Management of Kairbetta Estate, Kotagiri

Vs

Rajamanickam and Others

Civil Appeal No. 91 of 1959

(P. B. Gajendragadkar, K. C. Das Gupta JJ)

24.03.1960

JUDGMENT

GAJENDRAGADKAR, J. -

This appeal by special leave is directed against the order passed by the Labour Court at Coimbatore directing the appellant, the Management of the Kairbetta Estate, Kotagiri, to pay lay-off compensation to its workmen, the respondents, for the period between July 28, 1957, to September 2, 1957. This order was passed on a complaint filed by the respondents before the Labour Court under s. 33C(2) of the Industrial Disputes Act, XIV of 1947 (hereinafter called the Act).

The material facts leading to the respondents' complaint must be set out briefly at the outset. On July 26, 1957, Mr. Ramakrishna Iyer, the appellant's Manager, was assaulted by some of the workmen of the appellant. He suffered six fractures and had to be in hospital in Coonoor and Madras for over a month. The appellant's staff working in the division known as Kelso Division was also threatened by the workmen. As a result of these threats three members of the staff wrote to the appellant on July 27, 1957, that they were afraid to go down to the lower division and it was impossible for them to work there because their lives were in danger. They added that the workers in the lower division were threatening them that they would murder them if they worked in the lower division. On receiving this communication from its staff the appellant notified on the same day that the Kelso Division would be closed from that day onwards until further notice. This notice referred to the brutal assault on the Manager and to the threat held out against the field staff who were reluctant to face the risk of working in the lower division. It appears that the Kelso Division continued to be closed until September 2, 1957, on which date it was opened, as a result of conciliation before the labour officer, when the respondents gave an assurance that there would not be any further trouble. The claim for layoff is made for the said period during which the division remained closed between July 28 to September 2, 1957.

Soon after the division was closed the respondents made a complaint to the Labour Court (No. 43 of 1957) under s. 33A of the Act in which they alleged that they had been stopped from doing their work without notice or enquiry and claimed an order of reinstatement with back wages and continuity of service. At the hearing of the said complaint the appellant raised a preliminary objection that the closure in question was a lock-out and that it did not amount either to an alteration of conditions of service to the prejudice of the workmen nor did it constitute discharge or punishment by dismissal or otherwise under cls. A and B of s. 33 respectively, and so the petition was incompetent. This preliminary objection was upheld by the Labour Court and the complaint was accordingly dismissed on November 30, 1957.

Thereafter the present complaint was filed by the respondents on January 31, 1958, under s. 33C of the Act. In this complaint it was stated that the respondents were refused work from July 28 to September 2, 1957, "by declaring a lock-out of a division of the estate" and the claim made was that, as the management for their own reasons did not choose to run the division during the said days and laid-off the respondents, the respondents were entitled to claim lay-off compensation under s. 25C of the Act. Against this complaint the appellant raised several contentions. It was urged on its behalf that the complaint was incompetent under s. 33C and that the Labour Court had no jurisdiction to deal with it. It was also contended that the closure of the division amounted to a lock-out which under the circumstances was perfectly justified and as such the respondents were not entitled to claim any lay-off compensation. The Labour Court rejected the preliminary objection as to want of jurisdiction and held that the complaint was competent under s. 33C. On the merits it found in favour of the respondents and so it directed the appellant to pay to the respondents the lay-off compensation for the period in question. It is this order which is challenged before us in the present appeal; and the same two questions are raised before us.

For the purpose of deciding this appeal we will assume that the complaint filed by the respondents under s. 33C was competent and that the Labour Court could have entertained a claim for lay-off compensation if the respondents were otherwise entitled to it. On that assumption the question which we propose to decide is whether the closure of the appellant's division during the relevant period which amounts to a lock-out can be said to fall within the definition of lay-off. We have already pointed out that in the earlier complaint by the respondents under s. 33A it has been held by the Labour Court that the closure in question was a lock-out and as such the appellant had not contravened the provisions of s. 33 of the Act. Even in the present application the respondents have admitted that the said closure is a lock-out but they have added that a lock-out falls within the definition of lay-off and that is the basis for their claim for lay-off compensation. The question which thus arises for our decision is : Does a lock-out fall under s. 2(kkk) which defines a lay-off ?

Section 2(kkk) defines a lay-off as meaning the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched. There is an explanation to the definition which it is unnecessary to set out. It is clear that the lay-off takes place for one or more of the reasons specified in the definition. Lay-off may be due to shortage of coal or shortage of power or shortage of raw materials or accumulation of stocks or break-down of machinery or any other reason. "Any other reason" to which the definition refers must, we think, be a reason which is allied or analogous to reasons already specified. It has been urged before us on behalf of the respondents that "any other reason" mentioned in the definition need not be similar to the preceding reasons but should include any other reason of whatsoever character for which lay-off may have taken place; and in support of this argument reliance is placed on s. 25E(iii). Section 25E deals with three categories of cases where compensation is not liable to be paid to a workman even though he may have been laid-off. One of these is prescribed by s. 25E(iii); if the laying-off is due to a strike or slowing down of production on the part of workmen in another part of the establishment no compensation has to be paid. The argument is that laying-off which is specified in this clause has been excepted because, but for the exception, it would have attracted the definition of s. 2(kkk) and would have imposed an obligation on the employer to pay lay-off compensation. That no doubt is true; but we do not see how the case specified in this clause is inconsistent with the view that "any other reason" must be similar to the preceding reasons specified in the definition. If there is a strike or slowing down of production in one part of the establishment, and if lay-off is the consequence, the reason for which lay-off has taken place would undoubtedly be similar to the reasons specified

in the definition. We are, therefore, satisfied that the expression "any other reason" should be construed to mean reason similar or analogous to the preceding reasons specified in the definition. That is the view taken by the Allahabad High Court in J.K. Hosiery Factory v. Labour Appellate Tribunal of India & Anr. (A.I.R. 1956 All. 498)

Let us now consider what a lock-out means under the Act. Section 2(1) defines a lock-out as meaning the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. It may be relevant to point out that the definition of lock-out contained in s. 2(e) of the Trade Disputes Act, 1929 (VII of 1929), had, in addition to the present definition under s. 2(1), included an additional clause describing a lock-out which provided that "such closing, suspension or refusal occurs in consequence of a dispute and is intended for the purpose of compelling those persons or of aiding another employer in compelling persons employed by him to accept terms or conditions of or affecting employment". This clause has now been deleted. Even so, the essential character of a lock-out continues to be substantially the same. Lock-out can be described as the antithesis of a strike. Just as a strike is a weapon available to the employees for enforcing their industrial demands, a lock-out is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands. In the struggle between capital and labour the weapon of strike is available to labour and is often used by it, so is the weapon of lock-out available to the employer and can be used by him. The use of both the weapons by the respective parties must, however, be subject to the relevant provisions of the Act. Chapter V which deals with strikes and lock-outs clearly brings out the antithesis between the two weapons and the limitations subject to which both of them must be exercised. Thus the concept of lock-out is essentially different from the concept of lay-off, and so where the closure of business amounts to a lock-out under s. 2(1) it would be impossible to bring it within the scope of lay-off under s. 2(kkk). As observed by the Labour Appellant Tribunal in M/S. Presidency Jute Mills Co. Ltd. v. Presidency Jute Mills Co. Employees' Union ((1952) L.A.C. 62), in considering the essential character of a lock-out its dictionary meaning may be borne in mind. According to the dictionary meaning lock-out means "a refusal by the employer to furnish work to the operatives except on conditions to be accepted by the latter collectively".

Stated broadly lay-off generally occurs in a continuing business, whereas a lock-out is the closure of the business. In the case of a lay-off, owing to the reasons specified in s. 2(kkk) the employer is unable to give employment to one or more workmen. In the case of a lock-out the employer closes the business and locks out the whole body of workmen for reasons which have no relevance to causes specified in s. 2(kkk). Thus the nature of the two concepts is entirely different and so are their consequences. In the case of a lay-off the employer may be liable to pay compensation as provided by s. 25(C), (D) and (E) of the Act; but this liability cannot be invoked in the case of a lock-out. The liability of the employer in cases of lock-out would depend upon whether the lock-out was justified and legal or not; but whatever the liability, the provisions applicable to the payment of lay-off compensation cannot be applied to the cases of lock-out. Therefore, we hold that the lock-out in the present case was not a lay-off, and as such the respondents are not entitled to claim any law-off compensation from the appellant. Incidentally we would like to add that the circumstances of this case clearly show that the lock-out was fully justified. The appellant's Manager had been violently attacked and the other members of the staff working in the lower division were threatened by the respondents. In such a case if the appellant locked out his workmen no grievance can be made against its conduct by the respondents.

In the result the appeal is allowed, the order passed by the Labour Court is set aside and the

complaint filed by the respondents under s. 33C is dismissed. There would be no order as to costs. Appeal allowed.

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