
(1960) 03 PAT CK 0001

In the Patna High Court

Case No : Misc. Judicial Case No. 766 of 1958

United Press Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-03-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 33C, 33C(2)

Citation : AIR 1960 Patna 314

Hon'ble Judges : V. Ramaswami, C.J;R.K. Choudhary, J

Bench : Division Bench

Advocate : A.B.N. Sinha and Ram Narain Tewary, for the Appellant; Asghar Hussain and G.P. Shahi, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the petitioner is a public limited company, namely, the United Press Limited, Bhagalpur. It has obtained a rule from the High Court calling upon the respondents to show cause why the Notification of the Government of Bihar No. III-DI-21029/58LT-78, Dated 7-7-1958, making a reference to the Labour Court of Patna under Sub-section (2) of Section 33C of the Industrial Disputes Act, requiring the said Labour Court to determine the amount in money value of the benefit legally recoverable from the petitioner should not be quashed by a writ in the nature of certiorari under Article 226 of the Constitution. The Notification of the State Government is Annexure E to this application and is in the following terms:

Government of Bihar, Labour Department.

NOTIFICATION Dated Ranchi the 16th Asarh, 1880 7 th July 1958.

No. III/DI-21029/58LT-78 -- Whereas the workman named in the Schedule annexed hereto is entitled to receive from his employer, namely, the United Press Ltd., Bhagalpur of which Shri Birendra Narayan Agrawala is the proprietor, the benefits of retrenchment compensation as provided u/s 25F of the Industrial

Disputes Act, 1947, (XIV of 1947) which are capable of being computed in terms of money.

And whereas it is necessary to determine the amount at which such benefits should be computed and recovered from the said employer;

Now, therefore, in exercise of the powers conferred by Sub-section (2) of Section 33C of the said Act, the Governor of Bihar is pleased to specify the Labour Court at Patna constituted by the State Government u/s 7 of the said Act as the Labour Court for determining the amount in money value to which the workman is entitled,

ANNEXURE. 1. Shri Ahmad Hussain, Daftari. By order of the Governor of Bihar, Sd. B.P. Singh. Secretary to Government."

2. The argument on behalf of the petitioner is that the Notification of the State Government is ultra vires and without jurisdiction because there was no retrenchment compensation payable to respondent No. 3 Sri Ahmad Hussain u/s 25F of the Industrial Disputes Act, which sets out the conditions precedent to the retrenchment of a workman. In our opinion, the argument is well founded and must be accepted as correct. The case of the petitioner before the Labour Court was that respondent No. 3 was discharged from service because he was unwilling to join the Patna Branch of the Press. It is not a case of retrenchment u/s 25F of the Industrial Disputes Act and no question of retrenchment compensation arises in his case. This position is admitted by respondent No. 3 Ahmad Hussain in his written-statement which is Annexure F to the application. In paragraph 12 of this written-statement respondent No. 3 has stated before the Labour Court:

"As a matter of fact the discharge of the petitioner was not retrenchment as admitted by the opposite party himself. The opposite party gave ground of discharge (as) alleged unwillingness of the petitioner to join at Patna."

In our opinion, there is no legal foundation upon which the State Government could make a reference to the Labour Court under the provisions of Section 33C of the Industrial Disputes Act which is in the following terms:

"33C. (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA, the workman may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under the Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined may be

recovered as provided for in Sub-section (1).

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case."

Reference was also made to Section 25F which appears in Chapter VA and is in the following terms:

"25F. No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government."

For these reasons we hold that there is no legal foundation upon which the State Government could make the reference u/s 33C of the Industrial Disputes Act. It follows, therefore, that the Notification of the State Government, No. III/DI-21029/ 58 LT-78- dated 7th of July, 1958, is ultra vires and without jurisdiction and must be quashed. We also direct that a writ in the nature of mandamus under Article 226 of the Constitution should be issued commanding respondent No. 2, the presiding officer of the Labour Court, Patna, not to proceed with the further hearing of the reference made by the State Government.

3. We accordingly allow this application. There will be no order as to costs.