Mohan Lal

Vs

Management of M/s. Bharat Electronics Ltd.

Civil Appeal No. 364 of 1981

(A.C. Gupta, D.A. Desai JJ)

21.04.1981

JUDGMENT

DESAI, J. –

1. The appellant Mohan Lal was employed with the respondent M/s. Bharat Electronics Limited as Salesman at its Delhi Sales Depot on a salary of Rs. 520 per month December 8, 1973. His service was abruptly terminated by letter dated October 12, 1974 with effect from October 19, 1974. Consequent upon this termination, an industrial dispute was raised and the Delhi Administration, by its order dated April 24, 1976 referred the following dispute to the Labour Court, Delhi for adjudication :

> Whether the termination of services of Shri Mohan Lal is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect ?

2. As the respondent-management at one stage failed to participate in the proceedings, the reference was heard ex parte and the Labour Court made an award on May 2, 1977 directing reinstatement of the appellant with continuity of service and full back wages at the rate of Rs. 520 per month from the date of termination till reinstatement. Subsequently, respondent moved for setting aside the ex parte award and seeking permission to participate in the proceedings, which motion was granted. The respondent inter alia contended that the appellant was a salesman appointed on probation for six months and subsequently on the expiry of the initial period, the period of probation was extended up to September 8, 1974 and on the expiry of this extended period of probation, his service was terminated by letter dated October 12, 1974, as he was not found suitable for the post to which he was appointed.

3. The Labour Court, on evaluation of evidence both oral and documentary, held that the termination of the service was in accordance with the standing orders justifying the removal of the employee on unsuccessful probation during the initial or extended period of probation; and therefore the termination in this case, according to the Labour Court, would not constitute retrenchment within the meaning of Section 2(00) read with Section 25-F of the Industrial Disputes Act. Accordingly it was held that the termination was neither illegal nor improper nor unjustified and the claim of the appellant was negatived. Hence, this appeal by special leave.

4. The only point for determination is whether even in the circumstances, as pleaded by the respondent termination of service of the appellant would amount to retrenchment within the meaning of the expression as defined in Section 2(00) of the Industrial Disputes Act, 1947 ('Act' for

short) ? If the answer is in affirmative, the consequential question will have to be answered whether in view of the admitted position that the mandatory pre-condition prescribed by Section 25-F for a valid retrenchment having not been satisfied, the appellant would be entitled to reinstatement with back wages or as contended by Mr. Markendeya in the special facts of this case, the court should not direct reinstatement but award compensation in lieu of reinstatement.

5. An apparent contradiction which stares in the eye on the stand taken by the respondent is overlooked by the Labour Court which has resulted in the miscarriage of justice. In this context the facts as alleged by the respondent may be taken as true. Says the respondent, that the appellant was appointed by order dated July 21, 1973. The relevant portion of the order of which notice may be taken is paragraph 2. It reads as under : "This appointment will be temporary in the first instance but is likely to be made permanent." Paragraph 4 refers to the consequences of a temporary appointment, namely, that the service would be terminable without notice and without any compensation in lieu of notice on either side. Paragraph 6 provides that the employment of the appellant shall be governed by rules, regulations and standing orders of the company then in force and which may be amended, altered or extended from time to time and the acceptance of the offer carries with it the necessary agreement to obey all such rules, regulations and standing orders. There is not even a whisper of any period of probation prescribed for the appointment nor any suggestion that there are some rules which govern appointment of the appellant which would initially be on probation. Thus, the appointment was temporary in the first instance and there was an inner indication that it was likely to be made permanent. Even if this promise of likely to be made permanent is ignored, indubitably the appointment was temporary. The respondent, however says that note 3 at the foot of the appointment order inmates to the appellant that in the event of his permanent appointment the temporary service put in by him will be counted as part of probationary period of service as required under the rules. This consequence would follow in the event of permanent appointment being offered and this is clear from the language employed in note 3. In this case no appointment having been offered, the consequence set out in note 3 could not have emerged. Assuming, however, that this note incorporates all the necessary rules and regulations in the contract of employment, it was incumbent upon the respondent to show that even when appointment (sic appointee) is not shown to be on probation in the order of the appointment, in view of the rules governing the contract of employment there shall always be a period of probation for every appointee. Witness Bawdekar who appeared on behalf of the respondent stated in his evidence that the appellant was appointed as a probationary salesman. Even according to him prescribed period of probation was six months. He then stated that by letter dated July 10, 1974, respondent informed the appellant that his service should have been terminated on the expiry of the initial period of probation, i.e. on June 8, 1974. However, as a special case the probation period was extended up to September 8, 1974. No rule was pointed out to us enabling the respondent to extend the initial period of probation. Assuming even then that such was the power of the respondent, on September 9, 1974, the period of probation having not been further extended nor termination of service having been ordered during or at the end of the probationary period on the ground of unsuitability, the consequence in law is that either he would be a temporary employee or a permanent employee as per the rules governing the contract of employment between the appellant and the respondent. Admittedly his service was terminated by letter dated October 12, 1974, with effect from October 19, 1974. It is not the case of the respondent that there was any further extension of the probationary period. Thus, if the initial appointment which was described as temporary is treated on probation; even according to the respondent the period of probation was six months, it expired on June 8, 1974. Even if by the letter dated July 10, 1974 the period of probation was said to have been extended, on its won terms it expired on September 8, 1974. The service of the appellant was terminated with

effect from October 19, 1974. What was the nature and character of service of the appellant from September 8, 1974 when the extended period of probation expired and termination of his service on October 19, 1974 ? He was unquestionably not on probation. He was either temporary or permanent but not a probationer. How is it open to the Labour Court to record a finding that the service of the appellant was terminated during that period of probation on account of his unsatisfactory work which did not improve in spite of repeated warnings ? The Labour Court concluded that notwithstanding the fact that the appellant was not shown to have been placed on probation in the initial appointment letter but in view of the subsequent orders there was a period of probation prescribed for the appellant and that his service was terminated during the extended period of probation. This is gross error apparent on the face of the record which, if not interfered with, would result in miscarriage of justice.

6. If on October 19, 1974, the appellant was not on probation and assuming maximum in favour of the respondent that he was a temporary employee, could termination of his service, even according to the respondent, not as and by way of punishment but a discharge of a temporary servant, constitute retrenchment within the meaning of Section 2(00), is the core question. Section 2(00) reads as under :

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

7. Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the section itself. The excepted or excluded cases are where termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, 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, and termination of the service of a workman on the ground of continued ill-health. It is not the case of the respondent that termination in the instant case was a punishment inflicted by way of disciplinary action. If such a position were adopted, the termination would be ab initio void for violation of principle of natural justice or for not following the procedure prescribed for imposing punishment. It is not even suggested that this was a case of voluntary retirement or retirement on reaching the age of superannuation or absence on account of continued ill-health. The case does not fall under any of the excepted categories. There is thus termination of service for a reason other than the excepted category. It would indisputably be retrenchment within the meaning of the word as defined in the Act. It is not necessary to dilate on the point nor to refer to the earlier decisions of this Court in view of the later to pronouncements of this Court to both of which one of us was a party. A passing reference to the earliest judgment which was the sheet-anchor till the later pronoucements may not be out of place. In Hariprasad Shivshankar Shukla v. A.D. Divakar (1957 SCR 121 : AIR 1957 SC 121), after referring to Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union (1956 SCR 872 : AIR 1957 SC 95), a

Constitution Bench of this Court quoted with approval the following passage from the aforementioned case :

> But 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 . . . .

This observation was made in the context of the closure of an undertaking and being conscious of this position, the question of the correct interpretation of the definition of the expression 'retrenchment' in Section 2(00) of the Act was left open. Reverting to that question, the view was reaffirmed but let it be remembered that the two appeals which were heard together in Shukla case (1957 SCR 121 : AIR 1957 SC 121) were cases of closure, one Barsi Light Railway Company Ltd., and another Shri Dinesh Mills Ltd., Baroda. With specific reference to these cases, in State Bank of India v. N. Sundara Money ((1976) 1 SCC 822 : 1976 SCC (L&S) 132 : (1976) 3 SCR 160), Krishna Iyer, J. speaking for a three-Judge Bench, interpreted the expression 'termination . . . for any reason whatsoever' as under : (SCC pp. 826-27 : SCC (L&S) p. 136, para 9)

> A breakdown of Section 2(00) 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 weaker 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 25-F and Section 2(00). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by 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 25-F(b) is inferable from the proviso to Section 25-F(1). True, the section speaks of retrenchment by the employer and it is argued 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.

It would be advantageous to refer to the facts of that case to appreciate the interpretation placed by this Court on the relevant section. State Bank of India appointed the respondent by an order of appointment which incorporated the two relevant terms relied upon by the Bank at the hearing of the case. They were : (i) the appointment is purely a temporary one for a period of 9 days but may be terminated earlier, without assigning any reason therefor at the Bank's discretion; (ii) the employment, unless terminated earlier, will automatically cease at the expiry of the period i.e. November 18, 1972. It is in the context of these facts that the court held that where termination was to be automatically effective by a certain date as set out in the order of appointment it would nonetheless be a retrenchment within the meaning of Section 2(00) and in the absence of strict compliance with the requirements of Section 25-F, termination was held to be invalid.

8. Continuing this line of approach, in Hindustan Steel Ltd. v. Presiding Officer, Labour Court ((1976) 4 SCC 222 : 1976 SCC (L&S) 583 : (1977) 1 SCR 586), a Bench of three judges examined the specific contention that the decision in Sundara Money Case ((1976) 1 SCC 822 : 1976 SCC (L&S) 132 : (1976) 3 SCR 160) runs counter to the construction placed on that section by a Constitution Bench and, therefore, the decision is per incuriam. This Court analysed in detail Shukla Case (1957 SCR 121 : AIR 1957 SC 121) and Sundara Money case ((1976) 1 SCC 822 : 1976 SCC (L&S) 132 : (1976) 3 SCR 160) and ultimately held that the court did not find anything in Shukla case (1957 SCR 121 : AIR 1957 SC 121) which is inconsistent with what has been held in Sundara Case ((1976) 1 SCC 822 : 1976 SCC (L&S) 132 : (1976) 3 SCR 160). In reaching the conclusion it was observed that in Shukla Case (1957 SCR 121 : AIR 1957 SC 121) the question arose in the context of closure of the whole of the undertaking while in Hindustan Steel case ((1976) 4 SCC 222 : 1976 SCC (L&S) 583 : (1977) 1 SCR 586) and Sundara Money case ((1976) 1 SCC 822 : 1976 SCC (L&S) 132 : (1976) 3 SCR 160) the question was not examined in the context of closure of whole undertaking but individual termination of service of some employers and it was held to constitute retrenchment within the meaning of the expression. This question again cropped up in Santosh Gupta v. State Bank of Patiala ((1980) 3 SCC 340 : 1980 SCC (L&S) 409 : (1980) 3 SCR 884). Rejecting the contention for reconsideration of Sundara Money case ((1976) 1 SCC 822 : 1976 SCC (L&S) 132 : (1976) 3 SCR 160) on the ground that it conflicted with a Constitution Bench decision in Shukla Case (1957 SCR 121 : AIR 1957 SC 121) and adopting the ratio in Hindustan Steel case ((1976) 4 SCC 222 : 1976 SCC (L&S) 583 : (1977) 1 SCR 586) that there was nothing in the two aforementioned decisions which is inconsistent with each other and taking note of the decision in Delhi Cloth & General Mills Ltd. v. Shambhu Nath Mukherji ((1977) 4 SCC 415 : 1978 SCC (L&S) 1 : (1978) 1 SCR 519) wherein this Court has held that striking off the name of a workman from the rolls by the management was termination of service which was retrenchment within the meaning of Section 2(OO), the court held that discharge of the workman on the ground that she had not passed the test which would enable her to obtain confirmation was retrenchment within the meaning of Section 2(OO) and, therefore, the requirements of Section 25-F had to be compiled with. It was pointed out that since the decision in Shukla Case (1957 SCR 121 : AIR 1957 SC 121), the Parliament stepped in and introduced Section 25-FF and Section 25-FFF by providing that compensation shall be payable to workmen in case of transfer or closure of the undertaking, as if the workmen had been retrenched. The effect of the amendment was noticed as 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. The court concluded as under : (SCC p. 342 : SCC (Tax) p. 411, para 5)

> Whatever doubts might have existed before Parliament enacted Sections 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.

9. Reverting to the facts of this case, termination of service of the appellant does not fall within any of the excepted, or to be precise, excluded categories. Undoubtedly therefore, the termination would constitute retrenchment and by a catena of decisions it is well settled that where prerequisite for valid retrenchment as laid down in Section 25-F has not been compiled with, retrenchment bringing about termination of service is ab initio void. In State of Bombay v. Hospital Mazdoor Sabha ((1960) 2 SCR 866, 872 : AIR 1960 SC 610 : (1960) 1 LLJ 251), this Court held that failure to comply with the requirement of Section 25-F which prescribes a condition precedent for a valid

retrenchment renders the order of retrenchment invalid and inoperative. In other words, it does not bring about a cessation of service of the workman and the workman continues to be in service. This was not even seriously controverted before us.

10. It was, however, urged that Section 25-F is not attracted in this case for an entirely different reason. Mr. Markendaya contended that before Section 25-F is invoked, the condition of eligibility for a workman to complain of invalid retrenchment must be satisfied. According to him unless the workman has put in continuous service for not less than one year his case would not be governed by Section 25-F. That is substantially correct because the relevant provision of Section 25-F provides as under :

> 25-F : 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 -
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> (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;
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> Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;
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> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
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> (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.

Before a workman can complain of retrenchment being not in consonace with Section 25-F, he has to show that he has been continuous service for not less than one year under that employer who has retrenched him from service. Section 25-B is the dictionary clause for the expression 'continuous service'. It reads as under :

> 25-B. For the purposes of this chapter, -
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> (1) a workman shall be said to be in continuous service for a period if he is, for that period in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
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> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year six months, he shall be deemed to be in continuous service under an employer -
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> (a) for a period of one year, if he workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation. - For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which -

(i) 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;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.

11. Mr. Markendeya contended that clauses (1) and (2) of Section 25-B provide for two different contingencies and that none of the clauses is satisfied by the appellant. He contended that clause (1) provides for uninterrupted service and clause (2) comprehends a case where the workman is not in continuous service. The language employed in sub-sections (1) and (2) does not admit of this dichotomy. Sub-sections (1) and (2) introduce a deeming fiction as to in what circumstances a workman could be said to be in continuous service for the purposes of Chapter V-A, Sub-section (1) provides a deeming fiction in that where a workman is in service for a certain period he shall be deemed to be in continuous service for that period even if service is interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Situations such as sickness, authorised leave, an accident, a strike not illegal, a lock-out or a cessation of work would ipso facto interrupt a service. These interruptions have to be ignored to treat the workman in uninterrupted service and such service interrupted on account of the aforementioned causes which would be deemed to be uninterrupted would be continuous service for the period for which the workman has been in service. In industrial employment or for that matter in any service, sickness, authorised leave, an accident, a strike which is not illegal, a lock-out, and a cessation of work not due to any fault on the part of the workman, are known hazards and there are bound to be interruptions on that account. Sub-section (1) mandates that interruptions therein indicated are to be ignored meaning thereby that on account of such cessation an interrupted service shall be deemed to be uninterrupted and such uninterrupted service shall for the purposes of Chapter V-A be deemed to be continuous service. That is only one part of the fiction.

12. Sub-section (2) incorporates another deeming fiction for an entirely different situation. It comprehends a situation where a workman is not in continuous service within the meaning of sub-section (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year or six months, as the case may be, if the workman during the period of 12 calendar months just preceding the date with reference to which calculation is to be made, has actually worked under that employer for not less than 240 days. Sub-section (2) specifically comprehends a situation where a workman is not in continuous service as per the deeming fiction indicated in sub-section (1) for a period of one year or six months. In such a case he is deemed to be in continuous service for a period of one year if he satisfies the conditions in sub-clause (a) of clause (2). The conditions are that commencing (sic) the date with reference to which calculation is to be made, in case of retrenchment the date of retrenchment, if in a period of 12 calendar months just preceding such date the workman has rendered service for a period of 240 days, he shall be deemed to be in continuous service for a period of one year for the purposes of Chapter V-A. It is not necessary for the purposes of clause (2)(a) that the workman should be in service for a period of one year. If he is in service for a period of one year and that if that service is continuous service within the meaning of clause (1) his case would be governed by clause (1) and his case need not be covered by clause (2). Clause (2) envisages a situation not governed by clause (1). And clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, i.e. the date of termination of service which is complained of retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period on one year he will satisfy the eligibility qualification enacted in Section 25-F. On a pure grammatical construction the contention that even for invoking clause (2) of Section 25-B the workman must be shown to be in continuous service for a period of one year would render clause (2) otiose and socially beneficial legislation would receive a set back by this impermissible assumptions. The contention must first be negatived on a pure grammatical construction of clause (2). And in any event, even if there be any such thing in favour of the construction, it must benegatived on the ground that it would render clause (2) otiose. The language of clause (2) is so clear and unambiguous that no precedent is necessary to justify the interpretation we have placed on it. But as Mr. Markendeya referred to some authorities, we will briefly notice them.

13. In Sur Enamel & Stamping Works (P) Ltd. v. Workmen ((1964) 3 SCR 616 : AIR 1963 SC 1914 : (1963) 2 LLJ 367), referring to Section 25-B as it then stood read with Section 2(eee) which defined continuous service, this Court held as under :

> The position therefore is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of Section 25-B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days. Where, as in the present case, the workmen have not at all been employed for a period of 12

> calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more. For, in any case, the requirements of Section 25-B would not be satisfied by the mere fact of the number of working days being less than 240 days.

If Section 25-B had not been amended, the interpretation which it received in the aforementioned case would be binding on us. However, Section 25-B and Section 2(eee) have been the subject-matter of amendment by the Industrial Disputes (Amendment) Act, 1964. Section 2(eee) was deleted and Section 25-B was amended. Prior to its amendment by the 1964 Amendment Act, Section 25-B read us under :

> For the purposes of Sections 25-C and 25-F a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days, shall be deemed to have completed one year of continuous service in the industry.

14. We have already extracted Section 25-B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court ((1980) 4 SCC 443 : 1981 SCC (L&S) 16) Chinnappa Reddy, J., after noticing the amendment and referring to the decision in Sur Enamel & Stamping Works (P) Ltd. case ((1964) 3 SCR 616 : AIR 1963 SC 1914 : (1963) 2 LLJ 367), held as under : (SCC pp. 449-50 : SCC (L&S) pp. 22-23, para 9)

> These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months; it is not necessary that he should have been in the service of the employer for one whole year.

In a concurring judgment Pathak, J. agreed with this interpretation of Section 25-B(2). Therefore, both on principle and on precedent it must be held that Section 25-B(2) comprehends a situation where a workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service of one year for the purpose of Section 25-B and Chapter V-A.

15. Reverting to the facts of this case, admittedly the appellant was employed and was on duty from December 8, 1973 to October 19, 1974 when his service was terminated. The relevant date will be the date of termination of service, i.e. October 19, 1974. Commencing from that date and counting backwards, admittedly he has rendered service for a period of 240 days within a period of 12 months and, indisputably, therefore, his case falls within Section 25-B(2)(a) and he shall be deemed to be in continuous service for a period of one year for the purpose of Chapter V-A.

16. Appellant has thus satisfied both the eligibility qualifications prescribed in Section 25-F for claiming retrenchment compensation. He has satisfactory established that his case is not covered by any of the excepted or excluded categories and he has rendered continuous service for one year. Therefore, termination of his service would constitute retrenchment. As per-condition for a valid

retrenchment has not been satisfied the termination of service is ab initio void, invalid and inoperative. He must, therefore, be deemed to be in continuous service.

17. The last submission was that looking to the record of the appellant this Court should not grant reinstatement but award compensation. If the termination of service is ab initio void and inoperative, there is no question of granting reinstatement because there is no cessation of service and mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as Ruby General Insurance Co. Ltd. v. Chopra (P.P.) ((1969) 3 SCC 653 : (1970) 1 LLJ 63) and Hindustan Steels Ltd. v. A.K. Roy ((1969) 3 SCC 513 : (1970) 3 SCR 343 : AIR 1970 SC 1401), it was held that the court before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the courts in the field of social justice and we do not propose to depart in this case.

18. Accordingly, this appeal is allowed and the Award of the Labour Court dated May 31, 1980, is set aside. We hold that the termination of service of the appellant was ab initio void and inoperative and a declaration is made that he continues to be in service with all consequential benefits, namely, back wages in full and other benefits, if any. However, as the Award is to be made by the Labour Court, we remit the case to the Labour Court to make an appropriate Award in the light of the findings of this Court. The respondent shall pay the costs of the appellant in this Court quantified at Rs. 2000 within four weeks from the date of this judgment and the costs in the Labour Court have to be quantified by the Labour Court.

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