

Management of Hindustan Steel Ltd.

Vs

The Workmen and Others

Civil Appeal No. 175 of 1971

(C. A. Vaidialingam, I. D. Dua, A. Alagiriswami JJ)

12.01.1973

JUDGMENT

DUA, J. –

1. The Management of Hindustan Steel Ltd., Ranchi challenges in this appeal by special leave the award made by the Industrial Tribunal, Bihar, Patna, dated July 20, 1970, on a reference of the following industrial dispute between the management and their workmen represented by Hindustan Steel Ltd. Employees' Union, Ranchi :

"Whether the retrenchment of Shri Venkatesan, Ex-Overseer, Housing Colony Construction Scheme of Hindustan Steel Ltd., Ranchi, is proper and justified ? If not, what relief is he entitled to ?"

2. According to the written statement filed by the Management Shri R. Venkatesan Naidu, the workman concerned (hereinafter to be referred as Shri Naidu) was recruited to the work-charged establishment of the Ranchi Housing Project undertaken in 1960, on a consolidated salary of Rs. 250/- p.m. He was recruited in March, 1960, and it was made clear to him that the post was purely temporary subject to termination with or without notice. Shri Naidu joined duty on March 15, 1960, after accepting those conditions. He later applied for the post of Overseer in the same establishment of the Ranchi Housing Project in response to an advertisement and an offer for his appointment as an Overseer was made to him on June 15, 1960, clearly stating that his appointment would continue up to March 31, 1961, though it would be extended in case his services were to be required beyond that date. This appointment was also stated to be purely temporary, terminable at any time without assigning any reason and without giving any notice. Shri Naidu assumed charge of the post of Overseer on June 20, 1960. The construction and the connected residuary work relating to the Ranchi Housing Project were over by the end of the year 1966, and it was decided to wind up this project and retrench 13 workmen employed in four categories with effect from December 31, 1966, after giving notices and paying compensation to the workmen concerned. The services of three executives and two Overseers (Shri Naidu and Shri Varghese) were retained for some time in order to finalise accounts and to carry on some residuary work in connection with the said project. The management tried to secure employment to those five persons in the sister units of the Hindustan Steel Ltd., or sister public undertakings like Bokaro Steel Ltd., but without success. Shri Naidu, it is stated, did not possess any basic qualifications laid down by Bokaro Steel Ltd. The tenure of the posts held by these five persons was extended up to June 30, 1968. The departmental committee consisting of senior officers considered their cases for absorption in suitable posts in the Central Engineering and Design Bureau. As Shri Naidu had read up to Class IX only and did not possess any technical qualification he could not be taken in any concern. It was in these circumstances that

according to the management Shri Naidu's services were retrenched with effect from the afternoon of June 29, 1968. The financial concurrence for the continuance of the Ranchi Housing Project (Residuary work) also expired on the same date with the result that it was not possible any longer to retain Shri Naidu's services and his retrenchment became necessary. It was denied that big bosses of Hindustan Steel Ltd., did not like Shri Naidu because he had refused to oblige them whenever they made dishonest requests. Shri Naidu's retrenchment was accordingly stated to be quite proper, justified and legal and the action taken quite fair and bona fide. There was thus no question of any unfair labour practice or victimisation of Shri Naidu.

3. The case on behalf of the workmen was represented by the General Secretary of the Union. It was pleaded on behalf of the workmen that prior to joining Hindustan Steel Ltd., Shri Naidu had been serving as a construction foreman in the Damodar Valley Corporation Ltd., during the period 1950 to 1957 and that on February 18, 1960, he applied to the Hindustan Steel Ltd., for a technical post mentioning his qualifications for the post applied for. He was interviewed and after testing his merits for the job of Works Supervisor he was offered the same on March 10, 1960. Later he was offered the job of an Overseer and he joined that post on May 20, 1960. He worked efficiently to the satisfaction of all concerned but was served with a charge-sheet on June 10, 1964 on the ground that there was some shortage of steel rods. After an enquiry he was found guilty and on the recommendations of the enquiry committee he was dismissed with effect from January 13, 1965. Shri Naidu approached the Presiding Officer, Labour Court, Ranchi, under Section 25 of the Bihar Shops and Establishments Act, 1953, complaining against his dismissal, and the Presiding Officer on April 13, 1966, held the order of dismissal as unjustified and illegal and ordered his reinstatement. He resumed his duties on receipt of the office order on May 7/10, 1966. But some big bosses of the management were not happy on account of his reinstatement with the result that he was again charge-sheeted on May 12, 1966, on the ground that he had falsely stated that he had passed the Senior Cambridge Examination. Shri Naidu filed a civil suit for a declaration that the proceedings initiated by the employer were mala fide. But during the pendency of that suit he was served with a retrenchment order, dated June 29, 1968, purporting to be under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called the Act), which, according to Shri Naidu, was mala fide and unjustified.

4. According to the Tribunal there was no controversy about the following facts :

Shri Naidu had filed an application Ex. 1 on February 18, 1960, with the Construction Engineer of the Hindustan Steel Ltd., for a technical post and he had mentioned therein that he had studied up to Senior Cambridge standard but had served for a period of 23 years in other concerns. On March 10, 1960, he was offered the post of the Works Supervisor on a consolidated salary of Rs. 250 p.m. in the work-charged establishment of the Ranchi Housing Project but it was made clear to him that the post was purely temporary and subject to termination with or without notice. In response to this offer Shri Naidu submitted joining report on March 15, 1960. On April 18, 1960, Shri Naidu applied for the post of an Overseer and mentioned in the column meant for the particulars of the examination passed 'Cambridge Senior'. By office order, dated June 14/15, 1960, he was offered the temporary post of Overseer on the terms and conditions mentioned in that order. According to term 5 his appointment was up to March 31, 1961, but it could be extended beyond that date in case the company so desired. It was also mentioned that his appointment would be purely temporary terminable at any time without any reason and without giving any notice. He has asked to report for duty as soon as possible but not later than June 30, 1960. He joined as Overseer within the scheduled time. The work of construction undertaken by the Ranchi Housing Project came to a close by the end of the year 1966 with the result that 13 workmen were retrenched though Naidu was

allowed to continue as an Overseer for finishing some residual work.

5. Thereafter, according to the management the residual work was completed and the Ranchi Housing Project wound up in 1968. Shri Naidu having been rendered surplus, notice Ex. 7 for his retrenchment was given because it was not possible to offer him any alternative employment in any other unit. His services were retrenched with effect from June 29, 1968.

6. According to the award the Ranchi Housing Project and the Maintenance Division of the Hindustan Steel Ltd., were separate departments, the Housing Project being a temporary project whereas the Maintenance Division was to be maintained throughout. Both these departments were, however, controlled by the Central Engineering and Division Bureau. The award further held that the management had decided to wind up the establishment of Ranchi Housing Project with effect from March 31, 1968, and that serious attempts were made to absorb Shri Naidu but without success. The Ranchi Housing Project having been wound up the Management was fully justified in retrenching Shri Naidu. The management was also held to have made genuine and bona fide efforts to absorb Shri Naidu in other units but it did not succeed in its attempt. The plea of mala fides on the part of the management in retrenching Shri Naidu was repelled by the Tribunal. It was also observed that he had failed to substantiate that there was any unfair labour practice or victimisation. The further point raised on behalf of Shri Naidu, that the principle of "first come last go" or "last come first go" was not adhered to, was also not accepted by the Tribunal. Shri Naidu's appointment being temporary, terminable by the Company at any time without assigning any reason and without giving any notice was held to be an agreement contrary to the said principle and the provisions of Section 25-G of the Act were held inapplicable. The submission on behalf of the management that it was for them to decide from time to time the strength of labour required for that purpose was accepted and it was observed that the conduct of the management in closing one department and dividing its work amongst the other employees could not be reasonably characterised as improper or as amounting to an unfair labour practice. The last point urged on behalf of Shri Naidu was that the notice of retrenchment was not in accordance with the provisions of Section 25-F of the Act because the retrenchment compensation was to be paid immediately at the time of effecting the retrenchment and it could not be deferred. According to the notice Shri Naidu was merely informed that he could receive the retrenchment compensation from the cashier within two days from the date of termination of his employment and that this would also be subject to the production by him of no demand certificates from the concerned branches which were mentioned in the notice, Ex. 7. This plea prevailed with the Tribunal. After referring to certain decisions of this Court the Tribunal held that the notice was defective on the face of it because it did not comply with clause (b) of Section 25-F of the Act. The offer in the notice to pay the retrenchment compensation on the production of no demand certificate from the concerned branches, according to the appellant, clearly shows that the management did not intend to pay retrenchment compensation at the time of retrenchment. The objection on behalf of the management that this defect in the notice was not pleaded in the written statement filed on behalf of the workman was rejected with the observation that in para 13 of the written statement it was averred that the grounds given in the retrenchment notice were all false and cooked up and in Para 15 of the written statement it was pleaded that the retrenchment of the employee was mala fide, unjustified and against law. The infirmity in the notice being apparent on its face, in the opinion of the Tribunal, Shri Naidu was entitled to be reinstated and also to his wages and other dues. On this reasoning the impugned award was made in favour of Shri Naidu.

7. Before us Shri Setalvad, the learned counsel for the appellant, the Management of Hindustan Steel Ltd., submitted that this case is really governed by Section 25-FFF of the Act and Section 25-F(b) is inapplicable. It was pointed out that clause (b) of Section 25-F which has been held by the

award to have been violated by the appellant in the present case is not attracted to the facts. The counsel questioned the legality of the view taken by the Tribunal and submitted that Section 25-FFF(2) is the real provision which applies to the facts of the present case.

8. The short question thus requiring determination is whether Section 25-F(b) or Section 25-FFF(2) of the Act is attracted to the facts of this case. In order to appreciate the true scheme and scope of these sections it would be helpful to reproduce them :

"25-F. Conditions precedent to retrenchment of workmen. - No workman in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice :

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

"25-FFF. Compensation to workmen in case of closing down of undertakings. - (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched :

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of Section 25-F shall not exceed his average pay for three months.

Explanation. - An undertaking which is closed down by reason merely of financial difficulties (including financial losses) or accumulation of undisposed of stocks or the expiry of the period of the lease or the licence granted to it were the period of the lease of licence expires on or after the first day of April, 1967, shall not be deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.

(2) Where any undertaking set up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set up, no workman employed therein shall be entitled to any compensation under clause

(b) of Section 25-F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months."

9. Both of these sections occur in Chapter V-A of the Act dealing with "Lay-off and Retrenchment" inserted in 1953. In enacting Section 25-F the Legislature standardised the payment of compensation to workmen retrenched in the normal or ordinary sense in an existing or continuous industry by adopting a simple yard-stick of the length of service of the retrenched workmen doing away with the perplexing variety of factors for determining the appropriate relief in each case. In *Hari Prasad Shiv Shankar Shukla v. A. D. Divekar*, (1957 SCR 121 : AIR 1957 SC 121 : 1957 SCJ 83) it was held that this section was not intended by the Legislature to be applicable to bona fide closure of business. This decision led to amendment of the Act by the Parliament. In 1957 Section 25-FFF was inserted in order to give benefit of Section 25-F to the retrenched workmen where an undertaking is closed down "for any reason whatsoever". We need not refer to the amendment of Section 25-FF because that section does not directly concern us. According to sub-section (2) of Section 25-FFF it is quite clear that in case of closure of the categories of undertakings as mentioned therein, no workman employed in those undertakings can claim compensation under clause (b) of Section 25-F. The language of Section 25-FFF(2) is plain and unambiguous. Indeed, the learned counsel for the respondent also did not dispute that if it were to be held in this case that the undertaking had been closed down then clause (b) of Section 25-F would not be attracted and Shri Naidu would not be entitled to claim relief under that clause. According to Shri Madan Mohan, however, the present was not a case of closure of the undertaking. His submission was that only the work of the Housing Project at Ranchi had been completed. It was argued that unless the entire undertaking of the appellant was closed down Section 25-FFF(2) could not apply. This submission is, in our opinion, not acceptable.

10. The word undertaking as used in Section 25-FFF seems to us to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer as was suggested on behalf of the respondents. Even closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by this sub-section. The question has indeed to be decided on the facts of each case. In the present case the Ranchi Housing Project was clearly a distinct venture undertaken by the appellant and it had a distinct beginning and an end. Separate office was apparently set up for this venture and on the completion of the project or enterprise that undertaking was closed down. The Tribunal has actually so found. Its conclusion has not been shown to be wrong and we have no hesitation in agreeing with its view. There is no cogent ground for re-opening the Tribunal's conclusion under Article 136 of the Constitution. It is also noteworthy that Shri Naidu had been recruited to the work-charged establishment of the Ranchi Housing Project. In *Workmen of the Indian Leaf Tobacco Development Co. Ltd. v. Management*, ([1969] 2 SCR 282 : AIR 1970 SC 860 : (1970) 1 SCJ 465) closure of eight out of 21 depots of the company though not amounting to closure of its entire business was considered to amount to a closure within the contemplation of Section 25-FFF. In *Parry & Co. Ltd. v. P. C. Lal*, ([1969] 2 SCR 976 : AIR 1970 SC 1334 : (1970) 2 SCJ 433) it was observed that it was within the managerial discretion of an employer to organise and arrange his business in the manner he considers best and that if a bona fide scheme for such re-organisation results in surplus-age of employees, no employer is expected to carry on the burden of such economic deadweight and retrenchment has to be accepted as inevitable, however unfortunate. The reasoning and ratio of these decisions support of appellant's argument.

11. Now, under Section 25-FFF(1), which creates a statutory fiction, all that Shri Naidu was entitled

to, was notice and compensation in accordance with the provisions of Section 25-F as if he had been retrenched. Retrenchment notice, Ex. 7, dated June 29, 1968, quite clearly complies with this requirement. On behalf of the respondent, as already noticed, it is not disputed that there has been no failure to give notice as required by Section 25-F, in case clause (b) is held inapplicable.

12. It is also clear that the respondent had not specifically raised any plea of defect in the notice given to Shri Naidu. The Tribunal, however, allowed the objection of the notice Ex. 7 being conditional to be argued on the view that the notice was infirm on the face of it and that the objection was covered by the general plea in the written statement filed on behalf of Shri Naidu, to the effect that the grounds given in the retrenchment notice were all false and cooked up. On this view the notice was held to be conditional and, therefore, invalid and Shri Naidu was held entitled to be reinstated.

13. In our view, Shri Setalvad was fully justified in submitting that the management had been taken by surprise and that the Tribunal was in error in holding the general ground in the written statement to cover the specific plea of infirmity of the notice because of its being conditional. The plea of the statutory defect in the notice should, in our opinion, have been reasonably specific and precise so as to enable the appellant to meet it. The general plea could not serve the object of putting the appellant on guard about the precise case to be met at the trial and tell the management the precise nature of the plea with respect to the defect in the notice, to enable them to meet it. In our view, if clause (b) of Section 25-F is excluded from consideration and the plea relating to infirmity of the notice is ruled out, as we hold on these two points in agreement with Shri Setalvad, then, the impugned order is clearly insupportable. We are, therefore, constrained to allow the appeal, set aside the impugned award and hold that the retrenchment of Shri Naidu was proper and justified. In the circumstances of the case there would be no order as to costs.

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