same day. Two persons Khem Singh and Mustaq Ahmed are of course in service of the R.S.R.T.C., but they are on account of the orders issued in their favour by the civil courts. In these circumstances, the petitioners are not entitled to seek re-employment, because no person junior to them is any more in service of the R.S.R.T.C., after April 26, 1988.

12. The other clinching issue before us is as to what relief should be granted to the petitioners. Those who were re-employed remained in the employment of R. S. R. T. C. from December 31, 1987 to April 26, 1988. If the provisions of Section 25H of the Act were complied with, the petitioners were also entitled to re-employment for the aforesaid period from December 31, 1987 to April 26, 1988. In these circumstances, what appears to be just and proper is to direct the respondent to pay wages to the petitioners for the period from December 31, 1987 to April 26, 1988 at the rate they paid those who were taken on re-

employment.

13. In the rejoinder filed by the petitioners, it was stated that three persons Kantilal, Gokul Chand and Murarilal are still in service. In the writ petition, it is not stated that they were re-employed. It was only in the rejoinder that such a plea was taken. The respondent R.S.R.T.C. had no occasion to meet this allegation. We, therefore, leave it to the petitioners to agitate this question by raising an industrial dispute if they so choose.

14. In the result, the writ petitions are partly allowed to the extent that the respondents will pay wages for the period from December 31, 1987 to April 26, 1988 at the rate paid by them to the re-employed workmen (Conductors) as compensation to the petitioners within three months from today.

15. The petitioners may raise an industrial dispute as regards the workmen Gokul Chand, Murari Lal and Kanti Lal if they choose so.

16. No order as to costs.