Santosh Gupta

Vs

State Bank of Patiala

Civil Appeal No. 3563 of 1979

(V. R. Krishna Iyer, O. Chinnappa Reddy JJ)

29.04.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. Santhosh Gupta, the appellant-workman (a woman), was employed in the State Bank of Patiala the Mall, Patiala, from July 13, 1973 till August 21, 1974, when her services were terminated. Though there were some breaks in service for a few days, those breaks are not relevant for the purpose of deciding this case though we may have to advert to them in another connection. Despite the breaks, the workman had admittedly worked for 240 days in the year preceding August 21, 1974. According to the workman the termination of her services was 'retrenchment' within the meaning of that expression in Section 2(oo) of the Industrial Disputes Act 1947, since it did not fall within any of the 3 expected cases mentioned in Section 2(oo). Since there was 'retrenchment', it was bad for non-compliance with the provisions of Section 25-F of the Industrial Disputes Act. On the other hand the contention of the management was that the termination of services was not due to discharge of surplus labour. It was due to the failure of the workman to pass the test which would have enabled her to be confirmed in the service. Therefore, it was not retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act.

2. Section 25-F prescribes that no workman employed in any industry who has been in continuous service for not less than one year shall be retrenched by the 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; (b) the workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for ever completed year of continuance service or any part thereof in excess of six months and (c) notice in the prescribed manner is served on the appropriate Government or any such authority as may be specified by the appropriate Government by notification in the official Gazette. There is a proviso to clause (a) which dispenses with the necessity for the notice contemplated by the clause if the retrenchment is under an agreement which specifies the date for the termination of service.

3. The expression retrenchment is specially defined by Section 2(oo) of the Act and is as follows :

> '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

(b) retirement of the workmen 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;

4. In Hariprasad Shivshankar Shukla v. A. D. Divikar (1957 SCR 121 : AIR 1957 SC 121 : 1957 SCJ 83), the Supreme Court took the view that the word 'retrenchment' as defined in Section 2(oo) did not include termination of services of all workmen on a bona fide closure of an industry or on change of ownership of management of the industry. In order to provide for the situations which the Supreme Court held were not covered by the definition of the expression 'retrenchment', the Parliament added Section 25-FF and Section 25-FFF providing for the payment of compensation to the workmen in case of transfer of undertakings and in case of closure of undertakings respectively.

5. If the definition of 'retrenchment' is looked at unaided and unhampered by precedent, one is at once struck by the remarkably wide language employed and particularly by the use of the words "termination ..... for any reason whatsoever". The definition expressly excludes termination of service as a 'punishment inflicted by way of disciplinary action'. The definition does not include, so it expressly says, voluntary retrenchment of the workmen or retrenchment of the workmen on reaching the age of superannuation or termination of the service of the workmen on the ground of continuous ill-health. Voluntary retrenchment of a workman or retrenchment of the workman on reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workmen. Yet, the Legislature took special care to mention that they were not included within the meaning of "termination by the employer of the service of a workman for any reason whatsoever". This, in our opinion, emphasizes the broad interpretation to the given to the expression 'retrenchment'. In our view if due weight is given to the words "the termination by the employer of the service of a workman for any reason whatsoever" and if the words 'for any reason whatsoever' are understood to mean what they plainly say it is difficult to escape the conclusion that the expression 'retrenchment' must include every termination of the service of a workman by an act of the employer. The underlying assumption, of course, is that the undertaking is running as an undertaking and the employer continues, as an employer but where either on account of transfer of the undertaking or on account of the closure of the undertaking the basic assumption disappears, there can be no question of 'retrenchment' within the meaning of the definition contained in Section 2(oo). This came to be realised as a result of the decision of this Court in Hariprasad case (1957 SCR 121 : AIR 1957 SC 121 : 1957 SCJ 83). The Parliament then stepped in and introduced Sections 25-FF and 25-FFF by providing that compensation shall be payable to workmen in case of transfer of undertaking or closure of undertaking as if the workmen had been retrenched. We may rightly say that the termination of the service of a workman on the transfer or closure of an undertaking was treated by Parliament as 'deemed retrenchment'. The effect was that every case of termination of service by act of employer even if such termination was a consequence of transfer or closure of the undertaking was to be treated as 'retrenchment' for the purposes of notice, compensation etc. Whatever doubts might have existed before Parliament enactment Section 25-FF and 25-FFF about the width of Section 25-F there cannot be any doubt that the expression 'termination of service' for any reason whatsoever' now covers every kind of termination of service except those not expressly included in Section 25-F or not expressly provided for by other provisions of the Act such as Sections 25-FF and 25-FFF.

6. In interpreting these provisions i.e., Sections 25-F, 25-FF and 25-FFF one must not ignore their object. The manifest object of these provisions is to so compensate the workmen for loss of

employment as to provide him the wherewithal to subsist until he finds fresh employment. The non-inclusion of 'voluntary retirement of the workmen', 'retirement of workmen or reaching the age of superannuation', 'termination of the service of a workman on the ground of continued ill-health' in the definition of 'retrenchment' clearly indicate and emphasize what we have said about the true object of 25-F, 25-FF and 25-FFF and the nature of the compensation provided by those provisions. The nature of retrenchment compensation has been explained in Indian Hume Pipe Co. Ltd. v. Workmen ((1960) 2 SCR 32, 36, 37 : AIR 1960 SC 251 : 1960 SCJ 550), as follows :

> As the expression 'retrenchment compensation' indicates it is compensation paid to a workman on his retrenchment and it is intended to give him some relief and to soften the rigour of hardship which retrenchment inevitably causes. The retrenched workman is, suddenly and without his fault, thrown on the street and has to face the grim problem of unemployment. At the commencement of his employment a workmen naturally expects and looks forward to security of service spread over a long period; but retrenchment destroys his hopes and expectations. The object of retrenchment compensation is to give partial protection to the retrenched employee and his family to enable them to tide over the hard period of unemployment.

Once the object of Sections 25-F, 25-FF and 25-FFF is understood and the true nature of the compensation which those provision provide is realised it is difficult to make any distinctions between termination of service for one reason and termination of service for another.

7. Dr. Anand Prakash wants us to hold that notwithstanding the comprehensive language of the definition of "retrenchment" in Section 2(oo), the expression continues to retain its original meaning which was, according to the counsel, discharge from service on account of 'surplusage'. It is impossible to accept his submission. If the submission is right, there was no need to define the expression 'retrenchment', and in such wide terms. We cannot assume that the Parliament was undertaking an exercise in futility to give a long-winded definition an merely to say that the expression means what it always meant.

8. Let us not us now examine the precedents of this Court to discover whether the true position in law is to what has been stated by us in the previous paragraphs. The earliest of the cases of this Court to which our attention was invited was Hariprasad case (1957 SCR 121 : AIR 1957 SC 121 : 1957 SCJ 83). That was a case which was decided before Sections 25-FF and 25-FFF were brought on the statute book. In fact it was a consequence of that decisions that the Industrial Disputes Act had to be amended and these two provisions came to be introduced into the Act. The question which arose for a decision in that case was stated by the learned Judges themselves as follows : (SCR p. 130)

The question, however, before us is - does this definition merely give effect to the ordinary, accepted notion of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or does it go 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 so stated was answered by the learned Judges in the following way :

> In the absence of any compelling words to indicate that the intention was even to include a bona fide closure of the whole business, it would, we think, be divorcing

> the expression altogether from the context to give it such a wide meaning as is contended for by learned counsel for the respondents .... 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 ceases to exist.

9. It is true that there are some observations which, if not properly understood with reference to the question at issue, seemingly support the submission of Dr. Anand Parkash that 'termination of service for any reason whatsoever' means no more and no less than discharge of a labour force which is a surplusage. The misunderstanding of the observations and the resulting confusion stem from not appreciating (1) the real question which was posed and answered by the learned Judges and (2) that the reference to 'discharge on account of surplusage' was illustrative and not exhaustive and by way of contrast with discharge on account of transfer or closure of business.

10. Willcox Buckwell India Ltd. v. Jagannath (AIR 1974 SC 1166 : (1974) 4 SCC 850 : 1974 SCC (L & S) 490) and Digwadih Colliery v. Workmen ((1965) 3 SCR 448 : AIR 1966 SC 75 : (1965) 2 SCJ 864), were both cases where the termination of the workmen from service was on account of "surplusage" and, therefore, the cases were clear cases of retrenchment. They do not throw any light on the question now at issue.

11. In State Bank of India v. Shri N. Sundara Money ((1976) 3 SCR 160 : (1976) 1 SCC 822 : 1976 SCC (L & S) 132), a Bench of three Judges of this Court consisting of Chandrachud, J. (as he then was), Krishna Iyer, J., and Gupta, J., considered the question whether Section 25-F of the Industrial Disputes Act was attracted to a case where the order of appointment carried an automatic cessation of service, the period of employment working itself out by efflux of time and not by an act of employer. Krishna Iyer, J., who spoke for the Court observed : (SCC pp. 826 & 827, 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 ? 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. ..... 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 25-F and automatic extinguishment of service by effluxion of time cannot be sufficient. ... 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.

12. In Hindusthan Steel Ltd. v. Presiding Officer, Labour Court, Orissa ((1977) 1 SCR 586 : (1976) 4 SCC 222 : 1976 SCC (L & S) 583), the question again arose whether termination of service by efflux of time was termination of service within the definition of retrenchment in Section 2(oo) of the Industrial Disputes Act. Both the earlier decisions of the Court in Hariprasad Shivshankar Shukla v. A. D. Divikar (1957 SCR 121 : AIR 1957 SC 121 : 1957 SCJ 83) and State Bank of India

v. N. Sundara Money ((1976) 3 SCR 160 : (1976) 1 SCC 822 : 1976 SCC (L & S) 132), were considered. There was also a request that N. Sundara Money case ((1976) 3 SCR 160 : (1976) 1 SCC 822 : 1976 SCC (L & S) 132) conflicted with the decision in Hariprasad Shivshankar Shukla v. A. D. Divikar (1957 SCR 121 : AIR 1957 SC 121 : 1957 SCJ 83) and therefore required reconsideration. A Bench of three Judges of this Court consisting of Chandrachud J. (as he then was), Goswami, J. and Gupta, J., held that there was nothing in Hariprasad Shivshankar Shukla v. A. D. Divikar ((1957) SCR 121 : AIR 1957 SC 121 : 1957 SCJ 83) which was inconsistent with the decision in N. Sundara Money case ((1976) 3 SCR 160 : (1976) 1 SCC 822 : 1976 SCC (L & S) 132). They held that the decision in Hariprasad Shivshankar case (1957 SCR 121 : AIR 1957 SC 121 : 1957 SCJ 83) was that the words "for any reason whatsoever" used in the definition of retrenchment would not include a bona fide closure of the whole business because it would be against the entire scheme of the Act. The learned Judges then observed that, on the fact before them to give full effect to the words "for any reason whatsoever" would be consistent with the scope and purpose of Section 25 of the Industrial Disputes Act and not contrary of the scheme of the Act. In Delhi Cloth & General Mills Ltd. v. Shambhu Nath Mukherjee ((1978) 1 SCR 591 : (1977) 4 SCC 415 : 1978 SCC (L & S) 1), Goswani, Shinghal and Jaswant Singh, JJ. held that striking off the name of a workman from the rolls by the management was termination of the service which was retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act.

13. Dr. Anand Parkash, cited before us the decision of a Full Bench of the Kerala High Court in L. Robert D'Souza v. Executive Engineer, Southern Rly. ((1979) 1 LLJ 211 (Ker)), and some other cases decided by other High Courts purporting to follow the decision of this Court in Hariprasad Shivshankar Shukla v. A. D. Divikar case (1957 SCR 121 : AIR 1957 SC 121 : 1957 SCJ 83). Shukla case (1957 SCR 121 : AIR 1957 SC 121 : 1957 SCJ 83), we have explained. The ratio of Shukla case (1957 SCR 121 : AIR 1957 SC 121 : 1957 SCJ 83), in fact, has already been explained in Hindusthan Steel Ltd. v. The Presiding Officer, Labour Court Orissa ((1977) 10SCR 586 : (1976) 4 SCC 222 : 1976 SCC (L & S) 583). The decisions in Hindusthan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa ((1977) 1 SCR 586 : (1976) 4 SCC 222 : 1976 SCC (L & S) 583), and State Bank of India v. N. Sundara Money ((1976) 3 SCR 160 : (1976) 1 SCC 822 : 1976 SCC (L & S) 132) have, in our view, properly explained Shukla case (1957 SCR 121 : AIR 1957 SC 121 : 1957 SCJ 83) and have laid down the correct law. The decision of the Kerala High Court in L. Robert D'Souza v. Executive Engineer, Southern Rly. ((1979) 1 LLJ 211 (Ker)), and the other decisions of the other High Courts to similar effect, viz. Managing Director, National Garage v. J. Gonsalves ((1962) 1 LLJ 56 : AIR 1962 Bom 152 : 63 Bom LR 989), Goodlass Nerolac Paints (P) Ltd. v. Chief Commr., Delhi ((1967) 1 LLJ 545 (Pun)), and Rajasthan S.E.B. v. Labour Court ((1966) 1 LLJ 381 : AIR 1966 Raj 56 : 1966 Raj LW 98), are, therefore, overruled. We held, as a result of our discussion, that the discharge of the workman on the ground she did not pass the test which would have enabled her to be confirmed was 'retrenchment' within the meaning of Section 2(oo) and, therefore, the requirements of Section 25-F has to be complied with. The order of the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, New Delhi, is set aside and the appellant is directed to be reinstated with full back wages. The appellant is entitled to her costs.

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