

GAHC010027412016



THE GAUhati HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6258/2016

MD. SHAKIR ALAM and 2 ORS
S/O. MD. NASIMUDDING, RECORD KEEPER, CENTRAL INLAND WATER
TRANSPORT CORPN. LTD. CIWTC LTD. JOGIGHOPA, DIST. BONGAIGAON-
783382, ASSAM.

2: MD. IBRAHIM

S/O. LT. ABDUL MAJID DECK HAND
CENTRAL INLAND WATER TRANSPORT CORPN. LTD. CIWTC LTD.
COMPUTER CRAFT
NETAJI ROAD
P.O. DEKIAJULI
PIN-784110
DIST. SONITPUR, ASSAM.

3: MD. ATIK
DECK HAND
S/O. LT. MOTIUR RAHMAN
CENTRAL INLAND WATER TRANSPORT CORPN. LTD. CIWTC LTD.
COMPUTER CRAFT
NETAJI ROAD
P.O. DEKIAJULI
PIN-784110
DIST. SONITPUR, ASSAM

VERSUS

THE UNION OF INDIA and 2 ORS
REP. BY THE SECRETARY TO THE MINISTRY OF SHIPPING GOVT. OF
INDIA, NEW DELHI-110001.

2: THE CENTRAL INLAND WATER TRANSPORT CORPN. LTD
CIWTC
REP. BY IT'S CHAIRMAN CUM MANAGING DIRECTOR
4-FAIRLIE PLACE, 3RD FLOOR

KOLKATA-700001
WEST BENGAL.

3:THE CONSULTANT ADMN.
CENTRAL INLAND WATER TRANSPORT CORPN. LTD. CIWTC
FANCY BAZAR
M.G. ROAD
GHY.-781001
ASSAM

Advocate for the Petitioner : MR.A K DAS

Advocate for the Respondent : MS.R DEVI

BEFORE

HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

:: ORDER ::

25-04-2024

Heard Mr. S. Dutta, learned senior counsel, assisted by Ms. R. Medhi, learned counsel for the petitioners. Also heard Ms. R. Devi, learned Central Government Counsel for the respondent No. 1 as well as Mr. A. Khanikar, learned counsel for the respondent Nos. 2 and 3.

2. The petitioner No. 1 was initially appointed as a Record Keeper with effect from 04-10-1990, vide appointment letter dated 01-10-1990 under the Central Inland Water Transport Corporation Limited (in short, 'respondent corporation'). He was, later on, confirmed in the said post with effect from 04-10-1991 by order dated 17-12-1992.

3. The petitioner No. 2 was appointed as a Manual Labour, with effect from 10-03-1988, by appointment order, dated 25-02-1988/04-03-1988. He was confirmed in the said post with effect from 10-03-1989, by order dated 11-03-1989. He was, later on, posted as Cook by order dated 30-08-2004 and promoted to the post of Deckhand in the year 2009.

4. The petitioner No. 3 was initially appointed as a Cook in Vessel, Kolkata with effect from 04-05-1989 and was subsequently promoted to the post of Deckhand with effect from 01-08-2002 by order dated 16-07-2002.

5. The respondent corporation turned out to be a loss- making sick organization and its viability was assessed by the Government and a decision was taken to disinvest the respondent corporation to handover all its existing manpower, assets and liabilities to any other public sector enterprises.

6. Accordingly, the respondent corporation floated a voluntary retirement scheme, however, as the terms and conditions of the voluntary retirement scheme were not acceptable, a fresh Improved Voluntary Retirement Scheme (IVRS) was floated in the year 2015. Out of 272 employees of the respondent corporation, 267 employees were given IVRS. However, five employees did not accept the IVRS and out of the five employees, the present three writ petitioners are before this Court challenging the retrenchment orders dated 14-10-2016.

7. The respondent No. 1 has filed an affidavit-in-opposition on 07-06-2023 and in paragraph 6 therein, it is stated that the petitioners being the retrenched employees of the respondent corporation, necessary action in respect of them will be taken as per Section 25F of the Industrial Disputes Act, 1947 (in short, 'Act of 1947') and compensation equivalent to fifteen days average pay (for every completed year of continuous service) or any part thereof in excess of six months may be paid to them.

8. It is important to note that this Court, on 06-10-2016 passed an interim order directing that no prejudicial action be taken against the petitioners. Thereafter the said interim order was renewed on 21-11-2016.

9. Mr. S. Dutta, learned senior counsel for the petitioners submits that a reading of paragraph 6 of the affidavit-in-opposition filed by the respondent No. 6 would clearly indicate that the retrenchment order of the petitioners, all dated 14-10-2016 was passed under Section 25F of the Act of 1947 and, therefore, the requirement contained under Section 25F should have first been followed before issuance of retrenchment order dated 14-10-2016. He, however, submits that as the respondent corporation was failed to follow the pre-condition laid down under Section 25F of the Act of 1947, the retrenchment order should be set aside and the petitioners be directed to reinstate with full salary. He also submits that as the retrenchment order dated 14-10-2016 was issued after the interim order dated 06-10-2016 and therefore the said retrenchment orders are not sustainable in law and accordingly deserves to be quashed.

10. Ms. R. Devi, learned Central Government Counsel submits the retrenchment orders were not passed under Section 25F of the Act of 1947, however, in terms of paragraph 6 of the affidavit-in-opposition filed by the respondent No. 1, the compensation as provided under Section 25F of the Act of 1947 would be paid to them after the disposal of the present writ petition.

11. Mr. A. Khanikar, learned counsel for the respondent Nos. 2 and 3 also submits that the retrenchment orders were not passed by the respondent corporation under Section 25F of the Act of 1947 and, therefore, the pre-condition laid down under Section 25F of the Act of 1947 need not be followed and accordingly, the retrenchment orders dated 14-10-2016 were issued. He also submits that the retrenchment orders were passed in terms of the Union Cabinet decision held on 31-08-2016.

12. I have considered the submissions forwarded by the learned counsel for the parties.

13. A reading of paragraph 6 of the affidavit-in-opposition filed by the respondent No. 1 clearly indicates that the compensation amount would be paid to the petitioners as provided under Section 25F of the Act of 1947. Therefore, when the compensation amount of the petitioners is paid under Section 25F of the Act of 1947, it clearly implies that the retrenchment orders were passed under Section 25F of the Act of 1947.

14. A perusal of the retrenchment orders dated 14-10-2016 does not indicate that the retrenchment orders were passed under Section 25F of the Act of 1947. However, considering the fact that as the respondents are contemplating to pay the compensation amount under Section 25F of the Act of 1947, it can clearly be assumed that the retrenchment orders dated 14-10-2016 were also passed under Section 25F of the Act of 1947.

15. "Section 25F of the Act of 1947 read as under:

"25F. Conditions precedent to retrenchment of workmen.- 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."

16. A reading of Section 25F of the Act of 1947 indicates that the retrenchment orders can be passed only after the workman has been given one month's notice in writing, the workman has been paid retrenchment

compensation and notice in the prescribed manner is served on the appropriate Government by notification in the Official Gazette.

17. Coming to the case in hand, it is seen that one month's notice was given to the petitioners, however, no retrenchment compensation was paid nor notice in the prescribed manner was served on the appropriate Government by notification in the official Gazette. Therefore, in the considered opinion of this Court, the respondents have failed to follow the pre-condition laid down under Section 25F of the Act of 1947 which is a mandatory condition required to be fulfilled before the order of retrenchment of the petitioners are passed.

18. It is also to be noted that this Court had also passed an interim order dated 06-10-2016 directing that no prejudicial action be taken against the petitioners. However, the respondents proceeded to issue the retrenchment orders dated 14-10-2016 after the interim order was passed. On this ground alone the retrenchment orders are also liable to be set aside and quashed.

19. In view of the discussion made hereinabove, the impugned retrenchment orders all dated 14-10-2016 in respect of the petitioners are set aside and quashed. The respondents are directed to reinstate the petitioners back into service. The petitioners shall also be entitled to 50% of their arrear salary.

20. Liberty is given to the respondents to issue fresh retrenchment orders, however, the same shall be done only after fulfilling the mandatory condition laid down under Section 25F of the Act of 1947.

21. With the aforesaid observations and directions this writ petition stands disposed of.

JUDGE

Comparing Assistant