



GAHC010243932012

Page No.# 1/8



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/127/2012

THE MANAGEMENT OF ASSAM STATE TEXTILE CORPN. LTD.
INDUSTRIAL ESTATE, DISTRICT INDUSTRIES AND COMMERCE CENTRE,
BAMUNIMAIDAN, GHY-21, REPRESENTED BY ITS CHAIRMAN-CUM-
MANAGING DIRECTOR

VERSUS

STATE OF ASSAM and ORS.
REPRESENTED BY SECRETARY, LAHOOR and EMPLOYMENT
DEPARTMENT, GOVT. OF ASSAM, DISPUR, GHY-6

2:THE PRESIDING OFFICER
LABOUR COURT
ASSAM AT GUWAHATI
DIST- KAMRUP
ASSAM
GHY-1

3:SRI TANKESWAR DEKA

S/O PRABHAT CH. DEKA
R/O - JALIMURA
P.O. KALAJAL
P.S. KAMALPUR
DIST- KAMRUP ASSAM
PIN-781380

4:MAZNUL HOQUE
S/O LATE JASIMUDDIN AHMED
VILL- BHATIPARA
P.S. MANIKPUR
DIST- BONGAIGAON



ASSAM
PIN- 783392

5:ANANTA KAKOTI
S/O LATE SATYA RAM KAKATI
VILL and P.O. BARGHOPA
P.S.- SARTHEBARI
DSIT- BARPETA
ASSAM

6:SRI PRABHAT NATH

S/O LATE CHIKIN CH. DAS
VILL- RAMPUR
P. and P.S.- SORBHOG
DIST.- BARPETA
ASSAM

7:ON THE DEATH OF DIGANTA ROY @ DIGANTA KR. ROY
HIS WIFE SHIVA PRIYA DAS @ SHIVA PRIYA RAY DAS W/O LATE DIGANTA
ROY @ DIGANTA KR. ROY RESIDENT OF VILL NO 1 NOWAPARA PO
NAWAPARA DIST BONGAIGAON (ASSAM) PIN 783392

8:AMINUL HOQUE
S/O LATE HAHIMUDDIN SHEIKH
VILL- SILGHAGIRI
P.O. BHANDARA BAZAR
DIST- BONGAIGAON
ASSAM

9:ANI DAS

S/O LATE SAMBARU RAM DAS
VILL- SIYALMARI
P.O. BIJNI
DIST- BONGAIGAON
ASSAM.

10:ISLAM MAZID
S/O LATE HABIBAR RAHMAN
VILL- BHATIPARA
P.O. NOWAPARA
P.S. MANIKPUR
DIST- BONGAIGAON
ASSAM
PIN-78339

Advocate for the Petitioner : MR.A SARMA



Advocate for the Respondent : MR.K P SARMA

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

JUDGMENT & ORDER (ORAL)

Date : 21-04-2022

Heard Mr. A Jahid, learned counsel for the petitioner. Also heard Mr. J K Goswami, learned Additional Senior Government Advocate for the respondent no. 1 being the authorities under the Labour & Employment Department, Government of Assam and Mr. K R Patgiri, learned counsel for the respondents no. 3 to 10 workmen.

2. By a notice published in the vernacular daily Amar Asom dated 23.11.2002 the respondents no. 3 to 10 workmen were dismissed from service as per the order of the Board of the petitioner Assam State Textile Corporation Limited, Noapara. Against such dismissal from service, the Under Secretary to the Government of Assam in the Labour & Employment Department by the notification dated 03.09.2008 made a reference under Section 10 of the Industrial Disputes Act, 1947 (in short, the Act of 1947) to the Presiding Officer of the Labour Court at Guwahati for an adjudication on the referred questions, which are extracted as below:

“1. Whether the Management of the Assam State Textile

Corpn.Ltd. was justified in dismissing the 8 (eight) workmen from their service ?

2. If not, whether they are entitled to re-instatement in the services with full back wages and other benefit?

3. If so, what relief is entitled to them?

4. Any other matter relating to the case.”

3. A reading of the first question of reference makes it discernable that the Labour Court was required to decide whether the Management of the petitioner Assam State Textile Corporation Limited was justified in dismissing the 8 (eight) numbers of workmen from their

services and further reference was, if not, whether the workmen are entitled to reinstatement with full back wages and other benefits and also as to what reliefs they are entitled.

4. Accordingly, reference case no. 13/2008 was registered. The reference was answered by the learned Labour Court as per the award dated 25.11.2010.

5. In paragraph 16 of the award dated 25.11.2010, it had been held as extracted:

“16. It is both sides admitted fact that the concerned workmen were dismissed from service by the management w.e.f 23rd November-2002, and they were dismissed from service without complying with the provision of Section 25-F of Industrial Disputes Act, i.e. without giving one month notice showing the reasons of retrenchment or paying any amount to the concerned workmen in lieu of such notice, and even without paying retrenchment compensation. Thus, it is clear that the management of Assam State Textile Corporation Limited dismissed the concerned workmen from service w.e.f. 23.11.2002 without complying provision of Section 25-F of Industrial Dispute Act -1947, and hence, the dismissal order is palpably illegal and unlawful.”

6. A reading of the conclusion of the learned Labour Court in paragraph 16 makes it discernable that the Labour Court on one hand accepted that it is an admitted position of the parties that the workmen concerned were dismissed from their services by the Management with effect from 23.11.2002. But the further conclusion is that such dismissal from their services were made without complying with the provisions of Section 25-F of the Act of 1947 i.e. without giving one month notice showing the reasons of retrenchment or paying any amount to the concerned workmen in lieu of such notice and even without paying any retrenchment compensation. Accordingly, the learned Labour Court arrived at its conclusion that the dismissal of the workmen concerned from their services with effect from 23.11.2002 were made without complying with the provisions of Section 25-F of the Act of 1947 and therefore, the order/notice of dismissal was held to be illegal and unlawful.

7. Mr. A Jahid, learned counsel for the petitioner assails the aforesaid conclusion of the learned Labour Court on the ground that the requirement of Section 25-F of the Act of 1947 is in respect of a retrenchment but in the instant case, the workmen concerned were not

retrenched but were dismissed from their services.

8. Mr. K R Patgiri, learned counsel for the workmen on the other hand contends that the reasons stated in the notice of dismissal dated 23.11.2002 does not satisfy the requirement of law for dismissing a workman and hence, the interference by the learned Labour Court was justified in the facts and circumstances of the present case.

9. We have heard the learned counsel for the parties.

10. Section 25-F of the Act of 1947 inter-alia provides that 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, amongst others, the workman had been given one month's notice in writing indicating the reasons for retrenchment and that the period of notice had expired, or the workman had been paid in lieu of such notice the wages for the period of the notice.

11. Section 25-F (b) and (c) provides for certain further procedural requirements in order to give effect to the retrenchment of a workman.

12. Section 25-F is extracted as below:

“25-F. 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;

⁷³[* * *]

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay ⁷⁴[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 ⁷⁵[or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

13. Section 2 (oo) of the Act of 1947 defines retrenchment to mean the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include voluntary retirement of the workman or retirement of the workman on reaching the age of superannuation or termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned or the termination of the service of a workman on the ground of continued ill health.

14. Section 2(oo) which defines 'retrenchment' is extracted as below:

2[(oo)] "retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include –

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) the termination of the service of a workman on the ground of continued ill health.]”

15. A reading of the meaning of retrenchment under Section 2(oo) of the Act of 1947 discerns that a retrenchment means the termination by the employer of the service of a workman for any reason, otherwise than as a punishment inflicted by way of disciplinary action. In the instant case, a perusal of the dismissal notice dated 23.11.2002 makes it discernable that the termination of the services of the workmen by the employer was as a

punishment and not an action otherwise than as a punishment for the reasons stated therein which according to the Management were unlawful acts. As the services of the workmen were terminated in the form of a punishment for the alleged unlawful acts stated in the order of dismissal, we have to conclude that the termination of services of the workmen were not a retrenchment but made in the form of a dismissal of their services by way of punishment.

16. We are not expressing any view on the submission made by Mr. K R Patgiri, learned counsel for the workmen that the reasons stated in the notice of dismissal dated 23.11.2002 does not warrant or support the decision for dismissal of services of the workmen. But at the same time, the contentions definitely deserve a merit for its consideration. In the impugned award of the learned Labour Court dated 25.11.2010 in reference case no. 13/2008, as already noted above, the learned Labour Court arrived at its conclusion that the notice/order of dismissal dated 23.11.2002 is unsustainable and bad in law as because the procedures prescribed under Section 25-F of the Act of 1947 was not followed.

17. We are in disagreement with the said conclusion arrived at by the learned Labour Court in its impugned award. If the respondents were prima facie dismissed from their services i.e. termination of services by way of a punishment, it cannot be said that such termination was by way of retrenchment.

18. The required procedure under Section 25-F is required to be followed only in respect of a termination of service by way of retrenchment i.e. if the nature of termination satisfies the requirement of the provisions of Section 2(oo) of the Act of 1947. In the instant case, as it has already been concluded that the nature of termination of the services of the respondent workmen were not in terms with the provisions of Section 2(oo) of the Act of 1947, therefore, we are of the view that even the procedure prescribed under Section 25-F of the Act of 1947 is not required to be followed in the present manner.

19. It is another matter that for effecting an order or notice of dismissal from service, a particular procedure has to be followed or that such decision should be made by giving reasons good enough to justify a dismissal.

20. As the reference made before the learned Labour Court was whether the Management of the petitioner Assam Textile Corporation Limited was justified in dismissing the eight



respondent workmen, we find that in the impugned award dated 25.11.2010 of the learned Labour Court in reference case no. 13/2008, the said question had neither been considered nor been determined.

21. Accordingly, for the reasons mentioned hereinabove, the award dated 25.11.2010 in reference case no. 13/2008 of the learned Labour Court is set aside and the matter is remanded back to the learned Labour Court for a fresh adjudication as per law on the referred question as to whether the dismissal of the respondent workmen by the petitioner Management was justified as per law.

22. We have noticed that the dismissal is of the year 2002 and it is a writ petition of the year 2012 meaning thereby that considerable time had elapsed since the dismissal of the workmen. Accordingly, we request the learned Labour Court to adjudicate the dispute as expeditiously as possible and preferably within a period of three months from the date of receipt of the record.

23. Send back the LCR.

24. Writ petition stands disposed of as indicated above.

JUDGE

Comparing Assistant