

Central Administrative Tribunal
Ernakulam Bench

DATED MONDAY, THE TWENTY SECOND DAY OF MAY,
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE.

P R E S E N T

Hon'ble Shri G. Sreedharan Nair, Judicial Member

&

Hon'ble Shri N.V. Krishnan, Administrative Member

Original Application No. 173/87

P.K. Vasu

: Applicant

Versus

- | | | |
|--|---|-------------|
| 1. Union of India rep. by
Secretary to Government,
Ministry of Communications,
New Delhi. | } | Respondents |
| 2. The Assistant Engineer (E),
P&T Electrical Sub. Division No.1,
Cochin. | | |
| 3. The Executive Engineer (E),
P&T Electrical Division,
Trivandrum. | | |

Mr. M.R. Rajendran Nair, Counsel for applicant

Mr. P. Santhalingam, ACGSC, Counsel for Respondents

O R D E R

Shri N.V. Krishnan, Administrative Member

The applicant has impugned the termination of
his service as Pump Operator, P&T Quarters, Alleppey
by the order dated 26.6.86 of Respondent No. 2 on the
ground of its being in violation of the provisions of the
Industrial Disputes Act, 1947, ~~hereinafter referred~~
~~to as the Act.~~

2. This case has a protracted history. The applicant was sponsored by the Employment Exchange for the post of Pump Operator under Assistant Engineer, P&T Electrical Sub Division, Cochin. He was selected and he reported for duty on 24.12.81. On 17.7.84 the Junior Electrical Engineer informed him that his services were being terminated and he was asked to proceed to Ernakulam to collect his salary dues. No order was given to him.

3. This was challenged by the applicant in the High Court of Kerala in OP No. 6258/84 on the ground that the termination of service was made in violation of Chapter V-A of the Industrial Disputes Act, 1947 - Act, for short. The High Court held (Ann.IX) that the termination of the service / - as defined in Section 2(00) of the Act - of a workman can be effected only after compliance with the provisions of Chapter V-A of that Act. As this had not been done, the applicant should be treated as continuing in service until such time as his service was validly terminated and that he would be entitled to emoluments till such time. It would, however, be open to the respondents to take such proceedings as they ^{were} ~~are~~ advised for validly terminating his service, either by retrenchment or by disciplinary proceedings.

/ i.e., retrenchment

4. To enforce compliance of this order, further proceedings were initiated by the applicant culminating in a contempt petition OP 3969/86-S. By an order dated 17.6.86 (Annexure XIII) the respondents were directed by the High Court to calculate the salary and other emoluments payable to the applicant till date and deposit the same in the Court. After this was complied with, final judgment was delivered on 4.7.86 (Ann. XIV) finally disposing of the contempt petition, directing the amount deposited by the respondents to be paid to the applicant. It was also directed that if there was any claim of the petitioner in regard to payment of bonus, he was entitled to make a demand for the same which should be paid if he was entitled to it. The Court also took note of the information furnished by the Respondent that the services of the petitioner had since been terminated by the issue of a proper notice.

5. It is this last claim that is being challenged in this application. Prior to the judgment on 4.7.86 in the contempt petition, the respondents No. 2 had sent a registered letter dated 26.6.86 (Ann. XV) to the applicant informing him of the termination of his services with effect from ^{the} ^{the} same day, as a

qualified person, recruited on a regular basis, was functioning as Pump Operator in the P&T staff quarters at Alleppey. He was also informed that the retrenchment compensation due to him for 30 days (Rs.840/-) and the pay in lieu of notice (Rs.840/-) have been sent by money order on the same day. This was followed by another letter dated 10.7.86 (Annexure XVI) informing the applicant that Rs.1260/- towards balance of retrenchment compensation for 45 days and Rs. 252/- towards wages from 18.6.86 to 26.6.86 have been sent to him by MO dated 10th July, 86. It was also stated that there was nothing due to him from the Respondent's office.

6. The applicant has prayed for setting aside the order at Ann. XV dated 26.6.86 and for a declaration that he is deemed to have continued in service. He also seeks reinstatement with full back wages and other benefits.

7. Shri M.R. Rajendran Nair, the learned counsel for the applicant contends that the application^{nt} is entitled to the protection Chapter V-A of the Act. If his services had to be terminated on 26th June, 86 (as informed by Respondents) all dues payable to him in accordance with the provisions of Chapter-VA of the Act ought to have been paid to him on or

before that date. As this has admittedly not been done (Rs.1512/- having been sent only on 10.7.86 as stated in Annexure XVI), the termination is ab-initio void and the applicant should be treated as still continuing in service. In support of this contention, he cited the judgments of the Supreme Court in Senior Supdt., RMS, Cochin Vs KV Gopinath (AIR 1972 SC 1487), State Bank of India Vs N Sundamoney (AIR 1976 SC 1111) and Robert D' Souza Vs The Executive Engineer, Southern Railway (AIR 1982 SC 854). He claimed that it is fully established by these decisions that strict compliance of the provisions under Section 25F of the Industrial Disputes Act, particularly of clauses (a) & (b) thereof, is a condition precedent to the valid retrenchment of a workman. He has also stressed the other grounds raised in the application for setting aside the impugned order, which refer to the violation of Section 25G (retrenchment of applicant, instead of the last workman employed in the category of Pump Operator), violation of Section 25H(^unot ^uthe applicant as a giving preference to/retrenched workman and for re-employment/instead, employing new persons) and retrenching him by way of punishment.

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U Standing Counsel

U 8. Shri P. Santhalingam, Addl. Central Govt., on the other hand, contends that the provisions of Section 25F of the Act have been fully complied with in this case. He states that the matter has been finally concluded by the judgment of the High Court of Kerala dated 4.7.86 in OP No. 3969/1986. (Ann. XIV) Though the High Court was informed that the applicant's services had since been terminated, he did not then raise any dispute about this matter and did not protest that he had not been given proper notice of termination of service and compensation. It is further contended that the applicant, not being a qualified person, his appointment was ab-initio void and therefore, the termination of such an illegal appointment will not amount to retrenchment. The averment that retrenchment compensation was not paid to him is also denied. It is contended that the application has to be rejected.

9. The crucial question to be answered is whether, on the facts and in the circumstances of the case, the Respondents can claim to have fully complied with Section 25F of the Act.

10. The essence of Section 25F of the Act is that whatever dues are payable to a workman on his retrenchment, should be paid before his retrenchment.

This is a precondition to retrenchment. In the instant case this has not been complied with.

^{U xv}
Annexure ~~15~~ dated 26.6.86 is the order of retrenchment with effect from the same date. All amounts due

to the applicant whether as wages, notice pay or compensation should have been paid to him before

^{U xvi}
22.6.86. Annexure ~~15~~ dated 10.7.86 makes it clear that this was not done. Some arrears of wages and

compensation were sent by MO on 10.7.86. Thus, the mandatory requirements have not been rigidly complied with on or before 22.6.86, the intended date of retrenchment. This shortcoming has been

sought to be made up by a subsequent compliance of the legal provisions on 10.7.86. The learned counsel for the applicant has contended that such subsequent compliance of the provisions of clauses (a) and (b) of Section 25 F cannot validate a defective order of termination issued earlier.

The judgments of the Supreme Court in the State Bank of India Vs. N. Sundaramoney (AIR 1976-SC-1111) and in Robert D' Souza Vs. The Executive Engineer Southern Railway and another (AIR 1982 Sc 854) are well known authorities underlining the necessity for strict, rigid and timely compliance of the provisions of clauses (a) and (b) of Section 25 F of the Act to ensure the validity of any order of retrenchment

of a workman from an industrial establishment.

11. We, therefore, hold that neither the order dated 26.6.86 (Annexure ^{XV}~~XIV~~) by itself nor with the support of the supplementary order dated 10.7.86 (Annexure ^{XVI}~~15~~) has the effect of validly terminating ^Uservice the applicant's ~~appointment~~ from 22.6.86 as was intended by the Respondent. Accordingly, he is to be treated as still continuing in service.

12. The applicant has also alleged that the termination order would be invalid on the ground that prior notice in the prescribed manner has not been served on the Central Government under clause (c) of Section 25 F of the Act. We cannot agree with this view. The Supreme Court has held in *Bombay Union of Journalists Vs. the State of Bombay* and another (AIR 1964 SC-1617), that the compliance of clause (c) is not a condition precedent to the effective retrenchment of ~~the~~ workmen. If this were so, it would be impossible to retrench anyone with immediate effect, a right which employers have, subject to compliance of the other provisions of the Act. Hence, this provision was held to be directory in nature.



13. We now consider the alleged violation of Section 25G of the Act. The learned counsel for the applicant points out that while the applicant has been retrenched, others, appointed subsequent to him, have been retained in service. There are many other Pump Operators under Respondents 2&3 appointed much later. He refers to the appointment of a fresh hand Shri Ponnappan in para 16 of his application and to the appointment of one R. Babu as stated by the Respondent No.2 in para 5 of the counter affidavit. Thus the principle of 'last come, first go' has been violated. The respondents have denied that any person has been appointed as Pump Operator at Alleppey subsequent to the applicant's retrenchment.

14. We have carefully considered the matter. For obvious reasons, the industrial establishment for the purpose of section 25G is the establishment of Respondent 2 at the Alleppey staff quarters Pump station. Pump Operators working elsewhere cannot be considered in this context. A perusal of the records made available by the Respondents does not disclose that anyone named Ponnappan was appointed as Pump Operator. The records ^{U showed} stand that the applicant was recruited through employment

exchange as a temporary Pump Operator^{u and} paid daily wages on muster roll. Respondent No. 3 sent requisitions on 12.10.83 to the Employment Exchange for regular recruitment to the post of Khalasi (Rs.196-Rs.232) and Pump Operator (Rs.260-Rs.350). It appears that none could be appointed as a regular Pump Operator. R. Babu was appointed on 30.6.64 as a regular Khalasi under Resp. No.2. His qualifications are not available in this record. No one has been appointed as pump operator at Alleppey. Respondents state that this work is being looked after by R. Babu, Khalasi. The records do not throw light on this. It is however clear that (a) none has been appointed later as pump operator and retained at the cost of the applicant and (b) R Babu is ~~A~~ regular^{ly} appointed as Khalasi. He and the applicant belong to different categories, even if R Babu looks after the pump. We, therefore, find that there has been no violation of section 25G.

15. Section 25H of the Act is stated to be violated, because instead of re-employing the applicant who was retrenched, the Respondents have employed a person like R. Babu. This has been denied by the respondents stating that the applicant was not qualified for the post of Pump

Operator, he was appointed only on an ad-hoc basis and that he cannot compete for regular employment.

16. We have considered the matter. The respondents' reply is not satisfactory. A perusal of the records, ^{however,} shows that there has been no violation of Section 25 H of the Act. In the first place, that section will come into operation only after the applicant is retrenched. We have found in para supra that he is still to be treated as continuing in service. The qualifications for a Pump Operator - whether on daily wage basis or on a regular basis - is "Practical experience of 5 years in handling E&M Plants, including maintenance, knowledge of different types of I.C. Engines and Electric Motors, Age between 25 and 35 years." The qualifications of the applicant as mentioned in Annexures ^{II} ^{IV} I to ~~4~~ are more less similar to the prescribed qualifications. He is, therefore, not an unqualified person. The record shows that though requests were sent to the Employment Exchange for the regular employment of Pump Operators, none could be appointed. In fact, in response to a letter dated 21.4.84 of Respondent No. 3 asking information about the eligible Muster Roll staff who can be considered on priority basis for regular appointment, the Respondent No. 2 recommended the name of the

applicant for consideration. However, it was found that he, being nearly 43 years old, was age barred for such regular recruitment. We therefore find that no violation of section 25 H has taken place.

17. The applicant's complaint in para 12 of the application that others were being regularised like Mr. George and Mr. Joseph and not he, has also no basis. It is seen that Mr. George and Mr. Joseph were regularised in proceedings taken in response to the letter of Respondent No.3 referred to above. They, like the applicant, were working on Electricians. Their names were also recommended by their superior authority. As they satisfied the age qualifications, they were regularised.

18. Another allegation is that the Respondents have terminated the services of the applicant by way of punishment. We do not find any substance in the allegation. The order purporting to terminate his service, though ineffective, does not contain any suggestion of his being punished.

Respondent No. 2 forwarded the name of the applicant for consideration for regular employment, by his letter dated 29.4.84. It may be noted that this is more than a year after the applicant submitted his representation dated 22.11.82 (Annexure-^{vii}7)

Muster Roll as

What is more, as stated above,

which, according to him angered Respondent No.2 and provoked him to terminate his services.

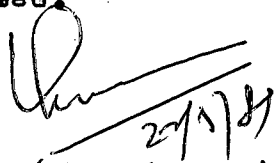
19. For the aforesaid reasons, we find that the only ground on which the impugned order of termination is invalid is its failure to comply rigidly with the letter of the mandatory provisions of Section 25F of the Act. We, therefore, set aside the order dated 26.6.86 of Respondent No.2 (Annexure XV), in so far as it seeks to terminate the applicant's service from 26.6.86. We declare that, in the circumstances, the applicant should be treated as still continuing in service. We leave it to the Respondents to consider whether the applicant should be reinstated as Pump Operator or his service should again be terminated in accordance with provisions of law.

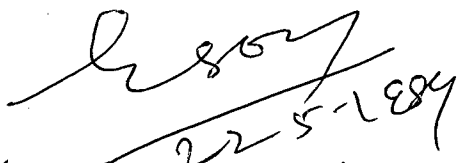
20. However, in view of the declaration made by applicant us, ~~the~~ will be entitled to wages from 27.6.86 till such time as his services are terminated or he is re-instated as Pump Operator. Such wages will be disbursed to the applicant for every wage period on the dates on which salary/wages are paid to other ^workmen, similarly situated like the applicant. As the order purported to retrench him has been

set aside, the applicant is not entitled either to the notice pay of one month or to the retrenchment compensation paid along with Annexure XV and XVI. These amounts can be adjusted by the Respondents from the wages payable as referred to above. We direct that the net arrears, ~~xxx xxx~~, of past wages from 27.6.86 till date, adjusted as above, shall be paid to him within a period of three months from the date of this order.

21. In the circumstances of this case one more ~~direction~~ seems to be necessary. As the applicant is treated to be in the service of the respondents, he shall, within one week from the date of receipt of this order, furnish to Respondent No. 2 personally or by Registered Post, his postal ^{the orders,} address for service of notice etc. If he fails to do so, Respondent may send communications to the address given at item (vi) of Para I of the application filed before us, and this will be at the risk of the applicant.

22. With these directions this applications is allowed.


(NV Krishnan)
Administrative Member
22.5.89


(G Sreedharan Nair)
Judicial Member
22.5.89