

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.3925 OF 2003

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed challenging the Order dated 26.07.1999 in I.D. No.55 of 1993 passed by the Chairman, Industrial Tribunal-cum-Labour Court (for short, 'the Tribunal'), Godavarikhani, published in gazette on 25.09.1999 in G.O. Rt.No.1625 dated 31.08.1999, wherein the Tribunal directed the employer to pay 15 days average wages for the completed one year continuous service of the petitioner, within thirty days, while rejecting the prayer for reinstatement with continuity of service, attendant benefits and back wages,

02. The petitioner is ex-technical N.M.R. He filed a petition in I.A. No.55 of 1993 under Section 2-A (2) of the Industrial Disputes Act, 1947 as amended by A.P. Act 32 of 1987 (for short, 'the Act') to declare the action of the respondents in retrenching him from services as null and void and to direct the respondents to reinstate with continuity of service with all attendant benefits with full back wages, alleging, that he had worked as Technical N.M.R. with the second respondent at Raikal from 02.01.1990 to 31.12.1990. The second respondent abruptly put an end to his services w.e.f. 01.01.1991 without any prior notice or payment of wages in lieu of notice and also without retrenchment compensation. The action of the second respondent is against Section 25-F of the Act. It is further alleged that the termination of his services would fall within the definition of retrenchment defined under Section 2(oo) of the Act, since he worked for more than 240

days continuous service in a calendar year and he is a Workman within the meaning of Section 2(s) of the Act and the second respondent is an Industry within the meaning of Section 2(j) of the Act. It is also contended that his juniors are continued in service, but without following the principles of natural justice, the second respondent terminated his services violating the principle 'first to come, last to go', which is in violation of Section 25-G and 25-N of the Act and prayed for the aforesaid reliefs.

03. The second respondent filed its counter denying the material allegations mainly contending that the petitioner was not appointed as Work-Inspector and was engaged on daily wage basis as per the necessity and workload as on the date of engagement of his services. As the petitioner has not worked continuously for 240 days, he is not entitled to any notice and such termination would not amount to retrenchment. Therefore, the second respondent did not violate any of the statutory provision under the Act and consequently not entitled to claim any relief and prayed for dismissal of the petition.

04. No counter was filed by the third respondent.

05. During enquiry, on behalf of the petitioner, W.Ws.1 and 2 were examined and Exs.W.1 and W.2 were marked. On behalf of the respondents 2 and 3, M.W.1 was examined and Ex.M.1 was marked.

06. Upon hearing of both the counsel, considering the oral and documentary evidence on record, the first respondent-Tribunal passed an award holding that the petitioner is not entitled for the relief of his reinstatement with continuity of service, all attendant

benefits and back wages, but the petitioner is entitled for one month daily wages prevailing as on 01.01.1991, the date of his retrenchment, in lieu of issue of notice under Section 25-F(a) of the Act and also for compensation, which shall be equivalent to 15 days average wage for his completed one year service under Section 25-F(b) of the Act.

07. Dissatisfied with the award passed by the first respondent-Tribunal in I.D. No.55 of 1993 dated 26.07.1999, the petitioner filed the present writ petition raising specific contentions that the Tribunal having found that the termination of the petitioner's service would fall within Section 25-F of the Act and concluded that the first respondent did not comply the requirement under Section 25-F of the Act, but passed an erroneous Order for payment of 15 days average wage for the completed one year continuous service and it is contrary to the principles laid down by the Apex Court, since the petitioner worked for a period of 240 days in a calendar year continuously as technical NMR. Therefore, the Order passed by the first respondent-Tribunal is contrary to the principles laid down by the Apex Court and prayed to set aside the impugned order.

08. The respondents did file no counter in the writ petition.

09. During hearing, learned counsel for the writ petitioner contended that the issue of direction for payment of 15 days average wage for the completed one year continuous service by the petitioner without awarding any retrenchment compensation is illegal and it is contrary to the law declared by the Apex Court in

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JADEJA GOVUBHA CHHANUBHA AND ANOTHER¹ and the delay is not a ground to deny such compensation. In support of his contention, he further relied on a Judgment of the Apex Court in **AJAIB SINGH v. SIRHIND COOPERATIVE MARKETING-CUM-PROCESSING SERVICE SOCIETY LIMITED AND ANOTHER²**. On the strength of the law declared by the Apex Court, the petitioner requested to pass appropriate order awarding retrenchment compensation in accordance with Section 25-F of Act.

10. Per contra, learned Government Pleader for Panchayat Raj appearing for the second respondent would contend that unless a reference under Section 10 of the Act is made, the petition before the Tribunal is not maintainable and the petitioner is not entitled to claim any compensation much less compensation claimed under Section 25-F of the Act, and prays to affirm the award passed by the first respondent-Tribunal.

11. Considering the rival contentions, perusing the material available on record, the sole point that arise for consideration is,

Whether the removal of the petitioner amounts to retrenchment? If so, whether the petitioner completed 240 days of continuous service in a calendar year and entitled for compensation in terms of Section 25-F of the Act?

POINT:

12. The case of the petitioner, from the beginning, is that he worked 240 days continuously in a calendar year as technical NMR and termination of his service is also not in dispute. Ex.W1 dated 20.09.1991 is the service certificate issued by the M.P.P. Raikal,

¹ (2014) 16 SCC 130

² (1999) 6 SCC 82

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shows that the petitioner completed more than 240 days continuous service in a calendar year. Ex.W.2 is the letter No.MDO/GRY/9/530/89 addressed to the Executive Engineer Panchayat Raj, Jagityal, by M.D.O., M.P.P. Raikal. It shows that the petitioner services were directed to be terminated and it is evident from the record that no notice is required under Section 25-F of the Act.

13. Before deciding the compliance of requirement under Section 25-F of the Act, it is my duty to decide, whether such termination is amount to 'retrenchment' within Section 2(oo) of the Act or not.

14. According to section 2(oo) of the Act, 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

[\(a\)](#) voluntary retirement of the workman; or

[\(b\)](#) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[\(bb\)](#) termination of the service of the workman as a result of the non- renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill- health

15. In the present case, the petitioner was terminated by issuing a letter-Ex.W.2 without any specific reason and in fact

there was no contract of employment with a stipulation, to terminate the contract of employment on the specified date and it is not the case of the respondents that the petitioner is suffering from ill-health continuously. In such case, the termination of the petitioner by issuing Ex.W.2 amounts to retrenchment. Therefore, the first respondent-Tribunal rightly concluded that the termination of the petitioner by issuing Ex.W.2-letter amounts to retrenchment and this finding needs no interference and that apart the respondents did not challenge the finding recorded by the Tribunal by filing a separate writ petition.

16. To retrench the employee, one month's prior notice indicating the reasons for retrenchment under Section 25-F (a) of the Act is required to be issued for any workman employed in any industry who has been in continuous service for not less than one year under an employer and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of notice.

17. But in the present case, the Tribunal ordered payment of wages for 15 days and in lieu of notice under Section 25-F (a) of the Act, the petitioner also entitled to 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 under Section 25-F (b) of the Act. As seen from the Order, at paragraph 10 (b), the first respondent was directed to pay one month daily wage prevailing as on 01.01.1991 in lieu of one month notice for retrenchment and also to pay compensation

which shall be equivalent to 15 days for the completed one year continuous service of the petitioner.

18. The only grievance of the petitioner is that the first respondent-Tribunal was not ordered to pay retrenchment of compensation in terms of Section 25-F (b) of the Act. But this contention appears to be without any substance for the reason that the first respondent was directed to pay compensation which shall be equivalent to 15 days average pay for completed one year continuous service of the petitioner. But, whereas Section 25-F (b) of the Act says the 15 days average pay.

19. Thus the first respondent-Tribunal passed an Order directing payment of wages more than prescribed under Section 25-F (b) of the Act. However, as a clarification to the Order, this Court hereby direct the second respondent to pay retrenchment compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or in part thereof in terms of Section 25-F (b) of the Act.

20. Learned counsel for the petitioner has contended that a direction to pay a particular amount in lieu of retrenchment, compensation would serve the purpose and drawn the attention of this Court to the Judgment of the Apex Court in **BHAVNAGAR MUNICIPAL CORPORATION**'s case referred to supra wherein the Apex court held that illegality in termination order on account of non-payment of retrenchment compensation does not necessarily result in reinstatement, compensation may be awarded in lieu of reinstatement. Taking into consideration of the facts of the particular case, the respondent, who worked for 18 months three

decades earlier, was past 50 years of age, and Transport Department in which he was working had wound up, sum of Rs.2,50,000/- awarded as compensation, to be paid within stipulated period, failing which it would carry interest @ 12% per annum. The direction given by the Apex Court based on the facts of the said case. But in the present facts of the case, the Department is still in existence and not closed. Therefore, directing the second respondent to pay substantial amount would result in payment of compensation in excess of the compensation prescribed under Section 25-F (b) of the Act. The Apex Court did not lay down any law, but based on the facts of the case, issued such direction. Hence, it is not a binding precedent. However, the petitioner is entitled to compensation in terms of Section 25-F (b) of the Act as stated above.

21. One of the major contentions of the respondent is that the petitioner is not entitled to invoke jurisdiction of the Tribunal without any reference under Section 10 of the Act and for non-compliance of Section 2-A (2) of the Act, the petitioner is not entitled to claim any relief in the writ petition and drawn the attention of this Court to Section 2-A(2) of the Act.

22. In fact, the petitioner himself filed a petition under Section 2-A (2) of the Act and it is an exception to reference contemplated under Section 10 of the Act and that apart this contention is not urged before the Tribunal. However, there is no substance in the contention of the counsel for the second respondent, since approaching the individual employee to the Tribunal directly is permitted under section 2-A (2) of the Act.

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23. Learned counsel for the second respondent also contended that there is abnormal delay in approaching the Tribunal and such contention was not raised before the Tribunal.

24. In fact, the petition was filed before the Tribunal in the year 1993. The said petition was dismissed and the finding of the Tribunal was challenged before this Court in W.P. No.5472 of 1997, wherein the Order passed by the Tribunal was set aside and remanded the matter to the Tribunal. Even otherwise in view of law laid down by the Apex Court in **AJAIB SINGH**'s case referred to supra, the petition before the Tribunal is not barred by limitation.

25. In view of my foregoing discussion, I find that it is a fit case to direct the second respondent to pay compensation in terms of Section 25-F(b) of the Act together with interest @ 12% per annum as directed by the Apex Court referred to supra on the arrears, if any.

26. Accordingly, the writ petition is allowed. No costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 10.08.2016
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