

The Executive Engineer, Electrical Division Vs. Prakash S/O. Devidas Kalsait

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Court : Mumbai

Decided On : Apr-07-1983

Reported in : (1983)85BOMLR270; 1983MhLJ615

Judge : Jamdar, J.

Appeal No. : Writ Petition No. 102 of 1983. (Nagpur)

Appellant : The Executive Engineer, Electrical Division

Respondent : Prakash S/O. Devidas Kalsait

Disposition : Petition dismissed

Judgement :

Jamdar, J.

1. The question that falls for consideration in this writ petition is whether the retrenchment effected without complying with the procedure prescribed by Section 25F of the Industrial Disputes Act amounts to unfair labour practice within the meaning of item 1(f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the Unfair Labour Practices Act).

2. The respondent was employed on daily wages of Rs. 8.10 as an assistant wireman in the electrical division of the Public Works and Health Department at

Nagpur from September 19, 1980 to August 31, 1981. His services were dispensed with from August 31, 1981 in order to accommodate the candidates recommended by the employment exchange as required by rules. The respondent filed a complaint application under Section 28 of the Unfair Labour Practices Act read with item 1(a)(b) and (f) of Schedule IV, challenging the termination of his services on the ground that though he had completed 240 working days during one calendar year his services were terminated without one month's notice or pay in lieu of notice and without paying retrenchment compensation as required by Section 25F of the Industrial Disputes Act, and that he was removed from service while his juniors were retained.

3. The learned Judge, Second Labour Court, Akola, who heard the matter, held that the respondent had completed 240 working days in one calendar year before his services were terminated. He, however, rejected the contention that non-compliance with the provisions of Section 25F of the Industrial Disputes Act ipso facto amounted to victimisation. He held that the services of the respondent were dispensed with, because the candidates recommended by the employment exchange were appointed. He further held that the facts of the case do not show that the termination was effected in colourable exercise of the employer's right. The Labour Judge, therefore, rejected the complaint. Being aggrieved by this decision, the respondent preferred revision application under Section 44 of the Unfair Labour Practices Act to the Industrial Court, Nagpur Bench, Nagpur. The learned Member of the Industrial Court confirmed the finding that the respondent worked continuously for 240 days in one calendar year, preceding August 31, 1981. He further held that non-compliance with Section 25F of the Industrial Disputes Act makes the retrenchment void ab initio and amounts to discharge in undue haste and thus comes within the mischief of item 1(f) of Schedule IV of the Industrial Disputes Act. On the basis of these findings, the learned Member of the Industrial Court set aside the orders terminating the services of the respondent and directed the petitioners to reinstate the respondent with continuity of service and to pay him full back wages from the date of termination till reinstatement. It is this order, which is sought to be quashed in this writ petition.

4. Shri Patil, learned Assistant Government Pleader, tried to contend that the respondent had not completed 240 working days in one calendar year before his services were terminated. It is difficult even to consider this submission, because it is a question of fact, the finding about which is concluded by the concurrent decisions of the two authorities.

5. Shri Patil next urged that non-compliance with the provisions of Section 25F does not amount to acting in undue haste within the meaning of item 1(f) of Schedule IV of the Unfair Labour Practices Act. It is difficult to accept this submission. It is clear from the facts of the case that the petitioners did not even care to ascertain whether the respondent had completed 240 working days in the calendar year and whether it was necessary to serve him with a notice or give him pay in lieu of notice and to pay him retrenchment compensation as required by Section 25F of the Industrial Disputes Act. They just stopped him on August 31, 1981 on the ground that the persons recommended by the employment exchange were to be accommodated. The ground no doubt was valid and proper, but that was no justification for hastily throwing the respondent out of the employment without following the procedure. As the respondent had completed 240 working days, it was incumbent on the petitioners to serve him with a notice of termination or at least pay him wages in lieu of notice and to pay him retrenchment compensation on the basis of completed years of his service. This obviously required some clerical work before terminating the services. Avoiding to do this work and taking requisite steps do amount to acting in haste within the meaning of item 1(f) of Schedule IV of the Unfair Labour Practices Act. It must be remembered that giving one month's notice and paying retrenchment compensation on the basis of completed years of service are conditions precedent to the retrenchment. This salutary provision is incorporated as a safeguard to the workman who is to be retrenched while providing a device to the employer to throw away the economic dead-weight of the surplusage of labour. It is now well settled that not following the conditions precedent to retrenchment renders the retrenchment invalid. It follows, therefore, that avoiding to take the steps necessary for effecting the retrenchment would be acting with undue haste also. The Industrial Court, therefore, was right in holding that the petitioners acted with undue haste while terminating the services of the respondent and thus committed an unfair labour practice within the meaning

of item 1(f) of Schedule IV of the Unfair Labour Practices Act.

6. In the result, the petition is dismissed with costs. Rule discharged.

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