
(1979) 11 DEL CK 0021

In the Delhi High Court

Case No : Letter Patent Appeal No. 12 of 1972

Suresh Kumar

APPELLANT

Vs

Management of Band Box (P) Ltd. and Another

RESPONDENT

Date of Decision : 23-11-1979

Acts Referred:

Citation : (1980) 17 DLT 401 : (1981) 42 FLR 276 : (1982) 1 LLJ 362

Hon'ble Judges : Prakash Narain, J; Charanjit Talwar, J

Bench : Division Bench

Advocate : D.D. Verma, Anand Prakash and Raj Birbal, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) This is an appeal under Clause X of the Letters patent against the judgment dated the 14th September, 1971 allowing the writ petition (CW500/71) filed by the management of Band Box Pvt. Ltd., (hereinafter referred to as the company), respondent No. 1 herein, seeking to quash the award of the Industrial Tribunal, Delhi, whereby the appellant had been ordered to be reinstated.

(2) The Lt. Governor, Delhi, by his order No. G-171/G-(2)/68-Lab, dated 29th November, 1968 referred the dispute that the appellant and two others had raised to the Tribunal in the following terms of reference :

"WHETHERS shri Suresh Kumar, Hari Ram and Gyan Chand are entitled to reinstatement? If so, what other directions are necessary in this regard."

(3) The Tribunal had held that the workman, Suresh Kumar, the appellant herein, was not paid the amount of compensation due to him on the day he was retrenched or discharged and as such there had been no compliance with the provisions of Section 25F of the Industrial Disputes Act. Accordingly, the workman was directed to be reinstated with full back wages and continuity of service.

(4) The respondent herein (the writ petitioner in CW500/71) had confined its

challenge to the case of Suresh Kumar only. Various grounds had been taken in the writ petition but before the learned Single Judge two submissions were made: (i) that the Industrial Tribunal did not correctly construe Section 25F of the Act; and (ii) that the Tribunal failed to discuss the question whether for non-compliance of Section 25F, order of re-instatement should be passed instead of directing payment of compensation.

(5) The learned Single Judge after reviewing the complete case law on the point in issue held that the offer made by the management to the appellant herein was a genuine and bona fide offer within the ambit of Section 25F of the Industrial Disputes Act and as such there was sufficient compliance with the provisions of that section. The offer made to the worker, who was working as a mechanic, by the management was contained in the letter dated 9th August, 1967 which reads as follows :

" THIS is to write that during the off season we have decided to reduce strength of Mechanics as there is not enough work for two whole time mechanics, you being the junior of the two mechanics, we hereby give you notice that your services shall stand terminated with effect from tomorrow .You are directed to settled your dues when you will be paid your service compensation and one month"s pay in lieu of notice besides your earned wages due up to date and wages in lieu of unavailed leaves, if any due. You may leave your permanent address for future correspondence."

The case of the writ petitioner, respondent No. 1 herein was that the letter was personally sought to be handed over to the workman on the same day but he refused to accept it after noticing its contents. Thereafter it was posted to the appellant along with another note wherein he had been informed that "accordingly you will be relieved from the day next of receipt by you of this letter". This letter was received by him on the 19th of August 1967. It is the admitted case that the workman did not collect his dues from the respondent but instead complained to the Mercantile Employees Association (hereinafter referred to as the Union), which wrote a letter on the 20th August, 1967 to the company demanding-reinstatement of the workman, inter-alia, on the ground that Section 25F of the Industrial Disputes Act had not been complied with. The company vide its letter dated the 23rd August, 1967 replied to the appellant advising him to collect his dues at any time during the working hours failing which the amount would be remitted to him by money-order at his cost. Thereafter the Union on behalf of the worker filed a statement of claim before the Conciliation Officer and on the basis of the report submitted by that officer, the Lt. Governor referred the Industrial Dispute vide reference order dated the 29th November, 1968, quoted above.

(6) In the appeal, Mr. D.D. Verma, learned counsel for the appellant has urged that the offer made by the company to the appellant was not in accordance with the provisions of Section 25F on two grounds. First, that the offer was vague, and secondly that the amount being offered was not ascertained or quantified.

The second ground of attack which is being raised now namely, that the offer was not quantified or ascertained was, however, not urged before the learned Single Judge.

(7) We do not find that the contentions raised before us have any merit. The learned Single Judge after examining the statement of claim filed by the union before the Industrial Tribunal and after going through the evidence recorded before it found that the Industrial Tribunal's approach to the case was perverse. It was held that there was an error apparent on the face of the record and hence the direction that the workman, be re-instated was liable to be quashed. On facts of the case it was held by Rangarajan J. that the workman, appellant herein, did not present himself to the Accounts officer of the company on the 20th August, 1967 to receive his retrenchment compensation, together with one month's pay in lieu of the notice, earned wages due to him upto that time and wages in lieu of unavailed earned leave which had been offered to him by the Company. After noticing the ratio in the decisions *Nowrozabad Mazdoor Sangh v. F. Jeejeebhoy*, (1970) 37 FJR 225, *Strawboard Manufacturing Co. Vs. Gobind*, , *Management of Delhi Transport Undertaking Vs. Industrial Tribunal, Delhi* and *Another, Tata Iron and Steel Co. Ltd. Vs. S.N. Modak*, , *Presidency Talkies Private Ltd .v. Labour Court, Madras*, 1959 1 LJ 90, and *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, , the learned Judge held that the offer made by the company to the appellant for the purposes of Section 25F was definite and genuine and complied with the requirements of the Act. We entirely agree with his observation that "all that need be ensured is a bona fide offer to the worker as part of the same transaction of either retrenching him or discharging or dismissing him."

(8) The second ground of attack by the learned counsel for the appellant that the amount being offered was not ascertained or quantified also has no merit. As pointed out earlier this submission had not even been raised before the learned Single Judge. As observed in the judgment under appeal the workman ought to have presented himself to the Accounts Officer of the company on 10th August, 1967 to receive his retrenchment compensation etc. He not having done so it cannot be urged on his behalf that unless the amount was quantified the offer to settle his dues was not valid. It is not disputed that the payments were made in the head office, where the cash or accounts section was located. It is that section which would have all the relevant record for quantification. The workman should have presented himself there to receive payment.