
(1999) 10 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 1269 of 1992

Sakharam Govind Kadam

APPELLANT

Vs

M/s. David Brown Greaves Ltd. and another

RESPONDENT

Date of Decision : 28-10-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 25

Citation : (1999) 4 ALLMR 493 : (2000) 1 BomCR 552 : (2000) 1 MhLj 644

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : I.A. Engineer instructed by Smt. Gayatri Singh, for the Appellant;
P.L. Rele, R.P. Rele, instructed by Piyush Shah, for the Respondent

Judgement

R.J. Kochar, J.—The petitioner workman has filed the present writ petition against the Award of the Labour Court, Pune rejecting his reference for reinstatement with full back wages and continuity of service.

2. The facts of the present petition are in a very narrow compass that the petitioner was employed by the respondent company as a casual employee from 6-4-1984 and was terminated from employment with effect from 8-12-1985, as there was no work for him. The petitioner workman raised an industrial dispute against the oral order of his termination from employment with effect from 8-12-1985. The industrial dispute was referred by the State Government for adjudication to the Labour Court, Pune. The petitioner filed his statement of claim to which the respondent company filed its reply. Both the parties had adduced their oral and documentary evidence before the Labour Court.

3. According to the petitioner workman, he had completed 240 days continuous service, and therefore, his termination from employment was in contravention of section 25-F of the Industrial Disputes Act, 1947. According to the respondent company, the petitioner workman was employed only as a casual workman, and therefore, his services were terminated, as there was no work available for him. It is further contended by the respondent company that at the time of

termination he was offered a sum of Rs. 3,500/- as his total legal dues including the amount of retrenchment compensation as provided u/s 25-F of the Act, but he refused to accept the same. It is further contended by the respondent company that even before the Government Labour Officer and also during the Conciliation proceedings the petitioner workman was offered his legal dues including the amount of retrenchment compensation but he refused to accept the same on the ground that he wanted a job and not money.

4. In view of the aforesaid broadly admitted facts it is argued by the learned Advocate for the petitioner that since there is no evidence of tender or offer of the amount of retrenchment compensation, section 25-F of the Act is violated, and therefore, the order is null and void, and therefore, the petitioner workman should be reinstated with full back wages and continuity of service. According to the learned Advocate, the question, that the petitioner was only a casual labourer was not material, as he had completed 240 days continuous service, and therefore, it was obligatory for the respondent company, to have complied with section 25-F of the Act. From the oral evidence of the petitioner it is clear that he was paid his wages from the Time Office. As under the system the wages or salary is always paid in the Cash Department or Time Office as per the practice prevalent in every company or employer. The petitioner workman was asked in cross examination that legal dues to the tune of Rs. 1099-56 as one month's pay plus the retrenchment compensation of Rs. 1268-72 from the Account's Department were drawn. The petitioner workman has merely denied the suggestion. He however admits that he had received six days pay of December, 1983 from Time Office after two months.

5. In the evidence of the Deputy Manager Personnel of the company it has come on record that the salary was offered to the petitioner workman and the amount approximately Rs. 3500/- was offered to him including one month's wages and retrenchment compensation and other legal dues. It has also come on record that the petitioner did not accept the same. He denied the suggestion that the said offer was not made. This witness has admitted that at the time of the termination of the petitioner workman, he was not in the company's employment and he joined later, therefore, he had no personnel knowledge as to what transpired at the time of termination of the petitioner's employment. He, however, admitted that he was deposing on the basis of the record. The company is a public limited company and has maintained its regular record during the course of business. Even though there is word against word about the offer of retrenchment compensation to the petitioner, from the totality of the circumstances one can safely infer that the respondent company must have offered the amount of retrenchment compensation and other legal dues as contemplated under the law and since the petitioner workman was interested in employment he must have refused to accept the same. This inference can be safely drawn as even before the Government Labour Officer and during the Conciliation proceedings the petitioner workman insisted for reinstatement and refused to accept the amount of retrenchment compensation etc. Coupled with

this evidence of the Deputy Manager, Personnel, who deposed on the basis of the record in the company, I am inclined to believe the fact that the petitioner workman was offered the amount of retrenchment compensation and notice pay as contemplated by section 25-F of the Act. There is nothing against the petitioner workman for which the Dy. Manager, Personnel would depose falsely as he was not even in employment at that time. He deposed on the basis of the record, which was available to show that the offer was made. It would have been better to have examined the person who had actually offered the said amount. But in the given circumstances I am inclined to believe the version of the company that the amount of retrenchment compensation with one month's wages in lieu of notice were offered to the petitioner workman but he had refused to accept as he was interested in employment. It is also significant to note that there are no allegations of mala fides or Unfair Labour Practice against the company. It appears that the action of the respondent company to terminate the petitioner from the employment being only a casual workman was bona fide action and was not to get rid of the petitioner for ulterior motives or to victimise him. To be fair to the petitioner, he had not made any such allegations against the management of the respondent company. I do not find anything wrong with the petitioner's insistence that he did not want money but he wanted a job. However, the fact remains that the money was offered to him but he refused to accept the same. The allegation of violation of section 25-F of the Act therefore cannot be accepted.

5-A The Labour Court has relied on the judgment of the Supreme Court in the case of Prakash Cotton Mills Pvt. Ltd. v. Rashtriya Mill Mazdoor Sangh, reported in 1986(3) Bom.C.R. 182 : 1986(53) F.L.R. 310. This was the case of a "Badli" workman, who was terminated from employment and had challenged the said order being illegal and claimed reinstatement with full back wages and continuity of service. In the aforesaid judgment of the Supreme Court it is held that a Badli workman had no right of reinstatement and that he could not claim closure compensation. The Supreme Court has finally held that a Badli employee was not entitled to closure compensation, Drawing an analogy from this judgment it was argued that like a Badli workman even a casual employee is not entitled to retrenchment compensation. I am afraid the ratio of the said judgment will not apply to the facts of the present case. In our case the petitioner was in continuous employment from 6-4-1984 to 8-12-1985. The Labour Court has held that the petitioner being a casual employee was not entitled to claim the benefit of section 25-F of the Act is not correct. According to me, any employee, who completes 240 days continuous service, as contemplated by section 25-B of the Industrial Disputes Act, is entitled to the benefit of section 25-F of the Act, if the occasion so arises. I have mentioned the aforesaid case as it was cited by the Labour Court. In the present case however, as I have held that there is compliance of section 25-F of the Act, the aforesaid judgment is not attracted. Shri Rele submitted that even assuming that section 25-F is violated by the respondent company no reinstatement need be granted in every case, Shri Rele

relied on a judgment of this Court between International Industries, Bombay and K.G. Sawant and others, given by Shri S.P. Bharucha, J., as then he was. In paragraphs 14 and 15 the learned Judge has observed that mere non-compliance of section 25-F of the Act will not straightway attract reinstatement with full back wages and continuity of service if the action of retrenchment is bona fide. In the present case the petitioner was only a casual employee and he was in fact offered the amount of retrenchment compensation at the time of retrenchment. The submission of the learned Counsel for the petitioner that the order is null and void and cannot be accepted. It is an accepted fact that the amount of retrenchment compensation was payable to the workman and such an amount to the tune of Rs. 3500/- was offered in the year 1985. As suggested by the learned Counsel for the company to mould the relief, I am inclined to award a reasonable amount of compensation in the present set of circumstances. According to me, a sum of Rs. 50,000/- would meet the ends of justice. The respondent company is, therefore, directed to pay to the petitioner workman a sum of Rs. 50,000/- within four weeks from today. The petition is allowed. Rule is discharged. No order as to costs.

6. Petition allowed.