

The Pioneer Ltd.

Vs.

S. Tajdar Hussain (Dead) and Others

Civil Appeal No. 1784 of 1967

(C. A. Vaidialingam, P. Jagmohan Reddy, K. K. Mathew JJ)

03.04.1972

JUDGMENT

VAIDIALINGAM, J. –

1. In this appeal, by special leave, the judgment and order of the Division Bench of the High Court of Allahabad, dated May 12, 1967, in Special Appeal No. 75 of 1966 are under attack.
2. The appellant effected retrenchment and terminated the services of S. Tajdar Hussain, the original first respondent in this appeal, and now deceased. A dispute was raised regarding the validity of the order of retrenchment and, accordingly, the same was referred by the State Government for adjudication to the concerned Labour Court.
3. Though, before the Labour Court, at a very early stage, the workman raised a controversy regarding the right of the appellant to be represented by Mr. O. P. Vatsa, the proceedings show that later on, the said workman withdrew his objections. It is also clear from the order of the Labour Court that this point was never raised during the later stage of the proceedings. The Labour Court, on a consideration of the evidence adducted by the parties, ultimately upheld the order of the management, retrenching the workman concerned. But it is seen from the said award that the workman, though offered the amounts due to him under Section 25-F of the Industrial Disputes Act, did not actually receive the amount. Hence the Labour Court held that the amount, having been made available to the workman by the Company, it was not the fault of the Company if the workman did not receive the same. Ultimately, the Labour Court upheld the order of retrenchment as valid.
4. The workman filed writ petition No. 455 of 1963 before the High Court under Articles 226 and 227 of the Constitution, challenging the award of the Labour Court. Before the learned Single Judge, who dealt with the writ petition in the first instance, it is seen that a contention was raised by the workmen that the entire proceedings before the Labour Court were illegal in view of the fact that there has been a contravention of Section 6(i) of the U.P. Industrial Disputes Act, by the appellant-management being represented by Mr. O. P. Vatsa. This question loomed very large, as is seen from the elaborate discussion contained in the judgment of the learned Single Judge. Though it was contended on behalf of the appellant that this question should not be allowed to be raised and that, in any event, there has been no violation of Section 6(i) of the U.P. Industrial Disputes Act, the learned Single Judge ultimately accepted the contention advanced on behalf of the workman and quashed the award. The learned Single Judge, by his judgment and order, dated February 16, 1966, remanded the dispute, for fresh consideration by the Labour Court.

5. The appellant challenged the decision of the Single, Judge before the Division Bench in Special Appeal No. 75 of 1966. The Division Bench agreed with the decision of learned Single Judge and confirmed the order, quashing the award and remanding the proceedings to the Labour Court for fresh consideration.

6. Mr. Gupte, learned counsel for the appellant, raised two contentions : (1) That the workman was not entitled to raise in proceedings under Articles 226 and 227 before the High Court for the first time the alleged irregularity or illegality, if any, pertaining to the representation of the appellant by Mr. O. P. Vatsa, specially as no such contention was raised before the Labour Court; and (2) In any event, there has been no violation of the provisions of Section 6(i) of the U.P. Industrial Disputes Act in Mr. O. P. Vatsa's having represented the appellant in the proceedings before the Labour Court. It has now become unnecessary, so to say, to consider the correctness or otherwise of the views expressed both by the learned Single Judge and the Division Bench of the High Court, as the workman, who was the first respondent in this appeal died on March 8, 1971. The Union also has not appeared before us.

7. On behalf of the appellant, it has been represented before us by Mr. B. P. Maheshwari, learned counsel, that his clients are prepared to pay to the legal representatives of the deceased respondent No. 1 the retrenchment compensation amount due to the deceased workman under Section 25-F of the Industrial Disputes Act as also an additional ex-gratia amount of Rs. 1,000/-. We consider this offer to be quite reasonable, because even if we do not accept ultimately the contentions of the appellant, the position would be that the proceedings will have to go on afresh before the Labour Court as per the order of the High Court, in which case, the parties will be put to considerable expenses. Over and above that, the appellant may also raise an objection before the Labour Court regarding its jurisdiction to consider the matter afresh after the death of the workman concerned.

8. If we accept the contention of the appellant, the result will be that the order of the High Court remanding the proceedings to the Labour Court will have to be set aside, in which case, the award upholding the validity of the retrenchment will stand. In such a case the legal representatives of the deceased workmen will not be entitled to get anything more than what was due to the workman under Section 25-F of the Industrial Disputes Act. On the other hand, as mentioned earlier, the appellant has offered to pay an additional ex-gratia amount of Rs. 1,000/- over and above the amount due by way of retrenchment compensation. That is why we are of the opinion that it is unnecessary to proceed further with the matter and that the offer made by the appellant is quite fair to all parties.

9. Having due regard to the circumstances mentioned above, and without expressing any opinion about the correctness or otherwise of the decision of the High Court, in its interpretation of Section 6(i) of the U.P. Industrial Disputes Act, we pass the following order :

1. The appellant will pay the legal representatives of the deceased-first respondent, namely, his son S. Bakar Husain and his wife, Malka Begum, referred to in C.W.P. No. 1973 of 1972; the amounts due to the deceased by way of retrenchment compensation under Section 25-F of the U.P. Industrial Disputes Act;
2. The appellant will also pay to the said legal representatives the costs awarded to the deceased-first respondent both by the learned Single Judge and the Division Bench, in the High Court;

3. The appellant will also further pay to the said legal representatives the costs incurred in this Court by the deceased-first respondent up to the date of his death, viz. March 8, 1971, as per the orders passed by this Court on November 1, 1967 at the time of granting special leave; and

4. In addition to the amounts mentioned above, the appellant will also pay an ex-gratia amount of Rs. 1,000/- to the said legal representatives of the deceased-first respondent.

10. On payment of the above amounts by the appellant to the said legal representatives, the appellant will get a complete discharge. If by chance, there are any other legal representatives, it will be open to them to claim reimbursement in accordance with their shares from the two legal representatives above-named. By way of abundant caution, we further direct that in order to save unnecessary litigation, the two legal representatives. referred to above, will draw the amounts from the appellant on executing an indemnity bond to provide for a contingency of any other legal representatives of the deceased-first respondent making a claim for a share in these amounts.

11. On the basis of the materials available with them, the Office of this Court will prepare a bill of costs in respect of the expenses incurred by the first respondent in this Court up to the date of his death, and furnish the same to the appellant, so that he may pay the said amount to the legal representatives, as per this order.

12. Subject to these observations and directions, the judgment and order of the High Court are set aside and the appeal is allowed. The Award of the Labour Court will stand restored.

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