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WP-10838-2008

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 16th OF JUNE, 2025WRIT PETITION No. 10838 of 2008*RAM DAS SAHU AND OTHERS**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

.....
Appearance:

*Shri Sanjay Verma - Advocate for the petitioners.**Shri Varun Jain - Panel Lawyer for the respondent No.1/State.**Shri Utkarsh Sankar - Advocate for the respondents No.2 and 3.*
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WITH

WRIT PETITION No. 11253 of 2008*PRAMOD AGRAWAL AND OTHERS**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

.....
Appearance:

*Shri Mohan Lal Sharma - Advocate for the petitioners.**Shri Varun Jain - Panel Lawyer for the respondent No.1/State.**Shri Utkarsh Sankar - Advocate for the respondents No.2 and 3.*
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ORDER

This order shall govern the disposal of both the aforesaid petitions i.e. W.P.No.10838/2008 and W.P.No.11253/2008. For the sake of convenience, the facts, as detailed in W.P.No.10838/2008 are being taken note of.

2. By way of this petition, petitioners are assailing the impugned order by which, the petitioners' services were terminated without following the prescribed procedure. The petitioners herein were employed on daily wages



against the post of "Mali" in the years which are mentioned in paragraphs 5.1 and 5.2 of writ petitions. All the petitioners approached the Labour Court seeking their classification as "Permanent Employee". The dispute was raised by the petitioners before the Labour Court and unfortunately, during pendency before the Labour Court, the respondents terminated the services of the petitioners without complying with the provisions of Section 25-F of Industrial Disputes Act, 1947 and without seeking prior concurrence of the Labour Court in terms of Section 33 of Industrial Disputes Act, 1947. Hence, the order of termination is being assailed in the present petition.

3. Learned counsels for the petitioners contend that the order impugned passed by the respondents is unsustainable and deserves to be quashed mainly on the ground that while passing the order impugned, the respondents have violated the statutory provisions contained in Section 25-F of Industrial Disputes Act, 1947 and the respondents without seeking leave of the Labour Court in terms of Section 33 of Industrial Disputes Act, 1947, proceeded to dispense with the services of the petitioners. It is contended by the counsel that in terms of Section 25-F of Industrial Disputes Act, 1947, it is bounden duty of the employer to give one months notice indicating the reasons for retrenchment when the workman has been paid wages for the period of notice. It is further contended by the counsels that in the present case, the impugned order was not served upon the present petitioners nor the wages were paid to them, therefore, the order impugned was unsustainable having been passed in violation of the provisions of Section 25-F of Industrial Disputes Act, 1947. It is also contended by the counsels that



as dispute before the Labour Court regarding classification of the present petitioners as "Permanent Employee" was already pending, there could not have been any termination of services of the present petitioners without prior concurrence of the Labour Court in terms of Section 33 of Industrial Disputes Act, 1947. In support of their contentions, counsels have placed reliance on the decisions of the Apex Court in the case of *Pramod Jha and Others vs. State of Bihar and others reported in (2003) 4 SCC 619* and *Raj Kumar vs. Director of Education reported in (2016) 6 SCC 541* and submitted that the impugned order deserves to be set aside and the petitioners deserve to be reinstated.

4. Per contra, counsel for the respondent No.1/State as well as counsel for the respondent Nos. 2 and 3 contends that both the petitions deserve to be dismissed. It is contended by the counsel for the respondent Nos. 2 and 3 that the present petition was already heard and decided vide order dated 10.04.2012 by this Court and this Court had dismissed the Writ Petition. Later on, order dated 10.04.2012 was assailed by the present petitioners by filing a Writ Appeal before the Division Bench of this Court vide W.A.No.1445/2012. The Division Bench of this Court vide order dated 10.01.2013 allowed the appeal and set aside the order passed by the Single Bench and remitted back the matter to the Single Bench for deciding the matter afresh as the Division Bench concluded in the order that there was no finding regarding the existence or permission under Section 33 of Industrial Disputes Act, 1947. It is contended by the counsel that there was permission by the Labour Court which was granted vide interlocutory order dated



22.11.2001. The factum of permission was also taken note of by this Court on previous occasion and therefore, there was due compliance of the provisions of Section 33 of Industrial Disputes Act, 1947.

5. It is further contended by the counsel that in the present case, there was due compliance of the provisions of Sections 25-F of Industrial Disputes Act, 1947 as along with the impugned order dated 14.08.2008, the cheques towards compensation in terms of Section 25-F of Industrial Disputes Act, 1947 were sought to be paid to the present petitioners however, they refused to acknowledge the same and this fact is evident from perusal of the affidavit filed along with the covering memo bearing document No.10366/2023. Along with the said covering memo, copies of cheques have been brought on record as well as the note of process server which reflect that the present petitioners had refused to accept the cheques pertaining to compensation and later on, the said cheques were dispatched through registered post. It is contended by the counsel that this fact was also taken note of by this Court while dismissing the petition on previous occasion. The contempt proceedings were also initiated pertaining to interlocutory order passed in the present case and in the said contempt petition also, the said facts were brought on record that the present petitioners had refused to accept the retrenchment compensation and the copy of letter dated 18.08.2008 which has been filed along with covering memo was also placed on record with the reply in the contempt petition.

6. It is also contended by the counsel that the Apex Court in the case of Pramod Jha (supra) has taken into consideration that the statutory



provisions which make it clear that the employer is expected to tender the amount before dismissal but the employer cannot force the employee to receive the payment before dismissal becomes effective. The Apex Court also observed that the tender of amount would be a sufficient compliance. The Apex Court in paragraph 16 has also observed that the compensation as required by the Section 25-F of Industrial Disputes Act, 1947 was available in the form of a Banker cheque of payment to the workers therein simultaneously at the time of retrenchment and they were given intimation in advance in that regard. The similar situation exists in the present case and as there is proper compliance of Section 25-F of Industrial Disputes Act, 1947 as well as Section 33 of Industrial Disputes Act, 1947, the present petition deserves to be dismissed.

7. No other point is pressed or argued by both the parties.

8. Heard the rival submissions of both the parties and perused the record.

9. A perusal of the record reflects that the order impugned is being assailed by the present petitioners on following two grounds:-

A. The order impugned has been passed without complying with the provisions of Section 25-F of Industrial Disputes Act, 1947 and

B. There is no prior sanction by the Labour Court to terminate the services of the petitioners in terms of Section 33 of Industrial Disputes Act, 1947.

10. In order to deal with the aforesaid two grounds, it is first important



to take note of the interlocutory order dated 22.11.2001 which was passed by the Labour Court. The aforesaid order reads as under:-

" 22.11.01:- आवेदक द्वारा श्री संजय वर्मा अभि.उप. ।

अनावेदक द्वारा श्री नमन नागरथ अभि.उप. ।

इस आदेश द्वारा आवेदक के धारा 107 एम.पी.आई. आर के आवेदन पत्र का निराकरण किया जा रहा है ।

संक्षेप में आवेदक अभि. द्वारा यह तर्क प्रस्तुत किया गया कि आवेदक 17.1.91 से माली के पद पर लगातार कार्य करता आ रहा है। जिससे उसने स्थाई पद का स्वत्व प्राप्त कर लिया है किन्तु अनावेदक द्वारा उसे स्थाई श्रेणी में वर्गीकृत नहीं किया गया है। अपितु उसके विरुद्ध उसकी सेवाएं समाप्त करने की कार्यवाही की जा रही है जो अवैध व अनुचित है ।

इसके खंडन में अनावेदक की ओर से यह तर्क प्रस्तुत किया गया कि आवेदक ने अनावेदक संस्थान में कभी भी लगातार 240 दिन से अधिक अवधि तक कार्य नहीं किया जिससे उसे स्थाई श्रमिक का स्वत्व प्राप्त नहीं है । आवेदक की कभी नियुक्ति नहीं की गई। उसका कार्य आकस्मिक प्रकृति का था और कार्य की समाप्ति पर उसका कार्य समाप्त हो जाता था। यदि आवेदक के पक्ष में सीगन आदेश प्रदान किया गया तो अनावेदक को अपूर्तिनीय क्षति होगी । प्रथा दृष्ट्या प्रकरण व सुविधा का संतुलन भी आवेदक के पक्ष में नहीं है। अतएव आवेदक का सीगन आवेदन पत्र निरस्त किया जावे ।

उभय पक्ष अभि. के तर्क एवं प्रकरण में प्रस्तुत दस्तावेजों का अवलोकन किया गया। विचार उपरान्त आवेदन का धारा 107 एम.पी.आई.आर का आवेदन पत्र स्वीकार किया जाना उचित प्रतीत नहीं होता गुण दोष पर साक्ष्य लेने के उपरान्त यदि आवेदक अपने प्रकरण में सफल रहा तो उसे वांछित सहायता दिलाई जा सकती है । मात्र वर्गीकरण हेतु आवेदन पत्र प्रस्तुत कर देने से उसे प्रकरण के निराकरण तक सेवा में बनाए रखने का आदेश देना उचित प्रतीत नहीं होता । अतः आवेदक का धारा 107 एम.पी.आई.आर. का आवेदन पत्र सीगन हेतु आवश्यक तीनों तत्वों के अभाव में निरस्त किया जाता है साथ ही दिनांक 31.7.99 को पारित एक पक्षीय स्थगन आदेश भी निरस्त किया जाता है किन्तु इसके साथ ही अनावेदक को यह निर्देश दिया जाता है कि वेदिका विधिक प्रावधानों का पालन किए आवेदक की सेवा समाप्ति कार्यवाही करें प्रकरण वाद प्रश्न एवं कागजात हेतु दिनांक 11.1.02 को प्रस्तुत हो ।"

11. A perusal of aforesaid interlocutory order dated 22.11.2001 reflects that the Labour Court had directed the respondents to terminate the services of the petitioners in accordance with law. The said interlocutory order was in consonance with the scheme of Section 33 of Industrial Disputes Act, 1947. It is not a case where there was no sanction by the Labour Court, on the contrary, the Labour Court in pending proceedings by way of an interlocutory order, extended liberty to the respondents/employer



to dispense with the services of the petitioners. Thus, the contention of the petitioners regarding non-compliance of Section 33 of Industrial Disputes Act, 1947 is misconceived and unacceptable.

12. So far as the ground pertaining to non-compliance of Section 25-F of Industrial Disputes Act, 1947 is concerned, paragraph 5.21 of the Writ Petition reflects that the petitioners have made an averment that the order dated 14.08.2008 was not served to the petitioners and they were not tendered the retrenchment compensation. The Writ Petition was filed on 04.09.2008 enclosing the impugned order as Annexure P/21. The petitioners in the entire petition have not mentioned anywhere as to how they came in possession of impugned order dated 14.08.2008 (Annexure P/21) if the same was not served upon them as per the contention so advanced in paragraph 5.21 of the Writ Petition. The petitioners were required to specifically plead in the petition as to on which date and in what manner, the petitioners came in possession of the impugned order. There are no averments in the petition as to how and when the petitioners came in possession of the impugned order dated 14.08.2008.

13. The respondents along with the covering memo filed bearing document No.10366/2023 has brought on record the copy of the impugned order as well copy of the cheques which were sought to be handed over to the petitioners. The respondents have also brought on record the copy of letter dated 18.08.2008 along with the covering memo which reflects that the present petitioners had refused to acknowledge the order dated 14.08.2008 and cheques and accordingly, all cheques pertaining to retrenchment



compensations were sent to the petitioners through registered POD. The said letter dated 18.08.2008 was also filed in Contempt Petition which was arising out of interlocutory order passed in Writ Petition and the fact of the said Contempt Petition also finds mentioned in paragraph 13 of the order passed by this Court on previous occasion i.e. 10.04.2012 which was set aside by the Division Bench of this Court.

14. Therefore, it is clear that the notice and retrenchment compensation were sought to be tendered to the present petitioners but they refused the acknowledgment thereof and later on, the aforesaid cheques were sent to the present petitioners through registered POD vide letter dated 18.08.2008. Thus, in the considered view of this Court, there was proper compliance of Section 25-F of Industrial Disputes Act, 1947 in the present case.

15. The Apex Court in the case of **Pramod Jha (supra)** has held in paragraphs 14 and 16 as under:

"14. In Delhi Transport Undertaking Vs. Industrial Tribunal, Delhi and Anr. (1965) 1 SCR 998 pari materia provision as to payment of compensation equivalent to one month's wages to workmen contained in proviso to sub-section (2) of Section 33 of ID Act came up for the consideration of this Court. It was held that the proviso did not mean that the wages for one month have to be actually paid; the employer is expected to tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective. The making of the tender of the amount, before the order of dismissal becomes effective, would be sufficient compliance.

16. In the case before us the workmen have been given one month's notice in writing. The reasons for retrenchment have been indicated. An opportunity of hearing against the proposed termination was also afforded though not required by Section 25F. Retrenchment was to take effect on expiry of one month from the



date of the notice. Compensation as required by Section 25F was available in the form of banker's cheques for payment to the workers simultaneously with the time of retrenchment and they were given an intimation in advance in that regard. The workers had already approached the High Court and secured an interim order protecting their employment and status quo being maintained. They were obviously not interested in receiving the retrenchment compensation which if done may have had the effect of frustrating the interim order. In these facts and circumstances, the retrenchment of any of the appellants cannot be found fault with on any of the grounds raised by the appellants by reference to clauses (a) and (b) of Section 25F."

16. The aforesaid judgment of the Apex Court reflects that the tender of the amount before the order of dismissal becomes effective and it would be sufficient compliance. In the present case also the respondents have been able to demonstrate that the said amount was tendered to the present petitioners but they refused to accept the same and thus, the same was sent to them through registered POD.

17. The aforesaid stand of the respondents, in absence of any challenge is not required to be interfered with. Moreover, there is conspicuous absence of the pleadings in the present case regarding details pertaining to the fact that as to how and when the petitioners came in possession of the impugned order i.e. 14.08.2008 which is enclosed with the petition.

18. Accordingly, both the petitions stand **dismissed**.

(MANINDER S. BHATTI)
JUDGE