

37

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1491 of 1987.

Mahesh Chandra Sahu .... Petitioner.  
Versus  
Union of India & another .... Respondents.

Hon'ble G.S. Sharma, J.M.  
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

This is a Writ Petition No. 2429 of 1980 filed in the High Court of Judicature at Allahabad by Mahesh Chandra Sahu, a Driver working in the Northern Railway, Kanpur. The writ petition has been received on transfer under the provisions of Section 29 of the Administrative Tribunals Act, 1985 for decision.

2. The facts of the case, in brief, are that the petitioner was employed as a casual Jeep Driver on 16.4.1976 and since then he has been working continuously. On 19.2.1980, the petitioner has been issued a notice for termination of his employment w.e.f. 19.3.80. He was ordered to hand over all tools, etc. No reason for the termination is cited in the letter. On 11.3.1980 another letter was issued by the same authority in continuation of the letter dated 19.2.1980, referred to above, stating that the petitioner's services are not required after 19.3.1980 on the ground that "Truck No. UPC 8318 for which you are working as C.P.C. driver is lying defective and its condition is beyond repairs on economical ground". The principal contention of the petitioner is that these two letters or notices are of no legal effect and that they seek to retrench the petitioner from his employment in violation of Section 25-F of the Industrial Disputes Act, 1947, since no compensation, as prescribed in that section, has been paid to him at the time of retrenchment.

*KJR*

In addition, the original notice did not contain any reason for retrenchment. The third contention is that a copy of the notice was not sent to the appropriate Government. The petitioner has prayed for quashing of the notices dated 19.2.1980 read with letter dated 11.3.1980 and also for the issue of a direction commanding the respondents not to terminate the services of the petitioner and to permit him to continue to work with the Railways.

3. The High Court issued an interim stay order on 17.3.1980 that no effect shall be given to the notice dated 19.2.1980 and 11.3.1980 terminating the petitioner's services and that it would be open to the respondents to pass suitable orders in accordance with law. On 31.10.1980, the above stay order was confirmed.

4. The respondents have submitted various affidavits in reply generally contesting the averments of the petitioner. In an affidavit filed on 4.11.1981 the respondents have stated that in pursuance of the order of the High Court the retrenchment compensation bill was prepared and the petitioner was offered the payment of a sum of Rs.1,290.24 P., which, however, he had refused to accept. It appears that this offer was made in April, 1981. In another counter affidavit filed in January, 1981 the respondents have generally denied that the petitioner was entitled to any compensation. However, no document has been filed to show that the petitioner was not entitled for the compensation taking into account the length of ~~the~~ service. An application was made to the Court stating that the writ petition ~~had~~ become infructuous because of the offer of <sup>more</sup> retrenchment compensation, as stated above. The Court, however, refused to allow the application and had not agreed that the petition had become infructuous. According to the records, the stay order seems to continue.

5. The case was heard when the learned counsel for both the sides reiterated the contentions, referred to above. The learned counsel for the petitioner cited the case of S.K. Sisodia v. Union of India & others (1988 (7) ATC 852) and a case decided by this

Bench in Registration (T.A.) No. 1800 of 1987, Khem Raj & others v. Union of India & others, in support of his contentions. We have carefully considered the facts of the case and the submissions made by the learned counsel. There is no doubt that the petitioner, a Driver working with the Railways, is a workman eligible for protection under Section 25-F of the Industrial Disputes Act, 1947. This is also confirmed by the offer of retrenchment compensation by the respondents themselves. The notice is purported to be the one dated 19-2-80 ~~11-3-1980~~ <sup>19-2-80</sup> While this notice gives the time of one month, it does not say anything about the retrenchment compensation, as required under Section 25-F(b) of the Industrial Disputes Act, 1947. There is also no doubt that the petitioner had put in sufficient period of service to be eligible for the compensation. In a way the respondents have admitted this position, by their belated offer of retrenchment compensation. The notice dated 19.2.1980 does not mention any reason for the retrenchment. The reason/stated in the subsequent letter dated 11.3.1980. The law with regard to payment of retrenchment compensation etc. has been well laid down by the Hon'ble Supreme Court in a number of cases, e.g. State of Bombay v. Hospital Majdoor Sabha (AIR 1960 S.C. 610); The State Bank of India v. N. Sundara Money (AIR 1976 S.C. 1111). In the latter case it has been observed as follows :-

"Without further ado, we reach the conclusion that if the workman swims into the harbour of Section 25-F, he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read with Section 25B (2)."

It is thus seen that payment of the retrenchment compensation ~~ata~~ at the time of retrenchment, is a condition precedent for legal and effective retrenchment. It has also been held in a series of cases (e.g. Surya Kant Raghunath Darole v. The Divisional Railway Manager, Central Railway, Bombay (ATR 1988 (1) CAT 158)) that in such cases of termination without fulfilling the conditions precedent

X/2

-: 4 :-

under Section 25-F, the affected workmen are directed to be reinstated, with continuity in service and full back wages as permissible under the Rules from the date of retrenchment till reinstatement.

6. In this case the purported notices dated 19.2.1980 and 11.3.1980 are ab initio illegal and of no effect. They are hereby quashed. The stay order issued by the High Court consequently becomes redundant. The petitioner shall be deemed to continue in service with effect from 19.3.1980, as if the notices dated 19.2.1980 and 11.3.1980 were not issued at all. He would be entitled to all consequential benefits accordingly, in accordance with law. The petition is allowed accordingly, with no order as to costs.

*HoD/AM on*  
~~MEMBER (A).~~

*Subarao*  
MEMBER (J).

Dated: 13-7-1989.

PG.