

Court No. - 7

Case :- WRIT - C No. - 7239 of 2024

Petitioner :- Principal/ Manager Christ Church College
Mahatma Gandhi Marg Lko

Respondent :- Anil Gautam And 2 Others

Counsel for Petitioner :- Pawan Kumar Misra

Counsel for Respondent :- Birendra Prasad Singh,C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Pawan Kumar Mishra, learned counsel for the petitioner, Sri Birendra Prasad Singh for caveator / respondent No.1 and the Standing counsel for State - respondent No.s 2 and 3.

2. The petition is being disposed of at the admission stage itself.

3. By means of the present writ petition the petitioner has challenged the judgment and award dated 21.5.2024 passed by Prescribed Authority, Industrial Tribunal (2), U.P., Lucknow in Adjudication Dispute No.65 of 2019 (Anil Gautam Vs. Principal / Manager Christ Church College, Lucknow and others).

4. It has been submitted that respondent No.1 was employed in the petitioner's institution on the post of Driver in the month of February, 2017 at the monthly salary of Rs.8000/- per month. It has been stated that the work and conduct of the workman was not satisfactory as he was not discharging his duties with responsibility, honestly and sincerely and, therefore, after giving him oral and written warning the services of respondent No.1 were terminated with effect from 1.11.2018.

5. Being aggrieved by the order of termination of his services respondent No.1 - workman raised industrial dispute which was referred to the Industrial Tribunal, U.P., Lucknow for its determination as to whether the termination with effect from 1.11.2018 from the post of Driver is valid or not and to what relief he is entitled to ?

6. Learned Labour Court had issued notice to the petitioner who put in appearance and raised several objections with regard to the claims raised by the respondent.

7. The respondent-workman on its part had filed documents and

oral evidences in support his claim that he had worked for more than 240 days in a calendar year and that no domestic inquiry was conducted against him prior to passing the order of termination which was clearly in violation of the provisions of Section 6 (N) of U.P. Industrial Disputes Act, 1947 and accordingly he was entitled to be reinstated with full back-wages. During the proceedings before the Labour Court the petitioner was directed to submit documents pertaining to the services of the workman but despite specific orders having been passed by the Labour Court, no document was filed. It is stated that certain documents were filed which were never proved before the Labour Court and accordingly it returned a finding that the said documents could not be relied upon.

8. Learned Labour Court after considering various evidences led by the workman and the employer was of the considered view that employer and employee relations existed between the petitioner and respondent No.1 and this fact was not denied by the petitioners themselves before the Industrial Court that the services of the workman was dispensed with without conducting any domestic inquiry and no reasons for the retrenchment were given to the workman though it was the case of the petitioners that they had given one month's prior notice with one month's salary and consequently the retrenchment was in accordance with law.

9. It was the case of the petitioners that work and conduct of the employee was not satisfactory and he was given warnings on two occasions and also that his behaviour with other employees was also not good and this was the foundation of termination of services of the workman. The workman on its part had stated that no notice was received by him nor was any domestic inquiry conducted nor charge sheet issued nor any sort of inquiry was conducted prior to termination of his services which was clearly illegal and arbitrary and violative of Sections 6 (N), 6 (P) and 6(Q) of U.P. Industrial Disputes Act. The petitioner could not prove before the Labour Court that either they had given any notice prior to termination or conducted any domestic inquiry prior to the retrenchment and accordingly, the Tribunal was of the view that the provisions of Section 6 (N) of the Act of 1947 has been violated and the workmen was entitled for his claim. It was further not disputed that the workman had completed 240 days in a calendar year prior to his termination

and accordingly all the conditions of Section 6 (N), 6 (P) and 6(Q) of the Act of 1947 stood satisfied and hence the claim was allowed.

10. Before this Court learned counsel for the petitioner has reiterated the arguments raised before the Industrial Court. This Court has considered the submissions and perused the judgment.

11. From a perusal of the judgment it is clear that though the petitioner had put in appearance before the Labour Court but did not produce any documents contesting the claim to the effect that the respondent was not a workman or that he had not completed 240 days in a calendar year. Their only stand was that they had given notice prior to termination of his services. It seems that even the notice could not be proved by them before the Labour Court and the documents as directed by the Labour Court were never produced by the petitioners. Certain documents were sought to be placed on record but were never proved before the Labour Court.

12. Section 6-N of the U.P. ID Act which is in pari materia with Section 25-N of the ID Act reads thus:

“6-N. 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 notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies the date of termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen day's average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the State Government.”

13. The above-said mandatory procedure has not been followed in the present case. In this regard, Hon'ble Supreme Court has held in **Anoop Sharma v. Public Health Division (2010) 5 SCC 497**, that:

“16. ... 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 : AIR 1976 SC 1111] , *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. Niranjana Das* [(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.”

13. This Court does not find any infirmity in the impugned

order and award where the retrenchment has been held to be illegal and contrary to the provisions of Section 6 (N) of the Act of 1947.

14. No other ground has been urged for setting aside the order of the Labour Court. Accordingly, the petition is devoid of merits and is accordingly **dismissed**.

(Alok Mathur, J.)

Order Date :- 2.9.2024

RKM./A. Verma