

(2004) 11 AHC CK 0150

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39137 of 2000

Reeta Pandey (Smt.)

APPELLANT

Vs

Industrial Tribunal (III) and Another

RESPONDENT

Date of Decision : 11-11-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2005) 1 ESC 691 : (2005) 104 FLR 584 : (2005) 1 UPLBEC 409

Hon'ble Judges : V.C. Misra, J

Bench : Single Bench

Advocate : K.P. Agarwal and Mahima Maurya, for the Appellant; P.S. Baghel, S.C., for the Respondent

Final Decision : Allowed

Judgement

V.C. Misra, J.—Heard Sri K.P. Agarwal, learned Senior Advocate assisted by Ms. Mahima Maurya, learned Counsel for the petition and Learned Standing Counsel appearing on behalf of the respondent No. 1. No one is present on behalf of respondent No. 2.

2. This writ petition has been filed by the petitioner challenging the impugned award dated 31.1.2000 (Annexure No. 1 to the writ petition) passed by the respondent No. 1-Industrial Tribunal (III) U.P. Kanpur holding that the termination of the service of the petitioner-workman as absolutely valid and legal, she was not entitled to any relief or compensation.

3. The facts of the case in brief are that the petitioner was in the employment of the respondent No. 2-U.P. Small Industries Corporation Limited, Industrial Estate, Kanpur since 14.1.1988 and had been placed in the regular pay scale on 5.7.1988. She worked with the respondent No. 2 continuously during the period 1988 to 1995 and was retrenched from service by the respondent No. 2 vide its order dated 23.12.1995 without compliance of the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). A

dispute was raised before the State Government and thereupon a reference was made by the State Government to the respondent No. 1 u/s 4-K of the Act to the effect that whether disengagement/ cessation from the employment of Smt. Reeta Pandey w.e.f. 23.12.1995 was proper and legal and, if so, to what relief and from what date and to what other consequential benefits, the workman was entitled to. On this reference an adjudication case No. 45 of 1999 was registered before the respondent No. 1.

4. The respondent No. 1-Industrial Tribunal vide its impugned award dated 31.1.2000 (Annexure No. 1 to the writ petition) held that termination of the service of the workman was absolutely valid and legal and she was not entitled to any relief or compensation. Feeling aggrieved, the petitioner filed the present writ petition before this Court.

5. The petitioner challenged the impugned award dated 31.1.2000 (Annexure No. 1 to the writ petition) mainly on the grounds, inter alia, that the cessation of employment of the petitioner on 23.12.1995 was not in compliance with the provisions of Section 6-N of the Act, which is pari-materia with Section 25F of the Central Act and non-compliance of the mandatory conditions precedent, the retrenchment invalidated the cessation of employment leading to the relief of reinstatement with continuity in service and with full back wages. Learned Counsel for the petitioner in support of his contention relied upon the decisions rendered in Workmen of Subong Tea Estate Vs. The Outgoing Management of Subong Tea Estate and Another, ; The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, ; The State Bank of India Vs. Shri N. Sundara Money, ; Barada Kanta Mishra Vs. Orissa High Court, and Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, .

6. Learned Standing Counsel, Sri R.K. Awasthi, has submitted that the provisions of Section 25F are not mandatory but are directory and since the petitioner had been paid the retrenchment compensation even subsequently, it cannot be said that the provisions of Section 25F had been flouted. In support of his contention, he has relied upon the decision of the Apex Court rendered in Bombay Union of Journalists and Others Vs. The State of Bombay and Another, .

7. Learned Counsel for the petitioner rebutted the contention of the learned Standing Counsel and has submitted that the above said decision does not apply to the present case. The said decision was in respect with the matter covered by Section 25F(C) of the Act, in which the Apex Court held that notice prescribed by Clause (C) of Section 25F of the Act is not mandatory and not a condition precedent for valid retrenchment.

8. I have looked into the decisions of the cases cited by the learned Counsel for the parties. In my view the decisions of the cases cited by the petitioner are applicable to the facts of the present case inasmuch as in Workmen of Subong Tea Estate (supra) the Apex Court held that, the right of the Management of effect retrenchment cannot normally be questioned when a dispute arises before

an Industrial Court in regard to validity of any retrenchment, but it would be necessary for industrial adjudication to consider whether the impugned retrenchment was justified for proper reasons and it would not be open to the Management either capriciously or without any reason at all to say that it proposes to reduce its labour force for no rhyme or reason. In *Nation Iron and Steel Co. Ltd and Ors. (supra)* the Supreme Court has held that it is the duty of the employer to pay one month's wages in lieu of notice to the workman forthwith. In the case of *National Iron and Steel Co. Ltd. and Ors. (supra)* wherein the workman's services were terminated w.e.f. November, 17 and that he would get one month's wages in lieu of notice of termination of his service and the workman was further asked to collect his dues from the Cash office on November, 20, 1958 or thereafter during the working hours. The Apex Court held that, manifestly Section 25F 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. Learned Counsel for the petitioner has further placed much reliance on the decision of the case rendered in *The State of Bombay and Ors. (supra)* wherein the Apex Court has held that the requirement prescribed u/s 25F(b) of the Act is a condition precedent for the retrenchment of the workman, and noncompliance of the said condition renders the impugned retrenchment invalid and inoperative. Section 25F(b) of the Act provides that no workman shall be retrenched until the condition in question has been satisfied. The decision cited by the learned Standing Counsel rendered in *Bombay Union of Journalists and Ors. v. State of Bombay and Anr. (supra)* does not apply to the facts and circumstances of the present case.

9. In view of the above said facts and circumstances of the case and the settled law, I find that the respondent No. 1 has erred in passing the impugned award dated 31.1.2000 (Annexure No. 1 to the writ petition) and committed manifest error of law while holding that the retrenchment of the workman-petitioner was valid and legal and she was not entitled to any relief, as claimed by her. Accordingly, the impugned award dated 31.1.2000 (Annexure No. 1 to the writ petition) passed by the respondent No. 1-Industrial Tribunal III, U.P. Kanpur, in Adjudication case No. 45 of 1999 is hereby quashed. The writ petition is allowed. The matter is remanded back to the Industrial Tribunal-respondent No. 1 to decide the case afresh in accordance with law expeditiously, preferably within a period of three months from the date of communication of this order. There will be no order as to costs.