The State Bank of India

Vs

Shri N. Sundara Money

Civil Appeals Nos. 933 and 934 of 1975

(Y.V. Chandrachud, V.R. Krishna Iyer, A.C. Gupta JJ)

16.01.1976

JUDGMENT

KRISHNA IYER, J. -

1. The appellant employer, undaunted by a double defeat at both tiers in the High Court, has appealed against the adverse judgments, by certificate, on the only ground that there was no retrenchment of the respondent-employee [within the meaning of Section 2 (oo) of the Industrial Disputes Act, 1947 (Act XIV of 1947) (hereinafter called the Act)] and, consequently, the latter was ineligible to the statutory compensation the non-payment of which, along with the termination of service, nulified the termination itself. The end result was that the Division Bench of the Court ruled that the respondent 'was entitled to retrenchment compensation' which, not having been paid, 'the termination would be invalid'. The subtle legal issue, substantial in its financial impact, is whether Section 25F read with Section 2(oo), vis-a-vis a short employment, casts a lethal spell on the cessation of service for non-compliance with the condition precedent set out in the provision.

The certificate

2. The certificate issued by the High Court under Article 133(1) is bad on its face, according to Counsel for the respondent and the appeal consequently incompetent. We are inclined to agree that the grant of a constitutional passport to the Supreme Court by the High Court is not a matter of easy insouciance but anxious advertence to the dual vital requirements built into Article 133(1) by specific amendment. Failure here stultifies the scheme of the article and floods this Court with cases of lesser magnitude with illegitimate entry. A substantial question of law of general importance is a sine qua non to certify fitness for hearing by the apex court. Nay, more; the question, however important and substantial, must be such pervasive import and deep significance that in the High Court's judgment it imperatively needs to be settled at the national level by the highest bench. The crux of the matter has been correctly set out in a decision of the Delhi High Court in words which find our approval :

A certificate can be granted only if the case involves a question of law :

(i) which is not only substantial but is also of general importance; and

(ii) the said question, in our opinion, needs to be decided by the Supreme Court.

It has to be noted that all the above requirements should be satisfied before a certificate can be granted. It means that it is not sufficient if the case involves a substantial question of law of general

importance but in addition to it the High Court should be of the opinion that such question needs to be decided by the Supreme Court. Further, the word 'needs' suggests that there has to be a necessity for a decision by the Supreme Court on the question, and such a necessity can be said to exist when, for instance, two views are possible regarding the question and High Court takes one of the said views. Such a necessity can also be said to exist when a different view has been expressed by another High Court.

3. It is but fair to add an implied but important footnote that while exercising the wider power under Article 136 this Court must have due regard to the constitutional limitations on Article 133(1) and owe allegiance to those restrains save in exceptional cases.

4. This view of the certificate would have put the lid on this appeal but on hearing Counsel we feel that the omission of the High Court to assess the case explicitly from this angle does not disable us from granting special leave, if applied for. So much so Counsel have proceeded to argue on the merits, the penumbral area of industrial law covered by the subject-matter being one which cannot be left in legal twilight.

The facts

5. One of the two employees involved in these appeal has been reabsorbed in service and his case is therefore of lesser import, but the other is still out in the cold and his legal fate falls for examination in the matrix of facts which we proceed to state. This respondent was appointed off and on, by the State Bank of India between July 31, 1973 (sic 1972) and August 29, 1973. The intermittent breaks notwithstanding, his total number of days of employment answered the test of 'deemed' continuous service within Section 25B(2) and both sides accept that fact situation. But the order of appointment, which bears in its bosom the 'good bye' to the employee after a few days, calls for construction in the light of Section 2(oo) and Section 25F and we may as well read it here :

(1) The appointment is purely a temporary one for a period of 9 days but may be terminated earlier, without assigning any reason thereof at the bank's discretion;

(2) The employment, unless terminated earlier, will automatically cease at the expiry of the period, i.e. 18-11-1972.

This nine day's employment, tacked on to what has gone before, has ripened to a continuous service for a year on the antecedent arithmetic of 240 days of broken bits of service.

The legal issue

6. The skiagram of the employment order must now be studied to ascertain which of the rival meanings Counsel have pressed deserves preference. Statutory construction, when courts consider welfare legislation with an economic justice bias, cannot turn on cold print glorified as grammatical construction but on teleological purpose and protective intendment. Here Sections 25F, 25B and 2(oo) have a workers' mission and in input of Part IV of the Constitution also underscores this benignant approach. While canons of traditional sanctity cannot wholly govern, courts cannot go haywire in interpreting provisions, ignoring the text and context. With these guideline before the us, we seek to decode the implications of the order of appointment. But before doing so, an analysis of the legal components of Section 25F will facilitate the diagnostic task.

7. The leading case on this facet of law in The Hospital Mazdoor Sabha (State of Bombay v.

Hospital Mazdoor Sabha, (1960) 2 SCR 866, 871-872 : AIR 1960 SC 610 : (1960) 1 LLJ 251). Gajendragadkar, J. (as he then was) observed :

Section 25F(b) provides that no workman employed 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 he has been paid at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months. Clauses (a) and (e) of the said section prescribe similar conditions but we are not concerned with them. On a plain reading of Section 25F(b) it is clear that the requirement prescribed by it is a condition precedent for the retrenchment of the workman. The second provides that no workman shall be retrenched until the condition in question has been satisfied. It is difficult to accede to the argument that when the section imposes in mandatory terms a condition precedent, non-compliance with the said condition would not render the impugned retrenchment invalid . . . failure to comply with the said provision renders the impugned orders invalid and inoperative.

8. Without further ado, we reach the conclusion that if the workman swims into the harbour of Section 25F, he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read with Section 25B(2). But, argues the appellant, all these obligations flow only out of retrenchment, not termination outside that species of snapping employment. What, then, is retrenchment ? The key to this vexed question is to be found in Section 2(oo) which reads thus :

2. (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health;.

For any reason whatsoever - very wide and almost admitting of no exception. Still, the employer urges that when the order or appointment carries an automatic cessation of service, the period of employment works itself out by efflux of time, not by act of employer. Such cases are outside the concept of 'retrenchment' and cannot entail the burden-some condition of Section 25f. Of course, that a 'nine-days' employment, hedged in with an express condition of temporariness and automatic cessation, may look like being in a different street (if we may use a colloquialism) from telling a man off by retrenching him. To retrench is to cut down. You cannot retrench without trenching or cutting. But dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation. Section 2(oo) is the master of the situation and the Court cannot truncate its amplitude.

9. A breakdown of Section 2(oo) unmistakably expands the semantics of retrenchment. 'Termination . . . for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated ? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong

this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. Maybe, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It means 'to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days - automatically maybe, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(1) [sic 25F(a)]. True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient. An English case R. v. Secretary of State ((1973) 2 All ER 103) was relied on, where Lord Denning, M. R. observed :

I think that the word 'terminate' or 'termination' is by itself ambiguous. It can refer to either of two things - either to termination by notice or to termination by effluxion of time. It is often used in that dual sense in landlord and tenant and in master and servant cases. But there are several indications in this paragraph to show that it refers here only to termination by notice.

Buckley, L. J. concurred and said :

In my judgment the words are not capable of bearing that meaning. As Counsel for the Secretary of State has pointed out, the verb 'terminate' can be used either transitively or intransitively. A contract may be said to terminate when it comes to an end by effluxion of time, or it may be said to be terminated when it is determined at notice or otherwise by some act of one of the parties. Here in my judgment the word 'terminated' is used in this passage in para 190 in the transitive sense, and it postulates some act by somebody which is to bring the appointment to an end, and is not applicable to a case in which the appointment comes to an end merely by effluxion of time.

Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision.

10. What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the bank has to pay for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows. At what point ? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw were he to be appointed in the same post today de novo. As for benefits, it any, flowing from service he will be ranked below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.

11. We substantially dismiss the appeal (C. A. No. 934 of 1975) subject to the slight modification made above. There was some intervening suggestion for settlement of the dispute but it fell through. We are persuaded to make the observation based on that circumstance that social justice has two sides, occasionally, one party or the other makes myopic mistakes resulting in further litigation.

12. Subject to the above observations, the appeal is dismissed. The parties will bear their costs throughout, although, in cases like this, where the law is not free from obscurity and needs this Court's pronouncement and one of the affected parties is week, being a worker, the costs must come out of public funds as suggested in Trustees of Port, Bombay (Trustes of Port of Bombay v. Premier Automobiles Ltd., (1974) 4 SCC 710). The State, we hope, will constitute a suitors' fund which will take care of hardships and public interest in the area of necessary litigation.

13. In C. A. No. 933 of 1975 the respondent has been re-employed by the appellant although in his case also we declare, for reasons already given and subject to the same norms till his absorption that the retrenchment is invalid. The costs, in this appeal, will be borne by each of the parties.

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