

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

R/LETTERS PATENT APPEAL NO. 196 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 9410 of 2013
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2022
In
R/LETTERS PATENT APPEAL NO. 196 of 2023

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BHIMNATH R YADAV & ORS.

Versus

TRIVEDI CRAFTS PVT LTD & ANR.

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Appearance:

MR YOGEN N PANDYA(5766) for the Appellant(s) No. 1,2,3,3.1,3.2,4,5,6

MR DG SHUKLA & MS MESHWA BHATT for the Respondent(s) No. 1

NOTICE SERVED for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

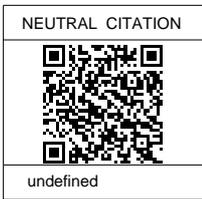
Date : 16/04/2024

ORAL ORDER

(PER : HONURABLE MR. JUSTICE PRANAV TRIVEDI)

1. The present appeal filed under Clause 15 of the Letters Patent assails correctness and validity of the judgment and order dated 23.08.2022 passed by the learned Single Judge in Special Civil Application No. 9410 of 2013.

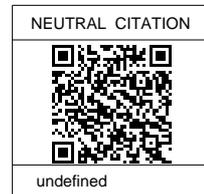
2. The prayers made in the writ petition preferred by the respondent no. 1 - original petitioner is to quash and set aside the award dated 08.01.2013 passed by the labour court in Reference (LCA) Demand No. 19 of 1998, whereby the labour court had



partly allowed the reference and directed reinstatement of six workmen on their original posts with continuity of service and 15% backwages.

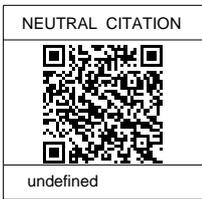
3. The learned Single Judge after hearing both the parties, came to the conclusion that award dated 08.01.2013 passed by the labour court in Reference (LCA) Demand No. 91 of 1998 was bad in law and is required to be quashed and set aside. In such context the writ petition was allowed. The said order is assailed in the present appeal.

4. The factual matrix which led to the filing of the petition is that the appellants - members of original respondent no. 1 - Union were employed by the respondent no.1 - original petitioner - company. The petitioner company had employed 93 employees of the Union in different categories. Due to economic measures and with a view to reduce cost and expenses the Company decided to reorganise its operations and business. In such factual background, the company decided to retrench all the 51 helpers including the present appellants who were working as helpers. Pursuant thereto, notice came to be issued on the notice board of



the Company and thereby, the appellants who were represented by the Union refused to accept the retrenchment orders as well as retrenchment dues that were proposed to be paid by the Company.

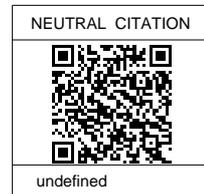
4.1. In the background of such factual scenario, the Union raised an industrial dispute as regards termination of 51 workers from the service. The said dispute came to be referred to the labour court which culminated into Reference (LCA) Demand Notice No. 19 of 1998. Respondent Union represented 51 helpers and submitted its statement of claim and the petitioner - company submitted its written statement, and the respective parties also led documentary as well as oral evidence before the labour court. During the pendency of the reference, 45 helpers arrived at a settlement and six helpers who are appellants herein refused for settlement and went ahead with the reference. The labour court vide award dated 08.01.2013 issued direction to reinstate six workmen on their original posts with continuity of service and 15% backwages and rejected the reference qua other workmen who had settled the dispute. Thus, the labour court partly allowed the reference and directed to reinstate six helpers. Aggrieved by the said award dated 08.01.2013, petitioner - company preferred writ



petition before this Court. The learned Single Judge after considering various provisions of the Industrial Disputes Act came to the conclusion that the labour court has erroneously interpreted the provisions of Section 25F of the Industrial Disputes Act and Rule 80B of the Industrial Disputes (Gujarat) Rules, 1966 and therefore, the award is required to be quashed and set aside. Against the said observations which are impugned in the order passed by the learned Single Judge, the appellants - original members of Union preferred the present appeal.

5. We have heard Mr. Yogen Pandya, learned advocate appearing for the appellant and Mr. D.G. Shukla, learned advocates appearing for respondent no.1.

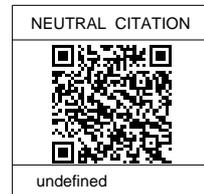
6. Learned advocate Mr. Pandya appearing on behalf of the appellant has contended that interpretation of the labour court with regard to provisions of Section 25F of the Industrial Disputes Act (hereinafter referred to as the "Act") read with Rule 80-B of the Industrial Disputes (Gujarat) Rules, 1966 (for short the "Rules") was just and proper. However, the learned Single Judge has wrongly interpreted it. Taking us through the said provisions,



learned advocate Mr. Pandya has contended that the respondent - original petitioner Company ought to have given notice prior to the retrenchment and by not doing so, they had clearly breached the provisions of the Act. It is further contended by learned advocate Mr. Pandya that the appellants were earning their livelihood in the respondent Company and therefore, such retrenchment was not permissible and as such, the learned Single Judge has not taken the said aspect into consideration. Therefore, the order passed by the learned Single Judge is required to be quashed and set aside.

7. On the other hand, Mr. Shukla, learned advocate appearing for respondent no.1 has contended that the learned Single Judge has correctly interpreted the provisions of the Section 25F of the Act read with Rule 80-B of the Rules and in particular, sub-clause (ii) of Rule 80-B of the Rules and has submitted that the Company had followed the procedure while retrenching the concerned workmen. Thus, the order passed by the learned Single Judge is just and proper.

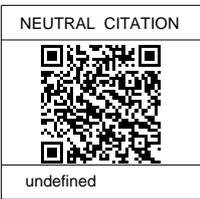
8. To understand the controversy involved in the present proceedings, it is necessary to go through the procedure adopted



by the company and the applicability of the Rule 80-B of the Rules. It is not in dispute that the respondent company decided to retrench the workers as the number of workers were more than necessary and the Company was going through reconstitution. In such context, notice was given on 10.01.1998 by the respondent - Company to the workers who were retrenched. Moreover, on the very same date, the respondent company as required under the provisions of Section 25F of the Act offered one month's wages in lieu of notice of retrenchment compensation by way of Banker's cheque to all the workers who were retrenched. Therefore, the core question would be whether the Company had followed due procedure of law during the act of retrenchment. Therefore, the issue involved in the reference as well as before the learned Single Judge was only whether proper procedure is followed as per Rule 80B of the Rules. For ready reference, Section 25F of the Act as well as Rule 80-B of the Rules are reproduced hereunder :-

"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;



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(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[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 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

80-B Notice of Retrenchment.

(I) The notice referred to in clause (c) of Sec.25F shall be given in Form XXIV by an employer and be served either by personal service or by registered post, on the [Secretary to the Government of Gujarat, Education and Labour Department Ahmedabad] :

(i) not less than twenty-one-days before the date or retrenchment, if the notice of retrenchment has been given to a workman;

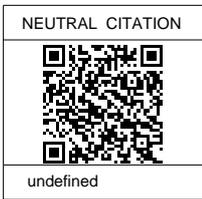
(ii) within seven days of the date of retrenchment, if no such notice has been given but the workman is paid wages in lieu of notice;

(iii) (a) at least one month before the date of termination of service, if such date is specified in an agreement where the retrenchment is carried out under an agreement; and

(b) on the date of such agreement, where the date of termination is not so specified.

[(2) A copy of such notice shall be sent by employer to the Commissioner of Labour, Ahmedabad and the Deputy Commissioner of Labour, Ahmedabad.]”

8.1. On going through the provisions of Section 25F of the Act read with Rule 80-B of the Rules, sub-clause (ii) of clause (I) of Rule 80-B of the Rules clearly indicates that the employer has to serve notice within **seven days** of the date of retrenchment, if no such notice has been given, but the workmen has been paid wages in lieu of notice. In the instant case, as can be observed the



workers were paid wages in lieu of notice on the same day i.e. on 10.01.1998 and notice in that aspect was also issued on 10.01.1998. Therefore, the labour court was not justified in observing that the notice has to be given seven days prior to retrenching the workers. Further, as per the provisions of Rule 80-B of the Rules, notice has to be given in a prescribed format i.e. Form No. XXIV which can be perused from the documents on record that such notice was given timely in the prescribed form i.e. Form No. XXIV as per the provisions of Rule 80-B of the Rules. Thus, the contention of learned advocate Mr. Shukla that the Company has taken care of all the procedural aspect and has complied with the procedure as laid down in Rule 80B of the Rules, is required to be accepted. The learned Single Judge has considered the said aspect and has categorically observed in paragraphs 14 and 15 which read as under :-

"14. In the opinion of the Court, steps taken by the petitioner-Company is in consonance with the requirement of Rule-80-B of the Industrial Disputes (Gujarat) Rules, 1966, which provides for notice for retrenchment requires notice of not less than 21 days before the date of retrenchment, if the notice of retrenchment has been given to the respondent-workmen. However, where no notice has been given, but the respondent-workmen are paid wages in lieu of notice, then within 7 days of the date of retrenchment, intimation is required to be given in prescribed form to the appropriate Authorities. In the instant case, from the record it appears that the petitioner-Company has complied with the timeline prescribed under the Act and the Rules. However, the Labour Court has proceeded to observe, erroneously though, that in the facts of the



present petition, the petitioner-Company was required to serve notice 7 days in advance to the appropriate Government from the date of retrenchment, whereas the requirement is to serve notice upon the appropriate Government within 7 days of the date of retrenchment.

15. In view of the aforesaid, the Court is of the view that the retrenchment procedure as prescribed, has been complied with by the petitioner- Company and therefore, impugned award, which has proceeded only on the ground that requirement of Section-25F of the Industrial Disputes Act, 1947 and Rule-80-B of the Industrial Disputes (Gujarat) Rules, 1966 are not complied with, is required to be interfered with and set aside."

9. In view of the aforesaid, the reasoning given by the learned Single Judge is just and proper and we see no infirmity in the order passed by the learned Single Judge. Therefore, the appeal being meritless, the same is required to be rejected. Hence, the appeal is rejected summarily.

Consequently, the connected civil application for stay also stands disposed of.

(BIREN VAISHNAV, J)

(PRANAV TRIVEDI, J)

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