

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 14620 of 1996
Date of Decision: 20.2.2017

Central Warehousing Corporation

... Petitioner

Versus

Union of India and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Paul S.Saini, Advocate for the petitioner

Ms.Minakshi Poswal, Advocate for respondent no.2

RAJIV NARAIN RAINA, J. (Oral)

1. The workman raised an industrial dispute with the Management which sparked off the conciliation proceedings before the Assistant Labour Commissioner (Central), Chandigarh. The workman abandoning the proceedings withdrew from them and filed writ petition challenging his termination before this Court. The respondent-workman's writ petition bearing CWP No.9238 of 1987 was tagged and heard together with CWP No.3330 of 1987 which was decided by a common order of learned Single Judge of this Court. The writ petition was dismissed on merits as the court found no ground to interfere with the termination. Being aggrieved by the order, the respondent preferred LPA No.231 of 1995 which was decided with LPA No.710 of 1995 and both the appeals were dismissed on 9th October, 1995 by the LPA Bench. The order attained finality as no SLP was carried to the Supreme Court.

2. Having lost his challenge to the termination order, the workman turned around and made a request to the Assistant Labour Commissioner to

re-open the matter. This led to Industrial Reference by the appropriate government referring the matter to the Central Industrial Tribunal, Chandigarh to adjudicate whether the termination of the services of the workman were legal and justified. Against the reference order, the petitioner-Corporation approached this Court in the present writ petition. The Division Bench issued notice of motion on 19th September, 1996 and stayed the proceedings before the Labour Court. The writ petition was admitted on 20th October, 1997 and stay was ordered to continue.

3. Mr. Paul S. Saini, learned counsel appearing for the petitioner-Corporation submits that the matter has *res judicata* in view of the decision on merits rendered by this Court against the termination order. The writ petition was dismissed not only on common law but also by the Court examining the grounds of challenge in the Industrial Dispute Act, 1947 (for short “the Act”) and its provisions such as Section 25-F. The Court entered into the argument raised by the workman/petitioner as to the violation of Section 25-F (c) of the Act since the petitioner had been paid wages at the time of discharge in lieu of one month’s notice and retrenchment compensation equivalent to 15 days of average pay for every completed year of continuous service. The issue raised by the workman before the learned Single Judge was that notice was not issued in the prescribed manner on the appropriate government within the stipulated period. The court’s attention was drawn to Rule 76 of the Industrial Disputes (Central) Rules, 1967 under which notice has to be sent to the Central Government in Form P. This rule provides that the workman is to be given one month’s wages in lieu of notice. The notice in Form P should be sent within three days on which the wages are paid. In that case, what was alleged is that notice was sent beyond

provisions. The Court was of the opinion that the provisions are directory and not mandatory and the technical flaw would not vitiate the retrenchment. The Court applied the law in Bombay Union of Journalists and others vs. The State of Bombay and another, AIR 1964 SC 1617 to reach the conclusion that Section 25-F (c) of the Act is directory in nature and is not a condition precedent to retrenchment. In view of the matter being *res judicata*, the reference is declared bad and illegal and consequently, the proceedings before the Labour Court are declared not maintainable and without jurisdiction.

4. In view of the above, the writ petition is allowed. The impugned order (Annex. P-6) is quashed.

(RAJIV NARAIN RAINA)
JUDGE

20.2.2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No