IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 3rd OF MAY, 2024

MISC. PETITION No. 2289 of 2020

BETWEEN:-

1. **COMMISSIONER M.P. HOUSEING BOARD THROUGH SHRI T.N. DWIVEDI S/O SHRI S.P. DWIVEDI AGED ABOUT 61 YEARS, PRESENTLY WORKING AS EXECUTIVE ENGINEER, MPHIDB, DIVISION NO.1, G. T. B. COMPLEX, T.T. NAGAR, BHOPAL (MADHYA PRADESH)**
2. **EXECUTIVE ENGINEER MADHYA PRADESH HOUSING AND INFRASTRUCTURE DEVELOPMENT BOARD DIVISION NO.1, BHOPAL (MADHYA PRADESH)**
3. **DEPUTY ENGINEER MADHYA PRADESH HOUSING AND INFRASTRUCTURE DEVELOPMENT BOARD SUB DIVISION NO.2, BERASIA ROAD, KAROND, BHOPAL (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI KAPIL DUGGAL - ADVOCATE)

AND

HARICHARAN S/O SHRI SHOBHRAM, AGED ADULT, R/O. VILLAGE AND POST PIPALIYA JAHIRPEER DISTRICT BHOPAL (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI SWAPNIL KHARE - ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

1. This petition under Article 227 of the Constitution of India has been filed seeking the following reliefs :-

   (i) Call for the records of the case.

   (ii) Set-aside the impugned award dated 9.1.2020 passed by the learned Labour Court, Bhopal in New Case No.108/18 I.D. Ref (Old Case No.39/03 I.D. Ref.)

   (iii) Any other appropriate writ/order/direction, which this Hon'ble Court may deem fit and proper also kindly be issued in the interest of justice.

2. It is submitted by counsel for the petitioners that Labour Court has set-aside the order of termination on the ground that since retrenchment compensation was paid through cheque and not in cash, therefore, there was no substantial compliance in the light of the judgment passed by the Supreme court in the case of **Anoop Sharma Vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana)** reported in **(2010) 5 SCC 497.**

3. Challenging the aforesaid order, it is submitted by counsel for the petitioners that it is an undisputed fact that along with an order of termination, cheque of one month salary along with compensation was given to the workman and that aspect has also been admitted by him in cross-examination. The facts of the judgment passed by the Supreme Court in the case of **Anoop Sharma (supra)** are distinguishable. In the said case, contention of the employer that compensation was paid on the same day was not accepted by the Supreme Court and, therefore, it was held that

payment of compensation by cheque after three months of termination of services of the employee cannot be said to be substantial compliance of provisions of Section 25-F of the Industrial Disputes Act. But, it was nowhere held that every time compensation has to be paid in cash or it cannot be paid by cheque and in the present case, the workman has admitted that cheque was received on the very same day, on which, his services were terminated by impugned order dated 28.2.2000, therefore, it is clear that as per provisions of Section 25-F of the I.D. Act, the compensation was paid on the same day and thus, the findings recorded by the Labour Court are liable to be set-aside.

4. Per contra, petition is vehemently opposed by counsel for the respondent. It is submitted that very purpose of payment of compensation in cash is that workman may not face the financial crises. Even payment is made by cheque and it is encashed on the next day, then it cannot be said that the compensation amount was paid on the very same day of retrenchment because under some circumstances, in absence of any cash amount, it may not be possible for the employee even to survive for one day.
5. Heard learned counsel for the parties.
6. Section 25-F (b) of the Industrial Disputes Act reads as under :-

> "(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."

7. The Supreme court in the case of **Anoop Sharma Vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana)** reported in **(2010) 5 SCC 497** has held as under :-

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in clauses (*a*) and (*b*) of Section 25-F of the Act are satisfied. In terms of clause (*a*), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (*b*) casts a duty upon the employer to pay to the workman *at the time of retrenchment*, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Sections 25-F(*a*) and (*b*) of the Act are mandatory and non-compliance therewith renders the retrenchment of an employee nullity—*State of Bombay* v. *Hospital Mazdoor Sabha* [AIR 1960 SC 610] , *Bombay Union of Journalists* v. *State of Bombay* [AIR 1964 SC 1617 : (1964) 6 SCR 22] , *SBI* v. *N. Sundara Money* [(1976) 1 SCC 822 : 1976 SCC (L&S) 132] , *Santosh Gupta* v. *State Bank of Patiala* [(1980) 3 SCC 340 : 1980 SCC (L&S) 409] , *Mohan Lal* v. *Bharat Electronics Ltd.* [(1981) 3 SCC 225 : 1981 SCC (L&S) 478] , *L. Robert D'Souza* v. *Southern Railway* [(1982) 1 SCC 645 : 1982 SCC (L&S) 124] , *Surendra Kumar Verma* v. *Central Govt. Industrial Tribunal-cum-Labour Court* [(1980) 4 SCC 443 : 1981 SCC (L&S) 16] , *Gammon India Ltd.* v. *Niranjan Dass* [(1984) 1 SCC 509 : 1984 SCC (L&S) 144] , *Gurmail*

Singh v. *State of Punjab* [(1991) 1 SCC 189 : 1991 SCC (L&S) 147] and *Pramod Jha* v. *State of Bihar* [(2003) 4 SCC 619 : 2003 SCC (L&S) 545] .

18. This Court has used different expressions for describing the consequence of terminating a workman's service / employment / engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as *ab initio void*, sometimes as illegal per se, sometimes as nullity and sometimes as *non est*. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F(*a*) and (*b*) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

19. The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of clauses (*a*) and (*b*) of Section 25-F must accompany the letter of termination of service by way of retrenchment or is it sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he is asked to go was considered in *National Iron and Steel Co. Ltd.* v. *State of W.B.* [AIR 1967 SC 1206 : (1967) 2 SCR 391] The facts of that case were that the workman was given notice dated 15-11-1958 for termination of his service with

effect from 17-11-1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20-11-1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance with Section 25-F was rejected by this Court by making the following observations: (AIR p. 1210, para 9)

"*9*. The third point raised by the Additional Solicitor General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman, etc. Learned counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25-F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date 15-11-1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on 20-11-1958 or thereafter during the working hours. Manifestly, Section 25-F had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the

notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25-F, we need not consider the other points raised by the learned counsel."

20. In *SBI* v. *N. Sundara Money* [(1976) 1 SCC 822 : 1976 SCC (L&S) 132] the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25-F(*b*).

21. The legal position has been beautifully summed up in *Pramod Jha* v. *State of Bihar* [(2003) 4 SCC 619 : 2003 SCC (L&S) 545] in the following words: (SCC pp. 624-25, para 10)

"*10*. … The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the

worker *along with one month's notice*; on the contrary, clause (*b*) expressly provides for the payment of compensation being made *at the time of retrenchment* and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment."

(emphasis in original)

22. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance with clauses (*a*) and (*b*) of Section 25-F of the Act.

23. The stage is now set for considering whether the respondent had offered compensation to the appellant before discontinuing his engagement/employment, which amounts to retrenchment within the meaning of Section 2(*oo*) of the Act. In his statement, the appellant categorically stated that before discontinuing his service, the respondent did not give him notice pay and retrenchment compensation. Shri Ram Chander, who appeared as the sole witness on behalf of the respondent stated that the compensation amounting to Rs 5491 was offered to the appellant along with letter, Ext. M-1, but he refused to accept the same. The respondent did not examine any other witness to corroborate the testimony of Ram Chander and no contemporaneous document was produced to prove that the compensation was

> offered to the appellant on 25-4-1998. Not only this, the respondent did not explain as to why the demand draft was sent to the appellant after more than three months of his alleged refusal to accept the compensation on 25-4-1998.
>
> **24.** If there was any grain of truth in the respondent's assertion that the compensation was offered to the appellant on 25-4-1998 and he refused to accept the same, there could be no justification for not sending the demand draft by post immediately after the appellant's refusal to accept the offer of compensation. The minimum which the respondent ought to have done was to produce the letter with which the draft was sent at the appellant's residence. The contents of that letter would have shown whether the offer of compensation was made to the appellant on 25-4-1998 and he refused to accept the same. However, the fact of the matter is that no such document was produced. Therefore, we are convinced that the finding recorded by the Labour Court on the issue of non-compliance with Section 25-F of the Act was based on correct appreciation of the pleadings and evidence of the parties and the High Court committed serious error by setting aside the award of reinstatement."

8. Thus, it is clear that it was held by the Supreme Court that whenever service of an employee is terminated, then he should not be called to collect the compensation on any future date and if the order of termination is either verbal or in writing, then it should be accompanied by compensation. It is nowhere held that compensation should be paid in cash and not by cheque.

9. If the facts and circumstances of the case are considered, then it is clear that order of termination dated 28.2.2000 Ex.P/4C also mentions specifically that the said order was accompanied by two cheques bearing no. 951307 dated 28.2.2000 towards one month salary and bearing no.951308 dated 28.2.2000 towards the compensation.
10. Workman in his cross-examination has admitted that he has received the cheques. Thus, it is clear that compensation and one month salary was paid to the workman along with termination order. Therefore, Section 25-F (b) of the I.D. Act was duly complied by the employer.
11. Under these circumstances, this Court is of the considered opinion that Labour Court committed a material illegality by holding that the amount should have been paid in cash and not by cheque.
12. Consequently, impugned award dated 9.1.2020 passed by Labour Court, Bhopal in New Case No.108/18 I. D. Ref. [old case no. 39/3 I.D. Ref.] is hereby **quashed.**
13. The petition succeeds and is hereby **allowed.**

(G.S. AHLUWALIA)
JUDGE

JP