Supreme Court of India
Shiv Kumar vs State Of Haryana on 4 May, 1994
Equivalent citations: 1994 SCC (4) 445, JT 1994 (4) 162
Author: H B.L.
Bench: Hansaria B.L. (J)

PETITIONER:
SHIV KUMAR

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT04/05/1994

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
KULDIP SINGH (J)

CITATION:
1994 SCC (4) 445 JT 1994 (4) 162
1994 SCALE (5)839

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by HANSARIA, J.- Leave granted. Heard learned counsel for the parties.

2.This Court had been approached by filing the connected SLP by one Shiv Kumar, D.P. Singh and D.H. Woodhead Ltd., Employees' Union through Shiv Kumar, its Joint Secretary. An application has, however, been filed, registered as IA No. 3 of 1994, in which it has been averred that Shiv Kumar has settled the matter with the management and the workmen who are challenging the order of the High Court may be taken as those whose names have been indicated in the amended cause title - their number being 21. We allow this IA.

3.These appellants have felt aggrieved at their retrenchment pursuant to the permission given by the specified authority under Section 25-N of the Industrial Disputes Act, 1947, hereinafter the Act. The permission granted by the authority came to be challenged before the High Court. It, however,

dismissed the petition. Hence this appeal under Article 136 of the Constitution.

4.What is required to be noted is that Respondent 3 M/s D.H. Woodhead Ltd. approached the specified authority to seek permission to retrench 79 of its workmen. The authority granted permission to retrench 58 workmen, after the matter had come to be discussed and settled between the representatives of the management and workmen. The High Court was approached by the aforesaid Shiv Kumar and D.P. Singh contending, inter alia, that the union leaders had colluded with the management, and so, the settlement arrived at was bad in the eye of law and the workmen concerned could not have been retrenched on the basis of that settlement. Another point urged was that the workmen concerned had not been personally served with the copy of the application as required by Section 25-N of the Act. The High Court did not accept either of the contentions. As to the non-service of personal notice, it observed that bald assertion in this regard could not be accepted as correct, more particularly, when their representatives had been duly heard by the specified authority. As to the hearing of the representatives, we would observe that the workmen having alleged collusion, no reliance could have been placed on that.

5.The point for examination, therefore, is whether there is material on record to show that the workmen concerned had been served with the copies of the application as required by Section 25-N read with Rule 76-A of the Industrial Rules, 1957, which was the point on which notice was ordered on 21- 1-1994. In reply to this contention advanced by the workmen, what has been stated by the management in its counter-affidavit is that the notices had been sent to all workmen under postal certificates and proof of service had been submitted to the specified authority. Learned counsel appearing for the management produces before us some certificates evincing posting of some letters to the workmen concerned on 26-12-1992.

6.We have not felt safe to decide the controversy at hand on the basis of the certificates produced before us, as it is not difficult to get such postal seals at any point of time. To assure our mind that the notices had really been sent out to the workmen concerned, we perused the application which had been filed by the management seeking permission. We did so because Rule 76-A(2) requires that the application shall be made in triplicate and copies of the same shall be served by the employer on the workmen concerned and "proof to that effect shall also be submitted by the employer along with the application". But the application (Annexure A) has not mentioned anything about "proof' of service to the workmen concerned. The statement in the counter-affidavit that proof of service had been submitted to the specified authority has not satisfied our mind in this regard.

7.The permission granted to retrench 21 appellant-workmen of the respondent-management cannot, therefore, be said to be in accordance with law. As, however, permission for retrenchment was sought for on the grounds mentioned in para 23 of the aforesaid application which the specified authority regarded as just and proper, we are of the view reinstatement would not be the proper order to be passed, and interest of justice would be met if, apart from what is due to each of the aforesaid workmen as retrenchment compensation visualised by Section 25-F(b) of the Act, a sum of Rs 10,000 is paid to each of them. From the amount which would become so due, payment if' any made towards retrenchment compensation shall be deducted; so also, if any further sum had been received by any of the aforesaid workmen. The sum of money which would become ultimately

payable, after the deduction(s), if any to be made, shall be remitted to each of the aforesaid workmen within a period of two months from today.

8. The appeal is allowed accordingly.