

**(2017) 04 AHC CK 0159**  
**In the Allahabad High Court**  
**Case No : 44027 of 2013**

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|------------------------------------------|------------|
| Subros Employees Association And Another | APPELLANT  |
| Vs                                       |            |
| State Of U.P. Thru Secry. And Others     | RESPONDENT |

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**Date of Decision :** 17-04-2017

**Acts Referred:**

[Industrial Disputes Act, 1947](#), [Section 25N](#) - Conditions precedent to retrenchment of workmen

**Citation :** (2017) 04 AHC CK 0159

**Hon'ble Judges :** Saumitra Dayal Singh

**Bench :** Single Bench

**Advocate :** S. Premchandra, Manoj Kumar Shukla, P. Chandra, Vijay Gautam, A.N. Srivastava, Vivek Ratan

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## Judgement

1. Heard Sri Sandeep Chatterjee, learned counsel for the petitioners, Sri Vivek Ratan, learned counsel for the respondent no.3 and learned Standing Counsel for the State. This writ petition has been filed by the Trade Union to challenge the order dated 30.12.2002 passed by the Labour Commissioner, Kanpur under Section 25 N (3) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"); the order dated 30.04.2003, by which the Labour Commissioner had refused to refer for adjudication, the industrial dispute sought to be raised by the petitioners as to validity of the retrenchment made under Section 25 N of the Act; the order dated 27.05.2013, whereby the Labour Commissioner after the remand of this Court again refused to refer for adjudication the industrial dispute claimed to have arisen in respect of Section 25 N of the Act.

2. Briefly stated that the respondent no.3 had applied under Section 25 N (3) of the Act in respect of retrenchment of 110 employee. That application was allowed by the order dated 30.12.2002 in which proceedings, the petitioner was also heard.

3. It appears thereafter petitioner applied under Section 25 N (6) of the Act for review and or reference of the dispute as to the application of Section 25 N of

the Act to the facts of the case. Upon this application being rejected by the Labour Commissioner vide order dated 30.04.2003, petitioner filed Writ Petition No. 38480 of 2003 which was disposed of by the order dated 11.04.2012 on the following terms:- "The short grievance of the petitioner is that after having permitted the management to retrench the employees, the prescribed authority has refused to refer the matter to the tribunal. The question which calls for consideration is as to whether the employees have a right to seek reference independent to the provision of Section 25-N (6) of the Act. I am of the opinion that that the employees have a right to seek reference of the dispute to the tribunal for which an appropriate application is required to be made before the appropriate Government. The petitioner may file an application before the appropriate Government within a period of 30 days, who shall after hearing the parties, shall take a decision to refer the matter to the tribunal for adjudication of the dispute."

4. As a consequence of the aforesaid order, the petitioner filed another application before the Labour Commissioner, wherein it was prayed that the matter may be referred to the Tribunal for adjudication. From a bare perusal of the said application annexed to the writ petition, it is clear that even at that stage the petitioner only sought reference of dispute on the question of applicability of Section 25N(3) of the Act i.e. whether section 25N had been rightly invoked and did it not specifically pray for reference of individual dispute pertaining to the employees' claim to have been retrenched.

5. In this regard it has been stated by Shri. Vivek Ratan, learned counsel for the management that out of 110 workmen retrenched by order dated 30.12.2002, most have settled their disputes with the management and claims of only a handful of workman remain.

6. The Labour Commissioner while deciding the aforesaid application has also looked at the matter narrowly and has confined his application of mind to the question of applicability of Section 25 N of the Act. He has not examined the issue from the perspective whether in view of Section 25 N of the Act being invoked any industrial dispute had arisen between the employer and the individual workman who were affected by the order of the retrenchment.

7. While it may be true that the Labour Commission could have itself examined the aforesaid aspect while dealing with the petitioner's application, still, without expressing any opinion on the same in these proceedings, it is clear from the order of this court dated 11.4.2012 passed in the earlier writ petition that the issue of reference of the applicability of Section 25 N of the Act did not survive after that decision of this Court.

8. Order dated 11.04.2012 passed by the Court amounts to refusal to interfere with the order of the Labour Commissioner. The petitioner having not challenged the order of this court dated 11.4.2012, the issue got closed at that stage. The only surviving issue that remained is with respect of making of a reference

affecting the individual rights of each workman.

9. While it may be true that the Labour Commissioner should itself have examined the aforesaid issue while dealing with the application filed by the petitioner under Section 25N(6) of the Act, still, without expressing any opinion on the same, the ends of justice would be met, if the petitioner and or the workmen in question were to make fresh application for making reference in respect of industrial dispute claimed by them in view of the order of retrenchment.

10. If such application/s are filed, the same shall be dealt with in accordance with law as expeditiously as possible, preferably within a period of two months from date of filing of such an application. With the above direction, the writ petition is disposed of.