M/s. Hindustan Steel Ltd.

Vs

The Presiding Officer, Labour Court, Orissa and Others

Civil Appeal No. 1580 of 1970

(Y.V. Chandrachud, P.K. Goswami, A.C. Gupta JJ)

15.09.1976

JUDGMENT

GUPTA, J. -

1. Respondents 3, 4 and 5 had been employed as head time keepers in the Rourkela unit of Hindustan Steel Limited, appellant herein. The third and the fourth respondents were appointed on September 24, 1959 and September 14, 1959 respectively, each for a period of three years. The fifth respondents was also appointed for a period of three years from July 15, 1957 but as time keeper, not head time keeper. In his case the period was extended after the expiry of three years from time to time till October 15, 1962. In the meantime he had been promoted from time keeper to head time keeper with effect from November 3, 1960. Pursuant to an alleged policy to "streamline the organisation and to effect economies wherever possible", the appellant chose not to renew the contracts of service of the head time keepers who were eight in number including these three respondents. There was no order terminating their services; according to the appellant the termination was automatic on the expiry of the contractual period of service. The aforesaid three respondents raised an industrial dispute through their union, respondent 6, Rourkela Mazdoor Sabha. The dispute whether the termination of the services of the three respondents was justified and, if not, to what relief they were entitled, was referred by the Government of Orissa for adjudication to the Labour Court of Orissa, Bhubaneswar. The Presiding Officer of the Labour Court by his award dated December 12, 1964 vacated the orders of termination passed against these three respondents and held that they were entitled to "reinstatement with continuity of service" and also to "full wages for the period between the date of their release from service and the date of dates of their reinstatement". The award is based on the following findings :

> (i) the three respondents had been retrenched from employment, and the requirements of Section 25F of the Industrial Disputes Act not having been satisfied, the retrenchment was contrary to law;
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> (ii) in terminating the services of these employees the management had adopted unfair labour practice and the action of the employer was not bona fide; and that
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> (iii) it had not been proved that they had any alternative employment after they were released from service.

The appellant challenged the award by filing a writ petition in the Orissa High Court. It was contended before the High Court that the services of these employees had come to an end by efflux of time, that the management had not terminated their services and as such these were not cases of

retrenchment. Another submission made on behalf of the management was that the employees not having proved that they had made efforts to minimise their losses during the period of unemployment, the award for payment of full back wages was erroneous. The High Court overruled both the contentions and dismissed the writ petition. In this appeal by special leave the appellant questions are the correctness of the decision of the High Court.

2. The main question in this appeal is whether the three respondents had been retrenched by their employer as found by the labour Court. If these were case of retrenchment, the order of reinstatement made by the Labour Court was obviously a valid order as, admittedly, the condition precedent to the retrenchment of workmen laid down in Section 25F of the Industrial Disputes Act had not been satisfied. The contention raised on behalf of the appellant both here and in the High Court was that the services of the three respondents came to an end by efflux of time and that such termination of service did not fall within the definition of retrenchment in Section 2(oo) of the Industrial Disputes Act. The Solicitor General appearing for the appellant frankly conceded that this appeal was covered by a recent decision of this Court, State Bank of India v. N. Sundara Money ((1976) 1 SCC 822 : 1976 SCC (L&S) 132), and the decision was against the contention of the appellant. He however submitted that this decision which was rendered by a Bench of three judges was in apparent conflict with an earlier decision of this Court, Hariprasad Shivshankar Shukla v. A. D. Divikar (1957 SCR 121 : AIR 1957 SC 121 : (1957) 1 LLJ 243), which was by a larger Bench and that Sundara Money's case therefore required reconsideration.

3. Retrenchment has been defined in Section 2(oo) of the Industrial Disputes Act as follows :

> 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 -
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> (a) voluntary retirement of the workman; or
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> (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 the behalf; or
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> (c) termination of the service of a workman on the ground of continued ill-health;

Analysing this definition in State Bank of India v. N. Sundara Money, this Court held : [SCC pp. 826-827 : SCC (L&S) pp. 136-137, para 9]

> '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 ? . . . A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term . . . . Termination embraces not merely the act of termination howsoever produced.
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> . . . 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.

This decision, as conceded by the Solicitor General, goes against the contention of the appellant and is conclusive on the main question that arises for consideration in this appeal. It may also be noted that Section 25F(a) which lays down that no workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer unless he has been given one month's notice or wages in lieu of such notice, has a proviso which says that "no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service". Clearly, the proviso would have been quite unnecessary if retrenchment as defined in Section 2(oo) was intended not to include termination of service by efflux of time in terms of an agreement between the parties. This was one more reason why it must be held that the Labour Court was right in taking the view that the respondents were retrenched contrary to the provisions of Section 25F.

4. In Hariprasad Shivshankar Shukla v. A. D. Divikar, to which the Solicitor General referred, one of the questions that arose for decision was whether the definition of retrenchment in Section 2(oo) goes so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona fide closure or discontinuance of his business by the employer ?

The question was answered in the negative on the authority of an even earlier case, Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union (1956 SCR 872 : AIR 1957 SC 95 : (1957) 1 LLJ 235), which held that retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff or the labour force is discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business cannot therefore be properly described as retrenchment.

Following Pipraich Sugar Mills' case it was held in Hariprasad Shivshankar Shukla v. A. D. Divikar that the words "for any reason whatsoever" used in the definition would not include a bona fide closure of the whole business because it would be against the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen by the employer when the business itself cases to exist.

On the facts of the case before us, giving full effect to the words "for any reason whatsoever" would be consistent with the scope and purpose of Section 25F of the Industrial Disputes Act, and not contrary to the scheme of the Act. We do not find anything in Hariprasad's case which is inconsistent with what has been held in State Bank of India v. N. Sundara Money.

5. Another point made on behalf of the appellant was that the Presiding Officer of the Labour Court was wrong in awarding full back wages to the respondents without satisfying himself that they had been unemployed after they were released from service by the appellant and, further, that they had taken all reasonable steps to mitigate their losses consequent on their retrenchment. The Labour Court has found that it had not been proved that the respondents had any alternative employment. In the writ petition filed by the appellant in the High Court, the finding that the respondents had no alternative employment was not challenged. From the judgment of the High Court it appears that the submission on the propriety of awarding full back wages to the respondents was confined to the ground that the respondents had not proved that they had tried to mitigate their losses during the period of unemployment. In the special leave petition also what has been urged is that the High Court should have held that the respondents were not entitled to full back wages unless they succeeded in proving that they tried to secure alternative employment but failed. The Labour Court awarded full back wages to the respondents on the finding that they had been illegally retrenched. It

does not appear that the question of mitigation of loss for deprivation of employment had at all been raised before the Labour Court. The High Court therefore refrained from exercising its "discretionary jurisdiction in favour of the employer" and proposed not to "deprive the workmen of the benefit they had been found entitled to by the Presiding Officer". That the respondents were unemployed cannot now be disputed. In these circumstances the High Court was justified, in our opinion, in refusing to interfere on this point.

6. The appeal fails and is dismissed with costs.

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