

(2008) 09 KAR CK 0021
In the Karnataka High Court
Case No : Writ Appeal No. 2311 of 2007

The Management of Cosmos Engineering	APPELLANT
Vs	
Sri K.G. Satish	RESPONDENT

Date of Decision : 20-09-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25 H

Citation : (2009) 121 FLR 370 : (2009) 4 KarLJ 353 : (2009) 1 KCCR 621

Hon'ble Judges : P.D. Dinakaran, C.J.;Mohan Shantanagoudar, J

Bench : Division Bench

Advocate : Ramachandra, for M.R.C. Ravi, for the Appellant; S. Basheer Mohammed, for T. Narayanaswamy, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, C.J.—The short question that arises for our consideration in this appeal is whether the Labour Court is right in setting aside the order of retrenchment dated 1.10.2001, in spite of rendering a clear finding that there is no illegality or irregularity in the impugned retrenchment, merely on account of the right conferred on the respondent-workman u/s 25H of the Industrial Disputes Act, 1947?

2. After going through the detailed award dated 12th October, 2004 of the Labour Court, we find that the Labour Court was carried away by the letter issued by the management on 3.8.2002 offering employment to the respondent-workman when a vacancy arises subsequent to the retrenchment. The said award was challenged by the management in writ petition No. 49182 of 2004.

3. The learned single Judge confirmed the order of reinstatement of the respondent with continuity of service. However, direction with regard to payment of 20% backwages of the Labour Court was set aside. Hence, the present appeal by the management

4. Both the learned Counsel appearing for the appellant-management and

respondent-workman reiterated the submissions that were made before the learned single Judge as well as the Labour Court.

5. Admittedly, both sides do not seriously object to the finding rendered by the Labour Court that there is no illegality or irregularity in the order of retrenchment dated 1.10.2001.

6. In that view of matter, the only issue that arises for our consideration is that whether the Labour Court is right in setting aside the order of retrenchment dated 1.10.2001, in spite of rendering a clear finding that there is no illegality or irregularity in the impugned retrenchment, merely on account of the right conferred on the respondent-workman u/s 25H of the Industrial Disputes Act, 1947?

7. In this regard, we are obliged to refer to Section 25H of the Act which reads as follows:

25H- Re-employment of retrenched workmen -

Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

8. It is a settled law that Section 25H only gives a preference to a retrenched workman and such preference will be available only prospectively as and when future vacancy arises. It is the right conferred on the retrenched workman u/s 25H to ensure the employee, whose employment was retrenched on the ground that his employment became surplus and whenever the employer has an occasion to employ another hand, the retrenched workman should be given a preference to join in service.

9. In *The Cawnpore Tannery Ltd., Kanpur Vs. S. Guha and Others*, the Supreme Court held that:

...Even before Section 25H was added to the Act, industrial adjudication generally recognised the principle that if an employer retrenched the services of an employee on the ground that the employee in question had become surplus, it was necessary that whenever the employer had occasion to employ another hand, the retrenched workman should be given an opportunity to join service. This principle was regarded as of general application in industrial adjudication on the ground that it was based on considerations of fair play and justice....

10. Further, the Supreme Court referring to the decision in *Annapurna Mills v. Workman* 1953 I LLJ 43 observed:

It is true that in the case of *Annapurna Mills* the discharge of the workmen was the result of the fact that the employer had closed his business and it was held that with improvement in circumstances if the employer reopened his business it

was necessary that he should take back in his employment his old employees. It would be noticed that the principle which was applied to the case of an employer who reopened his business which had been closed by him is substantially the same principle which requires the employer to give an opportunity to his retrenched workman when he has occasion to engage another servant That is why the Labour Appellate Tribunal has observed that the principle now statutorily recognised by Section 25H was, before the Act was amended, recognised by industrial adjudicators in dealing with such questions.

11. The right conferred u/s 25H of the Act, therefore, cannot by itself be a ground to interfere with the order of retrenchment validly made, particularly after holding that there is no illegality or irregularity in the retrenchment order dated 1.10.2001. Hence, we are obliged to interfere with the order of the learned single Judge dated 25.10.2007 and also the award dated 12.10.2004 and quash the same.

12. However, we make it clear that the quashing of the award of the Labour Court and the order of the learned single Judge would not by itself take away the right of the respondent u/s 25H of the Act for appointment to any future vacancy.

Writ Appeal is allowed with the above observation.