

**Vikas Bunkar Vs. Rajasthan State Handloom Development Corporation Ltd.**

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**Court :** Rajasthan

**Decided On :** May-25-1995

**Reported in :** 1996(1)WLC197; 1995(2)WLN198

**Judge :** Gyan Sudha Misra, J.

**Appeal No. :** S.B. Civil Writ Petition No. 3458 of 1989

**Appellant :** Vikas Bunkar

**Respondent :** Rajasthan State Handloom Development Corporation Ltd.

**Disposition :** Petition dismissed

**Judgement :**

**Gyan Sudha Misra, J.**

1. The petitioner in this writ petition has challenged the legality of the order of termination of his services, dated August 19, 1989, essentially on the ground that the same has been passed in violation of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

2. The facts which lie within a short compass are that the petitioner was initially appointed on daily wages of Rs. 14/- per day in the service of the respondent Rajasthan State Handloom Corporation with effect from 12/1/1988 for a period of three months which was extended from time to time. Ultimately, when the

petitioner completed approximately 20 months of service which according to him, was without any interruption, was handed over an envelope on August 18, 1989 regarding which the petitioner enquired and it was informed to him that the letter has been delivered to him in pursuance of the instructions of the Managing Director of the respondent Corporation. The petitioner opened the envelope and found a letter along with a cheque of Rs. 1022/- giving an account of the said amount towards which the said payment was made. In the said letter, it was stated that the petitioner had been appointed on daily wages on purely temporary basis for a period of three months and thereafter extensions were granted upto 31/12/1988. It was further informed that the services of the petitioner were no longer required in the Corporation and, hence, no extension could be granted beyond 19/8/1989, from which date the petitioner was treated as ceased to be in the employment of the Corporation. It was further stated therein that all pay and allowances had already been paid to the petitioner upto 31/7/1989 and Cheque No. 106596 dated 19/8/1989 for Rs. 1022/- (Rupees one thousand and twenty two only) was enclosed towards the wages for the period from 1/8/1989 to 18/8/1989 for 13 working days amounting to Rs. 182/-. It was further stated that one month's pay in lieu of notice under Section 25F of the Act amounting to Rs. 420/- was also included in the said amount of Rs. 1022/- Besides, the due payment of retrenchment compensation for a total period of 7 months 3 days, from 12/1/1988 to 18/8/1989 at Rs. 14/- per day under Section 25F of the Act, which amounted to Rs. 420/- was also included.

3. The petitioner feeling aggrieved with the aforesaid order of termination challenged the same in this Court initially on the ground that a number of employees who are much Junior to the petitioner have been retained in the service whereas the services of the petitioner have been dispensed with. It was, therefore, challenged that the principle of last come first go, which is the law unto itself, has been violated in the case of the petitioner. In the rejoinder, however, an additional plea has been raised on behalf of the petitioner wherein it has been stated that the petitioner was handed over a crossed account payee Cheque of Rs. 1022/-, but the said cheque was incomplete because it was an undated cheque. The petitioner, therefore, when submitted this cheque to his banker for deposit, the same was refused for payment. Thus, a ground has been taken that the same

does not amount to compliance of Section 25F of the Act and on this score too, the order of termination is fit to be quashed.

4. The respondent Corporation has also filed a reply to the aforesaid facts by filing a counter-affidavit, wherein it has been stated that the petitioner's services were purely temporary and he has acquired no lien or right on the post, as stated. It has further been stated that the petitioner was discharged from service on account of his poor performance and unsuitability to the job. The periodical reports regarding petitioner's performance disclose that he had not been discharging his duty diligently and was a habitual absentee without any information. A chart showing his absence has been enclosed to the counter affidavit as Annx. R/3, It has been stated in the reply that in spite of opportunity having been granted to the petitioner to improve his performance he failed to do as a result of which his services were discontinued.

5. A preliminary objection has also been raised on behalf of the respondents that since the petitioner has alleged violation of Section 25F and Section 25G of the Act, he ought to have approached the Labour Court or the Industrial Tribunal for the appropriate relief. In so far as delivery of account payee cheque is concerned, the same has been stated to be the due payment as according to the respondent the said cheque was neither presented nor dishonored. The same in view of the respondent, is sufficient compliance of Section 25F of the Act.

6. The main thrust of the argument advanced on behalf of the petitioner by learned Counsel, Shri J.P. Sharma, is based on the fact that the cheque which was attached along with the letter informing the petitioner about termination of his service was an undated cheque and, therefore, was not a valid payment in the eye of law and does not amount to sufficient compliance of Section 25F of the Act as according to him, the said cheque could not have been possibly honoured by the banker. He has further taken an additional plea that the petitioner's services have wrongly been dispensed in spite of satisfactory performance, whereas other similarly situated persons were retained in the service.

7. It is no doubt, true that Clause (a) and (b) of Section 25F of the Act lays down that no workman shall be retrenched until the workman has been paid wages in

lieu of notice and compensation and, therefore, for a retrenchment to be valid it is incumbent upon the employer to fulfill the requirement of Clauses (a) and (b) of Section 25F of the Act and that it follows therefrom that when these conditions are not satisfied, the retrenchment effected by the employer would be illegal as held by the learned Judges of the Supreme Court in *Delhi Transport Undertaking v. Industrial Tribunal, Delhi* : (1965)ILLJ458SC . But the learned Judges in this decision were equally pleased to hold that it was not necessary that wages for one month should have been actually paid because in many cases the employer can only tender the amount before dismissal and cannot force the employee to receive the payment before the dismissal being effected. In this regard, it may be relevant to cite the case of *Moinuddin and Ors. v. Union of India* 1981 LIC 697, where the services of persons employed as substitute workmen in Class IV category were terminated and they were told to collect the retrenchment compensation before the expiry of the notice period of one month. Notice to the same effect was also put up asking them to collect the amount from the office. The workmen failed to collect the amount and instead filed writ petition in the Rajasthan High Court alleging non payment and violation of Section 25F of the Act. On the basis of the ratio of the decision in the case of *Delhi Transport Undertaking v. Industrial Tribunal, Delhi* (supra) it was held that displaying of notice offering retrenchment compensation before the expiry of the notice period was sufficient compliance. Therefore, although it may be remembered that mere expression of readiness on the part of the employer to make payment of retrenchment compensation to the employee concerned, cannot be considered as sufficient compliance of the provisions of Section 25F of the Act, but what is required to be shown is that there must be either offer or a tender or actual payment of retrenchment compensation to the workman concerned and such an offer or tender can be made to the workman personally or by money order or by bank draft or by other well recognised means and if the workman refuses to accept the payment so tendered to him then the provisions of Section 25F of the Act will be taken to have been complied with. In the instant case, the petitioner, although, had been given an undated cheque, the letter attached with the same, clearly disclosed that the cheque was dated 18/8/1989. In such a circumstance it cannot be said that there was no willingness on the part of the employer to make the payment and the cheque being complete

in all other respects, it is obvious that the slip not markings the date on the cheque was a bonafide mistake which in any case was clear from the attached letter which the employee could have easily got rectified. The law, in my opinion, is not meant to take advantage of a bonafide technical error which could be easily remedied whether it be in favour of the employer or the employee, as the case may be. The payment by cheque along with the letter which indicated the date, therefore, in my view, was a sufficient tender of the amount by the employer and would amount to failure on the part of the workman to collect the amount. The facts, in the instant case, sufficiently indicate that the workman did not deliberately go to collect the amount inspite of tender, which means that he was not willing to accept the amount which was offered. It is obvious that the cheque on which date was not marked, was a mere slip and, since in the attached letter, the date of the cheque was clearly indicated, it cannot be held that the tender made by the employer of the statutory amount was not a valid tender in the eye of law. Therefore merely because the cheque was undated, it cannot be held that it was not a valid tender, since from the letter attached, the date of the cheque could have been sufficiently known and necessary correction obviously could have been made, but the petitioner deliberately refrained from getting it endorsed in order to take shelter of SC. 25F of the Act.

8. Apart from the aforesaid reason, the petitioner has not been able to establish uninterrupted service in the respondent Corporation. On the contrary, the respondents have produced reports of absence of the petitioner marked as Annx.R/3 and if the service of the petitioner has been dispensed with on the basis of his performance the same cannot be challenged on the ground of violation of the rule of 'last come, first go' as the rule cannot be said to be immutable. Its departure for valid reason is definitely permissible and certain amount of freedom to the employer to use his best judgment and discretion in the absence of allegation of mala fide cannot be held as arbitrary. Therefore, the petitioner cannot be held to be in continuous service of the respondent Corporation so as to take the plea of protection of Section 25F of the Act. Hence, even if it were held that the tendered payment by undated cheque to the petitioner is not sufficient compliance of the provisions of Section 25F, the petitioner cannot be held to be entitled to any relief. It may be added herein that the Counsel for the petitioner has cited several

decisions in support of his case on the point of non-compliance of Section 25F of the Act which renders the termination invalid. But I do not consider it relevant to discuss the same as the said position is not disputed. Since none of the cases relied upon deals with the situation regarding the effect of undated cheque as to whether it is a valid tender or not, it is not necessary, in my view to discuss those cases.

9. In the result, this writ petition is devoid of any merit. It is accordingly dismissed with no order as to costs.

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