

(2014) 01 KAR CK 0054
In the Karnataka High Court
Case No : Writ Petition No. 1257/2013 (S-KAT)

Sri D.G. Vasudev

APPELLANT

Vs

Government of Karnataka, The Executive Engineer and The
Assistant Executive Engineer, Public Works Department

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 25-F, 25-F(a), 25-F(b)

Citation : (2014) 2 AKR 461 : (2015) 144 FLR 921 : (2014) ILR 2747 : (2014) 6
KarLJ 485 : (2014) 2 KCCR 1444

Hon'ble Judges : S. Abdul Nazeer, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : S.B. Mukkannappa, Advocate for the Appellant; S. Susheela, A.G.A,
Advocate for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—The petitioner was appointed as a Literate Assistant on daily wage basis by the third respondent on 1.9.1983. He was terminated from service on 22.5.1985. The petitioner challenged the termination order before the Labour Court in Reference No. 54/1994. The Labour Court passed an award as per Annexure "A1" on 28.4.1999 directing reinstatement of the petitioner with 25% backwages and continuity of service with all consequential benefits. Since the respondent authorities failed to implement the award, the petitioner filed a writ petition before this Court in W.P. No. 43457/1999 for implementation of the award. This Court modified the award by directing reinstatement of the petitioner with 25% of the backwages from the date of the reference, namely, from 30.9.1994 till the date of reinstatement with continuity of service. The Executive Engineer, P.W.D. I also filed a writ petition in No. 3375/2000 before this Court challenging the aforesaid award of the Labour Court. This Court by order dated 7.6.2001 directed reinstatement of the petitioner into his original post. However, this Court denied the backwages. Feeling aggrieved, the respondent authorities filed a writ appeal in No. 7441/2000. The writ appeal was dismissed by this Court

on 27.8.2002 with liberty to the respondents herein to initiate appropriate action u/s 25-F of the Industrial Disputes Act, 1947 (for short "the Act"). Pursuant to the aforesaid orders of this Court, the petitioner was reinstated into service on 13.8.2000. It is the case of the petitioner that he has worked for a period of three years.

2. The respondents issued a notice u/s 25-F(a) of the Act as per Annexure "A7" for retrenchment of the petitioner. This was followed by a retrenchment order as per Annexure "A9" dated 20.6.2003 u/s 25-F(b) of the Act.

3. The petitioner challenged the notice of retrenchment as also the retrenchment order by filing an application in No. 8170/2003 before the Karnataka Administrative Tribunal, Bangalore. The Tribunal by its order at Annexure "A" dated 29.11.2002 has dismissed the application. However, the respondents were directed to take appropriate action for payment of retrenchment compensation to the petitioner as contemplated under Sec. 25-F(b) of the Act after quantifying the same within three months from the date of the said order. The petitioner has called in question the validity of the said order in this writ petition.

4. Sri S.B. Mukkannappa, learned Counsel for the petitioner would contend that after the retrenchment of the petitioner pursuant to the order of this Court in W.P. No. 3375/2000, notice of termination u/s 25-F(a) was issued on 16.5.2003. Thereafter, an order of retrenchment was passed by issuing an endorsement as per Annexure "A9" on 20.6.2003, which is effective from 21.6.2003 without payment of fifteen days of average pay for every completed year of continuous service or any part thereof in excess of six months as contemplated u/s 25-F(b) of the Act. Thus, the retrenchment of the petitioner is void-ab-initio. In this connection, he has relied on the decisions of the Apex court in Krishna Bahadur Vs. Purna Theatre and Others, and Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana), .

5. On the other hand, learned A.G.A. appearing for the respondents submits that after retrenchment of the petitioner as per the endorsement at Annexure "A9", the compensation was calculated on 4.8.2003 as per Annexure "R1" and was sent to the petitioner by a demand draft in a sum of Rs. 3,338/-. The petitioner has failed to receive the said Demand Draft. Therefore, the cover containing the office letter dated 4.8.2003 and the demand draft was returned to the office of the third respondent. Again, a demand draft was drawn in favour of the petitioner on 5.7.2013 as per Annexure "R2" was sent to the petitioner. The said cover was also returned by the postal authorities as per Annexure "R4". It is further contended that as per the language contained in Section 25-F(b), it is sufficient if the retrenchment compensation is sent within a reasonable period from the date of the order of the retrenchment. It is not necessary to pay the retrenchment compensation along with the order of retrenchment.

6. Having regard to the contentions urged, the question for consideration is whether the retrenchment of the petitioner is valid?

7. It is not in dispute that after the order of this Court in W.P. No. 3375/2000 dated 7.6.2001, petitioner was reinstated into service. Liberty was reserved to the respondents by the Division Bench of this Court in W.A. No. 7441/2000 dated 24.8.2002 to initiate action for retrenchment of the petitioner u/s 25-F of the Act. The third respondent therefore issued a notice under Sec. 25-F(a) of the Act as per Annexure "A7". This was followed by an order of retrenchment at Annexure "A9". It is clear from the materials on record that along with the order of retrenchment, retrenchment compensation has not been paid to the petitioner. It is also clear that retrenchment compensation was sent to the petitioner along with the letter at Annexure "R1" dated 4.8.2003. Thus, there is a delay of more than two months in sending the retrenchment compensation. It is no doubt true that the petitioner has not received the said amount. The demand draft has been returned to the office of the third respondent, which is also clear from Annexure "R4". Therefore, the third respondent has sent a demand draft as per Annexure "R2" dated 5.7.2013 after the order of the Tribunal impugned herein. This demand draft was also returned to the office of the third respondent.

8. Section 25-F(a) states that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one months" notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice. Section 25-F(b) mandates payment of retrenchment compensation to the workman, which shall be equivalent to fifteen days average pay in excess of six months. It is well settled that the requirement to comply with the provision of Section 25-F(b) is mandatory before retrenchment of a workman is given effect to. The expression "at the time of retrenchment" contained in this provision postulates that no workman shall be retrenched until he has been paid compensation at the time of retrenchment. Thus, this Section mandates that the employer shall not retrench a workman unless retrenchment compensation has been paid prior or at the time of the retrenchment. It is a condition precedent for retrenchment of a workman.

9. In Krishna Bahadur's case (supra) the Apex Court has held as under:

12. It is neither in doubt nor in dispute that the provision of Section 25-F(b) is imperative in character.

The provision postulates the fulfillment of the following three conditions:

- (i) One month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice;
- (ii) Payment of compensation equivalent to fifteen days" average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (iii) Notice to the appropriate Government in the prescribed manner.

13. The requirement to comply with the provision of Section 25-F(b) has been held to be mandatory before retrenchment of a workman is given effect to. In the event of any contravention of the said mandatory requirement, the retrenchment would be rendered void ab initio.

(emphasis supplied by me)

10. In Anoop Sharma's case (supra), the Apex Court has considered an identical issue and has held as under:

16. An analysis of the above reproduced provisions shows that no workman employed in any industry, who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Sections 25-F(a) and (b) of the Act are mandatory and noncompliance therewith renders the retrenchment of an employee nullity - State of Bombay v. Hospital Mazdoor Sabha, Bombay Union of Journalists v. State of Bombay, SBI v. N. Sundara Money, Santosh Gupta v. State Bank of Patiala, Mohan Lal v. Bharat Electronics Ltd., L. Robert D'Souza v. Southern Railway, Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, Gammon India Ltd. v. Niranjana Dass, Gurmail Singh v. State of Punjab and Pramod Jha v. State of Bihar.

18. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

11. Since the retrenchment compensation has not been paid along with the order of retrenchment, the said order is a nullity in the eyes of law. The Tribunal was therefore not justified in directing the respondent authorities to take appropriate action for payment of retrenchment compensation to the petitioner u/s 25-F(b) of the Act at this belated stage.

12. No other contentions have been urged by the learned Counsel for the parties at the time of hearing. In the result, the writ petition succeeds and it is accordingly allowed in part. The direction of the Tribunal contained in paragraph 9 of the order is hereby quashed. Consequently, the order of retrenchment at Annexure "A9" dated 20.6.2003 is also hereby quashed. However, liberty is reserved to the respondent authorities to take fresh action for retrenchment of the petitioner in accordance with law. No costs.