
(1978) 01 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3326 of 1977

Sunder Singh and Another

APPELLANT

Vs

Beas Construction Board, New Delhi and Others

RESPONDENT

Date of Decision : 10-01-1978

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25

Citation : AIR 1979 P&H 1 : (1978) 37 FLR 187 : (1979) 1 ILR (P&H) 45

Hon'ble Judges : Surinder Singh, J;S.P. Goyal, J;Perm Chand Jain, J

Bench : Full Bench

Judgement

Prem Chand Jain, J.—Sunder Singh and another have filed this petition under Art. 226 of the Constitution of India for the issuance of an appropriate writ, order or direction quashing the discharge notices dated 22nd Sept. 1977, copy Annexures "P-5" and "P-6", by which the services of the petitioners were terminated with effect from 28th Oct. 1977 (A.N.).

2. This petition came up for hearing before me and my learned brother Surinder Singh, J. on Dec. 12, 1977. Mr. Gopal Mahajan, Advocate, who appeared on that date for the petitioners, raised a contention that the petitioners were entitled to the payment of retrenchment compensation along with the impugned notices, as the cases of the petitioners were covered by the provisions of S. 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that the notices have not been served in accordance with law, inasmuch as no compensation amount in respect of retrenchment was paid at the time of the issuance of the notices. In support of his contentions, reliance was placed on an unreported decision of a Bench of this Court in Civil Writ Petition No. 3230 of 1977 (Raghubir Singh v. Beas Construction Board), decided on December 6, 1977.** On the other hand, the stand taken by Mr. Kuldip Singh, Bar-at-law, learned counsel for the respondents was that the cases of the petitioners were covered by the provisions of Section 25FFF of the Act and that legally it was not necessary to pay the amount of retrenchment compensation along with the

discharge notices.

3. The aforesaid position had been taken by Mr. Gopal Mahajan, learned counsel, on 8th December, 1977, when the petition had come up for motion hearing. On the request of Mr. Mahajan, the petition had been adjourned to 12th December, 1977. On that date the stand taken was modified by Mr. Mahajan to this extent that he claimed relief only on the ground that the case of the petitioners was a case of retrenchment of surplus labour and was covered by the provisions of Section 25F of the Act. The learned counsel further submitted that in case it was held that the petitioners were not entitled to any relief on the basis of his submissions, then he did not claim any relief on the basis of the judgment of the Bench in Raghbir Singh's case on the ground that even in cases which fell under S. 25FFF of the Act, a workman was entitled to the payment of retrenchment compensation along with the discharge notice.

4. After hearing the learned counsel or the parties, as is evident from our order dated 12th Dec. 1977, we did not agree with Mr. Mahajan, learned counsel, that the petitioners' case was covered by the provisions of S. 25F of the Act. Having arrived at that finding, the petition was liable to be dismissed. But Mr. Kuldip Singh, learned counsel for the respondents, vehemently contended that in the interest of justice it was necessary to deal with the question whether it was legally essential to pay retrenchment compensation along with the discharge notices in cases falling under S. 25FFF of the Act, as had been held by the learned Judges in Raghbir Singh's case. This contention had been advanced by the learned counsel on the basis that the view taken by the Bench in Raghbir Singh's case did not lay down the correct law and in case that view was allowed to stand then the Bhakra Construction Board was likely to suffer immensely, Mr. Kuldip Singh brought to our notice a couple of decisions of the Supreme Court to show that the view taken in Raghbir Singh's case deserved to be reconsidered. Finding some force in the contention of Mr. Kuldip Singh, we heard the learned counsel for the parties at length and ultimately prima facie found that the Bench decision in Raghbir Singh's case deserved to be reconsidered by a larger Bench. Accordingly, by our order dated 12th December, 1977, it was ordered that the papers of this case be laid before the Hon'ble the Chief Justice for appropriate orders. It is in these circumstances that the present Bench has been constituted for deciding the following question:--

"Whether retrenchment compensation has to be paid along with the notice even in the cases falling under S. 25FFF of the Act?"

5. When we resumed hearing, Mr. Anand Swaroop, Senior Advocate, learned counsel appearing for the petitioners sought permission to argue the entire matter as his effort was to show that the case of the petitioners was covered by the provisions of S. 25F of the Act and that the provisions of S. 25FFF did not apply. Mr. Anand Swaroop further contended that the view taken by the Bench on Dec. 12, 1977, was not correct and that it deserved to be reviewed. On the contention that had been advanced by Mr. Mahajan on Dec. 12, 1977, the Bench had

repelled the plea of the petitioners that their cases fell under the provisions of S. 25F of the Act and in this situation we did not permit the learned counsel to re-agitate the matter and asked him to limit his arguments on the aforesaid question which had been referred to for the decision of the Full Bench.

6. We heard the learned counsel for the parties at length. Mr. Kuldip Singh, learned counsel for the respondents, submitted that payment of retrenchment compensation along with the notice of discharge was not a condition precedent in the cases which fell within the provisions of S. 25FFF of the Act. In support of his connection the learned counsel placed reliance on the decisions of their Lordships of the Supreme Court in *Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others*, ; in *Payment of Wages Inspector Vs. Surajmal Mehta and Another*, ; of the Madras High Court in *M. Chinnappan v. Management of Kaleeswarar Mills, Ltd. Coimbatore* 1968 Lab IC 714 and in *Radio and Electricals Ltd., Madras v. Industrial Tribunal Madras* (1970) 2 Lab LJ 206 (Mad) and of the Delhi High Court in *Raj Hans Press v. K. S. Sidhu*, 1977 Lab IC 1633. On the other hand, Mr. Anand Swaroop, Senior Advocate, relied only on the observations of the Division Bench in *Raghubir Singh's case* 1978 52 FJR 451 (Punj) in support of his contention that even in the cases falling under S. 25FFF of the Act retrenchment compensation was payable along with the discharge notice.

7. In the ordinary course, I would have dealt with the matter at length in the light of the relevant provisions of the statute, but I do not propose to do so as to my mind, the controversy stands fully settled by the decision of their Lordships of the Supreme Court in *Payment of Wages Inspector Vs. Surajmal Mehta and Another*, where on a similar question after considering the provision of the statute, Shelat J., speaking for the Court observed thus (at p. 593):--

"The Industrial Disputes Act, which as enacted in 1947 was a piece of legislation which mainly provided machinery for investigation and settlement of industrial disputes, has since then undergone frequent modifications. In 1953, by Act 43 of that year Chap. V-A consisting of Ss. 25A, 25J was incorporated providing therein compensation for lay-off and retrenchment. It also provided a definition of retrenchment in S. 2(oo). Chap V-A, as it then stood, did not expressly provide for compensation for termination of service on account of transfer of an undertaking by an agreement or as a result of operation of law or the closure of the undertaking. Consequently, in *Hariprasad Shivshankar Shukla Vs. A.D. Divikar*, this Court held that retrenchment as defined in S. 2(oo) and the word 'retrenched' in S. 25F meant discharge of surplus labour or staff by the employer for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action and did not include termination of services of all workmen on a bona fide closure of an undertaking or on a change of ownership or management thereof. This decision was followed first by an ordinance and then by Act 18 of 1957 incorporating in the Act the present Ss. 25FF and 25FFF. It will be noticed that both these sections use the word "as if the workman had been retrenched". The intention of the legislature was, therefore, clear that it did

not wish to place transfer and closure on the same footing as retrenchment under S. 25F. This is apparent also from the fact that it left the definition of retrenchment in S. 2(oo) untouched in spite of the decision in Hariprasad Shivshankar Shukla Vs. A.D. Divikar, . The three Sections, Ss. 25F, 25FF and 25FFF also show that while under S. 25F no retrenchment can be made until conditions therein set out are carried out, the other two sections do not lay down any such conditions. All the three sections, however, involved termination of service whether it results in consequence of retrenchment or transfer or closure, and notice and compensation in both Ss. 25FF and 25FFF have been provided for "in accordance with the provisions of S. 25F". (See Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others, and Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen, . That being the position a workman whose service is terminated in consequence of a transfer of an under taking, whether by agreement or by operation of law, has statutory right under S. 25FF to compensation unless such right is defeated under the proviso to that section. The same is the position in the case of closure under S. 25FFF. Such compensation would be wages as defined by S. 2(vi)(d) of the Act as it is a "sum which by reason of the termination of employment of the person employed, is payable under any law..... which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made." Since Ss. 25FF and 25FFF do not contain any conditions precedent, as in the case of retrenchment under S. 25F, and transfer and closure can validly take place without notice or payment of a month's wages in lieu thereof or payment of compensation, S. 25FF can be said not to have provided any time within which such compensation is to be paid. It is well established that the words `in accordance with the provisions of S. 25F" in Ss. 25FF and 25FFF are used only as a measure of compensation and are not used for laying down any time within which the employer must pay the compensation."

8. In Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others, also while interpreting S. 25FFF, certain observations were made which are relevant and support the view propounded by Mr. Kuldip Singh. The said observations which appear in para 29 of the report, read as under:--

"For reasons already set out, payment of compensation and wages in lieu of notice under the impugned section are not made conditions precedent to effective termination of employment. The section only creates a right in the employees; it does not enjoin the employers to do anything before closure."

9. Mr. Anand Swaroop, Senior Advocate, learned counsel for the petitioners could not bring to our notice any decision of their Lordships of the Supreme Court taking a contrary view nor was he able to distinguish the two authorities referred to above. He only relied on the observations of the Hon"ble Judges in Raghubir Singh's case 1978 52 FJR 451 (Punj) which read as under:--

"Mr. Kuldip Singh, learned counsel for the respondents, urges that where an

undertaking is closed down for no fault of the employer, provisions of S. 25FFF apply and in that event the employer would be under no obligation to offer advance retrenchment compensation to the workmen who are asked to go. In support of this contention, reliance has been placed on *Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others*, . We are not prepared to accept the contention raised by Mr. Kuldip Singh, the learned counsel for the respondents, Sub-section (2) of S. 25FFF lays down that where any undertaking set up for the construction of building, bridges, canals, dams or other construction work is closed down on account of the competition of the work, the compensation payable to a workman has to be calculated in a particular manner, but the same would be deemed to be payable under S. 25F of the Industrial Disputes Act. In other words, sub-section (2) of S. 25FFF in the matter of payment of compensation adopts the procedure laid down in S. 25F of the Industrial Disputes Act. In that view of the matter, the retrenchment compensation to the workmen had to be paid in cash before they were asked to quit. In these circumstances, it must be held that the petitioners have an undisputed right to be paid retrenchment compensation in cash before they were asked to leave the service of the project and till it is done the petitioners would be deemed to be in the service of the project."

10. In my view, the observations of their Lordships of the Supreme Court reproduced above, leave no room for any doubt and on the strength of the said observations, I find no escape from the conclusion that in cases falling under S. 25FFF of the Act, payment of retrenchment compensation is not a condition precedent and that retrenchment compensation has not to be paid along with the discharge notice. The observations in *Raghubir Singh's case* 1978 52 FJR 451 (Punj) on which reliance had been placed by the learned counsel for the petitioners, in my view, go contrary to the observations of their Lordships of the Supreme Court and in this situation, with respect I find that the view taken in *Raghubir Singh's case* does not lay down the correct law.

11. For the reasons recorded above, the question referred to for our decision is answered in the negative

12. Answer in negative