Pramod Jha & Ors vs State Of Bihar & Ors on 3 March, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1872, 2003 AIR SCW 1340, 2003 LAB. I. C. 1449, 2003 AIR - JHAR. H. C. R. 548, 2004 BOM CRSUP 721, (2003) 2 SCR 512 (SC), 2003 (5) SRJ 365, 2003 (3) SERVLJ 67 SC, 2003 (2) SCALE 536, 2003 (4) SCC 619, 2003 LAB LR 419, (2003) 4 ALLINDCAS 985 (SC), 2003 (2) UPLBEC 1041, (2003) 2 KHCACJ 63 (SC), (2003) 3 SERVLJ 67, (2003) 2 JCR 135 (SC), 2003 (1) LRI 669, 2003 (3) ACE 167, 2003 (2) SLT 655, (2003) 2 JT 386 (SC), 2003 (2) SCR 512, 2003 (2) KHCACJ 63, 2003 (2) JT 386, 2003 (2) BLJR 929, 2003 (2) UJ (SC) 1081, (2004) 3 ESC 321, (2004) 1 JLJR 92, 2003 SCC (L&S) 545, (2003) 2 LABLJ 159, (2003) 2 SCT 296, (2003) 2 SCALE 536, (2003) 1 CURLR 898, (2003) 97 FACLR 110, (2003) 3 LAB LN 34, (2003) 4 MAH LJ 214, (2003) 2 MAHLR 385, (2003) 4 MPLJ 1, (2003) 2 PAT LJR 114, (2003) 2 RAJ LW 262, (2003) 3 SERVLR 230, (2003) 2 UPLBEC 1041, (2003) 2 SUPREME 439, (2003) 4 INDLD 493, (2003) 3 ALL WC 1788

Author: R.C. Lahoti

Bench: R.C. Lahoti, Brijesh Kumar

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           CASE NO.:
Appeal (civil)  4157 of 2000

PETITIONER:
Pramod Jha & Ors.

RESPONDENT:
State of Bihar & Ors.

DATE OF JUDGMENT: 03/03/2003

BENCH:
R.C. LAHOTI & BRIJESH KUMAR

JUDGMENT:
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J U D G M E N T WITH C.A.Nos. 1902-1905/2003 [@ SLP(C) Nos.9735-9738/2000] R.C. Lahoti, J.

Leave granted in SLP(C) Nos.9735-9738/2000.

Validity of retrenchment of project/scheme employees as also the precise procedure to be followed so as to amount to retrenchment as per law, are the issues arising for decision in these appeals.

A brief resume of uncontroverted and such other facts as cannot at this stage be disputed. In the State of Bihar a large number of workers were engaged on daily wage basis, instead of making regular appointments, in the Government departments by the authorities. The practice was viewed with concern by the State Government and it was decided to discourage the same. However, the authorities continued with making such illegal appointments contrary to the directions issued by the State Government. A stage reached when the State Government had to take a decision of terminating all appointments made on daily wage basis or on muster roll. The employment of a good number of such employees whose employment on daily wage basis or on muster roll came to an end, or was likely to come to an end, in view of the State Government's policy decision, was converted into employment on regular basis by regularizing their services as far as that was practicable and could be done by filling up the vacancies available. So far as the appellants are concerned they are project/scheme employees engaged on daily wage basis and who could not be absorbed in regular vacancies as neither vacancies nor work nor funds were available.

On 30.6.1995 Office of the Executive Engineer, Ganga Pump Canal Division, District Munger, served notices on 55 employees engaged on daily wage basis informing them that they were appointed for the timely implementation of the projects of the State Government on daily wage basis as per necessity. On account of the cut in running the project and resource crunch in the finance etc. there was a reduction in the work-load and there was no necessity of continuing the work on daily wage basis. Therefore, the daily wagers were informed "your services are terminated with effect from 01.08.1995"

> and the provisions of Section 25F of Industrial Disputes Act would be complied with; that this letter be treated as notice in accordance with Section 25F of Industrial Disputes Act. On 1.7.1995 another notice was issued to the daily wage employees supplemental to the earlier notice, giving each one of them opportunity to show cause against the proposed termination of their employment, consistently with Section 25F of the ID Act, on or before 17.7.1995. The appellants laid challenge to the validity of the notice by post haste filing civil writ petitions in the High Court. By order dated 28.7.1995 the High Court directed status quo to be maintained meaning thereby that the employment of the appellants was not to be discontinued.
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> During the period 1979 to 1981 there were several employees engaged as daily wagers. So far as Ganga Pump project nos. 1 & 2 are concerned there were 55 such workers. On 28.7.1995 another notice was issued whereby the daily wage employees were informed that their employment was being terminated in view of the high level decision taken discontinuing the new schemes, financial crunch and consequent reduction in employment opportunities and hence need for employment of daily wagers not surviving any more. It was also stated that the employment of the daily wagers was being terminated with effect from 1.8.1995 under Section 25F of ID Act. The daily wagers were informed that 'the amount due and payable to each one of them calculated as per Section 25F of ID Act' was available to be delivered to them by way of banker's cheques and each one of them should positively collect the amount on 31.7.1995 from the Divisional Office. It is categorically stated on the affidavit of

the Executive Engineer, Ganga Pump Canal, Division No.1, Government of Bihar that the banker's cheques were available for being delivered to the employees concerned but they did not turn up to collect the same. This statement on oath is not controverted in the rejoinder filed on behalf of the appellants. The reasons for termination of the employment of the daily wagers are also mentioned in the affidavit of the Executive Engineer which goes on to say that the project/scheme in which the appellants were engaged has been discontinued. The appellants do not dispute the correctness of these averments. It is not their case that the project/scheme in which they were engaged is still continuing or that anyone else has been appointed in their place after their retrenchment. The High Court has also recorded a finding of fact in its impugned judgment that the amount payable to the daily wagers under Section 25F of the ID Act was available at the Divisional Office in the form of banker's cheques and the workers were asked to personally appear and receive the payment from the Cashier at the Divisional Office but they did not do so.

Section 25F and 2(oo) of the Act read as under :

"Conditions precedent to retrenchment of workmen.

25F. 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].

2. [(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman;

or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or [(bb)

termination of the service of the workman as a result of the non-

renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;]"

> On behalf of the State of Bihar it is not disputed for the purpose of this case that the project wherein the appellants were engaged falls within the definition of 'industry' and that each one of the appellants had served continuously for not less than one year within the meaning of Section 25F, and therefore, the employment could not have been terminated except on compliance with the provisions of Section 25F of the Act. The core of controversy centers around the question whether it can be said that the mandatory requirements of Section 25F were complied with or not. A bare reading of Section 25F of the Act shows that retrenchment within the meaning of the Section 2(oo) of the Act must satisfy the following requirements:-
>
> (i) that the workman has been given one month's notice :(a) in writing, and (b) indicating the reasons for retrenchment;
>
> (ii) that the retrenchment must take effect after the expiry of the period of notice, i.e., one month or else the workman should be paid in lieu of such notice, wages for the period of the notice;
>
> (iii) that at the time of retrenchment the worker has been paid compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months, and
>
> (iv) that the notice in the prescribed manner is served on the appropriate government or on the specified authority as notified.

Shri P.S. Mishra, the learned senior counsel for the appellants submitted that the amount of compensation as contemplated by clause (b) of Sec. 25F, (and the wages for the period of notice where one month's notice is not given) must accompany the notice under clause (a), and if that is not done the notice shall be invalid, as is the present case. The learned senior counsel submitted that the retrenchment of the appellants suffers from two serious infirmities :

> firstly, the notice is not accompanied by the amount of requisite compensation, and secondly, the amount of compensation has not been paid or tendered to the workmen; asking the workmen to come to the Divisional Office for collecting the amount of compensation cannot be said to be compliance of clause (b). Reliance was placed on a recent decision of this Court in Sain Steel Products Vs. Naipal Singh and Ors. AIR 2001 SC 2401.

Shri B.B. Singh, the learned counsel for the State Government submitted, on the other hand, that the communications made on behalf of the State of Bihar and the steps taken by it fully and strictly satisfy the requirements of Section 25F and no fault can be found therewith.

We have given our anxious consideration to submission and counter-submission made before us in the light of the pleadings and undisputed documents available on record. We are of the opinion that the appeals are devoid of any merit and liable to be dismissed. The underlying object of Section 25F is two-fold. 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 of 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 would result in nullifying the retrenchment.

Compliance with clauses (a) and (b) of Section 25F strictly as per the requirement of the provision is mandatory. However, compliance with clause (c) is directory, as held in Gurmail Singh and Ors. Vs. State of Punjab and Ors. (1991) 1 SCC 189 and a substantial compliance would be enough.

Gammon India Limited Vs. Niranjan Dass (1984) 1 SCC 509, relied on by Shri Mishra, the learned senior counsel for the appellants, has no application to the facts of the present case. There the notice under Section 25F (a) stated the reason for retrenchment as "due to the reduction of the volume of work of company as a result of the recession". However, the real reason was closure of company's Delhi office and there was not even a whisper in the notice of this real reason and the same was sought to be disclosed by leading evidence before the Industrial Tribunal which was not countenanced by this Court.

In Gurmmail Singh's case (supra) a three-Judge Bench of this Court examined the question of compliance of Section 25F(b). It was contended on behalf of the workers that the State had not furnished the details of the amounts of compensation determined in the case of each employee and that the State had not taken steps to

deliver the amount in respect of each employee at his doorsteps by the relevant date. It was urged that the tender of compensation under Section 25F, in order to be valid, should be of the precise amount and should be made simultaneously with termination of the service. It was found that the bank drafts in respect of individual employees were dispatched in time so as to reach Divisional/Sub-Divisional Offices of the employer well in advance of the date of expiry of the notice period and the date on which the retrenchment was to be effective. The amounts were not actually paid or tendered to the workers directly but a method for disbursement of compensation was evolved in the interest of workers' convenience. Instead of the workers, spread out all over the State, being asked to come to the Head Office to collect the amount of compensation and the difficulty of the employer in making available the compensation at the doorstep of each employee, an arrangement was made whereby the workers could go to the nearest Divisional/Sub-Divisional Office and collect the amount of compensation due to them. None of the workers ascertained whether the amounts sent by the Head Office to the Divisional/Sub-Divisional Offices were the correct amounts. No instance was pointed out to show that the bank drafts were not for the correct amounts. The High Court felt satisfied that the individual compensation drafts were sent to the various subordinate offices ready for disbursement to the concerned workers on or before the relevant date. It was held that there was sufficient compliance with the provisions of clause (b) of Section 25F. This Court agreed with the view of the High Court.

In The Management of Delhi Transport Undertaking Vs. The Industrial Tribunal, Delhi and Anr. (1965) 1 SCR 998 pari materia provision as to payment of compensation equivalent to one month's wages to workmen contained in proviso to sub-section (2) of Section 33 of ID Act came up for the consideration of this Court. It was held that the proviso did not mean that the wages for one month have to be actually paid; the employer is expected to tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective. The making of the tender of the amount, before the order of dismissal becomes effective, would be sufficient compliance.

In Sain Steel Products (supra), which is a two-Judge Bench decision of this Court, the worker was informed "to collect what is due to him" without spelling out whether or not it included the amount as contemplated under Section 25F. It was in such peculiar facts and circumstances of the case that this Court refused to accept the offer in the terms in which it was made and quoted hereinabove as amounting to making an offer in terms of Section 25F of the Act. Both the Labour Court and the High Court had recorded a finding of fact that Section 25F (b) was not complied with. Sain Steel Products Case (supra) is clearly distinguishable and has no application to the facts of the present case.

In the case before us the workmen have been given one month's notice in writing. The reasons for retrenchment have been indicated. An opportunity of hearing against the proposed termination was

also afforded though not required by Section 25F. Retrenchment was to take effect on expiry of one month from the date of the notice. Compensation as required by Section 25F was available in the form of banker's cheques for payment to the workers simultaneously with the time of retrenchment and they were given an intimation in advance in that regard. The workers had already approached the High Court and secured an interim order protecting their employment and status quo being maintained. They were obviously not interested in receiving the retrenchment compensation which if done may have had the effect of frustrating the interim order. In these facts and circumstances, the retrenchment of any of the appellants cannot be found fault with on any of the grounds raised by the appellants by reference to clauses (a) and (b) of Section 25F.

Faced with this situation, a last effort was made by the learned senior counsel for the appellants urging for relief being allowed on the ground of non-compliance with the provisions of Section 25N of the Act. Section 25N is placed in Chapter V-B of the Act which according to Section 25K has an application only to industrial establishment in which not less than 100 workmen were employed on an average per working day for the preceding 12 months. The plea was not raised before the High Court. It is not even taken in the special leave petitions. It was sought to be taken only at the time of hearing. The plea need not detain us any longer. The infirmity in retrenchment by reference to Section 25N cannot be ventured to be found out without laying factual foundation attracting applicability of the provision. It is basically a question of fact. In the absence of requisite pleadings having been raised and documents having been brought on record, we are not persuaded to entertain the plea. On the contrary, Shri B.B. Singh, the learned counsel for the State has pointed out that the controversy in this case is confined only to 55 workers and therefore the submission based on Section 25N of the Act is totally irrelevant and devoid of any merit. We find substance in the opposition so offered. In Hindustan Steel Works Construction Ltd. and Ors. Vs. Hindustan Steel Works Construction Ltd. Employees' Union, Hyderabad and Anr. (1995) 3 SCC 474 (vide para 18), this Court refused to entertain a plea raised on behalf of the workers by reference to Chapters V-A and V-B of the Act as the contention was not urged before the High Court.

For all the foregoing reasons we find the appeals devoid of any merit and liable to be dismissed. They are dismissed accordingly. The workers are free to collect the amount of retrenchment compensation as was offered to them. For the convenience of the appellants we direct the respondents to have the banker's cheques renewed or fresh banker's cheques drawn up in lieu of the earlier banker's cheques for the amount due and payable to the workers under Section 25F of the Act and inform the workers to collect the same at an appointed time and place. Subject to the said observation the appeals are dismissed though without any order as to costs.