

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on May 01, 2014

+ **W.P.(C) 2656/2014**

RAMJAS FOUNDATION

..... Petitioner

Represented by: Mr.S.P.Gautam , Advocate

versus

DAYANAND

..... Respondent

Represented by: Mr.Sanjoy Ghose, Advocate with
Mr. Mohd. Farrukh, Advocate

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

W.P.(C) 2656/2014 & CM No. 5525/2014

1. The challenge in this writ petition is to the award dated February 23, 2011 passed by the Labour Court in Computer Identification No. 02402C0005711999 dated February 23, 2011 whereby the Labour Court has answered the reference holding the retrenchment of the respondent as void-ab-initio and granted to the respondent, continuity in service with all consequential benefits and reliefs with simple interest @ 6% per annum.

2. The Industrial Dispute was referred on the following terms:

“Whether the retrenchment from services of Sh. Daya Nand is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect”.

3. According to the respondent in his claim petition, he was working as a “Rent Collector (LDC)” with the petitioner w.e.f. October 01, 1979 and his services were illegally terminated on November 30, 1998 after

serving a notice of retrenchment on him.

4. The petitioner admitted the facts as narrated above by the respondent in his claim petition.

5. The following issue was framed by the Labour Court:

“To what relief, if any, is the workman entitled against the management in terms of reference”.

6. The Labour Court, inter alia, was of the following conclusion:

That his retrenchment is in violation of statutory provisions of Section 25-F (a) and Section 25-F(b) of the Industrial Disputes Act, 1947 (Act, in short). Further, it was also the conclusion that the petitioner had not placed anything on record to show that it had complied with the requirements of Rule 77 of the Industrial Disputes Central Rules (Rules in short).

7. The learned counsel appearing for the petitioner, would at the outset, submitted that the petitioner has filed an application seeking condonation of delay in filing the writ petition. According to him, the award is dated February 23, 2011 and the delay has been properly explained in the said application, and delay be condoned. On merit, it was his contention that the petitioner did comply with the provisions of Section 25-F of the Act. Merely because House Rent Allowance, which forms a part of the wages as defined under the Act, to be given as compensation under Section 25-F of the Act, has not been given, the same would not mean that the retrenchment would be bad. He would state that the petitioner is ready to pay the difference of amount, which was required to be paid under Section 25-F of the Act. He would further submit that the Labour Court has committed an error by not going into the reasons for retrenchment of the respondent by the petitioner. Further,

he has taken me to the deposition of the respondent himself, wherein, according to him, the respondent has conceded to the fact that the persons junior to him have also been retrenched along with him. Lastly, he would submit that the Labour Court has erred in not directing the payment of Rs. 1,04,470/- given to the respondent at the time of retrenchment in the year 1998. In other words, the respondent stands to gain inasmuch as, he having received the compensation under Section 25-F of the Act, has also got the award of the reinstatement with continuity in service and all consequential benefits, which is impermissible.

8. On the other hand, Mr. Sanjoy Ghosh, learned counsel for the respondent, who has appeared on caveat, vehemently argued that this Court, in exercise of power under Article 226 of the Constitution of India, which also is equitable in nature, would like to dismiss the petition at the threshold as the petition is premised on misleading facts and further dishonest submissions. He would state that no application for condonation of delay is maintainable. Being a writ petition, the petitioner has to satisfy that the petition has been filed without any delay and laches. Even otherwise, according to him, the application seeking condonation of delay is bereft of averments which would justify the delay. In support of his contention, he would state that pursuant to the award in the year 2011, the respondent got a notice issued for implementation of the award in the year 2011 itself. Thereafter, he filed a petition for execution of the award. In February 2013, the petitioner was represented by the counsel appearing for it in these proceedings, wherein, a specific stand was taken that the Labour Court has not granted any monetary benefits to the respondent. Further, he would submit that

this petition has been filed one year thereafter. According to him, the petitioner is required to give explanation for each day's delay which the petitioner has miserably failed to do so. In support of his contention, he would rely upon the judgments of this Court reported as 2003 (66) DRJ 77, *Delhi Transport Corporation Vs. Jai Bhagwan, Ex.Driver* and 2002 (65) DRJ 553 (DB), *Municipal Corporation of Delhi and Ors. Vs. Mahavir & Ors.* On merits, he would submit that the amount of Rs. 1,04,470/- which the respondent has received as compensation under Section 25-F of the Act, need to be adjusted from the benefits which the respondent would receive in terms of the award. On a finding of the Labour Court on Rule 77 of the Rules, the learned counsel for the respondent has made a valiant effort to justify the said conclusion. He would concede to the fact that the respondent had actually, in his deposition, stated that persons junior to him were also retrenched. Insofar as the finding of the Tribunal on Section 25-F of the Act is concerned, he would support such a conclusion inasmuch even the denial of a component of wages, HRA in this case, which would form part of the compensation under Section 25-F, would make retrenchment invalid. He has drawn my attention to para 19-22 of the judgment of the learned Single Judge of this Court in a batch of writ petitions decided on July 15, 2013, has held as under:

“19. Respondents place reliance on the judgment of Supreme Court in Krishna Bahadur v M/S Purna Theatre and Ors, AIR, 2004 SC 4282, wherein the Supreme Court held as under:

"11.It is neither in doubt nor in dispute that the provision of Section 25F(b) is imperative in character. The provision postulates the fulfilment of the following three conditions:

(i) One month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice;

(ii) Payment of compensation equivalent to fifteen days, average pay for every completed year of continuous service or any part thereof in excess of six months; and

(iii) Notice to the appropriate Government in the prescribed manner.

12. The requirement to comply with the provision of Section 25F(b) has been held to be mandatory before retrenchment of a workman is given effect to. In the event of any contravention of the said mandatory requirement, the retrenchment would be rendered void ab initio." (emphasis supplied)

20. Therefore, Ld counsel for the respondent submits that the aforesaid conditions are mandatorily required to be complied with before retrenchment of workman is given effect to, and in event of any contravention of the said mandatory requirements, the retrenchment would be void ab initio. He also relied on Anoop Sharma v Executive Engineer, Public Health, (2010) 5 SCC 497, wherein the Supreme Court held as under:

"17. This Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity ...

18...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 Section 25F(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.

20. *In State Bank of India v. N. Sundara Money (supra)*, the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

21. The legal position has been beautifully summed up in *Pramod Jha v. State of Bihar (supra)* in the following words:

.... 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.

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 of Clauses (a) and (b) of Section 25F of the Act."

21. Ld counsel for the respondents submits that in view of the above principles being laid down, the retrenchment of the workmen is void ab initio since the computation of retrenchment compensation was not in accordance with the law as admitted by the petitioner.

22. Ld counsel of the respondent relies on a single judge decision of the Bombay High Court in *Vijendrasingh Ladusingh Shekhawat v Todi Industries Ltd and Anr*, 2004 (4) MhLJ 412, wherein it was held:

"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 under Section 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 on retrenchment is void ab initio."

9. He has specifically pointed to the judgment of the Bombay High Court in the case of *Vejendrasingh Ladusingh Shekhawat Vs. Todi Industries Ltd. and Anr.*, 2004 (4) MhLJ 412, wherein the Bombay High Court, while dealing with an identical situation where employer had not calculated the House Rent Allowance in computing the retrenchment compensation, required to be paid under Section 25-F of the Act, held the retrenchment as void-ab-initio.

10. Having considered the rival submissions of the counsel for the parties, insofar as the issue of delay is concerned, I note that the application filed by the petitioner in this regard states as under:

"4. That nearly 20 awards were passed by the Ld. Labour Court in the Year 2010 and 2011, against the petitioner preferred by its retrenched employees challenging the retrenchment dated 30.11.1998. That most of the awards were passed in the year 2010 whereas the impugned Award was passed in Feb, 2011.

5. That the Ld. Labour Court had passed similar Award in all the cases, as the reason and cause of termination were very much similar in all the cases, the Ld. Labour Court had granted a relief of reinstatement along with continuity of service and consequential benefits with 6% interest there on.

6. That the Petitioner had challenged all the impugned by preferring a Writ Petition before the Hon'ble High Court of Delhi, whereas the present titled case was left out with an impression that this case is also filed, as all the cases were taken up as a concerned matter and has allowed the Writ Petition vide order dated 15.07.2013 by the Hon'ble Delhi High.

7. That the petitioner came to the knowledge of its mistake committed, when the respondent workman filed an Execution Petition for enforcing his right of back wages of which the notice dated 01.04.2013 for appearance as issued. Whereas no back wages are ordered in the Award, and no finding is also recorded to the effect of so called unemployment period of the respondent”.

11. On a perusal of the averments as made in the application seeking condonation of delay, it is noted that the petitioner was in the knowledge of the award having been given by the Labour Court on April 01, 2013. Regrettably, I note that no justification has been given for not filing the petition immediately thereafter and as to why, a period of one year has been taken by the petitioner to file this writ petition in the month of April, 2014. The delay from the date of the award is more than three years. It is true that there is no limitation for filing a writ petition, surely, the delay and laches would come into play. The delay and laches necessarily have to be properly explained by a party. There is no denial to the fact that the petitioner had filed a number of writ petitions before this Court against identical awards given by the Labour Court in the years 2009 and 2010, which petitions were decided by the learned Single of this Court in the month of July, 2013. There is likelihood that when so many awards are under challenge, the petitioner may have been under the impression that the impugned award has also been challenged in this Court. To that extent, I intend to give benefit of doubt to the petitioner in not filing the writ petition against that award. What is important insofar as the aspect of delay and laches is that despite knowing on April 01, 2013, the petitioner had still taken more than one year time to file the writ petition. Moreover, I find that no justification is given for filing the writ petition thereafter. If the delay and laches in filing the writ petition

is to be overlooked, the same has to be at a cost which would be quantified by me while concluding the judgment.

12. On merit, I agree with the learned counsel for the petitioner that the conclusion of the Labour Court on the aspect of Rule 77 of the Rules, Sections 25-G and 25-H of the Act, the respondent has admitted that persons junior to him have also been retrenched. If that be so, it is to be held that since no junior has been retained while retrenching the petitioner, Sections 25-G and 25-H of the Act have been complied with. That apart, even the witness of the petitioner has deposed that a seniority list has been published section wise. If that be so, even Rule 77 of the Rules has been complied with. To this extent, the finding of the Labour Court is contrary to the record and need to be set aside.

13. Insofar as the finding of the Labour Court on Section 25-F of the Act is concerned, it is a conceded case of the petitioner that the component of House Rent Allowance which constitutes the wages to be paid as compensation under Section 25-F of the Act, has not been paid to the respondent. I agree with the ratio laid down by the Bombay High Court in the case of *Vejendrasingh Ladusingh Shekhawat (supra)*. The consequence of not following Section 25-F is well settled inasmuch the retrenchment is held to be bad. It is also settled law that merely because Section 25-F of the Act has not been followed, the reinstatement with continuity in service with full back wages may not necessarily be granted. The Supreme Court in the case of *Senior Superintendent Telegraph (Traffic), Bhopal Vs. Santosh Kumar Seal & Ors., (2010) 6 SCC 773*, which has been followed by this Court as well, has held that the compensation in lieu of reinstatement and full back wages, would be a sufficient relief in such matters. In view of the fact that the

retrenchment is held to be bad, coupled with the fact that the respondent had worked for almost 20 years with the petitioner and also the fact that in the writ petitions challenging the identical awards, the learned Single Judge of this Court with regard to the petitioner-organization, has granted a compensation of Rs. 3.25 lakhs, I also adopt the compensation as granted by the learned Single Judge of this Court and grant to the respondent an amount of Rs. 3.25 lakhs as compensation in lieu of reinstatement, continuity of service and full back wages.

14. The writ petition along with the application for condonation of delay are disposed of accordingly with costs quantified at Rs. 25,000/- to be paid to the respondent.

CM No. 5526 of 2014

15. In view of the order passed in the writ petition, this application is disposed of as infructuous.

(V.KAMESWAR RAO)
JUDGE

MAY 01, 2014

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