



**105 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM-20654-CWP-2024 in/and
CWP No.16932 of 2003
Date of Decision : 24-03-2025**

**SECRETARY- CUM- EXECUTIVE OFFICER, MARKET
COMMITTEE AND ANOTHER, KHANDLSA ROAD, GURGAON**

.....Petitioner(s)

VERSUS

**SHIV KUMAR (SINCE DECEASED) THROUGH HIS LRS AND
ANOTHER**

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: None for the petitioner.

Mr. Ranvir S. Chauhan, Advocate
for respondent-Workman.

HARSIMRAN SINGH SETHI, J. (Oral)

CM-20654-CWP-2024

Present application has been filed for fixing the writ petition to
an early actual date of hearing.

For the reasons mentioned in the application, the same is
allowed and the writ petition is taken up for hearing today itself.

CWP No.16932 of 2003

1. In the present petition, the challenge is to the award dated
09.05.2003 passed by the Labour Court, copy of which has been appended
as Annexure P-2 by which, the termination of the services of the respondent
No.1-Workman was held to be bad and he was reinstated in continuity with
full backwages from the date demand notice was served i.e. 16.03.1994.

While issuing notice of motion, the operation of the impugned award dated 09.05.2003 (Annexure P-2) was stayed.

2. No one has appeared on behalf of the petitioner.
3. As per the averments made in the writ petition, the challenge to the award dated 09.05.2003 (Annexure P-2) is on the ground that once, the post of Electrician-cum-Plumber was abolished and the retrenchment compensation was calculated as Rs.3690/- and offered to the respondent No.1-Workman, which he refused, has been denied on the ground that the amount of compensation was calculated less, it cannot be said that there was no compliance of Section 27F of the Industrial Disputes Act, 1947.
4. The challenge is further on the ground that once, the post was abolished and the payment of compensation amount was sent the respondent No.1-Workman through money order, which bears his signature also, the quantum of retrenchment compensation, even if, was not as per the last drawn wages, cannot be made a ground to set aside the termination order as, the compensation can also be paid after the retrenchment order.
5. Learned counsel appearing on behalf of the respondent No.1-Workman submits that even if the post of Electrician-cum-Plumber, on which the respondent No.1-Workman was working was abolished, the employee was liable to be adjusted somewhere else and further once, it has already come on record that the respondent No.1-Workman was getting a salary of Rs.3000/- and it has also come on record that the amount of compensation was offered along with the notice but said amount was not as per entitlement of respondent No.1-Workman, the retrenchment was without following Section 25F of the Industrial Disputes Act, 1947, which has been rightly appreciated by the Labour Court in the favour of the

respondent No.1-Workman so as to grant the benefit of reinstatement along with continuity hence, the award dated 09.05.2003 (Annexure P-2) should be upheld.

6. I have gone through the pleadings and have heard the learned counsel for the respondent No.1-Workman.

7. The only ground taken by the Industrial Tribunal-cum-Labour Court, Gurgaon while passing the award dated 09.05.2003 (Annexure P-2) in favour of the respondent No.1-Workman is that nothing evident has come on record that while sending the notice of retrenchment, the compensation amount was also offered along with the notice hence, that once, there is non-compliance of Section 25F of the Industrial Disputes Act, 1947 while retrenchment, which is a condition mandatory prior to the retrenchment, the order terminating the services of the respondent No.1-Workman is bad.

8. It may be noticed that as per the material facts which have come on record, a resolution was passed by the Market Committee, Gurgaon to retrench the services of the respondent-Workman on 20.07.1991 and the respondent No.1-Workman had approached the Civil Court and got an interim order in his favour, which interim order was subsequently vacated and after the vacation of the interim order passed by the Civil Court, the respondent No.1-Workman was relieved on 10.01.1992 and a sum of Rs.3690/- was offered to him, which was refused by the respondent No.1-Workman and the said amount was again sent to him through money orders (Annexures M-7 and M-8), the photocopies of receipt of which have been brought on record and those receipts of the amount bears the signature of the respondent No.1-Workman.

9. Once, the retrenchment compensation was given and also received by respondent No.1-Workman, merely that the photocopies of the receipt have been brought on record with the signature of the respondent No.1-Workman, cannot be a ground record a finding that the payment of retrenchment compensation was not given.

10. Once, the compensation sent to the respondent No.1-Workman through money order (Annexures M-7 and M-8) was received by him, which compensation was refused by him on an earlier occasion, it cannot be said that the retrenchment compensation was not paid to the respondent No.1-Workman before terminating his services hence, the finding recorded by the Labour Court are perverse to the facts and evidences brought on record.

11. Even otherwise, as per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.1020 of 2011*** tilted ***"Raj Kumar Vs. Director of Education and ors."***, decided on 13.04.2016, wherein it has been held that the retrenchment compensation can also be paid after the termination of the services and the same is also valid. The relevant of the judgement is as under:-

"25. 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: "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 dif erent

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. This Court in the case of Mackinnon Mackenzie & Company Ltd. v. Mackinnon Employees Union, 2015(3) S.C.T. 49 : (2015) 4 SCC 544 held as under: "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." 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. ”

12. Learned counsel for the petitioner has not been able to rebut the same.

13. The other argument which has been raised by the learned counsel for the respondent No.1-Workman is that he was getting the salary of Rs.3000/- and he was not paid the retrenchment compensation as per his salary.

14. A bare perusal of Section 25F of the Industrial Disputes Act, 1947 makes it clear that either one month salary is to be paid or one month notice is to be given. In the present case, the respondent No.1-Workman was not only given one month notice but he was also given the retrenchment compensation to the tune of Rs.3690/-, which is more than the one month salary.

15. Nothing evident has come on record as to how, it is being contended that the retrenchment compensation, which was paid to the respondent No.1-Workman, was less.

16. Once, claim of the respondent No.1-Workman itself is that he was paid Rs.3000/- as salary and the compensation of Rs.3690/- has been paid to the respondent No.1-Workman, it cannot be said that the compensation was less as compared to the entitlement of the respondent No.1-Workman.

17. Keeping in view the totality of the circumstances which have been noticed hereinbefore, the award given by the Labour Court dated 09.05.2003 (Annexure P-2) passed by the Labour Court is perverse to the facts and material evidences, which have come on record and hence, cannot be sustained and the same is accordingly set aside.

18. It may be noticed that whatever the amount has been paid to the respondent No.1-Workman under Section 17B of the Industrial Disputes Act,1947, will not be recovered.

19. Present writ petition is allowed in above terms.

20. Pending application, if any, also stands disposed of.

24-03-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking : YES
Whether reportable: YES