

hereby quashed and set aside. The Deputy Commissioner, Ludhiana, is directed to hold special enquiry in regard to change of date of birth of the petitioner within a period of three months from the date of receipt of a certified copy of this order and submit his report to the competent authority. The competent authority will pass consequential order within a period of three months from the date of receipt of the report. (In the even, the competent authority is of the opinion that date of birth of the petitioner needs correction, in such circumstances petitioner shall be entitled to benefit of additional service with all consequences including monetary benefits.)

(13) Petition allowed in above terms.

J.S. Mehndiratta

Before K. Kannan, J.

PUNJAB STATE ELECTRICITY BOARD,—Petitioner

versus

**PRESIDING OFFICER, LABOUR COURT, BATHINDA
AND ANOTHER,—Respondents**

CWP No. 6404 of 1990

06th June, 2011

Constitution of India, 1950 -Art.226 & 227 - Industrial Disputes Act, 1947 - S.25F, 33 - Petitioner was employed on daily wage basis with PSEB in June 1986 - Retrenched on 30.04.1987 - Retrenchment challenged before Labour Court - workman re-employed when proceedings were still pending - Retrenched again - Held - Subsequent retrenchment is illegal and unlawful being violation of Section 33 - No attempt made by PSEB to sustain validity of the earlier order of retrenchment - Petition dismissed.

Held, That the section enacts a fundamental rule that during the pendency of proceedings before an Industrial Tribunal, no employer shall alter to the prejudice of the workmen any matter which is connected to the dispute.

(Para 4)

Further held, That the subsequent retrenchment is illegal and unlawful being violative of Section 33. No attempt was made by the Punjab State Electricity Board to sustain the validity of the earlier order of retrenchment passed on 30.4.1987.

(Para 5)

Gurmeet Singh Sandhwalia, Advocate and Deepak Sabharwala,
Advocate and N.L. Pruthi, Advocate, *for the petitioner*.

Parminder Singh, Advocate-Amicus Curiae, *for respondent No. 2*

K. KANNAN, J. (ORAL)

(1) The issue for consideration in the writ petition is the effect of termination of service after due notice in the manner required under Section 25-F, even while a petition for adjudication before the Labour Court for an earlier order of termination, was claimed by the workman in violation of the provisions of the Industrial Disputes Act.

(2) The petitioner was employed on daily wage basis with Punjab State Electricity Board in June, 1986 and was retrenched from service on 30th April, 1987. This retrenchment was a subject of challenge through a reference before the Labour Court. Even the proceedings were pending, the workman was re-employed on 1st November, 1988 and was retrenched again on 25th August, 1989 after serving him a notice as required under Section 25-F of the Industrial Disputes Act. Before the Labour Court, the Punjab State Electricity Board sought to contend that he had been subsequently terminated after due notice. The Tribunal still directed reinstatement finding that it cannot traverse beyond the reference and the reference was related to the validity of the retrenchment order made on 30th April, 1987.

(3) Before this Court, at the time when interim orders were sought, the Division Bench had ensured that the petitioner was paid the wages for the period when the Labour Court had held that the petitioner had suffered an illegal and unlawful retrenchment by the order dated 30th April, 1987 till he was properly retrenched on 25th August, 1989.

(4) Learned counsel appearing for the Punjab State Electricity Board argues that since he was lawfully terminated, subsequently there is no scope for reinstatement. This argument contains an inherent flaw, since the action of Electricity Board in terminating the services, is violative of Section 33 of the Industrial Disputes Act. The Section enacts a fundamental rule that during the pendency of proceedings before an Industrial Tribunal, no employer shall alter to the prejudice of the workmen any matter which is connected to the dispute. A Constitution Bench of the Supreme Court **“Jaipur Zila Sahakari Bhoomi Vikas Bank versus Ram Gopal Sharma and others, (1)** settled the controversy that existed on the interpretation of Section 33 of Industrial Disputes Act and held that a dismissal or discharge effected by the Management without taking permission from the Labour Court or the Industrial Tribunal becomes ineffective from the date when it was passed and not merely from the date of non-approval of the order of dismissal. The Supreme Court underscored that workman ought to be deemed never to have been dismissed or discharged and would be deemed to remain in the service of the employer. It is not even necessary that the workman to make a complaint under Section 33-A to this extent and earlier decision of the Supreme Court in **“Punjab Beverages Private Limited, Chandigarh versus Suresh Chand and another, (2)** was overruled. In this case no permission was obtained and admittedly the order of retrenchment relied on by the Management had been passed when there was a reference before the Labour Court for adjudication. The reference had been made in this case and instituted before the Labour Court on 18th July, 1989 and the alleged retrenchment which the Management was relying was on 25th August, 1989.

(5) The subsequent retrenchment is illegal and unlawful being violative of Section 33. No attempt was made by the Punjab State Electricity Board to sustain the validity of the earlier order of retrenchment passed on 30th April, 1987. The present writ petition is, therefore, dismissed.

A. Agg.

(1) AIR 2002 SC 643

(2) AIR 1978 SC 995