

In the High Court of Punjab and Haryana at Chandigarh

**1. Civil Writ Petition No. 7465 of 2013 (O&M)
Date of Decision: 01.3.2016.**

Principal, Sant Nischal Singh Public School,Petitioners
Ladwa and others

Versus

Ashok Kumar and anotherRespondents

2. Civil Writ Petition No. 7738 of 2013 (O&M)

Principal, Sant Nischal Singh Public School,Petitioners
Ladwa and others

Versus

Gurmej Singh and anotherRespondents

3. Civil Writ Petition No. 7740 of 2013 (O&M)

Principal, Sant Nischal Singh Public School,Petitioners
Ladwa and others

Versus

Pawan Rana and anotherRespondents

4. Civil Writ Petition No. 7743 of 2013 (O&M)

Principal, Sant Nischal Singh Public School,Petitioners
Ladwa and others

Versus

Yashpal and anotherRespondents

5. Civil Writ Petition No. 7746 of 2013 (O&M)

Principal, Sant Nischal Singh Public School,Petitioners
Ladwa and others

Versus

Jagga Ram and anotherRespondents

6. Civil Writ Petition No. 7748 of 2013 (O&M)

Principal, Sant Nischal Singh Public School,Petitioners
Ladwa and others

Versus

Ombeer and anotherRespondents

7. Civil Writ Petition No. 7751 of 2013 (O&M)

Principal, Sant Nischal Singh Public School,Petitioners
Ladwa and others

Versus

Dayawanti and anotherRespondents

8. Civil Writ Petition No. 7754 of 2013 (O&M)

Principal, Sant Nischal Singh Public School,Petitioners
Ladwa and others

Versus

Surjeet Singh and anotherRespondents

9. Civil Writ Petition No. 10048 of 2013 (O&M)

Principal, Sant Nischal Singh Public School,Petitioners
Ladwa and others

Versus

Pauli and anotherRespondents

10. Civil Writ Petition No. 10049 of 2013 (O&M)

Principal, Sant Nischal Singh Public School,Petitioners
Ladwa and others

Versus

Jai Singh and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sandeep Bhardwaj, Advocate
for the petitioners.

Mr. J.S.Bedi, Advocate and
Mr. Ashwani Bakshi, Advocate
for the workmen.

SABINA, J.

Vide this order, above mentioned petitions would be disposed of as controversy involved in all the cases is the same.

Workmen (respondent No. 1) had raised industrial disputes challenging their termination by issuing separate demand notices. The appropriate Government referred the disputes for adjudication to the Labour Court.

Case of the workmen was that their services were terminated on 29.7.2008 in violation of mandatory provisions of Section 25-F of the Industrial Disputes Act 1947 ('Act' for short).

Case of the petitioners, on the other hand, was that the workmen had been retrenched as the petitioners had taken the decision to outsource the services. Notices dated 28.7.2008 were issued to the workmen along with one month salary in lieu of notice and retrenchment compensation vide cheques dated 29.7.2008. However, the workmen had refused to accept the same and the same were sent to the workmen through speed post. It was further the case of the petitioners that they had also sent cheques dated 22.9.2008 to the workmen towards their additional legal dues.

On the pleadings of the parties, necessary issues were framed by the Labour Court.

Workmen led their evidence in support of their case whereas despite opportunity, petitioners failed to lead their evidence.

Labour Court vide the impugned awards ordered the reinstatement of the workmen with continuity of service and 50% back-wages.

Learned counsel for the petitioners has submitted that the workmen had been retrenched on account of decision of the petitioners to outsource the services. Workmen were retrenched on 28.7.2008 and cheques dated 29.7.2008 were offered to them with regard to one month pay in lieu of notice and retrenchment compensation. Learned counsel has further submitted that cheques dated 22.9.2008 were also sent to the workmen towards their additional legal dues but they had refused to accept the same.

Learned counsel for the workmen, on the other hand, have submitted that the workmen were retrenched on account of

their demand for payment of minimum wages. The workmen were retrenched on 28.7.2008 without complying with the mandatory provisions of Section 25-F of the Act. In support of their arguments, learned counsel have placed reliance on '**Mani Ram versus The Presiding Officer, Labour Court, Ambala 1996(3) SCT 482**', wherein it was held as under:-

“5. A perusal of the provisions of Section 25F would reveal that these provisions are mandatory in nature and Clause (b) of Section 25F postulates that no workman shall be retrenched until he has been paid compensation at the time of retrenchment. This Section contains mandate that the employer shall not retrench a workman unless retrenchment compensation has been paid prior or at the time of the retrenchment. In the present case the condition postulated in Section 25-F(b) has not been complied with. It is no doubt correct that the workmen were directed to collect the retrenchment compensation on February 17th & 18th February, 1983, but by this letter the management is not exonerated of its statutory liability. Also the management is not exonerated nor it can be said that it has complied with the provisions of Section 25-F by sending the money order, which was sent after the relevant date, i.e., 20.2.1983. Even the letter dated 25.2.1983 is not a compliance of the provisions of Section 25-F of the Act. The learned Labour Court while passing the award has not correctly appreciated or interpreted the legal effect of the statutory provisions of Section 25-F of

the Act. The erroneous approach of the Labour Court while applying the provisions of Section 25-F to the facts has caused miscarriage of justice to each of the workmen and which finding of the learned Labour Court cannot be upheld. It has been held in Shri Mohan Lal v. The Management of M/s Bharat Electronics Ltd., 1981(2) SLR 11, that it is well settled that where pre-requisite for valid retrenchment as laid down in Section 25F has not been complied with, retrenchment bringing about termination of service is ab initio void. Similar view was also taken in State of Bombay and others v. The Hospital Mazdoor Sabha and others, 1960(2) S.C.R. 866, that failure to comply with the requirement of Section 25F which prescribes a condition precedent for a valid retrenchment renders the order of retrenchment invalid and inoperative. In other words it does not bring about cessation of service of the workman. The workman continues to be in service.”

Section 25-F of the Act reads as under:-

25F. 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].

Thus, as per the above provision, workman is required to be given one month notice in writing indicating the reasons for retrenchment or is required to be paid the wages in lieu of notice period and retrenchment compensation.

In the present cases, admittedly, workmen were working with the petitioners. The workmen were retrenched on 28.7.2008. Petitioners have taken the plea that they had paid one month salary in lieu of notice along with retrenchment compensation vide cheques dated 29.7.2008 and the remaining legal dues were paid vide cheques dated 22.9.2008. However, petitioners had failed to lead evidence before the Labour Court in support of their said pleas. Hence, the petitioners had failed to prove on record that they had offered one month salary in lieu of notice and retrenchment compensation to the workmen on 28.7.2008 at the time of their retrenchment. Since the petitioners had failed to lead any evidence before the Labour Court, the plea taken by them in their written statement that they had retrenched the workmen as they had taken a decision to outsource their services, was also not proved on record. In these circumstances, the learned Labour

Court had rightly ordered the reinstatement of the workmen. The impugned awards passed by the Labour Court in the facts and circumstances of the present case do not suffer from the vice of illegality and call for no interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India.

Accordingly, all the petitions are dismissed.

**(SABINA)
JUDGE**

March 01, 2016
Gurpreet