

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

-
WRIT APPEAL No.2229 of 2003

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

This Writ Appeal is directed against the order in W.P.No.31892 of 1998 dated 10.02.2003. The said Writ Petition, filed by respondent Nos.1 to 3 herein, was allowed by the learned single Judge.

The appellant's husband was appointed as an Assistant Construction Engineer for a period of three years on contract basis when respondent Nos.1 to 3 were executing the works at Visakhapatnam. But, unfortunately, he died before the end of the contract period. The appellant herein approached respondent Nos.1 to 3 for employment and she was appointed as an assistant on daily wages on compassionate grounds on 02.04.1987. Since the contract works undertaken by respondent Nos.1 to 3 were completed, they retrenched all the daily wage workers including the appellant on 20.09.1994. She filed I.D.No.500 of 1994 on the file of the Industrial Tribunal – cum – Labour Court, Visakhapatnam, challenging the order of retrenchment. The Labour Court considered the issue of validity of retrenchment and by its order dated 15.07.1998 passed an Award directing the management to reinstate the workman with full back wages and continuity of service. While coming to the said conclusion, the Labour Court gave a finding that the management did not issue either three months notice or retrench the workman after taking prior permission from the

appropriate Government. Challenging the said Award of the Labour Court, respondent Nos.1 to 3 herein filed W.P.No.31892 of 1998.

Before the learned single Judge, respondent Nos.1 to 3 herein contended that when the works at Visakhapatnam were nearing completion, they initiated staff curtailment measures. As a part of this process the services of the appellant and five others were terminated by individual communications dated 20.09.1994. The cheque was made ready on 19.09.1994 and the letter dated 20.09.1994 was put on the notice board. The appellant was informed verbally on 19.09.1994 to collect her retrenchment notice and compensation on the next day. However, the appellant abstained from attending the office on 20.09.1994 and sent a leave application applying leave for three days from 20.09.1994 to 22.09.1994. Since the appellant did not attend the duties during the said period, the notice of retrenchment dated 20.09.1994 was displayed on the notice board. The notice of retrenchment dated 20.09.1994 and the banker's cheque representing the retrenchment compensation payable under Section 25-F of the Industrial Disputes Act, 1957 (for short, the Act), were sent by registered post on 21.09.1994 to the last known address of the appellant. The same was returned to the employer with an endorsement that the party was absent. The appellant received the payment on 03.01.1995 and sent an acknowledgment addressed to the management stating as follows:

"I have not taken the retrenchment notice No.28.73.24/1758 dated 20.9.94 and the registered letter No.28.73.24/1770 dated 21.9.94 containing the retrenchment

notice and that the retrenchment compensation sent by you earlier. Now I am accepting my retrenchment and received the registered cover containing letter No.28.73.24/1770 dated 21.9.94, retrenchment notice dated 20.9.94 and the Banker's Cheque No.2377178 dated 19.9.94 for Rs.27,627.00 towards full and final settlement of my retrenchment compensation and other dues."

Even after expiry of the leave, the appellant did not attend the duties. The learned single Judge considered the issue of compliance with Section 25-F of the Act and held that he was satisfied that there was a tender of the wages in lieu of notice and the retrenchment compensation by the employer simultaneously with the order of retrenchment and such tender by way of demand draft dated 19.09.1994 constitutes sufficient compliance with the requirement of Section 25-F of the Act. Accordingly, the learned single Judge set aside the Award of the Labour Court dated 15.07.1998 and further held that the wages received by the appellant pursuant to Section 17B of the Act, during the pendency of the Writ Petition, need not be refunded.

We have carefully perused the record including the order of the learned single Judge. The appellant was not given any order of appointment, but her services were terminated on 20.09.1994. The appellant applied for leave from 20.09.1994 to 22.09.1994 and did not join duty thereafter. The registered notice enclosing the retrenchment notice dated 20.09.1994 and the banker's cheque representing the retrenchment compensation payable under Section 25-F of the Act were returned unserved as the party was absent at the last known address. Thereafter, the appellant received the compensation

amount on 03.01.1995 and issued an acknowledgment. From the acknowledgement it is clear that respondent Nos.1 to 3 sent the notice by letter dated 21.09.1994 under registered post. The Tribunal gave a finding that there was no evidence on record to show that the retrenchment order and the compensation plus the wages in lieu of notice were paid well in advance before effecting retrenchment. Though the cheque was obtained on 19.09.1994 for the retrenchment compensation and wages in lieu of one month notice, since the same was sent only on 21.09.1994, it is not sufficient compliance with Section 25-F of the Act. Learned single Judge, on facts, held that the availability of the Bank Drafts in the office of the management on 20.09.1994 constitutes sufficient compliance with the requirements of Section 25-F of the Act. We are in agreement with the said finding recorded by the learned single Judge.

In view of the above, the Writ Appeal is dismissed. The miscellaneous petitions, if any, stand disposed of. There shall be no order as to costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

19.02.2015

VS