

LPA No.270 of 2022 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.270 of 2022 (O&M)
Date of decision : 26-04-2022

GBA Workers Union

.....Appellant

VERSUS

Chandigarh Administration & another

....Respondents

**CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. K.L. Arora, Advocate
for the appellant.

Mr. Anil Mehta, Senior Standing Counsel with
Mr. Aditya Jain, Additional Standing Counsel,
for U.T. Chandigarh.

Mr. Chetan Mittal, Senior Advocate with
Mr. Vivek Sethi and Mr. Mayank Aggarwal, Advocates
for caveator – respondent No.2.

AUGUSTINE GEORGE MASIH, J.

This intra court appeal has been preferred by the appellant – GBA Workers Union (hereinafter referred to as 'Union') challenging the order dated 15.03.2022 passed by the Hon'ble Single Judge dismissing the writ petition preferred by it, where directions were sought to quash the order dated 01.03.2021 (Annexure P-6) passed by the Secretary, Labour, Chandigarh Administration – respondent No.1, stating therein that application under Section 25 N(1)(b) of the Industrial Disputes Act, 1947, filed by M/s Groz-Beckert Asia Private Limited – respondent No.2 on 01.12.2020, seeking permission to retrench 37 workmen, the said

LPA No.270 of 2022 (O&M)

permission is deemed to have been granted on expiry of 60 days from the date of filing of the application.

2. It is the contention of the learned counsel for the appellant that the learned Single Judge has failed to appreciate and take into consideration the Division Bench judgment of the Karnataka High Court in **Jayhind Engineering and another Vs. State of Karnataka and others** 2004 (2) S.C.T. 443, wherein it has been held that once enquiry notice is issued by the State Government on receipt of an application, running of the period of 60 days, as provided under the statute, stands arrested and unless an order is passed on the said enquiry, the deeming fiction as provided for under the statute would not operate. His further contention is that the challenge to the Division Bench judgment of the Karnataka High Court by way of Special Leave Petition (Civil) No.11255-11256 of 2004, titled as 'Jayhind Engineering and another Vs. State of Karnataka and others', stands dismissed vide order dated 16.12.2004 by the Hon'ble Supreme Court. He, on this basis, submits that the judgment passed by the learned Single Judge cannot sustain as the deeming fiction would not come into effect till a decision is taken by the Competent Authority on an enquiry which has been initiated within a period of 60 days from the date of submission of an application by the Employer for retrenchment of the employees.

In any case, he asserts that when an undertaking had been given and a statement made in this Court by the counsel for the Chandigarh Administration i.e. in CWP No.3886 of 2021, which was preferred by the appellant – Union and decided by the learned Single Judge of this Court vide order dated 24.02.2021, where counsel for the Chandigarh

LPA No.270 of 2022 (O&M)

Administration, on instructions from the Assistant Labour Commissioner, Union Territory Chandigarh, stated that the application under Section 25 N of the Industrial Disputes Act, 1947, moved by respondent No.2 – company was under consideration of the authority and the appropriate order shall be passed before 28.02.2021, the authorities were required to pass an order on the enquiry, which had been initiated by the Secretary, Labour especially when the parties have been heard on 25.01.2021, which is much prior to the expiry of the period of 60 days from the date of submission of the application dated 01.12.2020. His submission is that there has been intentional delay on the part of the Chandigarh Administration in passing the order on the enquiry to help out respondent No.2 – company and granting it the benefit of the deemed permission on expiry of the period of 60 days from the date of submission of the application.

Learned counsel for the appellant has further contended that the learned Single Judge has misread the provisions as contained in Section 25 N of the Industrial Disputes Act, 1947 and has proceeded on mere technicalities without taking into consideration the intent and purpose for which the said provisions have been enacted. Reliance has also been placed upon the judgment of Constitution Bench of five judges of the Hon'ble Supreme Court in **M/s Orissa Textile and Steel Ltd. Vs. State of Orissa** 2002 (1) S.C.T. 1017 to contend that the Government is bound to make an enquiry before passing the order, the requirement to make an enquiry postulates an enquiry into the correctness of the facts stated by the Employer for the notice served by him and also all other relevant facts and circumstances including the *bona fide* of the Employer. An opportunity of

being heard has to be afforded to the Employer and the workman and all persons interested. It is after that only, the Government shall proceed to pass an appropriate order on the application seeking permission for retrenchment of the employees. He contends that the Hon'ble Supreme Court in Workmen of Meenakshi Mills Ltd. etc. Vs. Meenakshi Mills Ltd. and another AIR 1994 Supreme Court 2696 had not ruled out or taken away the powers of the High Court to be exercised under Article 226 of the Constitution of India of judicial review in adequate protection against arbitrary action in the matter and exercise of power by the appropriate Government or authority under the provisions of Section 25 N of the Industrial Disputes Act, 1947 is available and the Court should have so exercised the same in the given facts and circumstances of the case. Prayer has, thus, been made for setting aside the impugned judgment passed by the learned Single Judge as also the impugned order in the writ petition by allowing the same as preferred by the appellant – Union.

3. On the other hand, learned senior counsel for caveator – respondent No.2 submits that the order passed by the learned Single Judge is based upon proper appreciation of the provisions of Section 25 N of the Industrial Disputes Act, 1947. He contends that the learned Single Judge has not only referred to and relied upon the various judgments which have been passed by the Hon'ble Supreme Court while dealing with and interpreting not only Section 25 N of the Industrial Disputes Act, 1947 but also Section 25 M and 25-O of the said Act, which are *para materia* to the provisions which is the subject matter of the present *lis*. As regards the contention of the learned counsel for the appellant with regard to the

LPA No.270 of 2022 (O&M)

effective remedy of judicial review in exercise of the powers under Article 226 of the Constitution of India is concerned, learned senior counsel states that the learned Single Judge has rightly and appropriately left the matter open for the appellant – Union and the workmen to avail of their remedy under the Industrial Disputes Act, 1947. It, therefore, cannot be said that there is no effective appropriate statutory remedy available to the appellant – Union especially in the light of the observation of the Hon'ble Supreme Court in its judgment in ***Workmen of Meenakshi Mills Ltd.***'s case (supra).

4. Learned senior counsel has also submitted that the language of Section 25 N (3) of the Industrial Disputes Act, 1947, is totally silent with regard to keeping the period of 60 days as provided for under sub-Section 4 to be kept arrested or the operation of that period would stop. This aspect has been dealt with by the Hon'ble Supreme Court in the case of **State of Haryana and another Vs. Hitkari Potteries Ltd. and another** (2001) 10 Supreme Court Cases 74, where a similar situation relating to the permission to close down the company under Section 25-O of the Industrial Disputes Act, 1947 had been adjudicated, wherein it has been held that the deemed grant of permission on account of failure of the Government to grant permission to the Employer within the period of 60 days from the date, on which such application was made, does not stop to run and the authority cannot, after the expiry of period of 60 days, proceed to either grant or refuse permission for closure, rather the deemed provision would come into effect regarding the grant of permission. Prayer has, thus, been made for dismissing the present appeal.

5. Learned counsel for the Chandigarh Administration was put a

specific question by the Court in the light of the forceful argument which was raised by the learned counsel for the appellant that the enquiry which was initiated stood concluded on 25.01.2021, who responded by stating that the said enquiry had not been finalised and it was in the process of the said enquiry that the parties were called and heard at the inception. Before the enquiry could be finalized, 60 days period from the date of submission of the application had expired rendering the authority *functus officio* and thus, the deemed permission, as provided under Section 25 N (4) of the Industrial Disputes Act, 1947, came into effect.

6. We have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the impugned judgment passed by the learned Single Judge as well as the pleadings and the judgments on which reliance has been placed by them.

7. Facts are not in dispute and therefore, brief reference thereto would suffice. An application under Section 25 N (1) (b) of the Industrial Disputes Act, 1947, was submitted by respondent No.2 – company on 01.12.2020 before the Assistant Labour Commissioner-cum-Conciliation Officer (hereinafter referred to as 'Labour Commissioner') seeking permission to retrench 37 workmen. The reason assigned for the said retrenchment to be resorted to was due to novel corona virus (COVID-19). It was stated that the demand of the products of the company had shrunk in the local and the global market leading to large accumulation of the product at the warehouses of the company and it is for this reason that the company had decided to reduce its production with proportionate deduction of its work force on the principle of 'last come first go'. Labour

LPA No.270 of 2022 (O&M)

Commissioner sent notice to the appellant – Union for appearing before him for conciliation. Apart from the appellant – Union, some workers also appeared before the labour Commissioner, where five meetings were held. While the proceedings were under progress before the Labour Commissioner, U.T. Chandigarh, appellant – Union preferred CWP No.22297 of 2020 praying for direction to the Labour Commissioner, U.T. Chandigarh, to not act on the retrenchment application. This writ petition was withdrawn with liberty to avail of its alternative remedy. The matter before the Labour Commissioner could not be finalized and failure report was sent to the Secretary, Labour by the Labour Commissioner.

Secretary, Labour, then addressed a communication dated 22.01.2021 to the appellant – Union informing about the receipt of the notice regarding retrenchment from respondent No.2 – company and fixed 25.01.2021 as the date of hearing/enquiry in the matter. Although the notice was received by only one worker and the appellant – Union but 25 workers as also the appellant – Union appeared before the Secretary, Labour, U.T. Chandigarh, on the date fixed. When no order was passed on the basis of the said enquiry by the Secretary, Labour, U.T. Chandigarh, appellants filed CWP No.3886 of 2021 seeking direction to finalise the said enquiry proceedings. That writ petition was disposed of vide order dated 24.02.2021 on the basis of an undertaking given by the Labour Commissioner in Court that an order on the retrenchment application would be passed by the Competent Authority on or before 28.02.2021 as the matter is under consideration of the authority. 28.02.2021 being Sunday, the order in pursuance to the undertaking given to this Court as referred to above was

passed by the Secretary Labour. U.T. Chandigarh, on 01.03.2021 (Annexure P-6) stating therein that as per Section 25 N (4) of the Industrial Disputes Act, 1947, the application preferred under Section 25 N (1) (b) by respondent No.2 – company, dated 01.12.2020, seeking permission for retrenchment of 37 workmen, is deemed to have been granted on expiry of 60 days from the date of its filing. It is, in the light of the passing of this order, appellant – Union had filed the writ petition challenging the order dated 01.03.2021, which stands dismissed by the learned Single Judge.

8. The basic contention which has been raised by the learned counsel for the appellant – Union is that once an enquiry has been initiated in the matter on the basis of an application which has been submitted under Section 25 N (1) (b) of the Industrial Disputes Act, 1947, by the Employer for retrenchment of the workmen and if it is within the period of 60 days of submission of such application, the said period of 60 days shall cease to operate or would stand arrested which submission is based upon the Division Bench judgment of the Karnataka High Court in *Jayhind Engineering's* case (supra), suffice it to say that the same is based upon the assumption that the Competent Authority had taken cognizance of the matter and therefore, before an order is passed on an application for retrenchment either accepting or rejecting the same, the period would freeze. This was so said in the light of the fact that not only an enquiry was to be initiated but thereafter, opportunity of hearing was also to be given and obviously, some reasonable time would be necessary to carry out such an exercise. Keeping this in mind, the Division Bench had so observed in its judgment, SLP against which has also been dismissed by the Hon'ble

LPA No.270 of 2022 (O&M)

Supreme Court.

This contention of the learned counsel for the appellant – Union cannot be accepted as the reasoning which has been adopted by the Division Bench of the Karnataka High Court is not based upon the interpretation of the language of the provisions of Section 25-O of the Industrial Disputes Act, 1947 and the reasons as to why said period has been so prescribed. In *Orissa Textile and Steel Ltd.'s* case (supra), the question which was considered by the Hon'ble Supreme Court, was the constitutional validity of Section 25-O of the Industrial Disputes Act, 1947, as amended by the Amendment Act, 46 of 1982. This is the same provision which was the subject matter of consideration in *Jayhind Engineering's* case (supra) before the Karnataka High Court. The Hon'ble Supreme Court while referring to its judgment in **Excel Wear Vs. Union of India** (1978) 4 SCC 224, concluded that the guarantee under Article 19 (1) (g) of the Constitution included the right to close down a business and was an integral part of the fundamental right to carry on business. It was held that there could be a reasonable restriction on this right under Article 19 (6) of the Constitution by providing law to regulate unfair, unjust and *mala fide* closure. In the given provisions as it existed i.e. Section 25-O (unamended) was held to be unreasonable for various reasons, one of which was that there was no deemed provision of according approval in the Section. The Court proceed to make comparison between unamended Section 25-O and the amended Section 25-O and Section 25 N. It has been held in *Orissa Textile and Steel Ltd.'s* case (supra) that in substance, amended Section 25-O was akin to Section 25 N which was considered in *Workmen of*

LPA No.270 of 2022 (O&M)

Meenakshi Mills Ltd's case (supra) and therefore, the same principle would apply to the closure as also in retrenchment for the reason that it had the effect of termination of services of the workmen in one case some and in the other all. It had gone to the extent of holding that the grounds on which the unamended Section 25-O had been struck down in *Excel Wear's* case (supra) have now ceased to exist after the amendment of 1982 Act, thus, upholding the present provision as contained under Section 25-O of the Industrial Disputes Act, 1947. This was so said that it was because of the interpretation of the deeming provision that defect has been cured where the period of 60 days from the date of submission of application having been made, that permission would be deemed to have been granted on expiry of the said period.

If that be the position, as far as the provisions of Section 25-O are concerned, then the judgment of the Karnataka High Court, on which emphasis and reliance has been placed by the learned counsel for the appellant – Union would not hold the field.

9. Reference at this stage need to be made to the another judgment of the Hon'ble Supreme Court in **State of Haryana and another Vs. Hitkari Potteries Ltd. and another** (2001) 10 Supreme Court Cases 74, where the facts were that the permission for closure of the company was sought on 15.01.1998. A letter was sent on behalf of the Government to the respondent on 02.04.1998 to the effect that the application filed by it was defective in certain aspects and hence, rejected. This rejection was challenged before the Court by contending that once, no order has been communicated within the time stipulated i.e. 60 days from the date of

LPA No.270 of 2022 (O&M)

submission of the application under Section 25-O, the permission as deemed under Section 25-O (3) would come into operation and the said rejection would have no consequence.

The Hon'ble Supreme Court, while upholding the order of the High Court, held that the permission to close down the company under Section 25-O was deemed to have been granted on account of failure of the Government to communicate the order granting or refusing permission to the employer within a period of 60 days from the date on which such application was made.

10. Now coming to the present case where Section 25 N is the provision which would be applicable as respondent No.2 – company has sought permission to retrench 37 of its employees by way of an application submitted on 01.12.2020. The period of 60 days would expire on 30.01.2021. It is an admitted position that prior to the said date, no order has been passed by the Competent Authority either accepting or rejecting the permission as sought for vide application dated 01.12.2020. What has been asserted is that an enquiry was initiated on 15.01.2021 and the parties were called for hearing on 25.01.2021 but still no order has been passed. The order could have been passed, if any, by the Competent Authority on or before 30.01.2021, till which date, admittedly, no such order had been passed. The authorities became *functus officio* after the expiry of 60 days from the date of submission of the application for permission under Section 25 N (1) (b) of the Industrial Disputes Act. This, we state in the light of the law laid down by the Hon'ble Supreme Court in *Workmen of Meenakshi Mills Ltd.*'s case (supra), where the Hon'ble Supreme Court, while

examining the constitutional validity of Section 25 N of the Industrial Disputes Act, in para 28 of the judgment, has observed as follows:-

“28 Sub-section (1) of Section 25-N contains provisions similar to those contained in Section 25-F with one modification that the period of notice which is required to be given for retrenchment of a workman in an industrial establishment covered by Section 25-K and falling within Chapter V-B is three months instead of one months’ notice required under Section 25-F. The need for a period of notice is indicated by sub-section (3) of Section 25-N because within a period of three months from the date of service of the said notice, the appropriate Government or authority is required to communicate the permission or refusal to grant the permission for retrenchment to the employer after making such enquiry as it thinks fit under sub-section (2). The consequence of failure to keep this time schedule is indicated in sub-section (3) wherein it is provided that in case the Government or authority does not communicate the permission or the refusal to grant the permission to the employer within three months of the date of service of the notice, the Government or the authority shall be deemed to have granted the permission for such retrenchment on the expiration of the said period of three months. The change which has been brought about by sub-section (2) of Section 25-N is that instead of an adjudication by a judicial tribunal into the validity and justification of retrenchment after the order of the retrenchment has been passed under Section 25-F, an enquiry is to be made after the service of notice of retrenchment and before the retrenchment comes into effect and said enquiry is to be made by the appropriate Government or authority specified by it, maintaining

status quo in the meanwhile.”

Perusal of the above would show that the period which has been fixed for taking a decision with regard to the grant of otherwise of the permission, as sought, cannot be extended and the said period was the limit within which the enquiry was also required to be concluded so that an appropriate order is passed by the Competent Authority within a period of 60 days from the date of submission of the application for permission, failing which deemed permission for retrenchment by the Competent Authority was to come into effect.

11. The next contention which has been raised by the learned counsel for the appellant – union is that the Court should exercise its jurisdiction under Article 226 of the Constitution of India of judicial review. This aspect also has been answered by the Hon'ble Supreme Court in para 57 of its judgment in *Workmen of Meenakshi Mills Ltd.*'s case (supra), which reads as follows:-

“57. In order to validly retrench the workmen under Section 25-N, apart from obtaining permission for such retrenchment under sub-section (2), an employer has also to fulfil other requirements, namely, to give three months' notice or pay wages in lieu of notice to the workmen proposed to be retrenched under clause (a) of sub-section (1), pay retrenchment compensation to them under clause (b) of sub-section (1) and to comply with the requirement of Section 25-G, which is applicable to retrenchment under Section 25-N in view of Section 25-S. An industrial dispute may arise on account of failure on the part of the employer to comply with these conditions and the same can be referred for adjudication

under Section 10. In addition, an industrial dispute could also be raised by the workmen in a case where retrenchment has been effected on the basis of permission deemed to have been granted under sub-section (3) of Section 25-N on account of failure on the part of the appropriate Government or authority to communicate the order granting or refusing the permission for retrenchment within a period of three months from the date of the service of notice under clause (c) of sub-section (1) because in such a case, there has been no consideration, on merits, of the reasons for proposed retrenchment by the appropriate Government or authority and reference of the dispute for adjudication would not be precluded. What remains to be considered is whether an industrial dispute can be raised and it can be referred for adjudication in a case where the appropriate Government has either granted permission for retrenchment or has refused such permission under sub-section (2) of Section 25-N. Since there is no provision similar to that contained in sub-section (7) of Section 25-N attaching finality to an order passed under sub-section (2) it would be permissible for the workmen aggrieved by retrenchment effected in pursuance of an order granting permission for such retrenchment to raise an industrial dispute claiming that the retrenchment was not justified and it would be permissible for the appropriate Government to refer such dispute for adjudication though the likelihood of such a dispute being referred for adjudication would be extremely remote since the order granting permission for retrenchment would have been passed either by the appropriate Government or authority specified by the appropriate Government and reference under Section 10

of the Act is also to be made by the appropriate Government. Since the expression 'industrial dispute' as defined in Section 2(k) of the Act covers a dispute connected with non-employment of any person and Section 10 of the Act empowers the appropriate Government to make a reference in a case where an industrial dispute is apprehended, an employer proposing retrenchment of workmen, who feels aggrieved by an order refusing permission for retrenchment under sub-section (2) of Section 25-N can also move for reference of such a dispute relating to proposed retrenchment for adjudication under Section 10 of the Act though the possibility of such a reference would be equally remote. The employer who feels aggrieved by an order refusing permission for retrenchment thus stands on the same footing as the workmen feeling aggrieved by an order granting permission for retrenchment under sub-section (2) of Section 25-N inasmuch as it is permissible for both to raise an industrial dispute which may be referred for adjudication by the appropriate Government and it cannot be said that, as compared to the workmen, the employer suffers from a disadvantage in the matter of raising an industrial dispute and having it referred for adjudication. The grievance about discrimination in this regard raised by the learned counsel for the employers is thus unfounded. The fourth contention is, therefore, rejected."

A perusal of the above would show that the appellant – Union has an effective alternative remedy of filing a reference under the Industrial Disputes Act, 1947 and the learned Single Judge has rightly observed that it has not considered the case on merits the reasons for proposed retrenchment by the appropriate Government or authority and left it open to the parties to

LPA No.270 of 2022 (O&M)

avail of their remedy of reference of dispute for adjudication as provided for under the Act, as held by the Hon'ble Supreme Court.

12. The contention of the learned counsel for the appellant – Union that despite an undertaking given by the Assistant Labour Commissioner, U.T. Chandigarh, in the Court on 24.02.2021, when CWP No.3886 of 2021 came up for consideration and was disposed of on his statement that the application submitted by respondent No.2 – company under Section 25 N (1) (b) of the Industrial Disputes Act, 1947, being under consideration of the authority, appropriate order shall be passed before 28.02.2021, the said order has not been passed on merits rather it has merely proceeded to state that the period of 60 days having expired from the date of submission of the application under Section 25 N (1) (b) of the Industrial Disputes Act, 1947, shows the disregard with which the Court is held by the Chandigarh Administration.

This submission has been responded to in the reply which has been filed by the Secretary Labour, U.T. Chandigarh, taking the plea that on the date when the statement was made and the order was passed by the Writ Court on 24.02.2021 while disposing of the same, the authorities had already become *functus officio*. In view of the deeming provisions of Section 25 N (4), any order, if would have been passed by the authority on merits of the proposed reasons of retrenchment, would be in violation of the statutory provisions and apparently illegal. This stand on the part of respondent No.1 is fully justified in law as has been settled by the Hon'ble Supreme Court and discussed above. It cannot, therefore, be said that there was any *mala fide* or misleading of the Court on the part of the respondent

LPA No.270 of 2022 (O&M)

authorities when the case was disposed of by this Court vide order dated 24.02.2021 except for stating that the authorities should have been careful and should have seen the provisions of the statute before making such a statement in Court.

13. Keeping in view the above, we do not find any ground to accept the present appeal as the judgment passed by the learned Single Judge is based upon the proper appreciation of the statutory provisions and the law as laid down by the Hon'ble Supreme Court through various pronouncements referred to above and in the judgment of the learned Single Judge. The present appeal, therefore, stands dismissed.

In the light of the dismissal of the main appeal, all the pending miscellaneous applications stand disposed of.

(AUGUSTINE GEORGE MASIH)
JUDGE

26th April, 2022
Harish

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes