SUPREME COURT OF INDIA

Chaganlal Textile Mills Private Ltd.

Vs.

Chalisgoan Girni Kamgar Union

C.A.No.97 of 1959

(S. J. Imam, A. K. Sarkar and K. Subba Rao, JJ.)

31.03.1959

JUDGEMENT

A. K. SARKAR J.:

1. The appellant is a company running a textile mill. It has appealed against an order directing it to reinstate fourteen of its employees whose services it had terminated. The appeal is contested by the respondent Union representing the employees, whose contention is that the services of the employees had been terminated in disregard of the provisions of the Bombay Industrial Relations Act, Bombay Act XI of 1947, a reference to the relevant provisions of which will be made later.

2. The appellant mill worked in two shifts. On July 9, 1957, the appellant gave notice that the working of the second shift would be discontinued on the expiration of a month from that date. On August 9, 1957, the working of the second shift was closed in terms of the notice. It is not disputed that the second shift was properly and bona fide closed.

3. The fourteen employees with whom this case is concerned were not workers in the second shift but their services were necessary in order to make all arrangements ready for the second shift to start working. With the closure of the second shift, there was no longer any need to make things ready for its running. On November 1,1957, the appellant served notices on the fourteen employees terminating their services and paid them retrenchment compensation and salary as required by law. It has not been contended that the retrenchment was not necessary as a result of the closure of the second shift. The services of these fourteen employees were accordingly terminated. Thereafter on November 9, 1957, the appellant gave a notice, called the notice of change, that it wished to abolish twenty seven posts including the posts held by the fourteen employees. On December 8, 1957, the respondent on behalf of the employees applied to the Labour Court of Bombay under the provisions of the Act mentioned above for an order declaring that the notice of retrenchment was illegal and reinstating the employees concerned. It contended that the retrenchment was illegal as the notice of it had been given prior to the notice of change. The Labour Court accepted the contention of the respondent and directed the appellant to withdraw the notice of retrenchment and reinstate the employees in their posts. An appeal by the appellant from this order to the Industrial Court at Bombay under the provisions of the Act failed. The present appeal is from the order of the Industrial Court.

4. Section 35(1) of the Act provides a procedure for the framing of standing orders in regard to the matters mentioned in Schedule I of the Act. Sub-section (5) of the section provides that till the

standing orders framed under the section had come into operation, the model standing orders notified by the Government would apply. In the present case no standing orders relating to the appellant's industry had been framed or had come into operation at the material time and, therefore, the model standing orders notified by the Government were operative. Section 40(1) provides that the standing orders for the time being operative shall be determinative of the relations between an employer and his employers in regard to all industrial matters specified in Schedule I. It is necessary now to refer to two of the items in schedule I. Item No. 3 is concerned with "shift working including notice to be given to employee, of starting, alteration, or discontinuance of two or more shifts in a department or departments". And item No. 10 concerns "termination of employment including notice to be given by employer and employees". The standing orders in regard to items Nos. 3 and 10 were respectively as follows:

Standing Order No. 8(1)(c).-Whenever an additional shift is started or shifts are altered or discontinued, a seven days' notice shall be given provided that it shall be necessary to give one month's notice if as a result of the discontinuance of the shift any permanent employee is likely to be discharged.

Standing Order No. 23(1).-The employment of a permanent employee may be terminated by one month's notice or on payment of one month's wages (including all allowances) in lieu of notice.

5. Section 42 of the Act provides that any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representatives of employees. This notice has been called the notice of change. Item No. 1 of Schedule II is in these terms:

"Reduction intended to be of permanent or semi-permanent character in the number of persons employed or to be employed in any occupation or process or department or departments or in a shift not due to force majeure."

6. It is not necessary to refer to any other provision of the Act for the purpose of this judgment.

7. The Labour Court held that the termination of the services of the employees effected on November 1, 1957 amounted to a reduction of a permanent or semi-permanent character within the meaning of item No. 1 of Schedule II of the Act and it was illegal as no notice of change had been given. It held that the posts occupied by the retrenched employees were permanent or semi-permanent posts because a notice of change for the abolition of these posts was subsequently, namely, on November 9, 1957 given. It also held that the working of the second shift had been closed on August 9, 1957 and then the fate of the posts occupied by the retrenched employees had become certain. It, therefore, held that the retrenchment had amounted to a change within the meaning of item No. 1 of Schedule II and as it had been effected without a notice under S. 42 it was illegal. In this view of the matter, it directed the retrenched employees to be reinstated. On appeal the Industrial Court took the same view and affirmed the order of the Labour Court.

8. In our view, both the Courts below were wrong. The notice of change contemplated by S. 42 is the expression of an intention to effect a change in any of the matters mentioned in Schedule II. In the present case we are concerned with Item No. 1 of that Schedule. It seems to us clear that that item relates only to posts and not to the personnel occupying the posts. A notice of change in respect of Item No. 1 of Schedule II does not automatically effect any retrenchment; an independent notice to retrench has also to be given under standing order No. 23(1) earlier set out. Without such notice

no retrenchment can be legally effected. If Item No. 1 of Schedule II refers to the retrenchment of employees, then on the same subject there would be two provisions, for Item No. 10 of Schedule I also deals with the retrenchment of employees. In such a case two notices for the same purpose would be required by the Act, namely, a notice under S. 42 and another notice under standing order No. 23(1). But that could not have been intended.

9. Furthermore, the language of Item No. 1 of Schedule II clearly refers to a reduction in posts. It deals with the reduction not of persons employed but with the number of persons employed. Therefore, it clearly contemplates posts. Again, this item also refers to the number of persons to be employed. That of course has nothing to do with the retrenchment of persons actually employed. Again, when a notice of change in respect of Item No. 1 of Schedule II is to be given, it is not to be given to any employee but to the representative of the employees which would include a union of employees. It could hardly have been intended that when employees were to be retrenched they would not be given any notice. The learned counsel for the appellant said that the reason for a notice of change is that when posts are reduced, the burden of the work on the remaining posts may become heavier and therefore the representative of the employees is given a hearing in this connection. This seems to be a plausible view. Again the Act provides for conciliation when there is difference between the representative of the employees and the employer regarding the subject matter of a notice of change though there is no such provision where employees are retrenched. All these considerations lead us to the view that Item No. 1 of Schedule II is concerned only with posts. The notice of November 1, 1957 was not a notice of change and its validity cannot be tested by reference to S. 42 of the Act.

10. When, therefore, an employer does not desire to reduce the posts but only to retrench certain employees holding certain posts, no question of giving a notice of change as mentioned in S. 42 of the Act arises. This is what the appellant intended to do by notice of November 1, 1957. That notice was duly given in terms of standing order No. 23(1) earlier mentioned. This is not disputed by the respondent. The appellant paid all the retrenchment compensation and salary and other dues that under the law applicable, the retrenched persons were entitled to. In our view, the notice of retrenchment dated November 1, 1957 was legal and no exception can be taken to it. If it was legally given, it does not cease to be so because within eight days a notice of change was also given. It makes no difference that at the time the earlier notice was given the appellant knew that the later notice would have to be given. We have not been shown that by the procedure followed by the appellant the employees have in any way been prejudiced. We do not see that there was any attempt by the appellant to practise a fraud upon the Act: the rights of the employees under the Act had not been affected by anything that the appellant had done. Item No. 1 of Schedule II no doubt refers to reduction of a permanent or semi-permanent character and there is nothing on the record to establish that the retrenched persons were not permanent or semi-permanent employees. But that cannot make the notice of retrenchment given on November 1, 1957 a notice of change: the notice remains what it was, that is, a notice of termination of services of employees and not a notice of reduction of posts.

11. For the reasons stated above, we think that the Courts below were wrong, and, therefore, we set aside the orders made by them. This appeal is allowed. The parties will bear their own costs throughout.

Appeal allowed.

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