The Workmen of M/S. Firestone Tyre & Rubber Co. of India (P) Ltd.

Vs

The Firestone Tyre & Rubber Co.

Thiru J. N. George and Others

Vs

The Management of M/S. Firestone Tyre & Rubber Co. of India (P) Ltd. and Others

Civil Appeal Nos. 2307 of 1969

(V.R. Krishna Iyer, N.L. Untwalia JJ)

13.02.1976

JUDGMENT

UNTWALIA, J. -

1. As the main question for determination in these appeals by special leave is common, they have been heard together and are being disposed of by this judgment.

Civil Appeal No. 2307 of 1969

2. The Respondent company in this appeal has its head office at Bombay. It manufactures tyres at its Bombay factory and sells the tyres and other accessories in the markets throughout the country. The company has a distribution office at Nicholson Road, Delhi. There was a strike in the Bombay factory from March 3, 1967 to May 16, 1967 and again from October 4, 1967. As a result of the strike, there was a short supply of tyres etc. to the distribution office. In the Delhi Office, there were 30 employees at the relevant time. 17 workmen out of 30 were laid off by the management as per their notice dated February 3, 1968, which was to the following effect :

Management is unable to give employment to the following workmen due to much reduced production in the company's factory resulting from strike in one of the factory departments.

These workmen are, therefore, laid off in accordance with law with effect from February 5, 1968.

3. The lay-off of the 17 workmen whose names were mentioned in the notice was recalled by the management on April 22, 1968. The workmen were not given their wages or compensation for the period of lay-off. An industrial dispute was raised and referred by the Delhi Administration on April 17, 1968 even when the lay-off was in operation. The reference was in the following terms :

Whether the action of the management to 'lay off' 17 workmen with effect from February 5, 1968 is illegal and/or unjustified, and if so, to what relief are these workmen entitled ?

4. The Presiding Officer of the Additional Industrial Tribunal, Delhi has held that the workmen are not entitled to any lay-off compensation. Hence this is an appeal by their union.

5. We were informed at the Bar that some of the workmen out of the batch of 17 have settled their disputes with the management and their cases were not represented by the union in this appeal. Hence this judgment will not affect the compromise or the settlement arrived at between the management and some of the workmen.

6. The question which falls for our determination is whether the management had a right to lay off their workmen and whether the workmen are entitled to claim wages or compensation.

7. The simple dictionary meaning according to the Concise Oxford Dictionary of the term 'lay-off' is "period during which a workman is temporarily discharged". The term 'lay-off' has been well-known in the industrial arena. Disputes were often raised in relation to the 'lay-off' of the workmen in various industries. Sometimes compensation was awarded for the period of lay-off but many a time when the lay-off was found to be justified workmen were not found entitled to any wages or compensation. In Gaya Cotton & Jute Mills Ltd. v. Gaya Cotton & Jute Mills Labour Union ((1952) 2 LLJ 37) the standing orders of the company provided that the company could under certain circumstances

stop any machine or machines or department or departments, wholly or partially for any period or periods without notice or without compensation in lieu of notice.

In such a situation for the closure of the factory for a certain period, no claim for compensation was allowed by the Labour Appellate Tribunal of India. We are aware of the distinction between a lay-off and a closure. But just to point out the history of the law we have referred to this case.

8. Then came an amendment in the Industrial Disputes Act, 1947 - hereinafter referred to as the Act - by Act 43 of 1953. In Section 2, clause (kkk) was added to say :

"Lay-off" (with its grammatical variations and cognate expressions) means 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.

Explanation. - Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid off for that day within the meaning of this clause :

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid off only for one-half of that day :

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day.

By the same Amending Act, Chapter VA was introduced in the Act to provide for lay-off and retrenchment compensation. Section 25A excluded the industrial establishments in which less than

50 workmen on an average per working day had been employed in the preceding calendar month from the application of Section 25C to 25E. Section 25C provides for the right of laid-off workmen for compensation and broadly speaking compensation allowable is 50 per cent of the total of the basic wages and dearness allowance that would have been payable to the workman had he not been laid off. It would be noticed that the sections dealing with the matters of lay-off in Chapter VA are not applicable to certain types of industrial establishments. The respondent is one such establishment because it employed only 30 workmen at its Delhi office at the relevant time.

In such a situation the question beset with difficulty of solution is whether the laid-off workmen were entitled to any compensation, if so, what ?

9. We shall now read Section 25J. It says :

(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 :

Provided that where under the provisions of any other Act or Rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so for as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter.

10. The effect of the provisions aforesaid is that for the period of lay-off in an industrial establishment to which the said provisions apply, compensation will have to be paid in accordance with Section 25C. But if a workman is entitled to benefits which are more favourable to him than those provided in the Act, he shall continue to be entitled to the more favourable benefits. The rights and liabilities of employers and workmen in so far as it relate to lay-off and retrenchment, except as provided in Section 25J, have got to be determined in accordance with the provisions of Chapter VA.

11. The ticklish question which does not admit of an easy answer is as to the source of the power of management to lay off a workman. The employer has a right to terminate the services of a workman. Therefore, his power to retrench presents no difficulty as retrenchment means the termination by the employer of the service of a workman for any reason whatsoever as mentioned in clause (00) of Section 2 of the Act. But lay-off means the failure, refusal or inability of employer on account of contingencies mentioned in clause (kkk) to give employment to a workman whose name is borne on the muster rolls of his industrial establishment. It has been called a temporary discharge of the workman or a temporary suspension of his contract of service. Strictly speaking, it is not so. It is merely a fact of temporary unemployment of the workman in the work of the industrial establishment. Mr. S. N. Andley submitted with reference to the explanation and the provisos appended to clause (kkk) that the power to lay of a workman is inherent in the definition. We do not

find any words in the definition clause to indicate the conferment of any power on the employer to lay off a workman. His failure or inability to give employment by itself militates against the theory of conferment of power. The power to lay off for the failure or inability to give employment has to be searched somewhere else. No section in the Act confers this power.

12. There are two small matters which present some difficulty in the solution of the problem. In clause (i) of the explanation appended to sub-section (2) of Section 25B the words used are,

he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment,

indicating that a workman can be laid off under the Industrial Disputes Act also. But it is strange to find that no section in Chapter VA in express language or by necessary implication confers any power, even on the management of the industrial establishment to which the relevant provisions are applicable, to lay off a workman, Clause (ii) of Section 25E says :

No compensation shall be paid to a workman who has been laid off -

if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day.

This indicates that there is neither a temporary discharge of the workman nor a temporary suspension of his contract of service. Under the general law of master and servant, an employer may discharge an employee either temporarily or permanently but that cannot be without adequate notice. Mere refusal or inability to give employment to the workman when he reports for duty on one or more grounds mentioned in clause (kkk) of Section 2 is not a temporary discharge of the workman. Such a power, therefore, must be found out from the terms of contract of service or the standing orders governing the establishment. In the instant case the number of workman being only 30, there were no standing orders certified under the Industrial Employment (Standing Orders) Act, 1946. Nor was there any term of contract of service conferring any such right of lay-off. In such a situation the conclusions seems to be inescapable that the workmen were laid off without any authority of law or the power in the management under the contract of service. In industrial establishments where there is a power in the management to lay off a workman and to which the provisions of Chapter VA apply, the question of payment of compensation will be governed and determined by the said provisions. Otherwise Chapter VA is not a complete Code as was argued on behalf of the respondent company in the matter of payment of lay-off compensation. This case, therefore goes out of Chapter VA. Ordinarily and generally the workmen would be entitled to their full wages but in a reference made under Section 10 (1) of the Act, it is open to the tribunal or the court to award a lesser sum finding the justifiability of the lay-off.

13. In Management of Hotel Imperial, New Delhi v. Hotel Workers' Union ((1960) 1 SCR 476 : AIR 1959 SC 1342 : (1959) 2 LLJ 544) in a case of suspension of a workman it was said by Wanchoo, J. as he then was, delivering the judgment on behalf of the Court at page 482 :

Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend

either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

The same principle was reiterated in V. P. Gindroniya v. State of Madhya Pradesh ((1970) 3 SCR 448 : (1970) 1 SCC 362).

14. We have referred to the suspension cases because in our opinion the principles governing the case of lay-off are very akin to those applicable to a suspension case.

15. In Veiyra (M.A.) v. Fernandez (C.P.) ((1956) 1 LLJ 547 : AIR 1957 Bom 100) a Bench of the Bombay High Court opined that under the general law the employer was free to dispense with the the services of a workman, but under the Industrial Disputes Act he was under an obligation to lay him off; that being so, the action of lay-off by the employer could not be questioned as being ultra vires. We do not think that the view expressed by the Bombay High Court is correct.

16. There is an important decision of this Court in Workmen of Dewan Tea Estate v. Management ((1964) 5 SCR 548 : AIR 1964 SC 1458 : (1964) 1 LLJ 358) on which reliance was placed heavily by Mr. M. K. Ramamurthi appearing for the appellant and also by Mr. Andley for the respondent. One of the questions for consideration was whether Section 25C of the Act recognises the common law right of the management to declare a lay-off reasons other than those specified in the relevant clause of the standing order. While considering this question, Gajendragadkar, J. as he then was, said at page 554 :

The question which we are concerned with at this stage is whether it can be said that Section 25C recognises a common law right of the industrial employer to lay off his workmen. This question must, in our opinion, be answered in the negative. When the laying off of the workmen is referred to in Section 25C, it is the laying off as defined by Section 2 (kkk) and so, workmen who can claim the benefit of Section 25C must be workmen who are laid off and laid off for reasons contemplated by Section 2 (kkk); that is all that section 25C means.

Then follows a sentence which was pressed into service by the respondent. It says :

If any case is not covered by the standing orders, it will necessarily be governed by the provisions of the Act, and lay-off would be permissible only where one or the other of the factors mentioned by Section 2 (kkk) is present, and for such lay-off compensation would be awarded under Section 25C.

In our opinion, in the context, the sentence aforesaid means that if the power of lay-off is there in the standing orders but the grounds of lay-off are not covered by them, rather, are governed by the provisions of the Act, then lay-off would be permissible only on one or the other of the factors mentioned in clause (kkk). Subsequent discussions at pages 558 and 559 lend ample support to the appellant's argument that there is no provision in the Act specifically providing that an employer would be entitled to lay off his workmen for the reasons prescribed by Section 2 (kkk).

17. Mr. Andley placed strong reliance upon the decision of this Court in Sanghi Jeevaraj Ghewar Chand v. Secretary, Madras Chillies, Grain Kirana Merchants Workers' Union ((1969) 1 SCC 366). The statute under consideration in this case was the Payment of Bonus Act, 1965 and it was held that the Act was intended to be a comprehensive and exhaustive law dealing with the entire subject of bonus of the persons to whom it should apply. The Bonus Act was not to apply to certain establishments. Argument before the Court was that bonus was payable de hors the Act in such

establishments also. This argument was repelled and in that connection it was observed at page 381 :

It will be noticed that though the Industrial Disputes Act confers substantive rights on workmen with regard to lay-off, retrenchment compensation, etc., it does not create or confer any such statutory right as to payment of bonus. Bonus was so far the creature of industrial adjudication and was made payable by the employers under the machinery provided under that Act and other corresponding Acts enacted for investigation and settlement of disputes raised thereunder. There was, therefore, no question of Parliament having to delete or modify item 5 in the Third Schedule to Industrial Disputes Act or any such provision is any corresponding Act or its having to exclude any right to bonus thereunder by any categorical exclusion in the present case.

And finally it was held at page 385 :

Considering the history of the legislation, the background and the circumstances in which the Act was enacted, the object of the Act and its scheme, it is not possible to accept the construction suggested on behalf of the respondents that the Act is not an exhaustive Act dealing comprehensively with the subject-matter of bonus in all its aspects or that Parliament still left it open to those to whom the Act does not apply by reason of its provisions either as to exclusion or exemption to raise a dispute with regard to bonus through industrial adjudication under the Industrial Disputes Act or other corresponding law.

In a case of compensation for lay-off the position is quite distinct and different. If the term of contract of service or the statutory terms engrafted in the standing orders do not give the power of lay-off to the employer, the employer will be bound to pay compensation for the period of lay-off which ordinarily and generally would be equal to the full wages of the concerned workmen. If, however, the terms of employment confer a right of lay-off on the management, then, in the case of an industrial establishment which is governed by Chapter VA, compensation will be payable in accordance with the provisions contained therein. But compensation or no compensation will be payable in the case of an industrial establishment to which the provisions of Chapter VA do not apply, and it will be so as per the terms of the employment.

18. In Kanhaiya Lal Gupta v. Ajeet Kumar Dey ((1967) 2 LLJ 761 (All) a learned Single Judge of the Allahabad High Court seems to have rightly held that in the absence of any term in the contract of service or in the statute or in the statutory rules or standing orders an employer has no right to lay off a workman without paying him wages. A learned Single Judge of the Punjab and Haryana High Court took an identical view in the case of Steel and General Mills Co. Ltd. v. Additional District Judge, Rohtak ((1972) 1 LLJ 284 (Punj & Har)). The majority view of the Bombay High Court in K. T. Rolling Mills Private Ltd. v. M. R. Meher (AIR 1963 Bom 146 : (1962) 2 LLJ 667) that it is not open to the industrial tribunal under the Act to award lay-off compensation to workmen employed in an 'industrial establishment' to which Section 25-C does not apply, is not correct. The source of the power of the employer to lay off workmen does not seem to have been canvassed or discussed by the Bombay High Court in the said judgment.

19. In the case of the Delhi office of the respondent the tribunal has held that the lay-off was justified. It was open to the tribunal to award a lesser amount of compensation than the full wages. Instead of sending back the case to the tribunal, we direct that 75 per cent of the basic wages and dearness allowance would be paid to the workmen concerned for the period of lay-off. As we have said above this will not cover the case of those workmen who have settled or compromised their disputes with the management.

20. In these appeals the facts are identical to those in the other appeal. There were only 33 employees in the Madras office of the respondent company. Certain workmen were laid off for identical reasons from February 5, 1968. The lay-off was lifted on April 29, 1968. The concerned workmen filed petitions under Section 33C (2) of the Act for computation of their wages for the period of lay-off. Holding that the lay-off was justified and valid the Presiding Officer of the Additional Labour Court, Madras had dismissed their applications for salary and allowances for the period of lay-off. Hence these appeals.

21. In a reference under Section 10 (1) of the Act is open to the tribunal or the court to award compensation which may not be equal to the full amount of basic wages and dearness allowance. But no such power exists in the Labour Court under Section 33C (2) of the Act. Only the money due has got to be quantified. If the lay-off could be held to be in accordance with the terms of the contract of service, no compensation at all could be allowed under Section 33C (2) of the Act, while, in the reference some compensation could be allowed. Similarly on the view expressed above that the respondent company had no power to lay off any workmen, there is no escape from the position that the entire sum payable to the laid-off workmen except the workmen who have settle or compromised, has got to be computed and quantified under Section 33C (2) of the Act for the period of lay-off.

22. For the reasons stated above all the appeals are allowed. In Civil Appeal No. 2307 of 1969 in place of the order of the tribunal, an order is made on the lines indicated above. And in Civil Appeal Nos. 1857 to 1859 of 1970 the orders of the Labour Court are set aside and the cases of the appellants are remitted back to that court for computation and quantification of the sums payable to the concerned workmen for the period of lay-off. There will be no order as to costs in any of the appeals.

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