

**Parma Nand Vs. Management of Bharat Sevak Samaj and ors.**

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**Court :** Delhi

**Decided On :** Apr-03-1973

**Reported in :** 9(1973)DLT417

**Judge :** V.S. Despande, J.

**Acts :** [Constitution of India](#) - Article 226; [Industrial Disputes Act, 1947](#) - Sections 25F

**Appeal No. :** Civil Writ Petition No. 135 of 1972

**Appellant :** Parma Nand

**Respondent :** Management of Bharat Sevak Samaj and ors.

**Advocate for Pet/Ap. :** G.N. Aggarwal and; V.P. Chaudhary, Advs

**Judgement :**

**V.S. Deshpande, J.**

(1) Petitioner Parmanand was appointed as first & ledger keeper in February, 1963 and was then promoted as accounts assistant in January, 1964 in the construction service of Bharat Sevak Samaj. On 15th of July, 1967 one month's notice was given to him terminating his service at the end of the month of the notice but asking him to deliver the charge on the same day and informing him that the salary for the month of notice would be given to him. The petitioner received the notice but

stated that the retrenchment was illegal and void as conditions laid down under section 25F of the Industrial Disputes Act had not been fulfilled and the procedure laid under section 25G of the said Act had not been followed. There was some correspondence between him and the respondent employer and ultimately on 19th December, 1967 the petitioner accepted firstly, the amount of Rs. 360.00 as retrenchment compensation in the following words 'I have this day received sum of Rs. 360.00 only being total amount of retrenchment claimed including balance of pay due to me in full and the final payment of my dues. There is no other claim of mine against Bharat Sewak Samaj and this receipt is, therefore, given in token of acknowledgment of payment.' This retrenchment compensation was pay for two months. Secondly, he received retrenchment compensation equivalent to 7-1/2 days pay in these words on the same day 'I have this day received a sum of Rs. 8,63.00 being the total amount of retrenchment claim including balance of pay due to me in full and final payment of my dues. There is no other claim of mine against the Bharat Sewak Samaj and this receipt is, therefore, given in token of acknowledgment of payment.'

(2) On 15th July, 1968 the petitioner approached the conciliation officer alleging that his retrenchment was contrary to sections 25P and 25G of the Industrial Disputes Act but without disclosing that he had accepted retrenchment compensation and arrears of pay in full and final payment of his dues on 19th December, 1967. On 8th of October, 1968 the petitioner made an application to the Labour Commissioner Delhi Administration mentioning that he had received a total payment of Rs. 423.00 but stated that he never signed certificates of full and final satisfaction of his dues. On 15th November, 1970 a reference was made of this dispute to the Additional Industrial Tribunal by the Delhi Administration in the following words 'Whether the retrenchment of Shri Parmanand is illegal and/or unjustified and if so, what directions are necessary in this respect.' Again in the statement of claim filed by the petitioner before the Additional Industrial Tribunal the petitioner complained that his retrenchment was illegal but suppressed the statement of the material fact that he had received full retrenchment compensation in full and final satisfaction of his dues. On the contrary his Union stated that 'no full and final settlement of the account of the above named workman has been made so far as provided in the I. D. Act.' When the employer pointed out in the

reply that retrenchment compensation slated above has been accepted by the petitioner in full and final payment of his dues, the petitioner filed a rejoinder in para 6 of which he stated as follows 'the workman did receive certain dues from Bharat Sewak Samaj after long waiting on 19th December, 1967 but did not sign any statement as referred to in para 6 of the written statement' the reference being to the defense of certificate of full and final payment. Even the amount received was not explicitly admitted but was only stated that the 'workman did receive certain dues.' It was not even stated that the amount was received as retrenchment compensation.

(3) The Additional Industrial Tribunal framed the preliminary issue as to whether any dispute to be tried by him survived after the acceptance of retrenchment compensation in full and final satisfaction by the workman. He came to the conclusion that no dispute survived thereafter and made the award against the workman accordingly. In the present writ petition this award is impugned by the workman. Even in this writ petition the workman referred to the plea of the employer before the Tribunal that the workman had taken his dues in full and final settlement and answered it by what he had stated in the rejoinder before the Tribunal. The petitioner refused to admit in the petition that he had received any payment from the employer except a sum of Rs 42.00 and a sum of Rs. 63.00. He did not state anywhere in the petition that the retrenchment compensation of Rs.360.00 and retrenchment compensation plus arrears of pay amounting to Rs. 63.00 were paid to him on execution of two stamped receipts by him on 19th December, 1967.

(4) Again the employer pointed out that the petitioner had accepted full retrenchment compensation on 19th December, 1967 as slated above and filed the true copies of the stamped receipts signed by the petitioner. Even then in the rejoinder filed by the petitioner in this Court he stated as follows in para 7. 'I deny the contents of the alleged receipts... I say that I never accepted any retrenchment compensation. I also say that I never executed any receipts for full and final payment of my dues in favor of respondent No 1. [also say that the alleged receipts have been fabricated subsequently.] The claim of the petitioner was originally based on the contravention of section 25P and 25G of the Industrial

Disputes Act. The defense of the employer was firstly that that claim had been satisfied by payment of retrenchment compensation and secondly, that the petitioner raised the dispute before the Conciliation Officer for the first time after a lapse of about 7 months after accepting the retrenchment compensation. Lastly, it was stated that the construction service of the Bharat Sewak Saroj was wound up and was taken over by a new company formed under section 25 of the Companies Act, 1956. Some of the employees of the former unit were taken over in the new unit while others were retrenched. No reference was expressly made to section 25FF or 25FFF of the Industrial Disputes Act. But it appeared, to me from annexure 'A' of the rejoinder filed by the petitioner that while the petitioner was stressing the contravention of section 25F and the defense of the employer was as stated above attracting section 25FFF, the actual facts of the case may be covered under section; 25FFF I therefore called for additional affidavits from the parties by my order dated 22nd January, 1973. regarding the transfer from the old to the new unit. These additional affidavits have been filed by them.

(5) Three questions therefore arise for decision, namely, (1) whether the petitioner has suppressed the material facts and has not come to this Court with clean hands, (2) whether the acceptance of retrenchment compensation in full and final payment of his dues by the petitioner settled his dispute with the employer finally so that he was estopped from raising the dispute subsequently after a lapse of 7 months before the Conciliation Officer and (3) if the finding of issue No. 2 is in favor of the petitioner whether the case should go back to the additional Industrial Tribunal for trial with a direction that the parties should be allowed to file additional pleadings so that the trial should be of full facts including whether the retrenchment of the petitioner was covered by section 25FF of the Industrial Disputes Act. Question No. 1.

(6) The petitioner had executed two stamped receipts on 19th December, 1967 fully acknowledging the receipt of retrenchment compensation and arrears of pay in full and final settlement of his dues. This was a most material fact which he was bound to state in making any claim against illegality of his retrenchment. He has persistently concealed this damaging fact against him firstly while making his claim before the Conciliation Officer, secondly, while making his claim before the

Additional Industrial Tribunal and thirdly, while filing this writ petition in this Court. Before the Labour Commissioner ha admitted receipt of the amount bat denied the execution of receipts and did not admit anywhere that the amount had been received as retrenchment compensation. He has gone to the extent of stating that the receipts are forgeries. The respondent is the Bharat Sewak Samaj which is a well known and respected organisation devoted to social work. No allegation of malafides against any particular officer of the Bharat Sewak Samaj baa been made by the petitioner. It was, thereforee, most unworthy of him to have suppressed the receipt of retrenchment compensation and to have gone to the extent of alleging that the two receipts were forgeries. The conduct of the petitioner in a petition filed under Articles 226 and 227 is of great importance. For, the relief which is given by this Court there under is an extraordinary relief in the discretion of this Court. It is well settled law that the suppression of material facts in the petition and taking of blatantly false position would disentitle the petitioner from getting such extra-ordinary relief from this Court quite apart from the merits of his case. The conduct of the petitioner disentitles him from approaching this Court and his petition thereforee fails on the very threshold for this reason. The dispute was raised by the workman before the Conciliation Officer quite late after accepting retrenchment compensation That also shows that the conscience of the workman had made him keep quite for about 7 months and it is only thereafter that he could overcome his scruples and made a claim after suppressing the receipt of the retrenchment compensation. His claim is really a suppressjo veri and suggetio falis. Question No. 2

(7) On the one hand the compliance by the employer with section 25F has been held to be mandatory by the Supreme Court in State of Bombay v. Hospital Majdoor Sabha. Retrenchment contrary to section 25F is Invalid. If so, it would, thereforee appear that public policy would come in the way of the settlement of a dispute between a workman and the employer when the dispute of the workman is that the retrenchment was contrary to section 25P. In workmen of Subong Tea Estate v. Outgoing Managing of Subong Tea Estate, the acceptance of retrenchment compensation by the workman did not bar the workman from questioning the validity of the retrenchment under the circumstances and for the reasons stated by the Supreme Court in paragraph 26 of the decision as follows :-

'Apart from the fact that such technical pleas are not generally entertained in industrial adjudication, we cannot overlook the fact that after retrenchment compensation was paid to the employees on August 31, 1959, the next day they complained that they had been forced to accept the said compensation, because they were virtually told that if they did not accept the compensation, they would not receive their wages for the month of August. The notices issued by Mr. Hammond and the payment of compensation made by him; and the fact that the payment of wages for the month of August was made by the Vendee's Manager, can all be explained on the basis that once the Vendor and the Vendee agreed to retrench the 8 workmen, they decided to adopt the course which would apparently comply with the provisions of S. 25FF. That being so, we are not impressed by the argument that the acceptance of retrenchment compensation by the 8 workmen should be held to create a bar against them in the present proceedings '.

In *B. N. Elias and Co Pvt. Ltd. v. Fifth Industrial Tribunal of West Bengal*. D. Basu J. held relying on the Supreme Court decision in *State of Bombay v. Hospital Mazdoor Sabha*, that the compliance with section 25F went to the root of the thing and, therefore, there could not be estoppel against the statute and, therefore, acceptance of retrenchment compensation could not estop the workman from disputing the legality of retrenchment. In the Employers, in relation to *M/s Hind Strip Mining Corp. Ltd. v. Raj Kishore Prasad*, a Division Bench held that ' When the Industrial dispute had already arisen and the Union had taken up the cause of the workman any subsequent action of the individual workman in accepting retrenchment benefit will not operate as estoppel.' (Paragraph 15). On the other hand, section 25FF was contrasted with section 25F by the Supreme Court in *Payment of Wages Inspector v. Surajmal Mehta*, at 1055 in the following words 'Since section 25FF and 25FFF do not contain any conditions precedent as in the case of retrenchment under section 25F and transfer and closure can validly take place without notice or payment of a month's wages in lieu thereof or payment of compensation, section 25FF can be said not to have provided any time within which such compensation is to be paid. it is well established that the words ' in accordance with the provisions of section 25F 'in section 25FF and 25FFF are used only as a measure of compensation and are not used to lay down any time within which the employer must pay the compensation.' In *Management of Andhra*

Laundry v. Presiding Officer, Addl. Labour Court, a learned single Judge of the Madras High Court also drew a distinction between section 25F and section 25FFF in this respect. An agreement to accept a lesser amount under the latter provision of law would not be illegal according to the learned Judge. In *Management of Desi Textile Mills, v. State of Mysore*, a Division Bench held that the Industrial Disputes Act did not prohibit the settlement of a dispute between the employer and the employees even outside the framework of the Act. For, the very object of the Act was to promote industrial peace. It could not, therefore, make a private settlement of such a dispute illegal. From the above judicial decisions it would appear that while a private settlement of a dispute contrary to section 25F would not be legal such a private settlement would be permissible if the matter fell under sections 25FF and/or 25FFF. but the termination of the service of the petitioner was with effect from 15th August, 1967. Before that date an agreement of transfer or business was arrived at between the old and the new unit. Those workmen who were not to be taken over by the new unit were retrenched and retrenchment compensation was paid to them. Petitioner was such a workman. According to the Supreme Court decision in *Anakapalle Cooperative Agricultural and Industrial Society Ltd v. Workmen*, therefore, the petitioner could not be entitled to both the reliefs of retrenchment compensation and reinstatement. Having been rightly paid the former he could not ask for the latter in view of Section 25FF of the Industrial Disputes Act. It would, therefore, be a matter to be decided by the Additional Industrial Tribunal to whether the dispute between the parties is covered by section 25F as alleged by the petitioner or by section 25FF and/or 25FFF as would appear from the defense if the case were to be remanded. Question No 3.

(8) Even if, therefore, I were to set aside the finding of the Additional Industrial Tribunal on the preliminary question decided by it. I would have remanded the case to the learned Tribunal with a direction that the whole of the controversy between the parties should be decided by it and parties should be at liberty to file fresh pleadings regarding the transfer of business of the Bharat Construction Service to new company. In view of my finding on question No. 1, however, the necessity for remanding the case does not arise, and the writ petition stands dismissed with no order as to costs.

