

(2002) 02 KL CK 0017
In the High Court Of Kerala
Case No : O.P. No. 4350 of 1996 (P)

Unnikrishna Pillai R.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G, 25H

Citation : (2002) 95 FLR 299 : (2002) 2 LLJ 493

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : H.B. Shenoy and B. Ashok Shenoy, for the Appellant; D.P. Renu and Thomas Mathew Nellimoottil for Respondent No. 1 and C.A. Majee, Addl. CGSC, for the Respondent

Final Decision : Allowed

Judgement

Kurian Joseph, J.—Ext. P1 award passed by the Labour Court is under challenge. The issue referred for adjudication is as follows:

"Whether the action of the Management of Base Vitualling Yard, Southern Naval Command, Naval Base, Cochin - 682 004 in terminating the services of Shri. R. Unnikrishna Pillai w.e.f. February 1, 1989 and in re-engaging his juniors is justified ? If not, what relief he is entitled to and from what date?"

In the view I propose to take in the matter it is not necessary for me to go into the various details of the case, though there is a vehement argument on the part of the learned Central Government Standing Counsel Sri. Thomas Mathew Nellimoottil that the workman was only casually engaged on (sic) rate of pay.

2. The Labour Court has found as follows:

"Even though there is no violation of Section 25-F of the Industrial Disputes Act is the management bound to observe provisions contained in Sections 25-G and 25-H of the Industrial Disputes Act. But our High Court through a Division Bench

in the decision reported in Indian Airlines Vs. Sebastian, speaking through his Lordship JAGANNATHA RAJU, J. dealt with identical facts".

It was held in that decision that the workman had not completed 240 days for every continuous year of service and hence was not entitled to the benefit of Section 25-H of the I.D. Act. But the Supreme Court had dealt with the issue in detail in the decision reported in Central Bank of India Vs. S. Satyam and others, the relevant portion of which appearing in paragraph 10 reads as follows at pp. 826, 827 of LLJ:

"Section 25-H is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinary meaning of the word "retrenchment" used therein. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman."

In that view of the matter Ext. P1 award is liable to be set aside. I do so. I remit the matter to the Labour Court, Ernakulam for a fresh consideration in accordance with law. Since the matter is remitted, I make it clear that it will open to the petitioner and the second respondent to take all the contentions available to them and the first respondent will pass a fresh award in accordance with law. This shall be done within a period of three months from the date of receipt of a copy of the judgment.

3. The original petition is disposed of as above.

4. Petitioner will produce a copy of this judgment along with a copy of the original petition before the 1st respondent.