

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WP No.199 of 2004**

Navbharat Fuse Co.Ltd Through its Director Navbharat Udyog Bhavan, Ravigram, Telibandha, Ring Road No.1, Raipur (CG)

----Petitioner**Versus**

1. Jacinta Nair D/o-Shri K.P.Nair, A-5, Sahni Vihar, Telibandha, Ring Road No.1, Ravigram, Raipur (CG)
2. Presiding Officer, Labour Court, Raipur (CG)

---- Respondents

 For Petitioner : Mr.N.K.Vyas, Advocate
 For Respondent No.1 : None present

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****05/07/2018**

1. The petitioner company retrenched the services of respondent No.1 herein under the provisions of the Chhattisgarh Industrial Disputes Act, 1947 (hereinafter called as "the Act of 1947"). She was offered retrenchment compensation as well as notice pay, which she declined to accept, which was sent to her through registered post. Thereafter she raised industrial dispute before the appropriate Government and the appropriate Government referred the matter to the Labour Court for adjudication as to whether the termination of respondent No.1 herein is legal and justified. The Labour Court by its impugned order held that retrenchment is not just and proper and directed

reinstatement along with 40% back-wages. Feeling aggrieved and dissatisfied with the said order, this writ petition has been filed by the petitioner herein.

2. Mr.N.V.Vyas, learned counsel for the petitioner, would submit that respondent No.1 was offered retrenchment compensation as well as notice pay, which she admittedly declined to accept, which was sent through registered post vide Ex.D/5-C, which has been returned vide Ex.D/6-C, as such, finding of the Labour Court is contrary to law. He would further submit that the Labour Court having recorded a finding that she was gainfully employed elsewhere has directed reinstatement along with 40% back-wages. Non-payment of gratuity in favour of employee cannot be a ground for declare retrenchment illegal, therefore, the impugned order deserves to be set aside.
3. None appeared for respondent No.1 though served.
4. I have heard learned counsel for the petitioner and went through the records with utmost circumspection.
5. The Labour Court has clearly recorded a finding that respondent No.1 was offered retrenchment compensation. Statement of the petitioner's witness Shri J.N.Singh would also show that retrenchment compensation and notice pay was offered to the petitioner, which she declined to accept vide Ex.D/5-C and Ex.D/6-C, as such, the provisions contained in Section 25F of the Act of 1947 has been complied with.

6. The question for consideration would be whether non-payment of gratuity, retrenchment can be held to be unjustified.
7. The Supreme Court in the matter of **M/s. The Bramhachari Research Institute, Culcutta-4, v. Their Workmen**¹ the Supreme Court has observed as under:-

“6... We also cannot agree with the Appellate Tribunal that this gratuity under the Award in this case is not a retrenchment benefit. We have already analysed the Award above and shown that it deals with three contingencies, and one of them is payment due on retrenchment. On the terms, therefore, of the Award in this case it must be held that gratuity provided therein on retrenchment is nothing more nor less than retrenchment compensation provided under S. 25F of the Act, and the workmen are only entitled to one or the other, whichever is more advantageous to them in view of S. 25J. In the circumstances we are of the opinion that the Industrial Tribunal was right in holding that the scheme of the Award in this case providing for gratuity on retrenchment was exactly the same as compensation provided under S. 25F, and as the provisions of S.25F are better than the provisions of the Award in respect of retrenchment the workmen would be entitled to compensation provided under S.25F only, and not both under that section and under the Award. The appellant has already paid the compensation provided under S.25F; the workmen therefore are not entitled to anything more under the Award. We therefore allow the appeal, set aside, the decision of the Appellate Tribunal and restore that of the Industrial Tribunal in this matter. As this question has come up to this Court for the first time, we order the parties to bear their own costs.”

8. Since retrenchment compensation and notice pay have been offered to respondent No.1 which she declined to accept and there is material on record to hold so and in view of the

¹ AIR 1960 SC 257

principle of law laid-down by the Supreme Court in **The Bramhachari Research Institute** (supra), it cannot be held that respondent No.1 is entitled for reinstatement for non-payment of gratuity.

9. Accordingly, the impugned order is set aside and consequent thereto, order directing 40% back-wages is also set aside.
10. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-