IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

MISC. PETITION NO. 2923 of 2018

KRISHI UPAJ MANDI SAMITI PICHHORE & ORS.
Vs.
MUKESH KUMAR BHATT

APPEARANCE:
Shri S.P. Jain – Advocate for the petitioner.
Shri Subodh Pradhan – Advocate for the respondent.

{Passed on 8th the Day of November, 2024}

1. The present petition under Article 227 of the Constitution is preferred by the petitioner being crestfallen by the award dated 24-03-2018 (pronounced on 02-05-2018) passed by the Labour Court No.2, Gwalior in case No.02/A/I.D. Act/2015 (Reference) whereby the respondent has been directed to be reinstated with 50% back wages.

2. Precisely stated facts of the case are that petitioners and respondent were having workman employer relationship and the respondent was appointed as daily rated Nakedar on Collector rate in the establishment of petitioner No.1 Samiti. The dates and events having material bearing over the case and necessary for disposal of the case are as under:

S.No.	Date	Event
1	01/10/92	Respondent was appointed in the establishment of petitioner No.1 – Krishi Upaj Mandi Samiti, Pichhore District Shivpuri as daily rated Nakendar on Collector Rate.

2	13/11/94	Respondent/employee was orally removed from the services by petitioner No.1 as there was no necessity of his services.
3	2009	Respondent started conciliation proceedings before the Assistant Labour Commissioner, Gwalior but it failed.
4	27/07/2009	Respondent preferred his statement of claim before the labour Court No.2, Gwalior against his retrenchment from services by petitioner No.1.
5	2009	Petitioner No.1 preferred its reply to the statement of claim of respondent employee before the Labour Court No.2, Gwalior.
6	26/07/2010	After due conduction of trial, the labour Court No.2, Gwalior passed the award directing petitioner No.1 either to reinstate the respondent employee or if it is not possible then remove him from services after complying the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").
7	03/03/11	Since petitioners employer did not comply the said award therefore, calling in question the said award, petitioner preferred writ petition before the Division Bench of this Court.
8	29/06/11	The Division Bench of this Court disposed of the said writ petition directing the petitioners that it is obligatory on the part of the petitioners to reinstate the respondent employee first and thereafter they can pass any suitable order.
9	06/09/11	According to petitioners, in compliance to the directives of the Division Bench of this Court, respondent employee was reinstated in services.
10	16/08/12	Thereafter, in view of the Section 25F of the Act,

		petitioners retrenched the services of the respondent and calculated the compensation of the respondent to the tune of Rs.27,652/- (including retrenchment compensation and one month's salary in lieu of notice period).
11	29/08/12	Against the said order of retrenchment passed by the petitioners, respondent preferred writ petition bearing No.6413/2012.
11	10/09/12	Said writ petition was disposed of by this Court granting liberty to the respondent employee to avail the remedy under the Act.
12	2012-2013	Again conciliation proceedings started before the Assistant Labour Commissioner, Gwalior as Conciliation Officer but since those conciliation proceedings failed, therefore, Conciliation Officer referred the matter to the Appropriate Government.
13	25/03/15	The Appropriate Government referred the matter to the Labour Court No.2, Gwalior for adjudication of the dispute.
14	August, 2015	Respondent employee submitted his statement of claim before the labour Court No.2,Gwalior.
15	December, 2015	Petitioners submitted reply to the statement of claim of the respondent employee.
16	18/05/16	Respondent employee submitted an affidavit in relation to the fact that he is not employed anywhere.
17	02/05/18	The labour Court No.2, Gwalior passed the impugned award directing reinstatement of the respondent employee with 50% backwages, therefore, petitioners are before this Court.

3. It is the submission of learned counsel for the petitioners that the

labour Court No.2, Gwalior committed grave illegality in passing the order impugned while ignoring the material aspects of the matter and the fact that while passing the order of retrenchment of the respondent employee (Annexure P/1), petitioners have complied all the necessary provisions of the Act. After passing the order of retrenchment, the copy of the same has been sent to the Specified Authority i.e. Labour Commissioner, Bhopal. As such, the provisions contained in clause (c) of Section 25F of the Act is directory as held by the Apex Court in the case of **Pramod Jha and others Vs. State of Bihar and others, 2003(4) MPLJ 1**.

4. It is further submitted that petitioners complied with the provisions of Section 25G of the Act as no person junior to the respondent was working in petitioner No.1 Krishi Upaj Mandi Samiti when respondent employee was retrenched. The labour Court No.2, Gwalior committed grave error in holding that junior to the respondent namely Virendra Singh Parihar was working in petitioner No.1 Krishi Upaj Mandi Samiti and respondent has been removed. Virendra Singh Parihar was not similarly situated employee to the respondent as he was working on the post of Assistant Sub-Inspector of Mandi in regular pay scale as a permanent employee while respondent was working as daily rated employee, therefore, Virendra Singh Parihar cannot be said to be similarly situated employee to the respondent.

5. Since petitioners do not fall within the definition of Industrial Establishment, therefore, no allegation in relation to not complying the provisions of Section 25N of the Act can be made, as has been held by this Court in **Dilip Vs. Commissioner, M.P. Housing Board, 2017(1) MPLJ 162**.

6. Respondent was engaged in the petitioner Mandi Samiti in the year 1992 as daily rated employee and thereafter on 13-11-1994 he was removed from the services but he raised the dispute only in 2009 after lapse of 15 years period and this aspect has not been considered by the labour Court. Even otherwise, services of respondent has been terminated by the petitioners after giving him the retrenchment compensation. Learned counsel for the petitioner further stressed over the award wherein after reinstatement, 50% back wages has been awarded to the respondent while the respondent works in a private school and he himself submitted his claim before the labour Court after expiry of 15 years. Thus, prayed for setting aside the impugned award passed by the labour Court No.2, Gwalior.

7. Learned counsel for the respondent opposed the submissions made by the petitioner's counsel and supported the impugned award passed by the labour Court. It is further submitted that without assigning any cogent and plausible reason, petitioners have terminated the services of the respondent. The post on which the respondent was appointed in the establishment of petitioner No.1 – Krishi Upaj Mandi Samiti, Pichhore is still there and need and requirement of the post still persist in the establishment of petitioner No.1. The compliance of Section 17B of the Act has not been made by the petitioners while the labour Court has reinstated the services of the respondent. It is further submitted that the compliance of provisions of clause (c) of the Section 25F of the Act has not been made as no notice prior to retrenchment of services of the respondent has been given by the petitioners. Compliance of this provision is mandatory, not directory. For this purpose he relied over the judgment of Supreme Court in the case of **Raj Kumar Vs. Director of Education and others, (2016) 6**

SCC 541. Thus, prayed for dismissal of this petition.

8. Heard learned counsel for the parties and perused the documents appended thereto.

9. This is a case where petitioner Krishi Upaj Mandi Samiti, Pichhore/employer has taken exception to the order/award dated 24-03-2018 (pronounced on 02-05-2018) passed by the labour Court No.2, Gwalior whereby the respondent/employee has been directed to be reinstated with 50% back wages. Vide order dated 25-07-2018, the effect and operation of the said award dated 24-03-2018 was stayed subject to the compliance of Section 17B of the Act. From the course of events as narrated in the petition and reflected in the impugned award, it appears that the respondent/employee was working as daily wage employee since 01-10-1992 and allegedly removed on 13-11-1994. Thereafter the respondent/employee kept silent for 15 years and in 2009 (20-07-2009) he preferred for the first time reconciliation proceedings. Thereafter, the matter was referred on 27-07-2009 before the labour Court. At that point of time, the labour Court discussed in detail and gave finding that employee worked in a private school during that period. However, reinstatement was ordered and back wages was denied because of his employment in a private school.

10. Not only this, at that point of time vide award dated 26-07-2010 liberty was given to the employer to remove the employee if services are not required as per Section 25F of the Act. Therefore, it was a case where employee has to be retrenched but taking care of provisions contained in Section 25F of the Act. Therefore, the whole dispute is to be seen from that perspective also. Employer was given liberty by the labour Court itself. Although employer did not

proceeded as per direction of the labour Court but later on course correction was made as per the order dated 29-06-2011 passed by the Division Bench of this Court in Writ Petition No.1513 of 2011. Direction was given to the employer to reinstate the employee first and thereafter had liberty to pass any suitable order. Therefore, exercising that liberty retrenchment order was passed.

11. So far as provisions for non compliance of Section 25F of the Act is concerned, before proceeding further, Section 25F of the Act is worth reproduction:

> "***25F. Conditions precedent to retrenchment of workmen. -***
> *No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -*
> *(a) the workman has been given one month 's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
> *(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service or any part thereof in excess of six months; and*
> *(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

12. The Supreme Court in the case of **Pramod Jha and others (supra)** held that compliance of clause (c) of Section 25F of the Act is directory and not mandatory. Para 11 of the said judgment is

reproduced for ready reference:

"**11.** *Compliance with clauses (a) and (b) of Section 25F strictly as per the requirement of the provision is mandatory. However, compliance with clause (c) is directory, as held in Gurmail Singh and Ors. Vs. State of Punjab and Ors. (1991) 1 SCC 189 and a substantial compliance would be enough."*

13. However in the case of **Raj Kumar (supra)** two judge Bench of the Apex Court held in para 34 to 39 in following manner:

"*34.* *We are unable to agree with the reasoning adopted by the Tribunal as well as the High Court in the instant case. Admittedly, the notice under* Section 25F(c) *of the ID Act has not been served upon the Delhi State Government. In support of the justification for not sending notice to the State Government reliance has been placed upon the decision of this Court in the case of Bombay Journalists(supra). This decision was rendered in the year 1963 and it was held in the said case that the provisions of* Section 25F *(c) of the* ID Act *is directory and not mandatory in nature. What has been ignored by the Tribunal as well as the High Court is that subsequently, the Parliament enacted the Industrial Disputes (Amendment) Act, 1964.*Section 25F (c) *of the ID Act was amended to include the words:*

"25-F.(c) .... or such authority as may be specified by the appropriate Government by notification in the Official Gazette".

The statement of objects and reasons provides:

> *"Opportunity has been availed of to propose a few other essential amendments which are mainly of a formal or clarificatory nature"*

> ***35.*** *Nothing was done on part of the legislature to indicate that it intended* Section 25F(c) *of the ID Act to be a directory provision, when the other two sub-sections of the same section are mandatory in nature. The amendment was enacted which seeks to make it administratively easier for notice to be served on any other authority as specified.*

> ***36.*** *Further, even the decision in the case of Bombay Journalists(supra) does not come to the rescue of the respondents. On the issue of interpretation of* Section 25F(c) *of the ID Act, it was held as under:*

> *"12......The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause (c). Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the appropriate Government about the retrenchment, and that only helps the Government to keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provision prescribed by clause (c) a*

> *condition precedent as in the case of clauses (a) & (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) & (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) & (b), is not a condition precedent." (emphasis laid by this Court)*

Thus, this Court read the ID Act *and the relevant Rules thereunder together and arrived at the conclusion that* Section 25F(c) *is not a condition precedent for retrenchment. By no stretch of imagination can this decision be said to have held that there is no need for industries to comply with this condition at all. At the most, it can be held that* Section 25F(c) *is a condition subsequent, but is still a mandatory condition required to be fulfilled by the employers before the order of retrenchment of the workman is passed.*

***37.** This Court in the case of Mackinon Mackenzie & Company Ltd. v. Employees Union held as under:*

> *"34.......Further, with regard to the provision of* Section 25F *Clause (c), the Appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the Appellant-Company has not complied with the conditions precedent to retrenchment as per* Section 25F

> *Clauses (a) and (c) of the* I.D. Act *which are mandatory in law."*

38. *In the instant case, the relevant rules are the Industrial Disputes (Central) Rules, 1957. Rule 76 of the said Rules reads as under:*

> *"**76. Notice of retrenchment**.- If any employer desires to retrench any workman employed in his industrial establishment who has been in continuous service for not less than one year under him (hereinafter referred to as 'workman' in this rule and in rules 77 and 78), he shall give notice of such retrenchment as in Form P to the Central Government, the Regional Labour Commissioner (Central) and Assistant Labour Commissioner (Central) and the Employment Exchange concerned and such notice shall be served on that Government, the Regional Labour Commissioner (Central), the Assistant Labour Commissioner (Central), and the Employment Exchange concerned by registered post in the following manner :-*
>
> *(a) where notice is given to the workman, notice of retrenchment shall be sent within three days from the date on which notice is given to the workman; (emphasis laid by this Court)*

> *Rule 76(a) clearly mandates that the notice has to be sent to the appropriate authorities within three days from the date on which notice is served on the workman. In the instant case, the notice of retrenchment was*

> *served on the appellant on 07.01.2003. No evidence has been produced on behalf of the respondents to show that notice of the retrenchment has been sent to the appropriate authority even till date.*

39. *That being the case, it is clear that in the instant case, the mandatory conditions of* Section 25F *of the ID Act to retrench a workman have not been complied with. The notice of retrenchment dated 07.01.2003 and the order of retrenchment dated 25.07.2003 are liable to be set aside and accordingly set aside."*

14. Section 25F(a) of the Act contemplates two contingencies. One is that workman has to be given one month's notice in writing indicating reason for retrenchment and then workman shall be retrenched after expiry of one month's notice period. Another contingency is that if workman has been paid wages for the period of the notice in lieu of such notice then also he can be retrenched.

15. Both these contingencies are distinguished by incorporating the word "**OR**". In other words if employer gives one month's wages then he can dispense sending of one month's notice in writing. Since dispensation of notice is discretion of employer and if he pays wages for the period of notice and as per Section 25F(b) of the Act if he pays retrenchment compensation also at the time of retrenchment then requirement of notice to the appropriate Government as per Section 25F(c) of the Act would not exist. Notice is to be given to the appropriate Government when employer gives one month's notice in writing to the workman for retrenchment.

16. Once employer decided to pay one month's wages and compensation as per Section 25F(a) and (c) of the Act, then requirement of notice

under Section 25F(c) of the Act is not attracted. Any contrary interpretation would impliedly obliterate or omit the word **“OR”** from the statute book as figured in Section 25F(a) of the Act. That would be contrary to the legislative intent.

17. So far as the judgment of Supreme Court in the case of **Pramod Jha and others (supra)** is concerned it holds the compliance of clause (c) as **Directory** whereas the judgment as pronounced in the case of **Raj Kumar (supra)** holds the compliance to be **Mandatory**. However, in the case of **Raj Kumar (supra)**, management issued a notice to the workman in accordance with Section 25F(a) of the Act, stating that his services were no longer required by the School and that he would be retrenched from the services on the expiry of notice period of one month. This is not the position here. Workman was given wages of one month (Rs.4395/-) and compensation for retrenchment (Rs.23,257/-) thus totaling Rs.27,612/- to the workman vide order dated 16-08-2012. Therefore, compliance of Section 25F(c) of the Act has little meaning.

18. Although in the present case from the documents filed with the petition it appears that on 16-08-2012 vide outward No.215 order of retrenchment (payment of wages for one month and compensation) was sent to the employee. Similarly vide outward No.216 and 217, it was informed to the Managing Director and Joint Director of the M.P. Agriculture Marketing Board respectively. Further vide outward No.218 copy of the order dated 16-08-2012 was sent to the Labour Commissioner, Bhopal. Said document is filed as Annexure P/4 (exhibited vide Ex-D-2C by DW-1. Therefore, order of retrenchment has been communicated to the appropriate Government.

19. Another ground raised by the employee was in respect of Section

25G of the Act. Section 25G of the Act reproduced for ready reference:

> *"**25G.** Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."*

20. However, in the present case provisions of Section 25G of the Act are not attracted for two reasons; **one** is employee namely Virendra Singh Parihar who was the employee and working in the establishment of petitioner No.1 Krishi Upaj Mandi Samiti Pichhore on the post of Assistant Sub Inspector of Mandi was a permanent employee working in the regular pay scale on the date of issuance of order of retrenchment dated 16-08-2012. Therefore, being a regular and permanent employee said Virendra Singh Parihar was not similarly situated daily rated employee who was junior to the respondent/workman so as to attract the provisions of Section 25G of the Act. **Another** ground is that Section 25G of the Act itself gives leverage and liberty to the employer to retrench any workman for the reasons to be recorded. Here, the reason was obvious, liberty given by the labour Court vide its award dated 26-07-2010. When labour Court itself given the liberty to proceed for retrenchment if desired then it was also one of the reasons for the employer to proceed

further for retrenchment. Therefore, on this count also Section 25G of the Act is not attracted. Therefore, the findings (although scantly discussed) given by the labour Court is perverse and contrary to the record.

21. In the case of **Dilip (supra)** the Coordinate Bench of this Court has held that since M.P. Housing Board is a body corporate constituted under the provisions of the Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972, therefore, Section 25N of the Act is not applicable over the M.P. Housing Board. Therefore, it is neither a 'factory' as defined under the Factories Act, 1948, nor 'mines' as defined under the Mines Act, 1952, nor 'plantation' as defined under the Plantations Labour Act, 1951. Same is the situation in the present case as Krishi Upaj Mandi Samiti is an entity instituted under the M.P. Krishi Upaj Mandi Adhiniyam, 1972. Even otherwise no pleadings in this regard were made, therefore, case is bereft of merits on this count also.

22. Cumulatively, it appears that the compliance of Section 25F of the Act was made and the labour Court earlier vide award dated 26-07-2010 given liberty to the petitioners for retrenchment and therefore, petitioners retrenched the workman by following due process of law. Even otherwise employee was working in a private school (since 1994-95) during that period and after almost 15 years rose from the slumber and started proceedings in year 2009. Therefore, it suffers from inordinate delay and laches without any explanation.

23. *Resultantly*, the case of petitioners is made out for interference. Award dated 24-03-2018 (pronounced on 02-05-2018) passed by Labour Court No.2, Gwalior is hereby set aside and order of retrenchment dated 16-08-2012 is upheld. If the respondent/employee was not gainfully employed and payment has been made by the

employer as per Section 17B of the Act then that amount given to the workman shall be governed by Section 17B of the Act and shall not be recovered.

24. Petition stands **allowed and disposed of** in above terms.

(ANAND PATHAK)
JUDGE

Anil*