Management of Karnataka State Road Transport Corporation Bangalore

Vs

M. Boraiah and Another

Karnataka State Road Transport Corporation, Bangalore

Vs

Sheikh Abdul Khader and Others

Civil Appeals Nos. 3085 of 1981 and 3628-3649 of 1982

(A. N. Sen, Ranganath Misra JJ)

01.11.1983

JUDGMENT

RANGANATH MISRA, J. -

1. The employer - Karnataka State Road Transport Corporation - created under a State Act entitled the Transport corporation act of 1950 ('Corporation Act' for short) is in appeal by special leave and the common decision of a Division Bench of the High Court which held that termination of employees while on probation on ground of unsuitability amounted to retrenchment and for non-compliance with the provisions of Section 25-F of the Industrial Disputes Act, 1947 ('Disputes Act' for short), the termination is bad, is challenged.

2. As per Rule 7 made under Section 45 of the Corporation Act, direct recruits are to be on probation for two years and such probation can be extended. The employer terminated the employment of some of the employees during the initial period of probation and of some others during the extended period on the ground of unsatisfactory service. Thereupon an industrial dispute was raised question the legality of their termination and the State Government referred the dispute to the Labour court for adjudication under Section 10 of the Disputes Act. The Labour Court held, overruling the stand of the employer that Section 25-F of the Disputes Act had no application, to the effect that the discharge was invalid. The employer Corporation came before the High Court challenging the Award. A learned single Judge dismissed the writ petition holding that the order of discharge amounted to retrenchment as defined in Section 2(oo) of the Disputes Act and those orders were bad for non-compliance of Section 25-F. The employer Corporation challenged the decision of the single Judge before a Division Bench and the Division Bench by the impugned judgment upheld the decision of the learned single Judge.

3. Admittedly the employees were probationers at the time of discharge from service. There is no dispute that as a condition precedent to discharge the requirements of Section 25-F of the Disputes Act had not been complied with. If the discharge of the employees would amount to retrenchment, appellant's counsel does not dispute that the order of discharge would be bad for non-compliance of Section 25-F of the Disputes Act. The only question for consideration in these appeals, therefore, is whether the discharge of the employees from service amounted to retrenchment.

4. It is the stand of the employer Corporation that the employees were probationers and the order of discharge in every case was on account of unsatisfactory service. Since the order of discharge has been grounded upon unsatisfactory service during the period of probation, it has been argued that such termination of service is not retrenchment.

5. Section 2(00) of the Disputes Act defines retrenchment to mean : "'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".

6. A Constitution Bench of this Court in Hariprasad Shivshankar Shukla v. A. D. Divikar (1957 SCR 121 : AIR 1957 SC 121 : (1957) 1 LLJ 243 : (1956-57) 11 FJR 317, examined the true meaning of the expression 'retrenchment' and posed the following question : (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 ? ....

It went on to say : (SCR p. 131)

There is no doubt that when the Act itself provides a dictionary for the words used, we must look in the statute. We are not concerned with any presumed intention of the Legislature; our task is to get at the intention as expressed in the statute. Therefore, we propose first to examine the language of the definition and see if the ordinary, accepted notion of retrenchment fits in, squarely and fairly, with the language used. What is the ordinary, accepted notion of retrenchment in an industry ? ... Let us now see how far that meaning fits in with the language used. We have referred earlier to the four essential requirements of the definition, and the question is, does the ordinary meaning of retrenchment fulfill those requirements ? In our opinion, it does. When a portion of the staff or labour force is discharged as surplusage in a continuing business, there are (a) termination of the service of a workman; (b) by the employer; (c) for any reason whatsoever; and (d) otherwise than as a punishment inflicted by way of disciplinary action .....

The Constitution Bench further said : (SCR p. 132)

.... The Legislature in using the expression 'for any reason whatsoever' say in effect : "It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment". 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 its context to give it such a wide meaning as is contended for by learned counsel for the respondents. What is being defined is retrenchment, and that is the context of the definition. It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word, every single

requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined.

After referring to certain decisions the Constitution Bench concluded by saying : (SCR p. 141)

For the reasons given above, we hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in Section 2(oo) and as used in Section 25-F has no wider meaning than the ordinary, accepted connotation of the word : it means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, ...

7. The ratio of this decision has been pressed into service by the appellant corporation for its stand that in the instant case the service have been terminated on the ground of unsuitability and it was not a case of disbanding surplus labour force and, therefore, did not amount to retrenchment. On the other hand, counsel for the employees have contended that the consensus of judicial opinion in later decisions of this Court is against the appellant's stand. The first decision is the case of State Bank of India v. N. Sundara Money ((1976) 3 SCR 160 : (1976) 1 SCC 822 : 1976 SCC (L&S) 132 : AIR 1976 SC 1111 : 1976 Lab IC 769 : (1976) 1 ILJ 478). A Bench of three learned Judges of this Court referred to the definition in Section 2[oo] of the disputes Act and observed : [SCC p. 827, para 9]

... 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 ....

8. Then came the decision in Hindustan Steel Ltd. v. Presiding Officer, Labour Court, Orissa ((1977) 1 SCR 586 : (1976) 4 SCC 222 : 1976 SCC (L&S) 583 : AIR 1977 SC 31 : 1976 Lab IC 1766 : (1977) 1 LLJ 1 : (1976) 49 FJR 397) when a three-Judge Bench of this Court again examined the true meaning of the definition of the expression 'retrenchment'. On this occasion reference was made to the Constitution Bench decision and as would appear from page 589 of the Report, counsel had submitted that the three-Judge decision of this Court in Sundara Money case ((1976) 3 SCR 160 : (1976) 1 SCC 822 : 1976 SCC (L&S) 132 : AIR 1976 SC 1111 : 1976 Lab IC 769 : (1976) 1 LLJ 478) was in apparent conflict with the Constitution Bench decision and required reconsideration. This submission of counsel was considered and facts of the Constitution Bench case were analysed and Gupta, J. who spoke for the Court, stated : [SCC p. 225, para 4].

... 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 25-F of the Industrial Disputes Act, and not contrary to the scheme of the Act. We do not find anything in Hariprasad case (1957 SCR 121 : AIR 1957 SC 121 : (1957) 1 LLJ 243 : (1956-57) 11 FJR 317) which is inconsistent with what has been held in State Bank of India v. N. Sundara Money ((1976) 3 SCR 160 : (1976) 1 SCC 822 : 1976 SCC (L&S) 132 : AIR 1976 SC 1111 : 1976 Lab IC 769 : (1976) 1 LLJ 478).

9. The same question came up for consideration before a two-Judge Bench of this Court in Santosh Gupta v. State Bank of Patiala ((1980) 3 SCR 884 : (1980) 3 SCC 340 : 1980 SCC (L&S) 409 : AIR 1980 SC 1219). The facts of the case were more or less the same as in the present dispute. Employment there had been terminated upon failure of the workman to pass the test which would have enabled her to be confirmed in service and it was contended on behalf of the management that termination of service was not due to discharge of surplus labour force and, therefore, it did not amount to retrenchment. The Division Bench referred to the Constitution Bench decision and

observed : [SCC p. 342, para 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 workman on reaching the age of superannuation or termination of the service of the workman 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 workman. 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 of any reason whatsoever". This, in our opinion, emphasizes the broad interpretation to be given to the expression 'retrenchment'. In our view if due with 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[00]. This came to be realised as result of the decision of this Court in Hariprasad Shivashankar Shukla v. A. D. Divikar (1957 SCR 121 : AIR 1957 SC 121 : (1957) 1 LLJ 243 : (1956-57) 11 FJR 317). The Parliament then stepped in and introduced Section 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 involved 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 enacted Sections 25-FF and 25-FFF about the width of Section 25-F there cannot now be any doubt that the expression 'termination' of service for any reason whatsoever now covers every kind 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.

The learned Judges drew support from what had been observed in Indian Hume Pipe Co. Ltd. v. Workmen ((1960) 2 SCR 32 : AIR 1960 SC 251 : (1959) 2 LLJ 830 : (1959-60) 17 FJR 273) : [(1980)] 3 SCC 343, para 6] "... The object of retrenchment compensations is to give partial protection to the retrenched employee and his family to enable them to tide over the hard period of unemployment." and observed : [(1980)] 3 SCC 343, para 6].

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

Chinnappa Reddy, J. thereafter referred to the Constitution Bench decision and said : [(1980) 3 SCC 344, para 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 Prakash 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 lead 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.

It was further observed : [(1980)] 3 SCC 345, para 13]

... The ratio of Shukla case (1957 SCR 121 : AIR 1957 SC 121 : (1957) 1 LLJ 243 : (1956-57) 11 FJR 317) in fact, has already been explained, in Hindustan Steel Ltd. v. Presiding Officer, Labour Court, Orissa ((1977) 1 SCR 586 : (1976) 4 SCC 222 : 1976 SCC (L&S) 583 : AIR 1977 SC 31 : 1976 Lab IC 1766 : (1977) 1 LLJ 1 : (1976) 49 FJR 397) . The decision in Hindustan Steel Ltd. v. Presiding Officer, Labour Court, Orissa ((1977) 1 SCR 586 : (1976) 4 SCC 222 : 1976 SCC (L&S) 583 : AIR 1977 SC 31 : 1976 Lab IC 1766 : (1977) 1 LLJ 1 : (1976) 49 FJR 397) and State Bank of India v. N. Sundara Money ((1976) 3 SCR 160 : (1976) 1 SCC 822 : 1976 SCC (L&S) 132 : AIR 1976 SC 1111 : 1976 Lab IC 769 : (1976) 1 LLJ 478) have, in our view, properly explained Shukla case (1957 SCR 121 : AIR 1957 SC 121 : (1957) 1 LLJ 243 (1956-57) 11 FJR 317) and have laid down the correct law .....

10. The same question arose for consideration before another two-Judge Bench in Mohan Lal v. management of M/s. Bharat Electronics Ltd. ((1981) 3 SCR 518 : (1981) 3 SCC 225 : 1981 SCC (L&S) 478 : AIR 1981 SC 1253 : 1981 Lab IC 806 : (1981) 58 FJR 467) Desai, J. spoke of the Court thus : [SCC pp. 230, 231, para 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 case of voluntary retirement or retirement on reaching the age of superannuation or absence on account of contained 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 two 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 pronouncements may not be out of place. In Hariprasad Shivashankar Shukla v. A. D. Divikar (1957 SCR 121 : AIR 1957 SC 121 : (1957) 1 LLJ 243 : (1956-57) 11 FJR 317), after referring to Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union (1956 SCR 872 : AIR 1957 SC 95 : (1957) 1 LLJ 235 : (1957) 11 FJR 262), 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[oo] 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 : (1957) 1 LLJ 243 : (1956-57) 11 FJR 317) were cases of closure,...

11. In the majority judgment in Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi, ((1981) 1 SCR 789 : (1980) 4 SCC 443 : 1981 SCC (L&S) 16 : AIR 1981 SC 422 : (1980) 57 FJR 67 : (1981) 1 LLJ 386 : 1980 Lab IC 1292) the ratio of the latter case has been followed. A Bench of two learned Judges in the case of L. Robert D'Souza v. Executive Engineer, Southern Railway ((1982) 3 SCR 251 : (1982) 1 SCC 645 : 1982 SCC (L&S) 124 : AIR 1982 SC 854 : (1982) 60 FJR 144 : (1982) 1 LLJ 330 : 1982 Lab IC 811), re-examined the entire position. Desai, J. who again spoke for the Court indicated : [SCC pp. 650, 651, para 5]

At the outset it must at once be pointed out that the construction put by the Full Bench of the Kerala High Court on the expression 'retrenchment' in Section 2[oo] of the Act that it means only the discharge of surplus labour or staff by the employer for any reason whatsoever is no more good law and in fact the decision of the Full Bench of Kerala High Court in L. Robert D'Souza v. Executive Engineer, Southern Railway ((1979) 1 LLJ 211), has been specifically overruled by this Court in Santosh Gupta v. State Bank of Patiala ((1980) 3 SCR 884 : (1980) 3 SCC 340 : 1980 SCC (L&S) 409 : AIR 1980 SC 1219). This Court has consistently held in State Bank of India v. N. Sundara Money ((1976) 3 SCR 160 : (1976) 1 SCC 822 : 1976 SCC (L&S) 132 : AIR 1976 SC 1111 : 1976 Lab IC 769 : (1976) 1 LLJ 478), Hindustan Steel Ltd. v. Presiding officer, Labour Court ((1977) 1 SCR 586 : (1976) 4 SCC 222 : 1976 SCC (L&S) 583 : AIR 1977 SC 31 : 1976 Lab IC 1766 : (1977) 1 LLJ 1 : (1976) 49 FJR 397) and Delhi Cloth & General Mills Ltd. v. Shambhu Nath Mukherjee ((1978) 1 SCR 591 : (1977) 4 SCC 415 : 1978 SCC (L&S) 1 : AIR 1978 SC 8), 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. It was attempted to be urged that in view of the decision of this Court in Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union (1956 SCR 872 : AIR 1957 SC 95 : (1957) 1 LLJ 235 : (1957) 11 FJR 262), the ratio of which was reaffirmed by a Constitution Bench of this Court in Hariprasad Shivashankar Shukla v. A. D. Divikar (1957 SCR 121 : AIR 1957 SC 121 : (1957) 1 LLJ 243 : (1956-57) 11 FJR 317), all the later decisions run counter to the ratio of the Constitution Bench and must be treated per incuriam. This contention need not detain us because first in Hindustan Steel Ltd. case ((1977) 1 SCR 586 : (1976) 4 SCC 222 : 1976 SCC (L&S) 583 : AIR 1977 SC 31 : 1976 Lab IC 1766 : (1977) 1 LLJ 1 : (1976) 49 FJR 397), then in Santosh Gupta case ((1980) 3 SCR 884 : (1980) 3 SCC 340 : 1980 SCC (L&S) 409 : AIR 1980 SC 1219) and lastly in Mohan Lal v. Bharat Electronics Ltd. ((1981) 3 SCR 518 : (1981) 3 SCC 225 : 1981 SCC (L&S) 478 : AIR 1981 SC 1253 : 1981 Lab IC 806 : (1981) 58 FJR 467), it was in terms held that the decision in Sundara Money case ((1976) 3 SCR 160 : (1976) 1 SCC 822 : 1976 SCC (L&S) 132 : AIR 1976 SC 1111 : 1976 Lab IC 769 : (1976) 1 LLJ 478) was not at all inconsistent with the decision of the Constitution Bench in Hariprasad Shukla case (1957 SCR 121 : AIR 1957 SC 121 : (1957) 1 LLJ 243 : (1956-57) 11 FJR 317) and not only required no reconsideration but the decision in Sundara Money case ((1976) 3 SCR 160 : (1976) 1 SCC 822 :

1976 SCC (L&S) 132 : AIR 1976 SC 1111 : 1976 Lab IC 769 : (1976) 1 LLJ 478) was approved in the aforementioned three cases. This position is further buttressed by the decision in Delhi Cloth & General Mills Ltd. case ((1978) 1 SCR 591 : (1977) 4 SCC 415 : 1978 SCC (L&S) 1 : AIR 1978 SC 8) wherein striking off the name of a workman from the roll was held to be retrenchment ....

12. In the series of cases that have come later the Constitution Bench decision has been examined and the ratio indicated therein has been confined to its own facts. The view indicated by this Court in that case obviously did not meet with the approval of Parliament and, therefore, the law has been subsequently amended as already indicated. Lord Devlin once observed :

I am not one of those who believe that the only function of law is to preserve the status quo. Rather, I should say that law is the gatekeeper of the status quo. There is always a host of new ideas galloping around outskirts of society's thought. All of them seek admission but each must first win its spurs; the law at first resists, but will submit to a conqueror and become his servant. In a changing society the law acts as a valve. New policies must gather strength before they can force an entry; when they are admitted and absorbed into the consensus, the legal system should expand to hold them, as also it should contract to squeeze out old policies which have lost the consensus they once obtained (Fourth Chorley Lecture delivered at the London School of Economics on June 25, 1975).

We are inclined to hold that the stage has come when the view indicated in Money case ((1976) 3 SCR 160 : (1976) 1 SCC 822 : 1976 SCC (L&S) 132 : AIR 1976 SC 1111 : 1976 Lab IC 769 : (1976) 1 LLJ 478) has been "absorbed into the consensus" and there is no scope for putting the clock back or for an anti-clockwise operation.

13. Once the conclusion is reached that retrenchment as defined in Section 2[oo] of the Disputes Act covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. Admittedly the requirements of Section 25-F of the Disputes Act had not been complied with in these cases. Counsel for the appellant did not very appropriately dispute before us that the necessary consequence of non-compliance of Section 25-F of the Disputes Act in a case where it applied made the order of termination void. The High Court, in our opinion, has, therefore, rightly come to the conclusion that in these cases the order of retrenchment was bad and consequently it upheld the Award of the Labour court which set aside those orders and gave appropriate relief. These appeals are dismissed. There would be one set of costs. Consolidated hearing fee is assessed at Rs. 5000. This amount shall be over and above the deposit made by the appellants to meet the costs of the respondents.

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