
(1975) 05 RAJ CK 0009
In the Rajasthan High Court

Udaipur Mineral Development Syndicate Pvt. Ltd.	APPELLANT
Vs	
M.P. Dave and Another	RESPONDENT

Date of Decision : 14-05-1975

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25P

Citation : (1975) 2 LLJ 499 : (1975) WLN 434

Hon'ble Judges : P.N. Singhal, C.J.; M.L. Shrimal, J

Bench : Division Bench

Judgement

P.N. Singhal, C.J.—This special appeal of the Udaipur Mineral Development Syndicate Private Ltd., Bhilwara, is directed against the judgment of a learned single Judge dated July 9, 1971. It lies within a narrow compass and a narration of the undisputed facts will be quite sufficient for its disposal.

2. Respondent, M.P. Dave was employed as a mechanic in the appellant's factory in Bhilwara and had been in continuous service for not less than one year when he was retrenched by a notice dated July 25, 1966 which was served on him on July 30, 1966. He was, however, not paid the compensation prescribed by Clause (b) of Section 25F of the Industrial Disputes Act, 1947, hereinafter referred to as "the Act," at the time of the retrenchment. He moved the Labour and Conciliation Officer, and ultimately the dispute between him and the appellant was referred to the Labour Court for deciding the Question whether the removal of the respondent was proper and legal and, if not, to what relief he was entitled. That Court held that there was non-compliance with the provisions of the aforesaid Section 25F but, in the circumstances of the case, it allowed the respondent a sum of Rs. 3,000 as compensation and refused the relief of reinstatement. The respondent challenged the award of the Labour Court dated February 7, 1970, by a writ petition before the learned single Judge who allowed it by his impugned judgment dated July 9, 1971. He set aside that part of the award whereby the Labour Court refused to reinstate the petitioner, and directed the Court to amend its award accordingly. The Udaipur Mineral Development Syndicate Private Ltd.,

feels aggrieved against that judgment and has come up in appeal before us.

3. It has been argued by the learned Counsel for the appellant that the learned single Judge went wrong in holding that as the retrenchment of the petitioner was "invalid" in view of the decision of their Lordships of the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, "the Labour Court was left with no option but to reinstate the petitioner in his job." It has been urged that even if it was assumed that the normal rule in such cases would be the reinstatement of the retrenched workman, the learned single Judge erred in thinking that the Labour Court had no option but to reinstate the respondent in his job. Reliance for this argument has been placed on *Western India Automobile Association v. Industrial Tribunal, Bombay and Ors.* 1949 I L.L.J. 245; *Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi and Anr.* 1950 I L.L.J. 9211, *Bidi, Bidi Leaves" and Tobacco Merchants Association Vs. The State of Bombay*, and *Hindustan Steels Ltd. Rourkela v. A.K. Roy and Ors.* 1970 I L.L.J. 2281 -We have gone through these cases. In the case of *Western India Automobile Association v. The Industrial Tribunal, Bombay and Ors.* (supra) their Lordships of the Federal Court considered the argument whether as, order of reinstatement was unusual or extraordinary in law, and took the view that such a relief was on the same footing as the relief of restitution, and held that there was nothing extraordinary in the restoration of an ex-employee to his previous position in so far as capacity, status and emoluments were concerned when that was considered necessary in the interests of the peaceful settlement of an industrial dispute. It was observed that the award of the Tribunal may even contain provisions for settlement of a dispute which no Court could order if it was bound by the ordinary law, and that the industrial-arbitration may "involve" the extension of an existing agreement or the making of a new one, or in general the creation of new obligation or modification of old ones, and that was held to be a true statement of the functions of Industrial Tribunals in labour disputes. That, view was considered and approved by their Lordships of the Supreme Court in *Bharat Bank's case* (supra) and then again in *The Patna Electric Supply Co., Ltd., Patna Vs. The Patna Electric Supply Workers' Union*, , *Bidi, Bidi Leaves and Tobacco Merchants' Association case* (supra) and *Hindustan Steels Ltd., Rourkela v. A.K. Roy and others* (supra). It is, therefore, well settled that as Industrial Tribunal may create new obligations or modify contracts in the interest of industrial peace, and it has the jurisdiction to make a proper and a reasonable order in any industrial dispute. In the last of these cases, i.e.. in the case of *M/s. Hindustan Steels Ltd.* (supra) it has been held by their Lordships that while the normal rule in such cases should be reinstatement, in unusual or exceptional cases, where it is not expedient to grant that relief, the proper relief would be compensation if that would meet the ends of justice. The matter has, therefore, to be examined in a spirit of "fairness" and "justice."

4. The question of the extent of the power of the industrial Court to impose new obligations on the parties and to give awards which may have the effect of extending existing agreements or making a new agreement as stated in *Western*

India Automobile Association's case (supra) and Patna Electric Supply Co.'s case (supra) came up for specific consideration before their Lordships of the Supreme Court in *The New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad and Others Vs. The Textile Labour Association, Ahmedabad*, and they stated the law as follows

There is no doubt, therefore, that it is open to an Industrial Court in an appropriate case to impose new obligations on the parties before it or modify contracts in the interest of industrial peace or give awards which may have the effect of extending existing agreement or making a new one. This, however does not mean that an Industrial Court can do anything and everything when dealing with an industrial dispute. This power is conditioned by the subject-matter with which it is dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to that matter as laid down by the Legislature or by this Court.

(Emphasis added).

It is, therefore, equally well-settled that while the Tribunal has extensive powers for the just and fair settlement of an industrial dispute, that power is "conditioned" by the industrial law in the matter as laid down by (i) the Legislature or (ii) the Hon'ble the Supreme Court.

We have accordingly looked at the controversy before us in the light of the aforesaid two conditions, and we find that as it was the mandate of Section 25P of the Act that a workman like the respondent shall not be retrenched by his employer until he had been paid, at the time of his retrenchment, the compensation prescribed by Clause (b) of Section 25F and as it is not in dispute that that requirement of the law was not fulfilled by the appellant while retrenching the respondent, it would follow that the Labour Court's discretion to grant the appropriate relief had to be conditioned by a consideration of the fact that the appellant had committed a breach of a mandatory requirement of the law governing the respondent's retrenchment. The effect of a breach of the provisions of Section 25F of the Act came up for consideration before their Lordships of the Supreme Court in *Workmen of Subong Tea Estate Vs. The Outgoing Management of Subong Tea Estate and Another*, and, while holding the retrenchment to be invalid for breach of the provisions of Section 25F, they laid down the law as follows:

That being so, we must hold that the retrenchment of the eight workmen, being invalid in law, cannot be said to have terminated the relationship of employer and employee between the vendee, respondent 2 and the eight workmen concerned. They are accordingly entitled to reinstatement with continuity of service; they would also be entitled to recover their full wages for the period between the date of the retrenchment and the date of their reinstatement.

It appears, however, that the Labour Court did not examine the controversy in the light of the two conditions laid down in the *New Maneck Chowk Spinning and*

Weaving Co's case (supra), and it, therefore, wrongly laboured under the impression that it was permissible for it to refuse the relief of reinstatement even though the respondent's service could not be said to have been terminated by the notice of retrenchment because of the failure to comply with the requirement of Section 25F of the Act so that the relationship of employer and employee continued between the parties. In other words, the Court fell into the error of ignoring the fact that the legal effect of the invalid order of retrenchment was to continue the relationship of employer and employee between the parties, and it was not permissible for it to terminate that relationship by a fist of its own in breach of the mandate of Section 25F of the act and its interpretation by their Lordships of the Supreme Court in Subong Tea Estate's case (supra), simply because it thought that it would not be proper to order the reinstatement for the reasons mentioned by it. There is, therefore, nothing wrong if the learned single Judge has corrected the mistake and directed the Labour Court to amend its award.

5. The learned Counsel for the appellant has advanced some arguments, with reference to the facts and circumstances of the case, in justification of the Labour Court's decision refusing to reinstate the petitioner and granting him a cash compensation of Rs. 3,000, but in the view we have taken of the requirement of the law, it is not necessary for us to examine those arguments.

6. The appeal fails, and is dismissed with costs.