
(2004) 06 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 746 of 2001

Vijendrasingh Ladusingh Shekhawat	APPELLANT
Vs	
Todi Industries Ltd. and Another	RESPONDENT

Date of Decision : 29-06-2004

Acts Referred:

Citation : (2004) 6 BomCR 204 : (2004) 4 MhLj 412

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : S.N. Deshpande, for the Appellant; T.S. Shetty and Santosh Shetty, for the Respondent

Judgement

D.Y. Chandrachud, J.—The petitioner joined the respondents on 15th April, 1992 as an accountant and was confirmed on 7th August, 1992. The services of the petitioner were terminated on 11th September, 1995. The petitioner challenged the order of termination in a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 on the ground inter alia that the retrenchment compensation had not been correctly computed and that therefore the order of retrenchment was void. In the circumstances, it was alleged that the employer was guilty of an unfair labour practice under items 1(b), 1(d) and 1(f) of Schedule IV to the Act. The respondent employer denied in the written statement that the retrenchment compensation was not correctly computed.

2. On 11th January, 1996 the petitioner made an application for production of documents. According to the petitioner, the employer did not produce those documents, but by a reply dated 15th April, 1996 gave the break up of the retrenchment compensation. On 8th July, 1996, the petitioner filed a statement before the Industrial Court indicating how on the basis of the break up furnished by the employer the retrenchment compensation was not correctly computed since the House Rent Allowance had not been included while making the computation. On 26th July, 1996, the employer admitted that the retrenchment

compensation had been not correctly computed and that an amount of Rs. 259/- had been paid less.

3. The Labour Court by its judgment and order dated 2nd September, 1996 granted reinstatement with full backwages and continuity of service. In a revision filed by the employer the Industrial Court, however, modified this order by directing the employer to pay an amount of Rs. 259/- which had fallen short together with litigation expenses of Rs. 10,000/-. The order for reinstatement with backwages and continuity of service was set aside.

4. Before the Court it is common ground that the employer reinstated the petitioner on 9th September, 1996 in compliance with the order of the Labour Court, but once again the services of the workman were terminated on 19th September, 1996. The subsequent termination of service has been challenged in a complaint of unfair labour practice under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The complaint, it has been stated before the Court, was dismissed in default. Counsel for the petitioner states on instructions that an application for restoration has been filed. The only question which now survives at this stage is whether the petitioner is entitled to his backwages for the period between the date of the original order of termination (11th September, 1995) and the second termination (19th September, 1996). It is common ground that the employer has deposited the entire amount of backwages computed at Rs. 34,000/- before the Industrial Court.

5. In the present case, the admitted position is that the employer had not included the House Rent Allowance in computing the retrenchment compensation that was required to be paid u/s 25-F of the Industrial Disputes Act, 1947. Section 25-F, it is well settled, lays down a requirement which is mandatory. In the absence of compliance with the provisions thereof the order an retrenchment is void ab initio. In State Bank's Staff Union Vs. State Bank of India and Others, Mr. Justice B.N. Srikrishna (as the learned Judge then was) speaking for this Court held thus :--

"It is settled law that Section 25F of the Act was introduced into the statute book by Parliament as a measure of amelioration. The Section is specifically intended to soften the blow of unemployment which would fall upon a workman, who is suddenly deprived of his source of livelihood. Considering the constraints on the economy of the country as a whole and that of the industrial units. Parliament has limited this amelioration to what is specifically provided in Clauses (a) and (b) of section 25F, viz., payment of one month's wages in lieu of notice and retrenchment compensation calculated in accordance with Clause (b) of Section 25F. It is also settled law that, considering the negative language used in Section 25F, the section imposes a mandatory duty on the employer which is a condition precedent to retrenchment of workmen. Consequently, contravention thereof, however slight, vitiates the act of retrenchment itself. When a statute mandates a duty as a condition precedent for effecting retrenchment, there is no difficulty

in holding that breach of the said condition invalidates the retrenchment and renders it void ab initio."

6. In a subsequent decision in *Bombay Film Laboratory Ltd. v. L.G. Vasule* 1997 (2) LLN 774, Mr. Justice B.N. Srikrishna (as the learned Judge then was) following the judgment of a Single Judge of the Court in *Balmer Lawrie and Company Ltd. v. Waman B. More* 1981 (1) LLN 636 held that if there is a bona fide mistake either of fact or law, pertaining to the mandatory requirement of the statute, then an employer who rectifies the mistake at the earliest available opportunity and deposits the amount of shortfall in the Court, would be deemed to have complied with the provisions of the statute. The Learned Judge was of the view that though the aforesaid principle has been laid down in the context of Section 33(2)(b), there is no reason why it should not apply to a case u/s 25-F. On the facts, the Learned Judge was of the view that the question as to whether the daily wage of a monthly rated workman should be computed for the purpose of Section 25-F by dividing the monthly wage by 30 or 26 days is a controversy which was not free from doubt. Moreover, the employer had cured the deficiency at the earliest possible opportunity in a bona fide manner. In *Balmer Lawrie* (supra) it was held that it was impossible to accept on the facts of the case the contention of the employer that the non-payment of house rent allowance was a bona fide action on proper advice. However, there may be occasions when the amount paid, tendered or remitted falls short of the amount which may ultimately be payable to the workman and the difference arises because of some difficulty or inability to make the necessary calculation at a particular point of time which difficulty or inability is removed subsequently. A shortfall may also arise in cases where two views are possible or whether certain amounts are payable to the workman.

7. In the present case, it is not possible to even suggest that there was any doubt or dispute in regard to the entitlement of the workman to the inclusion of the House Rent Allowance in computing his dues for the purpose of Section 25-F. The witness for the employer admitted that when the termination took place, the gross salary of the workman inclusive of House Rent Allowance was Rs. 3,100/-. The witness admitted that retrenchment compensation was not computed on the basis of a salary of Rs. 3,100/-. Absolutely no explanation has been offered for the circumstances in which the House Rent Allowance was not included. The burden lies on the employer to establish the existence of circumstances justifying the invocation of the exception adverted to in *Balmer Lawrie* and *Bombay Film Laboratory*. Unless this is insisted upon, the exception will swallow the rule and defeat the salutary public interest underlying Section 25-F. Here there is no demonstrated inability or difficulty in making the calculations nor were two views possible. Indeed no such case has been set up in evidence. That being the position, the exception which has been laid down in *Balmer Lawrie*'s case and which was on the facts applied in *Bombay Film Laboratory* (supra) can have no application to this case. In the circumstances, I am of the view that the order of the Industrial Court, interfering with the finding of the Labour Court was not in

consonance with law. The order of retrenchment must be regarded as void ab initio for want of compliance with the mandatory requirement u/s 25-F.

8. However, it is now common ground that the services of the petitioner were dispensed with immediately after he was reinstated in compliance with the order of the Labour Court. The order of termination has subsequently been challenged in a separate complaint which has been dismissed for default and wherein an application for restoration is pending, that being the position the only consequence would be that the petitioner would be entitled to his backwages for the period from 11th September, 1995 to 19th September, 1996. An amount of Rs. 34,926.60 has been deposited by the employer in the Industrial Court representing the amount of backwages due and payable to the petitioner. In this view of the matter, this petition is disposed of with a direction that the petitioner would be entitled to withdraw the aforesaid amount of Rs. 34,926.60 that has been deposited before the Industrial Court by the respondent employer. This shall be in substitution of the order that has been passed by the Labour Court. Insofar as the question of reinstatement is concerned, nothing is required to be expressed in the present proceedings since the petitioner has once again been retrenched with effect from 19th September, 1996 and that has been challenged in separate proceedings. In the circumstances, the order of the Industrial Court dated 18th January, 2001 is quashed and set aside and shall stand substituted with the above directions. The petition is accordingly disposed of. No order as to costs.

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