

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7925 OF 2014

Supreme Embroidery Pvt. Ltd.
C-215, Sinthofine Industrial Estate,
Off Aarey Road, Goregaon (East),
Mumbai 400 063

... Petitioner

Vs.

Khapabhai Lalubhai Patel
Survey No.143/E.F. Village Dabhel,
Nani Daman

... Respondent

Mr. Ashok D. Shetty with Mr. Swapnil Kamble for Petitioner.
Ms N. R. Patankar a/w. Mr. V. P. Sawant for Respondent.

CORAM : R. G. KETKAR, J.
Reserved on: **17TH FEBRUARY, 2015**
Pronounced on: **24TH FEBRUARY, 2015**

ORDER :

Heard Mr. Shetty, learned Counsel for petitioner and Mr. Patankar, learned Counsel for respondent at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner - employer has challenged the judgment and award dated 15.02.2014 passed by the learned Labour Judge, Daman in I.D.R.No.09/2006. By that order, the Labour Court set aside the order of termination dated 24.03.2005 and directed the petitioner to reinstate the respondent - second party workman in his original position. The petitioner is directed to pay full backwages to the second party from the date of termination till the day he is reinstated, within 1 month from the date of reinstatement, failing which, the petitioner shall pay interest @ 8% p.a. on such amount of backwages. The petitioner was also directed

to pay costs of Rs.10,000/- to the second party.

3. In support of this Petition, Mr. Shetty submitted that by letter dated 24.03.2005, the services of the second party were terminated with effect from 24.03.2005 on the ground that company had installed computerized designing and punching system. In that regard, last one year, company suggested to the second party so many times to learn computer designing system but he was not able to do so. So unfortunately, petitioner terminated his service with finalize his complete dues.

4. The second party approached the conciliation officer. Since the conciliation proceedings failed, the appropriate government, Administration of Daman & Diu, Union Territory, Daman referred the industrial dispute to the Industrial Tribunal, in exercise of powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'Act'). He submitted that the Labour Court issued notices to the parties. In pursuance thereof, second party filed statement of claim. He submitted that the termination was challenged only on two grounds namely, i) that the petitioner has no reason and right to presume that he was not able to learn the computerized designing and punching machine and ii) for misconduct of second party workman, action of termination or otherwise can be taken against the workman after giving him a charge-sheet and after conducting a fair and legal domestic enquiry after following the principles of natural justice. The petitioner having not done so, the order of termination is illegal, null and void ab-initio.

5. Mr. Shetty submitted the second party did not specifically plead case of violation of Section 25-F of the Act. He invited my attention to

paragraphs 2, 5, 9 (a) and (b) of the statement of claim as also paragraphs 4, 5 and 11 of the written statement. He submitted that in paragraph 19, the Labour Court held that “the termination of the second party is bad in law as it is in total violation of Chapter V-A and V-B of the Act. There are more than 100 workmen in the petitioner company. No specific reasons of retrenchment have been informed directly to the second party and to the concerned Government. No legal retrenchment compensation had been paid to the second party at the time of alleged retrenchment by the petitioner.” He submitted that there were no pleadings in the statement of claim nor any evidence about number of workmen being more than 100 at the time of termination of the second party for attracting Chapter V-B of the Act nor there was any pleading that Chapter V-B applies. Even during the evidence, the number of employees was not brought on record.

6. Mr. Shetty further submitted that the Labour Court failed to appreciate that the legal dues were offered and the same were refused by the second party. There was, therefore, compliance of Section 25-F of the Act. At any rate, the Labour Court failed to appreciate that the petitioner had offered legal dues including compensation amounting to Rs.75,692/- which was declined by the respondent. Thus, there is sufficient / substantial compliance of Section 25-F of the Act. He also invited my attention to the evidence of witnesses of the petitioner namely, (i) Mr. Shailesh R. Vaidya working as a Plant Manager in the Company and (ii) Mr. E. Arumugam working as a Manager in the Company as also evidence of the second party, and in particular, paragraph 2 of the cross-examination where the second party admitted that company was ready to pay Rs.75,692/- and that the petitioner company was ready to pay amount amount of RS.75,692/- even in the conciliation proceedings. He, therefore submitted that there is sufficient

/ substantial compliance of Section 25-F of the Act. In support of his submissions, he relied upon the following decisions:

- a. **M/s. Parry & Co. Ltd Vs. P. C. Pal**, 1970 (21) *F.L.R.* 266 to contend that the Tribunal has to confine itself to the pleadings and the issues arising therefrom and when there is substantial compliance of Section 25-F of the Act, it cannot be said that the termination is illegal;
- b. **C. K. Dutta Vs. F. R. & Co.**, 1971 *Lab. I.C.* 790 to contend that the requirement of sub-clause (b) of Section 25-F of the Act is that the workman must be paid compensation at the time of retrenchment and not when the notice of retrenchment is given;
- c. **Shankar Vs. Britannia Biscuit Co.**, *AIR* 1979 *SC* 1652 to contend that if there is no pleading raising a contention, there is no question of substantiating such a non-existing contention by evidence. It is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained, it would tantamount to granting an unfair advantage;
- d. **M/s. Marikar (Motors) Ltd., Trivandrum Vs. State of Kerala**, 1986 *LAB. I.C.* 1213 to contend that the workman refusing to receive salary in lieu of one month's notice cannot contend non-compliance of Section 25-F by the management;
- e. **Sakharam G. Kadam Vs. David Brown**, 2000 (1) *Bom.C.R.* 552 to contend where workman has refused to accept retrenchment compensation, there is no violation of Section 25-F of the Act;
- g. **Ramesh Pandharinath Taharabadkar Vs. Executive Engineer**, *Jayakwadi*, 2001 *LAB. I.C.* 1255 to contend where the employer requested workman to come to accounts department or

office and collect amount of retrenchment compensation that will not be violative of mandatory provision of Section 25-F;

h. Metallurgical & Engineering Consultants (India) Ltd. Vs. State of Bihar, 2002 I CLR 914 (Jharkhand High Court) to contend that the legality and propriety of termination / retrenchment can be answered only if specific pleading is made to determine the condition precedent to retrenchment of a workman. There has to be specific pleading of the fact relating to payment of retrenchment compensation etc. and in the absence of such pleading, no specific finding can be given;

i. Engineering and Ancilliary Manufacturers Vs. S. Khan, 2003 (4) L.L.N. 261 to contend where the workman was required to collect legal dues and the workman did not come to office to collect the dues and he refused to accept the same, there is no violation of Section 25-F and there is substantial compliance of the said provision;

j. State Bank of India Vs. S. N. Goyal, (2008) 8 SCC 92 to contend that even if the termination is held to be illegal, reinstatement and backwages do not follow automatically;

k. Kishore Ahuja Vs. Balkrishna C. Kadam, 2013 I CLR 521 to contend that the evidence which is de hors the pleadings, cannot be taken cognizance of;

l. Jagbir Singh Vs. Haryana State Agriculture Marketing Board, 2009 III CLR 628 to contend that the relief by way of reinstatement with backwages is not automatic and may be wholly inappropriate.

7. On the other hand, Ms Patankar supported the impugned order. She submitted that by letter dated 24.03.2005, petitioner terminated the

services with effect from 24.03.2005 i.e. with immediate effect. The second party categorically came with the case that the petitioner terminated his services purportedly on the ground that the second party was not able to learn computerized designing and punching system without holding domestic enquiry as also without following the principles of natural justice. The services of the second party were terminated. She submitted that in the written statement, the petitioner company came with the case that it had informed the second party of his entitlement of retrenchment / termination benefits. She invited my attention to paragraphs 4 and 5 of the written statement and submitted that since the petitioner itself came with the case of retrenchment, the Labour Court was required to investigate the compliance of Section 25-F of the Act.

8. She submitted that the services of the petitioner were terminated on 24.03.2005. She submitted that witness Mr. Shailesh R. Vaidya working as a Plant Manager joined the petitioner in the year 2007. In other words, he had no personal knowledge of what transpired at the time of termination of services of the second party on 24.03.2005. In paragraph 8 of his examination-in-chief, though he deposed that the petitioner company informed second party about his entitlement of retrenchment / termination benefits, the said fact is not substantiated. In paragraph 17 of his cross-examination, he deposed that at the time of termination, the petitioner company offered payment of legal dues to the second party. However, the second party was not ready to accept the offer of the petitioner company. No attempt was made on the part of the petitioner company for sending the amount of legal dues to the second party at his residential address by post or other ways. She submitted that the witness has no personal knowledge about alleged offer made by the petitioner of payment of legal dues to the second party. In fact, Mr. E.

Arumugam, who was working as Manager of the company at the relevant time did not depose about petitioner company offering payment of legal dues to the second party. In short, she submitted that Mr. E. Arumugam was examined in June, 2012 and Mr. Vaidya was examined in May, 2013. As an after thought, Mr. Vaidya introduced the case of offering legal dues by the petitioner company at the time of termination of the second party claimant. She submitted that after appreciating the evidence on record, the Labour Court rightly came to the conclusion that Section 25-F is not complied, and therefore, termination is illegal.

9. She further submitted that before the Labour Court, no case was made out that this is not a fit case for ordering reinstatement with full backwages and in its place, payment of compensation. She, therefore, submitted that no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India. In support of this submission, she relied upon the following decisions:

- a. **Rajasthan Canal Project Vs. Union**, 1976 II L.L.J. 25 to contend that mere readiness on the part of the employer to pay retrenchment compensation is not sufficient, but there must be either an offer or tender or actual payment to the workman concerned. It may be that either an offer or tender is made to the workman personally or by a postal money order or by Bank Draft or any other well-recognized media but there should be an offer or tender in the real sense of the terms and if it is not made, it cannot be said that the provisions of Section 25F were complied with;
- b. **R. J. & Co. Vs. R. K. Meshram**, 1995 (70) F.L.R. 122 to contend that if the management has not paid notice one month's notice salary or other legitimate dues as mentioned in the notice but has merely asked workman to collect

retrenchment dues, gratuity and other dues, if any, from the office immediately, it amounts to non-compliance of Section 25-F;

- c. **P.W.D. Mazdoor Union Vs. Executive Engineer, P.W.D., 1997 (77) F.L.R. 76** to contend that the order of termination in violation of Section 25-F is null and void and of no effect. The workman is entitled to be reinstated with continuity of service with full backwages;
- d. **Sain Steel Products Limited Vs. Naipal Singh and others, 2001 II CLR 32** to contend that the termination letter dated 24.03.2005 does not spell out whether it included the amount as contemplated under Section 25-F or not;
- e. **Pramod Jha Vs. State of Bihar, (2003) 4 SCC 619** to contend that the essential statutory requirements laid down under Section 25-F are required to be satisfied.

10. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the respondent was appointed with effect from 01.01.2010 as Designer and Puncher. By letter dated 24.03.2005, he services were terminated with effect from 24.03.2005 i.e. on the same day. The reasons given are as follows:

“Company have installed computerized designing & punching system, on behalf of that last one year, we suggest you so many time to learn computer designing system, but you are not able to do so.

So unfortunately we terminated **your service with finalize your complete dues.**”

(emphasis supplied)

11. In paragraph 9(a) and (b) of the statement of claim, second party asserted thus,

“(9) The aforesaid termination order of the first party employer is totally illegal and non-est and ab-initio, null and void on the following grounds,

a) The first party employer has no reason and right to presume that the workman was not able to learn the computerized designing the punching machine;

b) For misconduct of the second party workman, action of termination or otherwise can be taken against the workman after giving him a chargesheet and after conducting a fair and legal domestic enquiry as per the provisions of the aforesaid standing orders and as also following the principles of natural justice. The first party employer having not done so, the order of the said termination becomes totally illegal and null and void ab-initio and the second party workman is entitled to his entire backwages till his said aforesaid misconduct is proved before the Hon'ble Court.”

12. The petitioner filed written statement and in paragraphs 4 and 5, it was asserted thus,

“4) The company informed him his **entitlement of retrenchment / termination benefits** as follows:

Gratuity (8000/26 x 90)	27692
Retrenchment Compensation (8000/30 x 90)	24000
Notice Salary (One month)	8000
Leave Salary (30 days)	8000
Current Month salary March 2005	8000
In Rupees	75692

5) There is a computerized machine and the second party is not aware about the technology. Therefore, the second party is unable to work on the computerized design machine, the organization had also to close down the department of manual punching as it is converted into computerized design and punching machine. Therefore, the second party became surplus in the company. Therefore, there is no necessity of the service. Therefore, **the second party was retrenched and accordingly, the notice was issued of his.**”

(emphasis supplied)

13. In support of its case, the petitioner examined Mr. E. Arumugam on 30.06.2012. He was working as a Manager in the petitioner company

at the relevant time. In paragraph 8 of examination-in-chief, he stated as under:

“8. I say that the company informed him his **entitlement of retrenchment / termination benefits** as follows:

Gratuity (8000/26 x 90)	27692
Retrenchment Compensation (8000/30 x 90)	24000
Notice Salary (One month)	8000
Leave Salary (30 days)	8000
Current Month salary March 2005	8000
In Rupees	75692

14. In cross-examination, he admitted thus,

“... While issuing termination letter no cheque of due amount given to the employee. ...”

15. Perusal of this evidence does not indicate that at the time of termination, the petitioner offered payment of legal dues to the second party and that the second party was not ready to accept the offer of the petitioner company. The petitioner thereafter examined Mr. Shailesh R. Vaidya on 02.05.2013, who admittedly joined the petitioner company in the year 2007. In other words, he had no personal knowledge as to what transpired on 24.03.2005 when the services of the second party were terminated. For the first time, in paragraph 17 of the cross-examination, he deposed as under:

“17] ... At the time of termination the First Party Company offered payment of legal dues to the Second Party claimant. However, the Second Party claimant was not ready to accept the offer of First Party Company. No attempt was made on the part of First Party Company for sending the amount of legal dues to the Second Party at his residential address by post or other ways....”

16. He was examined on 02.05.2013. In my opinion, the evidence of Mr. Vaidya is of no assistance to the petitioner for more than one reason.

In the first place, admittedly, he joined the company in the year 2007, and therefore, he has no personal knowledge. Secondly, Mr. E. Arumugan, who was working at the time of terminating the services of the second party did not depose about petitioner's offering payment of legal dues to the second party and the second party's refusal to accept the legal dues. In other words, the evidence of Mr. Vaidya is clearly an attempt on the part of the petitioner company to improve its case. Thirdly, the notice dated 24.03.2005 neither spells out offer nor makes it clear whether it included the amount contemplated under Section 25-F.

17. Mr. Shetty submitted that the second party admitted in cross-examination that when he received termination letter dated 24.03.2005, at that time, the petitioner was ready to pay Rs.75,692/- and that the company was ready to pay the said amount even in the conciliation proceedings. In the first place, perusal of the termination letter does not spell out payment as contemplated under Section 25-F of the Act. Section 25-F of the Act reads as under:

“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.)”

18. Secondly, perusal of Section 25-F clearly shows that 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 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 and the workman has been paid at the time of retrenchment, compensation which shall be equivalent to 15 days average pay (for every completed year of continuous service or any part thereof in excess of six months).** Perusal of termination letter dated 24.03.2005 does not fulfill the requirements laid down in clauses (a) and (b) of Section 25-F of the Act. Mere sentence in the termination letter about “finalizing complete dues of the second party” will not amount to compliance of Section 25-F of the Act as held by the Apex Court in the case of **Sain Steel Products Limited** (*supra*).

(emphasis supplied)

19. Mr. Shetty submitted that in the statement of claim, second party did not plead case of retrenchment as also applicability of Chapter V-B of the Act. I do not find any merit in this submission as in the written statement, it is the petitioner's case of retrenchment, and therefore, the Labour Court was required to go into validity or otherwise of the retrenchment made by the petitioner. Mr. Shetty further submitted that even if the retrenchment is held to be illegal, the order of reinstatement with continuous service and backwages does not follow automatically. Perusal of the material on record does not indicate that such case was made out by the petitioner before the Labour Court.

20. The Labour Court, after considering the material on record, has held that the termination letter dated 24.03.2005 is illegal and bad in law. I do not find that the findings recorded by the Labour Court are perverse being based upon no evidence or are contrary to the material on

record. Reliance placed by Mr. Shetty on the decisions referred hereinabove does not advance the case of the petitioner as from the material on record, it is evident that there is no compliance of Section 25-F of the Act. In the result, Petition fails and the same is dismissed.

21. At this stage Ms Joshi prays for continuation of interim arrangement as per order dated 27.10.2014 for a period of 6 weeks from today. Mr. Jadhav opposes this application.

22. Having regard to the fact that the interim arrangement is continued from 27.10.2014 and having further due regard to the fact that the petitioner intends to challenge this order before higher Court, I find that the request made by Ms Joshi is reasonable. Hence, notwithstanding dismissal of the Petition, the interim arrangement as per order dated 27.10.2014 shall remain in force for a period of 6 weeks from today. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab