
(2002) 07 JH CK 0089
In the Jharkhand High Court
Case No : C.W.J.C. No. 3860 of 2000

Sudipta Rai @ S. Roy

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 25F

Citation : (2002) 95 FLR 648

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : T.K. Das, for the Appellant; S.N. Das, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The petitioner, a workman was appointed on 14.9.1989 as a Peon by Mr. Mukesh Syal, Site Manager, National Industrial Development Corporation Limited (Corporation for short) with wages of Rs. 600/- per month. He worked for the period from 14.9.1989 to 27.10.1990 in the office of the Site Manager and on 27th October, 1990 he informed by Site Manager that his service was no longer required in the Corporation.

2. The petitioner-workman when raised the industrial dispute, the Governor of Bihar vide Notification No. IV/D2-1909/ 94 L & E-274, dated 10th February, 1994 referred the Labour Court, Ranchi to adjudicate the following terms of reference :

"Whether the termination of services of Sri Sudipta Rai, Peon, National Industrial Development Corporation Limited. Ranchi is proper? If not, what relief he is entitled to?"

3. The case of petitioner-workman was that the Corporation terminated his service without any rhyme or reason, wrongfully, illegally without following the rules of natural justice. No chargesheet was issued, nor any enquiry was conducted and order of termination was issued in violation of Section 25F of the I.D. Act. He had worked in the Corporation continuously for more than a year (about 14 months) but he was not paid any notice pay or the compensation as

required u/s 25F of the I.D. Act and Rule 78 of the Industrial Dispute (Bihar) Rules.

4. The respondents-Management of the Corporation opposed the reference both on merit and on the question of maintainability. The case of respondents was that the Corporation is a Government of India Undertaking and its works are carried on by and under the authority of the Central Government and is fully under Control and financed by the Central Government. Its working is under administrative control of the department of Heavy Industry, Ministry of Industry, Government of India, New Delhi. The Corporation is only a consultant consisting of certain architecture and engineers having its office situated at Chanakyapuri, Chanakya Bhawan, Africa Avenue, New Delhi.

However, it was not disputed that the petitioner-workman worked as Peon for the period from 14th September, 1989 to 27th October, 1990 continuously in the office of Site Manager, Ranchi.

It was also not disputed that the service of writ petitioner-workman was terminated without notice pay and compensation as per Section 25F of the I.D. Act.

5. The learned Presiding Officer, Industrial Tribunal, Ranchi by impugned Award dated 8th October, 1999 in Reference case No. 11/94 held that the Central Government is the appropriate Government of N.I.D.C. Ltd., since the reference had been made by the State of Bihar, which is not the appropriate Government of the Management, held the reference as bad in law.

However, in respect to the issue relating to legality and propriety of order of termination, the Tribunal held as follows :

"The concerned workman challenged the order of termination on the ground that without following the provisions of Section 25F of the I.D. Act and Rule 78 of the I.D. Act. retrenching the workman is unjustified and illegal. Admittedly compliance of Section 25F is mandatory. Admittedly provision of Section 25F has not been complied. The learned advocate appearing on behalf of the management relied on 1997 SCC 1079 and contended that in a case of casual labour compliance of Section 25F is not necessary. The above decision is not applicable in the instant case as their lordships were considering the case of Government department. It is settled principles of law that termination of service is a retrenchment if it is not covered by exemption of the definition. Admittedly the case of the concerned workman is not covered by exception of the definition of retrenchment. Thus in this case compliance of Section 25F is necessary and its non-compliance makes the order of termination nullity. Thus the order of termination is not justified and proper. It is illegal and void. Thus this point is also answered."

6. The reference having not been made by the appropriate Government, no relief was granted in favour of petitioner-workman.

It is not necessary to decide the question of maintainability of the reference aforesaid as the writ petition can be disposed of on a short question of a law. Further, in case, the question of maintainability is answered in negative affirming the Award, in that case, the petitioner-workman is to be given opportunity to approach the appropriate Government for reference which will cause further delay in the matter.

7. As admittedly the termination of service of petitioner-workman was in violation of Section 25F of the I.D. Act as held by the impugned Award dated 8th October, 1999 in Reference Case No. 11/94 and the finding to that effect has not been challenged by the Corporation, the said order of termination is declared illegal by this Court under Article 226 of the Constitution of India.

However, in the facts and circumstances, more than 12 years having passed after the retrenchment, taking into consideration the plea taken by the Corporation before the Tribunal that only a skeleton consultant office was functioning at Ranchi, instead of reinstatement, the petitioner-workman is allowed 50% of the arrears of wages which should be construed to be one time lump sum payment made in his favour in the interest of Justice.

8. The respondent-Corporation is directed to pay the aforesaid 50% of the wages for the period from July, 1992 to June, 2002 within a period of three months.

9. The writ petition stands disposed of, with the aforesaid observations.