

216 (3 cases)

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

(1) **CWP-9982-2011 (O&M)**

DAYA NAND ...Petitioner

Versus

THE LEARNED PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, CHANDIGARH AND OTHERS
...Respondents

(2) **CWP-9959-2011 (O&M)**

JAI BHAGWAN ...Petitioner

Versus

THE LEARNED PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, CHANDIGARH AND OTHERS
...Respondents

(3) **CWP-9971-2011 (O&M)**
Date of Decision : 04.01.2024

SURESH ...Petitioner

Versus

THE LEARNED PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, CHANDIGARH AND OTHERS
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Ms. Veena Hooda, Advocate
for the petitioner(s) (in all the cases).

Mr. Ashok Gupta, Advocate
for the respondents (in all the cases).

HARSH BUNGER, J.

1. This order shall dispose of three petitions bearing
CWP-9982-2011 titled as “*Daya Nand Versus The learned Presiding*”

Officer, Industrial Tribunal-cum-Labour Court, Chandigarh and others”, CWP-9959-2011 titled as “*Jai Bhagwan Versus The learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Chandigarh and others*” and CWP-9971-2011 titled as “*Suresh Versus The learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Chandigarh and others*” as common questions of law and facts are involved therein. All three above-numbered petitions have emanated from a common Award dated 14.10.2008 (notified vide Notification dated 05.11.2008 and received on 22.01.2009) (Annexure P-7); whereby three references were decided by the learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-1, Chandigarh.

2. Petitioners herein have filed the instant writ petitions seeking a writ in the nature of *certiorari* for quashing the impugned Award dated 14.10.2008 (Annexure P-7); whereby, the reference of industrial dispute raised by them was disposed of by holding that the petitioners are entitled to receive one month’s salary in lieu of notice and retrenchment compensation with 9% interest from 28.02.1990 till the date of payment.

3. Briefly, the petitioners herein raised an industrial dispute regarding termination of their services, which was referred for adjudication to the Central Government Industrial Tribunal-cum-Labour Court 1, Chandigarh (for short ‘the Tribunal’). As per claim of the petitioners, they were appointed on different dates in the year 1987 on the post of ‘Mali’ as daily wage workers. They claimed to have completed 240 days of work preceding the date of their termination from services without any notice or retrenchment compensation. It was also stated by the petitioners that juniors

to them were retained in service and few new hands were recruited by the Beas Project. Accordingly, prayer was made for reinstatement into service along with other consequential benefits.

4. On the other hand, the afore-said claim of the petitioners was contested by the Chief Engineer (Electrical), Beas Project and Executive Engineer, GSS Division, Beas Project (presently under respondents No.2 and 3, herein) on the plea that the Beas Construction Board was constituted by the Central Government for execution and completion of works of the Beas Project and since the works assigned to the Beas Construction Board have been completed and handed over to the Bhakhra Beas Management Board (respondent No.2, herein); accordingly, Beas Construction Board has virtually ceased to exist. It was the case of the management that the petitioners were retrenched due to completion of works under Section 25-FFF of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). It has been stated that there is neither any work under Beas Construction Board nor any worker/employee is physically in position under the Board. It has further been stated that only some notional posts are continuing, which are being managed by the officers of the Bhakhra Beas Management Board in dual charge capacity. It is the case of the management that due to completion of work, the petitioners were served 24 hours' retrenchment notice under Section 25-FFF of the 1947 Act, wherein it was stated that they should collect their retrenchment benefits and one month's wages in lieu thereof from the SDO (Civil Works) Sub-Division Beas Construction Board, Bhiwani and a copy of the said notice was also put up on the notice board; however, the petitioners had refused to accept the notice and to collect the retrenchment benefits. It was stated that at the time of completion of the works, nine daily wage workers

were working and all of them were retrenched on 28.02.1990 and no person had been retained in service. Accordingly, it was contended that there was no violation of the provisions of the 1947 Act.

5. Upon considering the case of the respective parties and also the material/evidence available on the record, the Tribunal below decided the references vide common Award dated 14.10.2008 (Annexure P-7) by holding as under :-

“I have heard learned counsels for the parties and perused all the materials on record.

Learned counsel for the workmen has argued that as per the evidence of management, it was the part completion of the Project on which the services of the workmen were terminated which is against the provisions of Industrial Disputes Act. It has also been alleged by learned counsel for the workmen that few new hands were recruited after the termination of the services of the workmen which entitles the workmen for their reinstatement into the services. Learned counsel for the management of Bias Project has argued that as the work of the Project was over, no work was left for the workmen, their services were ordered to be terminated under the provisions of Industrial Disputes Act, and no new recruitment were made after the termination of their services.

In the statement of claim, all the workmen have alleged that no notice was given nor retrenchment compensation paid, but in the cross-examination every workmen has admitted that the notice was served upon them but they refused to accept the same. It shows that intention of the management was conveyed to them that their services were no more required. The notice dated 27.2.90 is on record which shows that services of any workmen were no more required w.e.f. 28.2.90. Vide this

notice the management also asked every workmen to receive one month salary in lieu of notice and retrenchment compensation from the SDO C/W S/D II BB, Bhiwani Services of this notice is admitted by all the workmen. Order no.293 dated 8.3.90 regarding the retrenchment of daily wager is also on record which also shows the intention of the management to retrenched the daily waged workers including the three workmen whose claim is in question in these references. As on completion of the work the management shows its intention to give one month salary in lieu of one month notice and retrenchment compensation in compliance of the provisions of Industrial Disputes Act, the termination of the workmen cannot be said to be illegal under the provisions of Industrial Disputes Act.

Another issue to be answered by this Tribunal is whether the management has violated the policy of last come first go and appoint any new hands after the termination of the services of the workmen. The workmen have to prove before this Tribunal that new hands were recruited after the termination of their services. There is a casual statement made by all the workmen in their cross-examination that Ram Parshad had been appointed after their termination. Witnesses of the management in his cross examination have denied this contention. It was a casual statement made by each workmen without narrating and disclosing the post and place of posting on which the worker so recruited was working and recording the addresses. The documents which have been filed by the management proved that there was no violation of the rule of last come first go and no new hands were recruited. As per the documents filed by the management, it is evident that all the workmen working in a particular wing were retrenched as per the provisions of Industrial Disputes Act as their services were no more required. Accordingly, all these references are answered in positive

that the action of the management of Bias Project Bhiwani in terminating the services of all the three workmen were just, fair and legal ?

So far as the next part of the reference is concerned which is to what relief are the workmen entitled, I am of the view that as the workmen have yet not received one month salary in lieu of the notice and retrenchment compensation, they are entitled to receive the same with 9% interest from 28.2.90 till the date of payment. The non payment of one month salary in lieu of notice and retrenchment compensation was on ground of the conduct of the workmen, so, no other relief/compensation can be awarded to any of the workman. Accordingly, the management of respondent is directed to provide to the workmen or deposited the same in the Tribunal one month salary in lieu of the notice which was due at the time of the termination of the services of the workmen and retrenchment compensation along with 9% interest thereon from 28.2.90 till the date of payment within one month from the publication of the award. Central Government be informed. File be consigned.”

6. Being aggrieved, the petitioners have filed their respective writ petitions before this Court, challenging the afore-said Award passed by the learned Tribunal.

7. Learned counsel for the petitioner(s) has argued that the retrenchment of the petitioners is bad in the eyes of law as the provisions of Section 25 F of the 1947 Act, have not been complied with at the time of termination of their services. It is submitted that even if the stand of the management is to be accepted that the petitioners have been retrenched under Section 25-FFF of the 1947 Act, even then, the same has to be done in accordance with the requirements of Section 25-F of the 1947 Act. It is

submitted that while retrenching the services of the petitioners, neither the required notice was given nor salary in lieu of notice and even the retrenchment compensation was not paid. Accordingly, it is submitted that the learned Tribunal below has erred in law and fact in directing the management to pay one month salary in lieu of notice and retrenchment compensation to the petitioners with 9% interest from 28.02.1990 till the date of payment. It is submitted that the references were made in the year 1994 and the same were decided in the year 2008 i.e. after more than 14 years; accordingly, the relief granted to the petitioners is meager and is liable to be enhanced.

Learned counsel for the petitioner(s), while referring to the notice of motion order dated 31.05.2011 passed by this Court, submitted that the same was issued for the limited purpose of suitably enhancing the amount of compensation.

8. On the other hand, learned counsel representing respondent Nos.2 and 3, has submitted that the impugned Award is well reasoned and justified in the peculiar facts and circumstances of this case and does not call for any interference. It is submitted that the respondents have already complied with the directions contained in the impugned Award and the amount was duly offered to the petitioners; however, upon their refusal to accept the same, it was re-deposited with the Bhakhra Beas Management Board, Delhi and a report to that effect was also submitted before the Labour Court, Chandigarh. Accordingly, prayer for dismissal of the above-numbered writ petitions has been made.

9. I have heard learned counsel for the respective parties and have perused the paper-book(s) with their able assistance.

10. As per the case of the respondent-management, the services of the petitioner(s) have been terminated under Section 25-FFF of the 1947 Act. A perusal of Section 25-FFF of the 1947 Act, would manifest that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman had been retrenched. Furthermore, sub-section (2) of Section 25FFF provides that where an undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set-up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months.

11. In the instant case, the respondent-management had made the following averments in reply to paras No.6 and 7 of the statement of claim, while submitting its reply which reads as under :-

“6&7. In reply to para 6 and 7, it is stated that the applicant was retrenched due to the completion of the works after complying with the provisions of I.D. Act and principle of nature of justice. The applicant was also offered retrenchment benefit at the time of retrenchment but he refused to accept the same. A notice was also pasted on the notice Board to collect the retrenchment benefits from SDO Civil Works Bhiwani. The department is still ready and willing to pay the same. Even otherwise also the

payment of retrenchment benefit is not a condition precedent in case of retrenchment under Section 25 FFF of the I.D. Act. Thus there is no violation of provision of I.D. Act and principle of natural justice as alleged.”

12. A perusal of the afore-said reply of the respondent-management would clearly indicate that the payment of compensation, as envisaged under Section 25-F of the 1947 Act, had not been paid to the petitioner(s) and rather a stand was taken that the department was ready and willing to pay the same. Therefore, it is apparent that the provisions of Section 25-F of the 1947 Act, had not been complied with at the time of terminating the services of the petitioner(s).

13. Here a gainful reference can be made to the judgment of Hon'ble Supreme Court in ***Anoop Sharma v. Executive Engineer, Public Health Division No. 1 Panipat, 2010 (3) S.C.T. 319***; wherein the following observations were made: -

*“14. The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25F must accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in ***National Iron and Steel Company Ltd. v. State of West Bengal (1967) 2 SCR 391***. The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance of Section 25F was*

rejected by this Court by making the following observations :

"The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25F, we need not consider the other points raised by the learned counsel."

15. In **State Bank of India v. N. Sundara Money** (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

16. The legal position has been beautifully summed up in **Pramod Jha v. State of Bihar** (supra) in the following words :

“The underlying object of Section 25F is twofold. Firstly, a retrenched employee must have one month’s time available at his disposal to search for alternate employment, and so, either he should be given one month’s notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month’s notice; on the contrary, clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with

the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.”

17. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act.

18. The stage is now set for considering whether the respondent had offered compensation to the appellant before discontinuing his engagement/employment, which amounts to retrenchment within the meaning of Section 2(oo) of the Act. In his statement, the appellant categorically stated that before discontinuing his service, the respondent did not give him notice pay and retrenchment compensation. Shri Ram Chander, who appeared as the sole witness on behalf of the respondent stated that the compensation amounting to Rs. 5,491/- was offered to the appellant along with letter Ext. M-1, but he refused to accept the same. The respondent did not examine any other witness to corroborate the testimony of Ram Chander and no contemporaneous document was produced to prove that the compensation was offered to the appellant on 25.4.1998. Not only this, the respondent did not explain as to why the demand draft was sent to the appellant after more than three months of his alleged refusal to accept the compensation on 25.4.1998. If there was any grain of truth in the respondent's assertion that the compensation was offered to the appellant on 25.4.1998 and he refused to accept the same, there could be no justification for not sending the demand draft by post immediately after the appellant's refusal to accept the offer of compensation. The minimum which the respondent ought to have done was to produce the letter with which draft was sent at the

appellant's residence. The contents of that letter would have shown whether the offer of compensation was made to the appellant on 25.4.1998 and he refused to accept the same. However, the fact of the matter is that no such document was produced. Therefore, we are convinced that the finding recorded by the Labour Court on the issue of non-compliance of Section 25F of the Act was based on correct appreciation of the pleadings and evidence of the parties and the High Court committed serious error by setting aside the award of reinstatement..."

14. Keeping in view the afore-said legal position and in the peculiar facts and circumstances of the case, I am convinced that while terminating the services of the petitioner(s), the provisions of Section 25-F of the 1947 Act had not been complied with.

15. In view of the fact that notice of motion was issued in this case limited on the aspect of enhancement of compensation and considering the totality of circumstances, especially the fact that the petitioner(s) had worked from 1987 till 1990, when their services were retrenched without complying with the provisions of Section 25-F of the 1947 Act and also taking note of the fact that they have been litigating since the year 1994; accordingly, in my considered view, the interest of justice would be met if the petitioner(s) are granted *lump sum* compensation of Rs.2,00,000/- (each) within a period of three months from the date of receipt/presentation of a certified copy of this order. In case of non-payment of the amount to the petitioners within the stipulated period, the petitioners shall be entitled to claim simple interest at the rate of 6% per annum till such time payment is not made.

16. Accordingly, the instant writ petition(s) are partly allowed and

disposed of in the afore-stated terms.

17. All pending application/s, if any, shall stand closed.
18. A photocopy of this order be placed on the file of other connected cases.

January 04, 2024
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No