

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on March 12, 2014

Judgment Delivered on April 02, 2014

+ **W.P.(C) 297/2000**

PYARE LAL AND ORS

..... Petitioner

Represented by: Mr.D.D.Dayani, Advocate

versus

M/S KORES (INDIA) LTD.

..... Respondent

Represented by: Mr.Nitinjay Chaudhary, Advocate with
Ms.Sushma Sachdeva, Advocate

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the Award passed by the Labour Court on June 19, 1999 in I.D No.97/83, wherein the Labour Court decided the reference made against the petitioners herein by holding that they are not entitled to any relief.

2. The reference was made with regard to 19 workmen by the appropriate government on July 11, 1983 on the following terms:

“Whether the workmen at Annexure-A have been terminated illegally and/or unjustifiably by way of retrenchment and if so, to what relief are they entitled and what directions are necessary in this respect”.

3. I may state here that this writ petition has been filed by 11 workmen/petitioners and out of 11, petitioner Nos.5 & 8 have settled their disputes with the respondent. It is the case of the petitioners in their claim which was filed through the General Secretary Mr.Pyare Lal that

they were in permanent employment of the respondent for the last several years and have never given any chance of complaint with regard to their work and conduct. The respondent however, has been adopting anti-labour practices, as a result of which they decided to form a union namely Kores (India) Workers Union (Regd.). According to them, on September 18, 1981 workman Pyare Lal was suspended from his services along with co-worker Mangal Singh and domestic inquiries were instituted against them. However, as the respondent was aware that it was not going to succeed in the said domestic inquiry, they entered into an agreement with the union on February 22, 1982 and the genuine demands of the petitioners were accepted by the respondent. Mr.Pyare Lal and Mr.Mangal Singh were reinstated with continuity of service and back wages. It was their case that on August 30, 1982 at about 4.00 p.m when the factor was to be closed, officer of the respondent came and started giving cheques to the workers for full and final settlement and asked them that their services were no longer required by the respondent. The termination of the services of the petitioners is alleged to be illegal on the ground that the seniors were thrown out of job and juniors were retained in services of the respondent.

4. A civil suit for permanent injunction was filed in the Civil Court. The cheques were not accepted by the petitioners as the same were not in accordance with the rules of retrenchment and were also in full and final settlement of claims of the workmen.

5. The respondent contended before the Labour Court that Mr.Pyare Lal and Mr.Mangal Singh were suspended and domestic enquiries were instituted against them. Mr.Mangal Singh was found guilty of the charges and was let off with a warning while Mr.Pyare Lal tendered

apology during the pendency of the inquiry, with the result, the matter was closed. It was also their case that the Ink tablet and Stamp Pad Divisions in the factory of respondent at Delhi were found to be uneconomical and therefore the production of said two items had to be stopped. As a consequence thereof it was found by the respondent in the last week of August, 1982 that 21 workers belonging to different categories had become surplus, that their services had thus to be dispensed with. Therefore, the respondent had prepared a list of workmen to be retrenched following the principle of 'last come first go'. However, the said 21 workmen (except 1) refused to accept the memo and the cheque. The respondent had, therefore, no option left except to send the memo and cheque to the remaining 20 workmen including petitioners by registered post on August 31, 1982. According to respondent, it had displayed the notice on the board of the factory and a copy thereof was sent to the Secretary, Ministry of Labour, Government of India, Regional Labour Commissioner (Central) and Assistant Labour Commissioner (Central). A category-wise list of the workmen including petitioners who have been retrenched and whose services have been terminated with effect from September 01, 1982 was also displayed on the notice board on August 31, 1982. In other words, it was its case that the provisions of Section 25(F) of the Industrial Disputes Act, 1947 ('Act' in short) was scrupulously followed. Further, the respondent had taken a stand that way back on April 16, 1976, the respondent had displayed a notice on the Notice Board placing the existing workmen in various categories/grades. Objections were invited to the said categorization and placement in the grades, however, no objections were received from any workman. The grades were further revised and a

notice to this effect was put up on the Notice Board on January 01, 1978 placing the then existing workmen in the revised grades. Objections were again invited to the said placement of the workmen in the revised grades but no objections were received. The respondent had further stated that on August 18, 1982 a category/grade-wise seniority list of the workmen was displayed on the Notice Board of the factor premises. A copy of the same was forwarded to the Chief Inspector of factories by the respondent. A copy of the same was also given to the union on August 21, 1982. The union raised certain objections and the objections were rejected by the respondent vide order dated August 30, 1982. The respondent justified the retrenchment of the workmen on the basis of category/grade.

6. Three issues were framed by the Labour Court, which are as under:

(a) Whether the reference is bad in law as alleged in preliminary objections of the WS. If so, its effect?

(b) As per terms of reference.

(c) Relief.

7. Insofar as the issue No.1 is concerned, the same was decided in favour of the workers. On issue No.2 the Labour Court examined the following aspects:

(a) If the closure of the ink tablet and stamp pad division was genuine.

(b) Whether the workmen were to be retrenched department-wise i.e. the workmen who were working in two departments mentioned above were to be retrenched.

(c) Whether the retrenchment was in accordance with the provisions of Section 25(F).

(d) Whether the principles of last come first go as given under Section 25(F) of the Act was followed by the management or not.

8. Suffice to state that the Labour Court was of the view that the closure of the Ink tablet and Stamp Pad Divisions and consequently the respondent had to resort to retrenchment of the surplus work force was justified; the respondent prepared a common seniority list of the workmen category/grade-wise in accordance with Section 25(G) to retrench the workmen who had become surplus; there is a full compliance of the provisions of Section 25(F) of the Act and retrenchment was done by the respondent category/grade-wise on the principle of 'last come first go'.

9. Learned counsel for the petitioner would reiterate the submissions as were advance before the Labour Court. He would state that the retrenchment letter dated August 30, 1982 does not specify any category/grade-wise retrenchment. In any case such a retrenchment cannot be category/grade-wise and the same has been effected as a measure of unfair labour practice. He would state that grading/categorization was never effected. Moreover the workmen were transferred from one division to another and under such circumstances the workers are one general group and even if surplus the 'last come first go' principle have to be adopted by taking all workers together. He would rely upon the judgment of the Supreme Court in the case reported as (1980) 3 SCC 406 Workmen of Sudder Workshop of Jorehaut Tea Company Ltd. vs. Management of Jorehaut Tea Company Ltd. in support of his contention that the principle of 'last come first go' under Section 25(G) of the Act, departure wherefrom is permissible only on valid and

justifiable grounds and the burden is on the management to prove the existence of such grounds.

10. On the other hand, learned counsel for the respondent would justify the Award of the Labour Court.

11. Having heard the learned counsel for the parties, the only issue need to be decided in this case is whether Section 25-G of the Act, which encompasses in itself the principle of “last come first go” has been followed and the criteria adopted by the respondent is justified. Before I answer this issue, I reproduce herein Section 25-G of the Act:

“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.”

12. The Supreme Court, as back as in the year 1960 in the case of *Swadesamitran Limited, Madras Vs. Their Workmen, 1951 LLJ 504* has held the rule of ‘last come first go’ to be followed by the employer in effecting the retrenchment of a workman. It has also been held by the Supreme Court in the case reported as *(1966) 2 LLJ 324 M/s. Om Oil & Oilseed Exchange Ltd., Delhi Vs. Their Workmen* that the underlying principle, in the matter of retrenchment, the management should commence with the latest recruit and progressively retrench the employees higher up in the list of seniority, and the same has been well accepted in the Industrial Law.

13. Section 25-G of the Act postulates, the workman in a particular

category unless there is an agreement, shall ordinarily be retrenched who was last to be employed in that category, unless for the reasons to be recorded, the employer retrenches any other workman. It is noted that the respondent in the reply before the Labour Court had taken a plea that on April 16, 1976, it had displayed a notice on the notice board, placing the workers in various grades; objections were invited to the said categorization. However, no objections were received from the workmen. It is also the case of the respondent that grades were further revised and notice to that effect was put up on the notice board on January 21, 1978 for placing the existing workmen in the grades also. The seniority list, Grade-wise of the workers of the factory was displayed on August 18, 1982 and the same was forwarded to the Chief Inspector of the factories and a copy was also handed over to the General Secretary of Kores (India) Workers Union on his request in the year 1982. The Union, vide letter dated August 24, 1982 objected to that list.

14. The petitioners have not filed any rejoinder to the reply controverting the stand of the respondent regarding categorization/grading and the same being the basis for retrenchment, this aspect becomes relevant. There is no dispute that retrenchment has been effected in terms of categorization/grading. The Supreme Court in the case of *Workmen of Sudder Workshop of Jorehaut Tea Co. Ltd. Vs. Its Workmen*, has held as under:

“It must be remembered that the above provision which we have quoted insists on the rule being applied category-wise. That is to say, those who fall in the same category shall suffer retrenchment only in accordance with the principle of last come first go”.

15. I may note here, the seniority list issued on August 18, 1982

determines the seniority in the grades in which the petitioners were working. In this case, the word 'grade' is synonymous with the word 'category' as is clear from the notice dated April 16, 1976 and January 21, 1978.

16. It is not the case of the petitioners that the persons junior to them in the same category/grade have been retained and they have been retrenched. Suffice to note that the issues raised by the learned counsel for the petitioner have been dealt by the Labour Court in para Nos.19 & 24 to 28, which is reproduced hereunder:

“19. Now comes the next question whether the workers working in Ink Tablet and Stamp Pad Divisions were to be retrenched or the workers on the basis of their length of services only had to be retrenched. Of course, the grouse of Sh.Satish Kumar (WW1) is that he had never worked in Ink Tablet and Stamp Pad Division and, thus, he could not have been retrenched. But, it was admitted by Sh.Pyare Lal (WW2) who was also the General Secretary of the Union that the workers were posted in the various departments as per the need of the department. In fact Sh. Mathur (MW1) was cross examined on this point also and it was admitted by him that the workmen were interchangeable and were being taken in different departments (See: Cross examination page 3 recorded on 5.1.88). Since the workmen were interchangeable and could work in any of the department of the management as per the need, the management could not have retrenched the workers working only in the Stamp Pad and Ink Tablet Divisions as that could have invited the allegations of malafides as anybody who was to be shunted out could have been posted in those departments at the relevant time. Thus the management had to prepare a common seniority list of the workers categorywise in accordance with Sec.25(G) to retrench the workers who had become surplus.

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24. Now comes the most important question and in fact both the parties have strongly contested if the principle of 'Last come first go' was followed or in other words, the provisions of Sec. 25(G) of the I.D.Act were complied with. At the cost of burdening the record, I would not hesitate to reproduce Sec.25(G) hereunder:

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.

Thus, it is evident that an employer in general has to retrench the workman categorywise and the retrenchment has to be on the basis of length of service. If any exception is to be made to the rule, then there must be valid reasons for the same. The burden, however, will be on the management to substantiate the special ground for departure from the rule. Though the workmen in their statement of claim have not specifically stated that there were no grades or categories of the workers employed by the management. The management specifically took up the plea that in the year, 1976, the management had decided to categorise the workers. On 16.4.76, the management had displayed a notice on the notice board placing the then existing workers in various grades; objections from workmen invited to the said categorisation and placement in grades within a week of the display of the notice. However, no objections were received from any of the workmen. The management, further took up the plea that the grades were further

revised and a notice to that effect was put up on the notice board on 21.1.78 for placing the existing workmen in the revised grades also. The seniority list categorywise (gradewise) of the workers of the factory was displayed on 18.8.82 at the notice board, a copy of the seniority list was also forwarded to the Chief Inspector of the factories and a copy was also handed over to the General Secretary of Kores (India) Workers Union at his request on 21.8.82. The union by its letter dated 24.8.82 objected to that list raising some vague and untenable objections. Unfortunately, the workmen have not contradicted these pleas of the management by filing any rejoinder to the written statement. It is noteworthy that there is specific provision in the shape of Rule 10-B(4) of the Industrial Disputes (Central) Rules, 1957 which enables a party raising dispute to submit a rejoinder if it so wanted. Even if no adverse inference can be drawn against the workmen for not filing the rejoinder the workmen have definitely lost the opportunity of putting up a case at the earliest opportunity. During evidence, a case was tried to be set up on behalf of the workmen that there was no category of the workers and, thus, the retrenchment had to be done on the basis of common seniority of all the workers. I have also gone through the letter dated 24.8.82 written by the union against the seniority list displayed on 18.8.82, no such plea nor any such objection was taken to the seniority list in the said letter. Even during their evidence, workmen were not sure of their case. Sh. Satish Kumar (WW1) one of the workers simply stated that he was working in the Carbon and Ribbon Department and that he never worked in Ink Tablet and Stamp Pad Division which were closed. From his examination in chief, it appeared that his only grouse was that he was victimized for trade union activity (which I have already dealt with) and that he could not be retrenched as the Carbon and Ribbon Department were still working. Similarly, Sh. Pyare Lal (WW2) did not state a word in his examination in chief that categorywise (gradewise) seniority list was incorrect or that all the workers were doing the same kind of work. However, during cross examination, WW1 stated that he was doing

the work of packing in the category though he admitted that he was also working on the rotary machine in the Ink Tablet Department and he also admitted the payment of Rs.5/- as extra allowance but he stated that he was made to work on Ink Tablet rotary machine (underlines are mine). He probably meant to say that he was not willing to work but was compelled to work. The fact remains that he was operating the machine. During the course of his arguments, it has been urged on behalf of the workmen that the workmen were the chips of the same block, they were not categorised either in the appointment letter of in any other document and the grading if any effected by the management in the year 1976 was illegal being in violation of Sec.9(A) of the I.D.Act.

25. First of all, I would take up the question whether there was any category of the workmen; in other words, whether the workmen were belonging to any particular category so as to differentiate them while effecting retrenchment. There is overwhelming evidence on record to show that the category such as machine man, packet, watch man etc is not mentioned by the management in respect of any of the worker either in their attendance card, their leave book or in their pay slip. The appointment letters of the workmen have not been placed on record by the management. In fact, the case of the management appears to be that the workmen were categorised for the first time in 1976. On the other hand, the case of the workmen is that they were never categorised. The management is relying upon the letters dated 16.4.76 (Ex.MW1/1 and 21.1.78 (Ex.MW1/2).

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26. In their cross examination, all the 3 workmen, i.e. WW1, WW2 and WW3 have denied the suggestion that the notices Ex.MW1/1 and MW1/2 were displayed by the management on 16.4.76 and 21.1.78 respectively. All the 3 workers were also cross examined on the point if they were given increase in the salary on the basis of their revised grades. Sh. Satish Kumar (WW1) showed his

ignorance, if the grades were introduced in the year 1976 regarding payment of arrears, he stated that he had received arrears sometimes but could not say specifically if he got the arrears from Jan. 1977 to Dec. 1977 in March, 1978. Sh. Ram Khilawan (WW3) during cross examination stated that he could not say if he was given in increment of Rs.17 and was kept in Grade-III in the year 1976. He denied the suggestion that in Jan. 1978, the company revised the Grades and increased the Scales. However, during further cross examination recorded on 15.3.85 admitted that Ex.WW1/M18 was bearing his signatures at Point-B. He admitted that additional payment was made to him as a consequence to the revision of Grades by the Company. Thus, what has come in the evidence of the workmen is that their scales have been revised and they had been given certain increase in the pay.

27. Now, I would see as to what management has to say in this regard. MW1 categorically stated that a notice dated 16.4.76 (Ex.MW1/1) placing the different workers in various categories was displayed on the notice board inviting objections from the workers. The grades were further revised vide notice Ex.MW1/2 which was again displayed. He also stated that no objections were received from the workmen in respect of this categorization. Sh. Y.B.Mathur was cross examined at length but no suggestion was given to him that the notices Ex.MW1/1 and MW1/2 had not been displayed or that the workman had not been categorized. On the other hand, the cross examination of Sh. Y.B. Mathur (MW1) conducted on 28.11.86 would go to show that the workmen had, in fact, admitted the categorization of the workers in the year 1976. It was admitted by Sh. Y.B.Mathur (MW1) in cross examination that anybody (any worker) could be used in any department as per the requirement. The categorization of the workers was done in the year 1976 and the list Ex.MW1/1 was displayed. Sh. Mathur also admitted that as per this notice, the categorization was gradewise and not departmentwise. He also admitted that the workers were retrenched

categorywise and not departmentwise. Sh. Mathur denied the suggestion that in Kores (India), the workers junior to the workmen (herein) were still in employment in the same category and grade. From the cross examination of MW1, it does not appear that the workmen were challenging the factum of categorization or the category in which a specific worker was placed. Only a bare suggestion was given to them that the gradewise and categorywise list was prepared by the management just to victimise the active trade union workers. No suggestion was given as to which of the worker was in active trade union worker and who was victimised for the same. Even in the written arguments, it has been submitted on behalf of the workmen that categorization, if any, was purely with a view to victimise the workmen. Even in the written arguments or in the oral arguments, it has not been demonstrated as to how a particular workmen was victimised being an active member of the workers' union. From the testimony of Sh. Y.B.Mathur (MW1) and Sh. N.K.Trehani (MW2) and in the absence of any serious challenge to their testimony on the question of displaying the notice Ex.MW1/1 and Ex.MW1/2, I have every reason to believe that these notices were duly displayed at the notice board by the management.

28. Now, the question for consideration is whether there was any real category of the workers so as to treat them differently. I have already held above that notices Ex.MW1/1 dated 16.4.76 placing the workmen in various categories/grades and Ex.MW1/2 dated 21.1.78 whereby the grades were further revised were duly displayed by the management in the factory. Ex.MW1/1 which has been reproduced by me in Para 24(25) hereinabove would clearly reveal that in Grade-I there were the workers who were placed in category of office boy, watchman, delivery man, deliveryman-cum office boy and in Grade-I A, unskilled helpers were placed. Similarly, in Grade-I B, another category of unskilled workers, namely, make up, filing operations, see man and squeezer were placed. On the other hand, in Grade-II,

the management placed another category of workers who were semi-skilled such as spooler and griding machine operator. In Grade-III, the management placed the mixing and cutting machine operation as well as delivery van driver who were described as skilled by the management. It is also evident from the five grades reproduced above that the minimum of the grade started at Rs.35/- in Grade-IA and the maximum of the grade, i.e., Grade-III started at Rs.75. Similarly, while revising the grades vide notice Ex.MW1/2, the workmen working in Grade-I were mentioned to be in Grade-A and the Grade-IA, IB II and III were placed in Grade-I, Grade-II, Grade-III and Grade-IV respectively as the names of the workers mentioned in these grades which were given as replacement grades were also the same. Admittedly, a delivery van driver or a machine operator cannot be equated with a watch man or an office boy. An office boy or watch man can neither operate a machine nor can drive a delivery van. The management in its factory needed various workers to work as office boy, watch man and, at the same time, also needed the mixing and cutting operator as well as delivery van driver. It is not a case where these five grades were being given to each and every worker on the basis of length of service. Notice Ex.MW1/1 would go to show that the worker mentioned at serial No.1 in Grade No.1 in Grade-IB had joined the management on 1.4.59 and vide this notice he was placed in the grade starting at Rs.45/- and ending Rs.100/- at the same time a worker, Sh. Kanta Prasad who had joined the mgmt. On 15.5.68, i.e., almost 9 years after Bahadur Singh was placed in Grade-III which started at Rs.75/- and ended at Rs.157/-. Admittedly, the union had given a letter in response to the seniority list displayed at the factory on 18.8.82 vide Ex.M4 which was duly signed by Sh. Pyare Lal, General Secy. Of the union. No such objection has been raised in the said letter that there was no category of the workers. The document Ex.M4 (letter dated 24.8.82) written by the union would itself go to show that there were machine man, machine man helper, cutter, packer, sodder etc. in the management. The only objection that was made to the seniority list dated

18.8.82 was that the designation of the persons mentioned in five grades had not been mentioned. I have already held above that the management vide Ex.MW1/1 and MW1/2 had placed the works in various grades and these grades were categorywise. There was no necessity for the management to have mentioned again the category of the worker in each grade while displaying seniority list Ex.MW2/1 on 18.8.82.”

17. In view of the aforesaid discussion, I do not find any merit in the writ petition. The same is accordingly dismissed without any order as to costs.

(V.KAMESWAR RAO)
JUDGE

APRIL 02, 2014
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