SUPREME COURT OF INDIA

Workmen

Vs.

Mgmt. of the Bangalore, W.C. and S. Mills Co, Ltd.

C.A.No.165 of 1960

(P. B. Gajendragadkar, A. K. Sarkar and K. N. Wanchoo, JJ.)

25.01.1962

JUDGEMENT

SARKAR, J.:

1. The appellants are the workmen of the Bangalore Woollen, Cotton and Silk Mills Co., Ltd. and this Company is the respondent in his appeal.

2. In or about 1951, certain disputes had cropped up between the parties which had been referred to an Industrial Tribunal for adjudication under the Industrial Disputes Act, 1947, hereafter called the principal Act. One of the disputes so referred concerned "payment of bonus at the rate of one month's pay for every year to all workers with long service but discharged as being no longer required." On December 4, 1952, the Tribunal made its award deciding this question against the workmen and holding at the demand was not justified in view of the amenities provided by the management. The workmen went up in appeal against this decision to the Labour Appellate Tribunal. While the appeal was pending there, Ordinance No. 5 of 1958 was promulgated by the President and by this Ordinance the Industrial Disputes Act, 1947 was amended by the addition of certain sections to it providing for compensation for lay-off and retrenchment. This Ordinance came into force on October 24, 1953. Thereafter the parties settled the appeal pending before the Labour Appellate Tribunal and filed a joint memorandum of compromise. The Labour Appellate Tribunal on December 18, 1958, passed orders disposing of the appeal in terms of the aforesaid compromise. Clause 5 of the memorandum which was incorporated in the award of the Labour Appellate Tribunal was in these terms :-

"The management agree "to give Gratuity according to the terms of Ordinance No. 5 of 1958 (Central) as from 1-1-1958."

Five days later the aforesaid Ordinance was repealed and replaced by Act XLIII of 1958.

3. Soon after this award a dispute arose between the workmen and the Company as to whether sixty workmen whose services with the Company had come to end for various reasons were entitled to payment in terms of the award of December 18, 1953 Of these sixty workmen thirty-seven had been discharged by the Company on account of old age and inefficiency but without any official enquiry as to their health. The Company agreed to and did pay these persons certain moneys under the award of December 18, 1958. The dispute concerning them therefore no longer survived. That left twenty-three persons. Of these twenty-three one had been dismissed for misconduct, another had

been discharged before January 1, 1953, four had resigned, seven had died and the remaining ten had been discharged on grounds of health after proper medical examination. The workmen contended that these twenty-three persons were all entitled to payment under the aforesaid award. The Company however refused to accede to this contention.

4. In these circumstances on August 1, 1957, the Government of Mysore referred the following disputes for adjudication under the Industrial Disputes Act -

(1) Whether gratuity is payable under Cl. 5 of the decision of the Labour Appellate Tribunal dated the 18th December, 1953. . . .. . according to the provisions of Ordinance No. 5 of 1953, or according to the provisions of Act 43 of 1953 ?

(2) Who, if any, among the persons shown in Annexure 'A' will be entitled to gratuity,

(a) if Ordinance No. 5 of 1953 applies?

(b) if Act 43 of 1953 applies ?

(3) To what amount would each be entitled if any ?

The disputes so referred concerned the twenty-three persons earlier mentioned and named in Annexure 'A' to the order of reference.

5. The Tribunal made an award on this reference on March 6, 1958 by which in substance it held that the workmen were not entitled to any gratuity under the terms of the Ordinance but they were entitled to gratuity under the gratuity scheme in force in the, Company's works, but at the rate specified in the Ordinance. The present appeal is by the workmen against this award. It is not in dispute that excepting in the case of the person dismissed for misconduct, in all other cases the Company had paid gratuity under the scheme prevailing in its works, such payment being made in the case of the workmen who had died, to their legal representatives. The claim on which the award under appeal was made was for payment in addition to the payment under the said gratuity scheme.

6. The question that arises in this appeal is really one of construction of the award of December 18, 1953. Mr. Jha appearing for the workmen based his claim on the definition of the word "retrenchment" introduced into the principal Act by Ordinance 5 of 1953. That definition was in these terms: 'retrenchment" means the termination of service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action : (see S. 2 (00)) of the principal Act). Section 25-E which was introduced into the principal Act by the Ordinance provided for payment of certain gratuity or compensation for retrenchment. Mr. Jha's contention is that 'retrenchment' means termination of service for any reason other than by way of disciplinary action and therefore all workmen whose services had been terminated except by way of disciplinary action were entitled to the compensation under S. 25-E in view of the award. To clear the ground it may be stated that even if Mr. Jha is right, then thirteen of the twenty-three- persons would not be entitled, to any gratuity under the award. As we have stated earlier, one of them was discharged for misconduct, that is, that was a case of termination of service by way of disciplinary action and therefore not retrenchment within the definition. Another of these twenty-three persons had been discharged before January 1, l953 and the award only applied to workmen whose services had been terminated as from that date. This workman also was therefore not entitled to the benefit of the award. Seven had died and four had resigned. These eleven therefore had not been retrenched for their services could not be said to have been terminated. That leaves only ten workmen who had

been discharged on grounds of health. As we understood Mr. Jha, he fairly conceded that he could not press the case of any workman excepting these ten.

7. Now the question with regard to these ten workmen is whether they can be said to have retrenched within the meaning of the definition. It seems to us that they cannot. The award has first to be read along with the dispute referred in connection with which it had been made. That dispute concerned payment of bonus to workmen as "discharged as being no longer required." It therefore clearly contemplated workmen who were surplus but who were otherwise fit and willing to continue in service if their service had been needed. The award settled this dispute. Therefore it seems to us that the Company agreed by it to pay gratuity only to workmen who had been discharged on the ground that their services were no longer required and not to any whose services had been terminated for any other reason. Now when a workman is discharged on the ground that he is medically unfit as happened in the case of the ten workmen with whom alone we are concerned in this appeal, is cannot be said that they had been discharged on the ground that their services were no longer required; on the contrary they were not in a fit condition of health to continue in service at all. Their physical condition prevented them from rendering the service for which they had been employed. The reason for their discharge was that they could not render the services required of them and which under the contracts of service they were bound to render. Their services cannot be said to have been terminated on the ground that such services were not required.

8. But Mr. Jha says that we have to construe the award by itself. According to him, under the award the Company is bound to pay gratuity according to the terms of the Ordinance, and, therefore, to all whose services were terminated by way of retrenchment within the definition of that word inserted in the principal Act by the Ordinance. We do not think that this contention either of Mr. Jha is tenable. The definition makes 'retrenchment a termination of service. It seems to us that a service cannot be said to be terminated unless it was capable of being continued. If it is not capable of being continued, that is to say, in the same manner in which it had been going on before, and it is, therefore, brought to an end, that is not a termination of the service. It is the contract of service which is terminated and that contract requires certain physical fitness in the workmen. Where therefore a workman is discharged on the ground of ill-health, it is because he was unfit to discharge the service which he had undertaken to render and therefore it had really come to an end itself. That this is the idea involved in the definition of the word "retrenchment' is also supported by S. 25-G of the Act which provides that where any workmen are retrenched, and the employer proposes to take in his employ any person he shall give an opportunity to the retrenched workmen to offer themselves for reemployment and the latter shall have preference over other persons in the matter of employment. Obviously, it was not contemplated that one whose services had been terminated on grounds of physical unfitness or ill-health would be offered re-employment; it was because his physical condition prevented him from carrying out the work which he had been given that he had to leave and no question of asking such a person to take up the work again arises. If could not do the work, he could not be offered employment again. It would fallow that such a person cannot be said to have been retrenched within the meaning of the Act as amended by the Ordinance.

9. We therefore think that the ten persons who had been discharged on grounds of health-and as to this there does not appear to be any dispute-were not persons who were entitled to any payment under Ordinance No. 5 of 1953.

10. Mr. Jha made a point that the Company paid thirty-seven workmen whom it had dismissed on grounds of health and it was discriminatory on its part not to pay those ten discharged on similar grounds. We are here not concerned with discrimination but with the construction of the award.

Furthermore, as it was stated on behalf of the Company, it was not in a position for whatever reason it may have been, to prove that the thirty-seven men were medically unfit. So the discharge of these men was termination of their services by the Company. In this view the Company could not dispute that they were entitled to payment under the award. In the case of the ten persons with whom we are concerned, the Company can prove that they were physically unfit to do the work. That they were so is, as we have earlier said, not in dispute. Hence the two sets of workmen were entirely differently situated. No question of discrimination therefore arises.

11. In our view therefore the claim of the workmen in this case is not well founded. A question appears to have been raised before the Tribunal as to whether in view of the fact that the Ordinance was repealed by an Act, it was the Ordinance under which gratuity would be payable under the award, or the Act. It appears to have been the contention on behalf of the Company that the Act governed the case, the workmen contending that the Ordinance did so. We think it unnecessary to decide the question for it has not been contended on behalf of the workmen that their position would be any better under the Ordinance than under the Act, and because in our view under the Ordinance on which only the workmen based themselves their claim cannot be supported.

12. In the result we dismiss the appeal with costs.

Appeal dismissed.

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