Anakapalla Co-Operative Agricultural and Industrial Society Limited

Vs

Workmen

Civil Appeal No. 224 of 1962

(P. B. Gajendragadkar, K. N. Wanchoo, N. Rajgopala Ayyangar, A. K. Sarkar, K. C. Das Gupta JJ)

23.10.1962

JUDGMENT

GAJENDRAGADKAR, J. –

The principal question which arises in this appeal has relation to the scope and effect of s. 25-FF of the Industrial Disputes Act, 1947 (14 of 1947) (hereinafter called the Act). An industrial dispute between the appellant, Anakapalla Co-operative Agricultural & Industrial Society, and the respondents, its workmen, was referred by the Governor of Andhra Pradesh for adjudication to the Industrial Tribunal, Hyderabad, under s. 10(1)(d) of the Act on December 7, 1960. The respondents who were in the employment of Vizagapatnam Sugar and Refinery Ltd. (hereinafter called the Company) claimed that they were entitled to re-employment in the said concern which had been purchased by the appellant, and since their demand for re-employment by the appellant was not accepted by it, they represented to the State Government that the said demand should be adjudicated upon by an Industrial Tribunal. That is how their demand for re-employment came to be referred under s. 10(1)(d).

It appears that the Company was an old Company which manufactured sugar. Its business, however, did not result in profits, because the supply of sugar-cane was insufficient and the management apprehended that it could not face the losses from year to year, and so, it thought of shifting its business to Yerravaram in East Godavari where it anticipated that the supply of sugar-cane was assured. This attempt of the management, however, did not succeed because of the local cane growers. The local cane growers decided to form a co-operative society themselves and to purchase the concern of the Company. Accordingly, the appellant Society was formed and the sale transaction was effected between the said concern and the appellant on October 7, 1959. It was agreed between the appellant and the Company that the Company should pay retrenchment compensation to its employees and terminate their services leaving the appellant full freedom to choose its own employees. Accordingly, Rs. 1,90,000/- were paid by the Company to its employees by way of retrenchment compensation. Before the completion of this transaction, however, the employees had suggested that their Union could itself purchase the concern, but the Union could not manage to effect the proposed sale transaction. It, however, suggested that the compensation of Rs. 1,90,000/- which the Company had to pay to its employees may be credited to the account of the Society and the employees paid the said amount by instalments, but this suggestion was not accepted and as a result of the sale transaction, the appellant took over the concern and employed such persons as it needed according to the recommendations of a committee appointed by the appellant in that behalf. It appears that on the rolls of the Company, there used to be 800 workmen in all; of these 329 were permanent workmen, whereas 471 workmen joined the Company as seasonal workmen. The appellant has employed 678 employees in all, 248 of whom are permanent and the rest seasonal

employees. Out of 248 employees who are engaged on a permanent basis, 220 are from amongst the employees of the Company and about 28 have been newly appointed. In the result, about 49 permanent employees and 103 seasonal employees of the Company have not been absorbed by the appellant and the demand which has been referred for adjudication in the present proceedings is that these permanent and seasonal employees should be absorbed by the appellant.

The appellant disputed this claim on three grounds. It urged that the dispute referred to the adjudication of the Tribunal was not an industrial dispute and so, the reference was incompetent. This argument was based on the allegation that the Thummapala Sugar Workers Union which had sponsored the present demand was not a representative Union. On its roll, a very small number of the appellant's present employees were shown as members. The bulk of its membership consisted of the previous employees of the Company. The appellant's employees have formed a separate Union of their own and this latter Union has not only not sponsored the present demand, but it seeks to resist it. The Tribunal considered the evidence bearing on this point and held that the sponsoring Union was, in law, competent to raise the present industrial dispute, and so, it rejected the appellant's contention about the invalidity of the reference.

The next contention raised by the appellant was that it was not a successor-in-interest of the Company and as such, under industrial law, the claim made by the respondents for re-employment of the permanent and the seasonal employees was not sustainable. The Tribunal has held that the appellant is a successor-in-interest of the Company and so, it has come to the conclusion that the demand for re-employment of the said specified employees was permissible under the industrial law.

The last argument raised by the appellant was that it had already employed a full complement of the labour force that it needed and so, there was no scope for the re-employment of any of the workmen on whose behalf the present dispute was raised. This contention has been rejected by the Tribunal and it has ordered the appellant to re-employ as many of the permanent employees out of 49 as were left out in favour of the new employees as and when vacancies occur. In regard to the seasonal employees, it made a similar direction. This order requires the appellant to guarantee to the re-employed workmen continuity of service and one-fourth of the back wages. The Tribunal has, however, held that if the Society has employed less workers, then only as many old workers should be reinstated as the new workers appointed in their place. In that case, the old workers will be absorbed in the order of seniority. It is against this order that the appellant has come to this Court by special leave.

The first question which falls to be considered in this appeal is whether the appellant is a successor-in-interest of the Company. The learned Solicitor-General contends that the agreement of sale under which the appellant has arrived on the scene, clearly shows that it cannot be treated as a successor-in-interest of the Company. The terms of the agreement of sale show that the appellant has left with the Company a part of its land, its investments to the tune of Rs. 19 lakhs and its liability to the tune of Rs. 27 lakhs. 4,000 bags of processed sugar have also been left with the Company at the time of the transaction. Clause 8 of the agreement provides that the Company will be entitled to withdraw and appropriate to itself all advances, part payments and deposits made by it either in cash or security and the Society shall have no right over them Clause 13 similarly provides that the Company will pay all its liabilities, secured and unsecured, determined or to be determined, and the Society will not be liable to pay the same. Under cl. 11, the godown in which the stocks of sugar were stored was to continue in the possession of the Company free of rent or compensation until the entire stock was released, sold and delivered. The Company had also agreed to terminate the

services of its employees on or before October 9, 1959, and cl. 7 which deals with this topic, has provided that whatever claims are to be paid to such employees on account of such termination will be paid by the Company. The appellant has also not purchased the goodwill of the Company. The argument, therefore, is that though the work of the Company was, in a sense, a going concern when it was purchased by the appellant, the appellant had not purchased the entire concern including the goodwill; and so, it would be inappropriate to describe the appellant as the successor-in-interest of the Company.

In support of his argument, the learned Solicitor-General has relied on the decision of the Labour Appellant Tribunal in the case of Ramjilal Nathulal v. Himabhai Mills Company Ltd. [(1956) II L.L.J. 244.]. In that case, the Appellate Tribunal had to consider the effect of two transfers : (1) in favour of the Himabhai Mills Company Ltd., and (2) in favour of the New Gujarat Cotton Mills Company Ltd. The decision of the Appellate Tribunal was that the first transfer did not make the transferee a successor-in-interest, whereas the second one did. In regard to the first transfer, it was found that the transferee Company had not purchased the transferor Company as a going concern and had not accepted any liabilities of the old Company and had started a completely new business of its own. On the other hand, under the second transfer, the transferee had purchased not only all the tangible assets of the old Company, but the goodwill which was expressly valued in the sale-deed at a very large sum of Rs. 3 lakhs. It was also found that the transferee Company carried on the same business as the transferor Company in the result, the employees of the transferor Company in the first transaction were held not entitled to make a claim for re-employment by the transferee Company, whereas a claim made by the employees of the transferor Company in regard to the second transfer was held to be sustainable in law. It appears that this decision was challenged by a writ petition before the Bombay High Court, and the High Court took the view that in view of the relevant findings recorded by the Labour Appellate Tribunal in respect of the transfer in favour of the New Gujarat Cotton Mills Ltd., there would be no justification to interfere under Art. 226 of the Constitution, vide New Gujarat Cotton Mills Ltd. v. Labour Tribunal [1957 II L.L.J. 194.].

The learned Solicitor-General has also referred to another decision of the Labour Appellate Tribunal in the case of Antony D'Souza v. Sri Motichand Silk Mills [(1954) I L.L.J. 793.]. The question which fell for the decision of the Appellate Tribunal in that case was whether the purchaser could be said to be successor-in-interest within the meaning of s. 114 of the Bombay Industrial Relations Act, and it was held that the purchaser was not a successor-in-interest, because the transaction was a purchase of only plant, machinery and accessories and not of a going concern or running business. We ought, however, to add that the decision in this case was substantially, if not entirely, based on the fact that the workmen of the transferor Company had executed a document in which specific and unambiguous demands had been made which supported the purchaser's claim that the transfer did not make the purchaser a successor-in-interest of the vendor. This question was sought to be raised before this Court in the case of Workmen of Dahingeapara Tea Estate v. Dahingeapara Tea Estate [A.I.R. (1958), S.C. 1026.] as well as in the case of Keys Constructions Co. (Private) Ltd. v. Its Workmen [A.I.R. (1959) S.C. 208.], but on both the occasion, the Court thought it unnecessary to decide it.

The question as to whether a purchaser of an industrial concern can be held to be a successor-in-interest of the vendor will have to be decided on a consideration of several relevant facts. Did the purchaser purchase the whole of the business ? Was the business purchased a going concern at the time of the sale transaction ? Is the business purchased carried on at the same place as before ? Is the business carried on without a substantial break in time ? Is the business carried on by the purchaser the same or similar to the business in the hands of the vendor ? If there has been a break in the

continuity of the business, what is the nature of the break and what were the reasons responsible for it ? What is the length of the break ? Has goodwill been purchased ? Is the purchase only of some parts and the purchaser having purchased the said parts purchased some other new parts and started a business of his own which is not the same as the old business but is similar to it ? These and all other relevant factors have to be borne in mind in deciding the question as to whether the purchaser can be said to be a successor-in-interest of the vendor for the purpose of industrial adjudication. It is hardly necessary to emphasise in this connection that though all the facts to which we have referred by way of illustration are relevant, it would be unreasonable to exaggerate the importance of any one of these facts or to adopt the inflexible rule that the presence or absence of any one of them is decisive of the matter one way or the other. If industrial adjudication were to insist that a purchaser must purchase the whole of the property of the vendor concern before he can be regarded as a successor-in-interest, it is quite likely that just an insignificant portion of the property may not be the subject-matter of the conveyance and it may be urged that the exclusion of the said fraction precludes industrial adjudication from treating the purchaser as a successor-in-interest. Such a plea, however, cannot be entertained for the simple reason that in deciding this question, industrial adjudication will look at the substance of the matter and not be guided solely by the form of the transfer. What we have said about the entirety of the property belonging to the vendor concern, will apply also to the goodwill which is an intangible asset of any industrial concern. If goodwill along with the rest of the tangible property has been sold, that would strongly support the plea that the purchaser is a successor-in-interest; but it does not follow that if goodwill has not been sold, that along will necessarily show that the transferee is not a successor-in-interest. The decision of the question must ultimately depend upon the evaluation of all the relevant factors and it cannot be reached by treating any one of them as of over-riding or conclusive significance.

It is in the light of this legal position that the question about the character of the appellant vis-a-vis the vendor company has to be judged. It would be recalled that the vendor company sold the concern to the appellant because it was faced with the problem of recurring losses, and so, the appellant, in purchasing the concern, was not prepared to have both the advances and the outstandings included in the sale transaction. The appellant Society has been formed by the local cane growers with the object of manufacturing sugar which would suit each one of them in turn and so, the purchaser was not particularly interested in including the goodwill of the Company in the sale transaction. The exclusion of 4,000 bags of processed sugar shows that the purchaser wanted to accommodate the Company in that matter. On the other hand, the appellant has carried on the business of the Company without an appreciable break; the business thus carried on is the same as that of the Company, the place of business is the same, and the very object of entering into the sale transaction was to enable the local cane growers to carry on the business of the Company. Therefore, we are inclined to take the view that having regard to all the relevant facts in case, the Tribunal was right in law in coming to the conclusion that the appellant is a successor-in-interest of the Company.

That takes us to the question as to what would be the nature of the appellant's liability to the employees of the Company. Before s. 25-FF was introduced in the Act in 1956, this question was considered by industrial adjudication on general considerations of fairplay and social justice. In all cases where the employees of the transferor concern claimed re-employment at the hands of the transferee concern, industrial adjudication first enquired into the question as to whether the transferee concern could be said to be a successor-in-interest of the transferor concern. If the answer was that the transferee was a successor-in-interest in business, then industrial adjudication considered the question of re-employment to the light of broad principles. It enquired whether the refusal of the successor to give re-employment to the employees of his predecessor was capricious

and unjustified, or whether it was based on some reasonable and bonafide grounds. In some cases, it appeared that there was not enough amount of work to justify the absorption of all the previous employees; sometimes the purchaser concern needed bonafide the assistance of better qualified and different type of workers; conceivably, in some cases, the purchaser has previous commitments for which he is answerable in the matter of employment of labour; and so, the claim of re-employment made by the employees of the vendor concern had to be weighed against the pleas made by the purchaser concern for not employing the said employees and the problem had to be resolved on general grounds of fairplay and social justice. In such a case, it was obviously impossible to lay down any hard and fast rules. Indeed, experience of industrial adjudication shows that in resolving industrial disputes from case to case and from time to time, industrial adjudication generally avoids - as it should - to lay down inflexible rules because it is of the essence of industrial adjudication that the problem should be resolved by reference to the facts in each case so as to do justice to both the parties. It was in this spirit that industrial adjudication approached this problem until 1956 when s. 25-FF was introduced in the Act. Sometimes, the claim for re-employment was allowed, or sometimes the claim for compensation was considered. But it is significant that no industrial decision has been cited before us prior to 1956 under which the employees were held entitled to compensation against the vendor employer as well as re-employment at the hands of the purchaser on the ground that it was a successor-in-interest of the vendor.

It was in the background of this broad position which had evolved out of industrial adjudications that the Legislature enacted s. 25-FF on September 4, 1956. As it was then inserted, s. 25-FF read thus :-

> "Notwithstanding anything contained in section 25-F, no workmen shall be entitled to compensation under that section by reason merely of the fact that there has been a change of employers in any case where the ownership or management of the undertaking in which he is employed is transferred, whether by agreement or by operation of law, from one employer to another :-
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> Provided that -
>
> (a) the service of the workman has not been interrupted by reason of the transfer;
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> (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
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> (c) the employers to whom the ownership or management of the undertaking is so transferred is, under the terms of the transfer or otherwise, legally liable to pay to the workman, in the event of his retrenehment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer."

It may be relevant to add that this section conceivably proceeded on the assumption that if the ownership of an undertaking was transferred, the cases of the employees affected by the transfer would be treated as cases of retrenchment to which s. 25-F would apply. That is why s. 25-FF begins with a non-obstante clause and lays down that the change of ownership by itself will not entitle the employees to compensation, provided the three conditions of the proviso are satisfied. Prima facie, if the three conditions specified in the proviso were not satisfied, retrenchment compensation would be payable to the employees under s. 25-F; that apparently was the scheme

which the Legislature had in mind when it enacted s. 25-FF in the light of the definition of the word "retrenchment" prescribed by s. 2(oo) of the Act.

The validity of this assumption was, however, successfully challenged before this Court in the case of Hariprasad Shivshankar Shukla v. A.D. Divikar [[1957] S.C.R. 121.]. In that case, this Court was called upon to consider the true scope and effect of the concept of retrenchment as defined in s. 2(oo) and it held that the said definition had to be read in the light of the accepted connotation of the word, and as such, it could have no wider meaning than the ordinary connotation of the word, and according to his connotation, retrenchment means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and does not include termination of services of all workmen on a bonafide closure of industry or on change of ownership or management thereof. In other words, the effect of this decision was that though the definition of the word "retrenchment" may perhaps have included the termination of services caused by the closure of the concern or by its transfer, these two latter cases could not be held to fall under the definition because of the ordinary accepted connotation of the said word. This decision necessarily meant that the word "retrenchment" in s. 25FF had to bear a corresponding interpretation. In that case, the employees of the Barsi Light Railway Company Ltd. had made a claim for retrenchment compensation under s. 25-FF against the purchaser of the Railway Co., and the employees of the Shri Dinesh Mills Ltd. had made a similar claim against their employer on the ground that the Mills had been closed. These claims had been allowed by the Bombay High Court and the employers had come to this Court in appeal. This Court having held that the word "retrenchment" necessarily postulated the termination of the employees' services on the ground that the employees had become surplus, allowed the appeals preferred by the employers and held that the employees' claim against the purchaser in one case and against the employer who had closed his business in the other, could not be sustained. Thus, as a result of this decision, it was realised that if the object of the legislature in introducing section 25-FF was to enable the employees of the transferor concern to claim retrenchment compensation unless the three conditions of the proviso to the said section were satisfied, it could not be carried out any longer. The decision of this Court in Hariprasad's case [[1957] S.C.R. 121.] was pronounced on November 27, 1956.

This decision led to the promulgation of an Ordinance No. 4 of 1957. By this Ordinance, the original s. 25-FF as it was inserted on September 4, 1956, was substantially altered. Section 25-FF as it has been enacted by the Ordinance reads thus:-

> "Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking, immediately before such transfer, shall be entitled to notice and compensation in accordance with the provisions of s. 25-F, as if the workman had been retrenched :
>
> Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if -
>
> (a) the service of the workman has not been interrupted by such transfer;
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> (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

(c) the new employer is, under the terms of the transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer."

In due course, this Ordinance was followed by Act 18 of 1957 on June 6, 1957. By this Act, s. 25-FF as it was enacted by the Ordinance has been introduced in the parent Act. It would be noticed that the Ordinance came into force retrospectively as from December 1, 1956, that is to say, three days after the judgment of this Court was pronounced in Hariprasad's case [[1957] S.C.R. 121.].

The Solicitor-General contends that the question in the present appeal has now to be determined not in the light of general principles of industrial adjudication, but by reference to the specific provisions of s. 25-FF itself. He argues, and we think rightly, that the first part of the section postulates that on a transfer of the ownership or management of an undertaking, the employment of workmen engaged by the said undertaking comes to an end, and it provides for the payment of compensation to the said employees because of the said termination of their services, provided, of course, they satisfied the test of the length of service prescribed by the section. The said part further provides the manner in which and the extent to which the said compensation has to be paid. Workmen shall be entitled to notice and compensation in accordance with the provisions of s. 25-F, says the section, as if they had been retrenched. The last clause clearly brings out the fact that the termination of the services of the employees does not in law amount to retrenchment and that is consistent with the decision of this Court in Hariprasad's case [[1957] S.C.R. 121.]. The Legislature, however, wanted to provide that though such termination may not be retrenchment technically so-called, as decided by this Court, nevertheless the employees in question whose services are terminated by the transfer of the undertaking should be entitled to compensation, and so, s. 25-FF provides that on such termination compensation would be paid to them as if the said termination was retrenchment. The words "as if" bring out the legal distinction between retrenchment defined by s. 2(oo) as it was interpreted by this Court and termination of services consequent upon transfer with which it deals. In other words, the section provides that though termination of services on transfer may not be retrenchment, the workmen concerned are entitled to compensation as if the said termination was retrenchment. This provision has been made for the purpose of calculating the amount of compensation payable to such workmen; rather than provide for the measure of compensation over again, s. 25-FF makes a reference to s. 25-F for that limited purpose, and, therefore, in all cases to which s. 25-FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against the transferee of the said concern.

The scheme of the proviso to s. 25-FF emphasises the same policy. If the three conditions specified in the proviso are satisfied, there is no termination of service either in fact or in law, and so, there is no scope for the payment of any compensation. That is the effect of the proviso. Therefore, reading section 25-FF as a whole, it does appear that unless the transfer falls under the proviso, the employees of the transferred concern are entitled to claim compensation against the transferor and they cannot make any claim for re-employment against the transferee of the undertaking. Thus, the effect of the enactment of s. 25-FF is to restore the position which the Legislature had apparently in mind when s. 25-FF was originally enacted on September 4, 1956. By amending s. 25-FF, the Legislature has made it clear that if industrial undertakings are transferred, the employees of such transferred undertakings should be entitled to compensation, unless, of course, the continuity in their service or employment is not disturbed and that can happen if the transfer satisfies the three requirements of the proviso.

In this connection, it is necessary to point out that even before s. 25-FF was introduced in the Act for the first time, when such questions were considered by industrial adjudication on general grounds of fair play and social justice, it does not appear that employees of the transferred concern were held entitled to both compensation for termination of service and immediate re-employment at the hands of the transferee. The present position which results from the enactment of s. 25-FF, as amended, is, therefore, substantially the same as it was at the earlier stage. It is common ground that if a transfer is fictitious or 'benami', s. 25-FF has no application at all. In such a case, there has been no change of ownership or management and despite an apparent transfer, the transferor employer continues to be the real employer and there has to be continuity of service under the same terms and conditions of service as before and there can be no question of compensation.

Mr. Chari, however, urges that the present case ought to be governed by the provisions of s. 25-H of the Act. This argument proceeds on the assumption that the case of termination of service resulting from the transfer of ownership or management of an undertaking to which s. 25-FF applies is a case of retrenchment properly so called. In our opinion, this assumption is clearly not well-founded. The first difficulty in accepting the correctness of this assumption is the decision of this Court in Hariprasad's case [[1957] S.C.R. 121.] to which we have already referred. The decision of this Court in that case clearly shows that the termination of services resulting from transfer or closure is not retrenchment, and it is on the basis of the correctness of this decision that s. 25-FF as amended has been enacted. Besides, on a construction of s. 25-FF itself, it is difficult to equate the termination of services with which it deals, with retrenchment covered by s. 25-F. As we have already indicated, s. 25-F is referred to in s. 25-FF to enable the assessment of compensation payable to the employees covered by s. 25-FF. The clause "as if" clearly shows the distinction between retrenchment under s. 2(oo) and termination of service under s. 25-FF. In this connection, we may refer to the decision of this Court in M/s. Hatisingh Manufacturing Co. Ltd. v. Union of India [[1960] 3 S.C.R. 528.]. Inthat case, this Court had to consider the effect of the words "as if" occurring in s. 25-FFF, and it has been held that by the use of the words "as if the workmen had been retrenched" under the said section, the Legislature has not sought to place closure of an undertaking on the same footing as retrenchment under s. 25-F. Therefore, the plea that s. 25-H applies to the present case cannot be accepted.

Mr. Chari then argued that though in terms s. 25-H may not apply to the present case, the general principle underlying the provisions of the said section should be invoked in dealing with the claim made by the respondents against the appellant. His argument is that too much emphasis should not be placed on the identity of the individual employer in dealing with the present question and he suggested that what is important to bear in mind is the identity of the undertaking which was run by the vendor before and which is run by the vendee now. If the undertaking is the same, there is no reason why the workman should not be entitled to claim continuity of service in the said undertaking. In our opinion, this argument is misconceived. Once we reach the conclusion that in the case of a transfer of any undertaking the Legislature has by s. 25-FF provided for payment of compensation to the employees on the clear and distinct basis that their services have been terminated by such transfer, it is difficult to see how any questions of fair play or social justice would justify the claim by the respondents that they ought to be re-employed by the appellant. It is true that in cases falling under s. 25-F, workmen may get retrenchment compensation and they may yet be able to claim re-employment under s. 25-H and in that sense, some workmen may get both retrenchment compensation and re-employment. That is no doubt the effect of reading s. 25-F and s. 25-H together. But it must be borne in mind that in the case of retrenchment, the undertaking continues and only some workmen are discharged as surplus and it is the problem of re-employment of this small number of discharged workmen that is tackled by s. 25-H. Besides, under s. 25-H, a

discharged workman may not be entitled to claim re-employment immediately after retrenchment or even soon thereafter. It is only if the employer who discharged him as surplus requires additional workmen that his opportunity may occur. In the present case, however, the position is entirely different. As soon as the transfer is effected under s. 25FF, all employees are entitled to claim compensation, unless, of course, the case of transfer falls under the proviso; and if Mr. Chari is right, these workmen who have been paid compensation are immediately entitled to claim re-employment from the transferee. This double benefit in the form of payment of compensation and immediate re-employment cannot be said to be based on any considerations of fair play or justice. Fair play and justice obviously mean fair play and social justice to both the parties. It would, we think, not be fair that the vendor should pay compensation to his employees on the ground that the transfer brings about the termination of their services, and the vendee should be asked to take them back on the ground that the principles of social justice require him to do so. In this connection, it is relevant to remember that the industrial principle underlying the award of retrenchment compensation is, as observed by this Court in the case of The Indian Hume Pipe Co. Ltd. v. The Workmen [[1960] 2 S.C.R. 32.], "to give partial protection to workmen who are thrown out of employment for no fault of their own, to tide over the period of unemployment"; and in that sense, the said compensation is distinguishable from gratuity. Therefore, if the transferor is by statute required to pay retrenchment compensation to his workmen, it would be anomalous to suggest that the workmen who received compensation are entitled to claim immediate re-employment in the concern at the hands of the transferee. The contention that in cases of this kind, the workmen must get retrenchment compensation and re-employment almost simultaneously is inconsistent with the very basis of the concept of retrenchment compensation. We are, therefore, satisfied that the general principles of social justice and fair play on which this alternative argument is based, do not justify the claim made by the respondents.

In the result, the appeal is allowed and the award is set aside. There would be no order as to costs.

Appeal allowed.

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