Management of Standard Motor Products of India Limited

Vs

A. Parthasarathy and Another

Civil Appeal Nos. 486 and 487 of 1980

(D. Chinnappa Reddy, V. Khalid JJ)

28.08.1985

JUDGMENT

CHINNAPPA REDDY, J. -

1. The Standard Motor Products of India Limited closed down their factory on May 22, 1970. During the 12 months preceding the date of closure, the workmen were on strike from September 12, 1969 to November 6, 1969 and February 12, 1970 to February 26, 1970. The strike was illegal from September 19, 1969 to November 6, 1969 and from February 12, 1970 to February 26, 1970 as the Government of Tamil Nadu had made an order under Section 10(3) of the Industrial Disputes Act on September 19, 1969 prohibiting the strike. After the closure on May 22, 1970, there was a settlement between the management and the workmen on February 15, 1971. Under the terms of the settlement, it was agreed that the closure should be accepted as a fact, with the necessary legal consequences to follow. The factory resumed work as a new unit on January 22, 1971. The erstwhile employees were taken back as new employees, but it was agreed that their previous services were to be taken into account for the purpose of gratuity. Two hundred and seventeen workers filed petitions under Section 33-C(2) of the Industrial Disputes Act claiming closure compensation under Section 25-FFF. The petitions were dismissed by the Labour Court. Two writ petitions were filed before the High Court. Two writ petitions were filed before the High Court of Madras as test cases and both of them were allowed by the High Court. The Management of Standard Motor Products of India Limited has come up in appeal having obtained a certificate under Article 133(1)(a) of the Constitution.

2. Shri G. B. Pai, learned counsel for the appellant-Management submitted that the workmen were not entitled to any closure compensation under Section 25-FFF as they had not been in continuous service for not less than one year in the undertaking immediately before such closure. His submission was that the continuity of service was broken by the two periods of illegal strike and therefore, the workmen could not be said to have been in service for not less than one year. There is no force in this submission. Section 25-B(1) of the Industrial Disputes Act says that 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 by a strike which is not there was a break in the continuity of service. There would be force in the submission of Shri Pai if Section 25-B(2) did not exist. Under Section 25-B(2), where a workman is not in continuous service within the meaning of clause (1) for a period of one year he shall be deemed to be in continuous service for a period of one year, if the workman, during the 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 two hundred and forty days. In the present case, even if the period of illegal strike is excluded, the number of days during which the workman actually worked under the employer would be found to

be more than 240 days. That being so it has to be held that the workmen were in continuous service for a period of one year immediately before the date of closure. The further submission of Shri Pai that the number of days on which the workmen actually worked under the employer would be less than 240 days if Sundays and other holidays for which the workmen were paid wages were excluded has already been answered by us in the case of Workmen of American Express International Banking Corporation v. Management ((1985) 4 SCC 71) in which judgment has just been pronounced by us. In the circumstances, both the appeals are dismissed with costs.

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