W. P. No.11387/2016

31.01.2017

Shri Saurabh Sunder, learned counsel for the petitioner.

Shri Rajesh K. Pandey, learned counsel for the respondents.

With consent learned counsel for the parties, the matter is finally heard.

This petition under Article 227 of the Constitution of Indian is directed against the Award dated 08.01.2016 passed by labour Court Jabalpur; whereby, the services of the respondent is directed to be reinstated with entire backwages.

The labour Court was in seisin with the following Industrial Disputes-

> ''क्या श्री मनोज पटेल पिता आर.एल. पटेल का सेवा पृथकीकरण वैध एवं उचित है? यदि नहीं तो वे किस सहायता के पात्र है एवं इस संबंध में नियोक्ता को क्या निर्देश दिये जाना चाहिये?''

The dispute emanated from the fact that the respondent being engaged as notice server on daily wages w.e.f. 26.04.1994 was dispensed with from service w.e.f. 30.04.2001. The termination was found

fault with by the labour Court in a proceeding forming subject matter of Industrial Reference:4/2008/IDR because of non compliance of provisions under Section 25 F Industrial Dispute Act 1947 (for short "the Act of 1947)", which resulted in passing of Award on 09.05.2011, directing reinstatement without backwages. The respondent was reinstated on 17.05.2012 and later his services were dispensed with by order dated 07.07.2012. On raising of industrial dispute, the matter was referred to the labour Court.

The Labour Court framed two issues viz.,

> ''1— क्या द्वितीय पक्ष की ओर से जारी छंटनी आदेश दिनांक 7.7.2012 वैध एवं उचित है?
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> 2— क्या प्रथम पक्ष सेवा समाप्ति के बाद से बेरोजगार है और पुनः सेवा में स्थापित होने पर पिछला वेतन पाने का अधिकारी है।''

As regard to issue No.1 the labour Court found fault with the order of termination since the order of termination was not accompanying the retrenchment compensation. Finding to that effect is recorded in paragraph 8 in the following terms-

> ''8. द्वितीय पक्ष की ओर से जारी आदेश दिनांक 7.7.2012 में यह उल्लेख है कि प्रथम पक्ष को छंटनी मुआवजा का चैक संलग्न कर दिया जा रहा है। प्रकरण के साथ

संलग्न छंटनी मुआवजा के चैक की फोटोकापी संलगन की है जिस पर 6–7–2012 अंकित है। प्रथम पक्ष ने शपथ पर दिये कथनों में बताया कि छंटनी मुआवजा का चेक दिनांक 25.7.2012 को दिया गया था द्वितीयपक्ष साक्षी (डी.डब्ल्यू. –1) ने प्रति परीक्षण में यह स्वीकार किया है कि प्रथमपक्ष को छंटनी मुआवजा का चैक दिनांक 25.07.2012 को दिया गया था। इससे स्पष्ट है कि प्रथमपक्ष को छंटनी मुआवजा काा चैक छंटनी आदेश के साथ नहीं देकर बाद में दिया गया है। छंटनी मुआवजा का चेक छंटनी आदेश के साथ दिया जाना आज्ञात्मक है। इस सम्बन्ध में माननीय सर्वोच्चय न्यायालय का न्याय दृष्टान्त 2001 (89) एफ.एल. आर. पेज 3456 सेन स्टील प्रोडक्ट विरुद्ध नयेपाल सिंह का अवलोकनीय है। छंटनी मुआवजा छंटनी आदेश के समय दिया आज्ञात्मक है। प्रथम पक्ष के प्रकरण में छंटनी मुआवजा बाद में दिया गया है इस कारण से प्रथमपक्ष की छंटनी का आदेश वैध नहीं ठहराया जा सकता है।''

Section 25 F of the Act of 1947 mandates-

"25 F- Conditions precedent to retrenchment of workmen.- 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:
(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 continuous service] or any part thereof in excess of six months; and
(c)- notice in the prescribed manner is served on the appropriate Government or such

> authority as may be specified by the appropriate Government by notification in the Official Gazette].”

Clause (b) of Section 25 F of the Act of 1947 with the expression “the workman has been paid, at the time of retrenchment,” contemplates that the retrenchment compensation should accompany the retrenchment. The simultaneous payment is thus mandatory and a non-payment would invalidate the retrenchment. In this context reference can be had of the decision in **Syed Azam Hussaini v. Andhra Bank Ltd: AIR 1995 SC 1352,** wherein it is held-

> “13- … The termination of appellants services was, therefore, retrenchment under Section 2(oo) of the Industrial Disputes Act, 1947 and it could be done only in accordance with the provisions contained in Section 25-F of the Industrial Disputes Act, 1947....”

There is another aspect in the matter. Clause (c) of Section 25 F of the Act of 1947 provides for that notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette. In the case at hand there is no material on record of the labour Court and even before the Court that the stipulations contained in

Clause (c) of Section 25 F of the Act of 1947 has been adhered. Recently, in a decision in **Raj Kumar v. Director of Education and others: (2016) 6 SCC 541** it is held-

> "34- We are unable to agree with the reasoning adopted by the Tribunal as well as the High Court in the instant case. Admittedly, the notice under Section 25F(c) of the ID Act has not been served upon the Delhi State Government. In support of the justification for not sending notice to the State Government reliance has been placed upon the decision of this Court in the case of Bombay Journalists (supra). This decision was rendered in the year 1963 and it was held in the said case that the provisions of Section 25F.
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> (c) of the ID Act is directory and not mandatory in nature. What has been ignored by the Tribunal as well as the High Court is that subsequently, the Parliament enacted the Industrial Disputes (Amendment) Act, 1964. Section 25F (c) of the ID Act was amended to include the words:
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> "25-F (c) ... or such authority as may be specified by the appropriate Government by notification in the Official Gazette" The statement of objects and reasons provides:
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> The statement of objects and reasons provides:
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> "Opportunity has been availed of to propose a few other essential amendments which are mainly of a formal or clarificatory nature."
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> 35- Nothing was done on part of the legislature to indicate that it intended Section 25F(c) of the ID Act to be a directory provision, when the other two sub-sections of the same section are mandatory in nature. The amendment was enacted which seeks to make it administratively easier for notice to be served on any other authority as specified.
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> 36- Further, even the decision in the case of Bombay Journalists (supra) does not come to the

rescue of the respondents. On the issue of interpretation of Section 25F(c) of the ID Act, it was held as under: **Bombay Union of Journalists v. State of Bombay: AIR 1964 SC 1617-**

> "The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause (c). Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the appropriate Government about the retrenchment, and that only helps the Government to keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provision prescribed by clause (c) a condition precedent as in the case of clauses (a) & (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) & (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) & (b), is not a condition precedent."

Thus, this Court read the ID Act and the relevant Rules thereunder together and arrived at the conclusion that Section 25F(c) is not a condition precedent for retrenchment. By no stretch of imagination can this decision be said to have held that there is no need for industries to comply with this condition at all. At the most, it can be held that Section 25F(c) is a condition subsequent, but is still a mandatory condition required to be fulfilled by the employers before the order of retrenchment of the workman is passed.

37- This Court in the case of Mackinon Mackenzie & Company Ltd. v. Mackinnon Employees Union: (2015) 4 SCC 544-

> "Further, with regard to the provision of Section 25F Clause (c), the Appellant-Company has not been able to produce cogent evidence

that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the Appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F Clauses (a) and (c) of the I.D. Act which are mandatory in law."

38- In the instant case, the relevant rules are the Industrial Disputes (Central) Rules, 1957. Rule 76 of the said Rules reads as under:

"76. Notice of retrenchment.- If any employer desires to retrench any workman employed in his industrial establishment who has been in continuous service for not less than one year under him (hereinafter referred to as 'workman' in this rule and in rules 77 and 78), he shall give notice of such retrenchment as in Form P to the Central Government, the Regional Labour Commissioner (Central) and Assistant Labour Commissioner (Central) and the Employment Exchange concerned and such notice shall be served on that Government, the Regional Labour Commissioner (Central), the Assistant Labour Commissioner (Central), and the Employment Exchange concerned by registered post in the following manner :-

a) where notice is given to the workman, notice of retrenchment shall be sent within three days from the date on which notice is given to the workman;

Rule 76(a) clearly mandates that the notice has to be sent to the appropriate authorities within three days from the date on which notice is served on the workman. In the instant case, the notice of retrenchment was served on the appellant on 07.01.2003. No evidence has been produced on behalf of the respondents to show that notice of the retrenchment has been sent to the appropriate authority even till date.

39- That being the case, it is clear that in the instant case, the mandatory conditions of Section 25F of the ID Act to retrench a workman have not

> been complied with. The notice of retrenchment dated 07.01.2003 and the order of retrenchment dated 25.07.2003 are liable to be set aside and accordingly set aside. ”

Since there is non compliance of the stipulations contained under Section 25 F (c) of the Act of 1947, the termination of the respondent workman cannot be upheld.

Since the termination of respondent workman is found to be bad for non compliance of Section 25 F (a) and (c) of the Act of 1947, the issue as to whether Section 25 N of the Act of 1947 is attracted in case of Municipal Corporation is not gone into and is kept open.

As regard to backwages, the labour Court has recorded a categorical finding that the workman has deposed of being unemployed after termination which has not been contradicted by the petitioner. In view whereof, and in view of the law laid down in **M/s. Hindustan Tin Works Pvt. Ltd. vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. (1979) 2 SCC 80-**

> “9. … The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right

> to the work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer."

This view have been reiterated in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others: (2013) 10 SCC 324** and **Tapash Kumar Paul v. BSNL (2014) 4 SCR 875**.

The conclusion arrived at by the labour Court cannot be faulted with as would warrant an interference.

Consequently, petition fails and is **dismissed**.

(SANJAY YADAV)
JUDGE

Loretta