MANU/MH/0279/2001

Equivalent Citation: 2001(3)BOMLR570

IN THE HIGH COURT OF BOMBAY

Writ Petition Nos. 172 of 1999

Decided On: 10.04.2001

Appellants: **N.E.P.C. Airlines and ors.**
Vs.
Respondent: **Captain A.K. Singh and ors.**

Hon'ble Judges/Coram:
R.J. Kochar, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Mr. N.V. Walawalkar and Mr. G.R. Kinkhabwala, Advs., i/b., Mulla & Mulla

For Respondents/Defendant: Mr. Shailesh Naidu, Adv., i/b., C.R. Naidu & Co.

Case Note:
Industrial Disputes Act, 1947 - Chapter VB - Sections 25M, 25N and 25O - Lay off - Retrenchment - Closure of undertaking - No prior permission of the State Government obtained - Lay off, closure and retrenchment null and void ab initio.

Held:

The Petitioner have not proved that they were given permission by the State Government as required under Section 25N and 25O of the Chapter V-B of the Industrial Disputes Act. In the absence of this case having been proved it cannot he said that there was a legal and valid retrenchment and closure disentitling the Respondent employee wages for that period.

Even the lay off was not legal as there was no prior permission obtained by the petitioners under Section 25M of the I.D. Act. In the absence of such mandatory permission granted by the Appropriate Authority under Chapter V-B of the Act the retrenchment, lay off and closure are null and void ab initio and the employer is liable to make payment of full wages to his workmen for the relevant period.

ORDER

R.J. Kochar, J.

1. The Petitioners are aggrieved by the order dated 12.8.1998 passed by the 2nd Respondent. Labour Court in Application No. LC-2/162 of 1997 filed by their former employee to claim earned wages/benefits and wages in lieu of two months notice period, under section 33-C(2) of the Industrial Disputes Act. 1947. The Labour Court had determined and computed the money dues of the Respondent employee for the months of February, March. April, May, June, July, August, September and upto 13th

October, 1997 to the tune of Rs. 15,94,290/-. It may be clarified at this stage itself that the wages for the month of May 1997 were nine days as lay off compensation and for the remaining period full wages were claimed and granted.

2. It was the case of the Respondent employer, in nut shell, that he had not received his wages for the aforesaid period though he was continued to be in employment and was always available for allotment of work till 13th August, 1997. He had tendered his resignation on 13th August 1997 as under the contract he was required to give two months notice. According to the employee he ceased to be in employment on and from 13.10.1997, and therefore, he was entitled to get his full wages till that time. The total claim in the application was Rs. 16,72,810/- including the claim for nine days lay off compensation. This simple case of the employee was mistakenly put in the application for want of proper knowledge on the point of lay off etc.

3 . Shri Walawalkar the learned Counsel for the petitioners, in his usual fairness submitted that that was claim of the employee without getting involved in the question of lay off compensation or compulsory lay off etc. Shri Walawalkar, candidly agreed with me about the simplification of the claim put by me as gathered from the application filed by the employee.

4. The Petitioners filed their written statement to oppose the claim of the employee on various grounds, which appear to have been taken for the sake of taking such grounds. It was pleaded by the petitioner company that the respondent employee was not falling within the definition of workman under Section 25 of the Act, and therefore, his application was not maintainable. It was further averred that the company had decided to closedown its Bombay and other Units from 30.6.1997 and that there was a Memorandum of Undertaking dated 1.7.1997 between the Company and the recognised Union in respect of the Bombay Unit for retrenching the staff and the payment of compensation by installments upto 3.10.1997. The Respondent employee filed his affidavit as examination-in-chief setting out his claim and his case in detail. He has sworn on oath that he was in employment and that he was not paid his salary and that he had resigned on 13.8.1997 and that he had given two months notice and that he had not received his earned wages claimed by him in the application. He has also clearly stated that the petitioners had issued three cheques dated 29.5.1997, 11.6.1997 and 30.6.1997 for the amounts of Rs. 1,50,000/ -, Rs. 92,089/-and Rs. 80,274/- respectively towards part payment of his claim. He has further stated that all the three cheques were dishonoured by the Petitioners. He was cross-examined on behalf of petitioners. Nothing worth mentioning was elicited in the cross-examination of the respondent employee. Neither on the point of workman any case was put up in the cross-examination to bring on record the duties to take him out from the definition of workman given in the Act nor on the question of so-called retrenchment and closure of the Bombay Unit of the Company. Nothing was put to him in respect of the so-called Memorandum of Understanding between the Company and the Union. In respect of his employment and work there is hardly any cross-examination worth its contents. The Respondent employee withstood his case that he was in employment during the relevant period and that he was ready and willing to work and was always available for his duties but he was not restored or allotted any work and he was compelled to resign for want of work and for want of salary.

5 . It is very crystal and significant to note that the Petitioners have not led any evidence worth the name to rebut the case of the Respondent employee and to prove their case of so-called retrenchment and closure of the Bombay Unit. The whole case

of the Respondent employee has gone totally unchallenged. The Petitioners have also not proved the case of so-called retrenchment, so-called closure and so-called memorandum of understanding to throw the claim of the Respondent employee over the board on any of his contentions raised in the written statement. It was for the petitioners to have proved the legality of the retrenchment and closure by leading proper evidence which is totally absent. This was the case asserted by the petitioners in their written statement that the Respondent employee was not entitled to claim wages for certain period as there was closure of the Unit and that there was retrenchment of the staff and both such steps were strictly in accordance with the provisions of the law i.e., Chapter V-B of the Industrial Disputes Act. It was for the Petitioner to have proved that they were given permission by the State Government as required under Section 25N and 25-O of the Chapter V-B of the Industrial Disputes Act. In the absence of this case having been proved it cannot be said that there was a legal and valid retrenchment and closure disentitling the Respondent employee wages for that period.

6 . The Labour Court has considered the pleadings of both the parties and has appreciated the evidence on record and has determined that the Respondent employee was entitled to claim his earned wages and the wages in lieu of two months notice period from 13.8.1997 to 13.10.1997 as the Respondent employee ceased to be in employment on and from 13.10.1997. The Labour Court has reduced the claim to the tune of Rs. 15,94,290/-. According to me, even the lay off was not legal as there was no prior permission obtained by the petitioners under Section 25M of the I.D. Act. In the absence of such mandatory permission granted by the Appropriate Authority under Chapter V-B of the Act the retrenchment, lay off and closure are null and void ab initio and the employer is liable to make payment of full wages to his workmen for the relevant period. Such right is statutorily held to be existing right of the workman. However, it is not relevant for my purpose in the present writ petition. The Respondent employee having fully proved his case of entitlement of earned wages and wages for the notice period till 13.10.1997 in my opinion there is absolutely no infirmity or illegality in the Impugned judgment and order of the Labour Court directing the Petitioners to pay a sum of Rs. 15,94,290/-. There is absolutely no merits and substance in the writ petition to challenge the legality and validity of the impugned judgment and order of the Labour Court. The Respondent employee therefore is entitled to get the claim granted by the Labour Court.

7 . In my opinion the Respondents have behaved with utmost disregard for the law. They have failed to pay the earned wages of the respondent employee for no reason and justification. The Respondent employee was not claiming anything more than what he was lawfully entitled to claim. In effect he has claimed lesser amount for the so-called lay off period. It is further more significant that the petitioners had issued three post dated cheques to the respondent employee which were dishonoured by the petitioners. The Petitioners have compelled the respondent employee to approach the Labour Court for his earned wages which have been finally held to be due and payable as the existing right of the respondent employee. Even before this Court the petitioners have taken all sorts of untenable pleas and have prolonged the payment of the dues. They have also compelled the respondent employees to resort to contempt proceedings as the petitioners had not obeyed the orders passed by this Court. In these circumstances it would be in the Interest of justice to award interest on the principal claim of the respondent employee at the rate of 9% p.a. from 13.9.1998 till full payment is made. The Respondent employee however would not be entitled to get interest on the amount of Rs. 1,75,000/- admittedly received by him

during the pendency of this Petition. From the date of the receipt of the aforesaid amount the interest would be computed on the reduced amount due and payable by the Petitioners.

8. The writ petition is disposed of as above. Rule is discharged with costs which is quantified at Rs. 10,000/- payable by the Petitioners along with the principal amount to the Respondent employee.

9. Certified copy is expedited.

10. All parties to act on an ordinary copy of this order duly authenticated by the Associate of this Court.