

THE HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT APPEAL No.827 of 2006

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JUDGMENT: (Per Hon'ble Sri Justice A.Ramalingeswara Rao)

Heard the learned Counsel for the appellant and the learned Counsel for the second respondent.

This Writ Appeal is directed against the order of the learned single Judge in W.P.No.6701 of 1997 dated 11.11.2004 dismissing the Writ Petition.

The appellant/writ petitioner filed the above Writ Petition challenging the award of the Labour Court in I.D.No.185 of 1990 and M.P.No.65 of 1990 dated 21.11.1994.

The appellant was stated to have been appointed as a Clerk-cum-Typist in the second respondent society with a pay scale of Rs.600/- per month on 30.04.1987. It was alleged that the second respondent terminated her from service on 15.06.1989 without following the provisions of the Industrial Disputes Act, 1947 (for short, the Act). She filed an application under Section 2-A(2) of the Act before the first respondent in I.D.No.185 of 1990 and when the said application was pending, she filed M.P.No.65 of 1990 claiming wages on par with the regular employees. Before the first respondent the appellant was examined as WW1 and marked Exs.W1 and W2 and for management, MW1 was examined and Exs.M1 to M18 were marked. The first respondent after considering the evidence, oral and documentary, held that the retrenchment of the workman by the management was justified and she was not entitled for any relief, by common award dated 21.11.1994, while disposing of I.D.No.185 of 1990 and M.P.No.65 of 1990. Challenging the said award, the appellant filed W.P.No.6701 of 1997 raising various grounds. The learned single Judge dismissed the

Writ Petition observing that as the services of the appellant were not required, the Society terminated her services after paying the notice-pay as well as compensation by way of pay-order on 14.06.1989. The contention of the learned Counsel for the appellant was that though her juniors were retained, the services of the appellant were retrenched. The said contention was negatived as she was only a contingent employee engaged as Clerk-cum-Typist. Learned single Judge also observed that the Tribunal had considered elaborately as to the compliance of the provisions of the Act and also the similar contention, which was rejected by this Court in W.P.No.7778 of 1989 and batch, dated 12.12.1989.

Learned Counsel for the appellant submits as follows:

- i) The provisions of Section 25-N of the Act have not been followed while retrenching services of the appellant and hence the retrenchment is invalid;
- ii) The retrenchment was not made through a written order and hence it is not in compliance with the provisions of the Act; and
- iii) While retrenching the services of the appellant, the principle of “last come first go” was not followed.

Learned Counsel for the appellant relied on a decision of the Supreme Court in **Swadesamitran Ltd. v. Their workmen**^[1] and the decision of the Bombay High Court in **Superintending Engineer, Urdhwa Painganga Project Circle, Sinchan Bhawan, Nanded v. Yavatmal Zilla Raste, Imarati Va Patbhandhare Kamgar Union, Nanded**^[2].

At the outset, we have to observe that none of the grounds raised by the learned Counsel for the appellant were either raised before the Labour Court – the first respondent, or before the learned single Judge. Even though the appellant/writ petitioner raised as many as 24 grounds, the above contentions are conspicuous by their absence in the said grounds. The decisions cited by the learned Counsel deal with the

procedure to be followed by the employer and the Labour Court in the case of retrenchment of employee and hence it is a mixed question of fact and law. In the absence of pleadings and arguments before the Courts below, we are not inclined to entertain such contentions.

Be that as it may, the undisputed facts of the case are that the appellant was working as a Clerk-cum-Typist on NMR basis from 30.04.1987 to 15.06.1989 and her services were terminated by the second respondent due to paucity of funds with effect from 15.06.1989. An amount of Rs.1,500/- was paid to the appellant on 22.06.1989 through a pay-order dated 14.06.1989. In her deposition before the Labour Court, she stated as follows:

“Along with me about 69 persons were retrenched as per Ex.M13. I do not know whether other workers approached the Hon’ble High Court and filed a Writ Petition for appropriate reliefs. It is not true to say that I worked as N.M.R.Worker. It is true that I was paid an amount of Rs.1,500/- on 14.06.1989. It is not true to say that I was not paid the said amount on 14.06.1989.”

Out of the said 69 workers, 54 workers filed ten Writ Petitions before this Court in W.P.No.7778 of 1989 and batch and they were disposed of by a common order on 12.12.1989 with the following observations:

“...The short controversy which survives is about the violation of Sec.25-F of the Industrial Disputes Act and grant of relief by this Court. The stand of the society is that they have paid wages upto 15.6.1989 and retrenched the employees after satisfying the requirements of S.25-F. The settlement between the society and the union may not bind the petitioners, but it clearly indicates that the decision to comply with the provisions of S.25-F was taken before the date of actual retrenchment i.e., 15.6.1989. The plea of the petitioners that retrenchment was w.e.f.1.6.1989 by which date the retrenchment compensation was not paid cannot be accepted as there is no material apart from their affidavit.

Towards the conclusion of the hearing and after perusing the records, the petitioners’ counsel have sought to urge an additional ground of illegality in the preparation of the list of employees as contemplated by Rule 77 of the Central Rules framed under the Industrial Disputes Act. It is urged that the list does not reflect the category-wise seniority. This objection was not raised in the writ

petition, nor is it shown whether any prejudice has been caused to the petitioners. As pointed out earlier, out of 99 employees, only 30 have been retained and 54 have approached this Court on different dates. Apparently, many have approached this Court after an interim direction was granted in the earlier case. In none of these cases, there is a grievance about any illegality in the seniority list. No relief can, therefore, be granted to the petitioners on that score in these proceedings...”

The said order of this Court was exhibited as Ex.M18 before the first respondent. The first respondent, after considering the evidence on record, dismissed the application of the appellant. The same was confirmed by the learned single Judge by his order dated 11.11.2004.

In view of the facts stated above and in view of the reasoning given by the learned single Judge, we find no merit in the present Writ Appeal.

The Writ Appeal is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

20.01.2015
vs

[\[1\]](#) 1960 (1) LLJ 504 (SC)

[\[2\]](#) 1993 (3) LLJ 515