

BOMBAY HIGH COURT

Indian Hume Pipe

Vs.

Bhimrao Baliram

Special Civil Appln. No. 817 of 1964

(Chainani, C.J. and Wagle, J.)

07.07.1965

JUDGMENT

Chainani, C. J.

1. The facts giving rise to this application are that the respondent No. 1, hereinafter referred to as the respondent, had been employed by the petitioners sometime in 1960. After about two years' service, he was retrenched on 10-3-1962 and was paid retrenchments compensation in accordance with the provisions of Section 25F of the Industrial Disputes Act, 1947. At the time when the respondent was retrenched, a proceeding under Section 38A of the C.P. and Berar Industrial Disputes Settlement Act, 1947, was pending before the State Industrial Court. Under the award, which was made by that Court in that proceeding, the respondent became entitled to a basic wage of 86 Np. in addition to dearness allowance of Rs. 1.75 on the date of his retrenchment. The respondent was re-employed on 1st October 1962. According to the employment order issued to him, he was to be said a basic wage of 62 Np and dearness allowance of Rs. 1.75 nP. Under the award 62 nP. was the basic wage fixed for new entrants. The respondent subsequently made an application to the Labour Court under Section 33C(2) of the Industrial Disputes Act. He contended in that application that he was entitled to receive the same wages from the date of his re-employment as were being paid to him on the date of his retrenchment that is, 86 nP per day, apart from dearness allowance. He complained that he had been paid 24 nP less per day and accordingly he claimed Rs. 65 from the petitioner. The petitioner resisted the application of the respondent and raised various contentions. The principal contention of the petitioner was that as the respondent had been paid retrenchment compensation, he was liable to be treated as a new entrant and accordingly entitled only to the basic wage of 62 nP. which is the wage fixed for new entrants by the award. This argument was not accepted by the Labour Court, which relied upon the decision of the Andhra Pradesh High Court in *Indian Hume Pipe Company v. Presiding Officer Labour Court*¹, The Labour Court, therefore made an order directing the petitioner to pay Rs. 65 to the respondent. That order has been challenged before us in this application.

2. Section 25H of the Industrial Disputes Act provides that where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in

¹1963-1 Lab LJ 770 : (AIR 364 Andh Pra 56)

such manner as may be prescribed, give an opportunity to the retrenched workmen to offer themselves for re-employment and retrenched workmen who offer themselves for re-employment shall have preference over other persons. This section, therefore, imposes an obligation on an employer to give first preference to retrenched a workmen whenever he decides to increase the strength of his establishment and employ some persons. The employer must first offer the job to a retrenched workman before he can engage any other person. Under the section, an offer is to be made to retrenched workmen for re-employment. According to the Oxford Dictionary, "re-employ" means "employ again" or "take into employment". Re-employment , also therefore means taking back in employment, but it does not necessarily imply that the taking back into employment or service must be on the same terms and conditions, to which the employee was entitled previously. Section 25H only gives a right to a worker to have preference in the matter of re-employment, but we do not find anything in the section or any other provision in the Act which also gives him a right to secure employment on his previous terms and conditions of service. Under Section 25F, when a worker is retrenched, he gets compensation for the loss of service. The amount of this compensation depends on the length of service put in by him. His previous service, is, therefore, taken into consideration when the retrenchment compensation is paid. Thereafter, the only right available to him by reason of his having been previously employed is that conferred on him by section 25H and that is of preference in securing the employment. If the argument that a worker is entitled to be re-employed on his previous terms and conditions of service is accepted the position would be that if a worker is retrenched again, he would be entitled to have his previous service also taken into consideration for the purpose of determining the retrenchment compensation payable to him. It could not have been intended by the Legislature that the same period of service should be taken into consideration more than once for the purpose of paying retrenchment compensation.

3. It has been urged by Mr. Kukday that a distinction should be drawn between retrenchment compensation and the wages payable to a worker. He has in fairness conceded that previous service of a worker cannot be taken into consideration again if after being re-employed, he is retrenched, for the purpose of determining the compensation then payable to him. But he has argued that wages, which a worker is entitled to draw at any time, depend also upon the length of service put in by him. He has urged that there is no reason why the previous service of a worker should not be taken into consideration for the purpose of fixing his basic wage. In the absence of any provision to the contrary, it will, however, be difficult to accept the argument that while the previous service should be taken into consideration for one purpose, it should be ignored for another purpose.

4. Reference has been made to the decision of the Andhra Pradesh High Court in 1963-1 Lab LJ 770 : AIR 1964 Andhra Pradesh 56. At page 775 (of Lab LJ) : (at p. 59 of AIR) it has been observed :

"The word 're-employment', in our opinion, connotes employment on the same terms as before. The meaning given in the Oxford English Dictionary is to employ again, to take back into employment. This implies employment on the same terms and conditions of service. In our considered judgment, the obligation to employ the workmen on the same condition as to employments etc., is implicit in the concept of re-employment.'

With respect, we find ourselves unable to agree that the word "re-employment" necessarily

connotes employment on the same terms as before. All that Section 25H provides for is preference to retrenched workmen in securing employment, but it does not say that the re-employment should be on the former terms and conditions of section. If that had been the intention of the Legislature it would have made a specific provision to effect.

5. In our opinion, therefore, the view ***** by the Labour Court is not correct. Accordingly we set aside the order made by the Labour Court and direct that the application made by the respondent to the Labour Court should be dismissed. No order as to costs.

Petition allowed.