SUPREME COURT OF INDIA

Krishna Dist. Co-operative Marketing Society Ltd. , Vijayawada

Vs.

N.V. Purnachandra Rao

S.L.P.(Civil) Nos. 6887-88 of 1987

(E. S. Venkataramiah and K. N. Singh, JJ.)

03.08.1987

JUDGEMENT

VENKATARAMIAH, J.:-

1. The question arising for decision in this case is whether an employer whose establishment is governed by the Andhra Pradesh Shops and Establishments Act, 1966 (hereinafter referred to as 'the State Act') is required, while retrenching any worker, to comply with the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Central Act') or with Section 40 of the State Act.

2. The petitioner in this case is a cooperative society carrying on business at Vijayawada in the State of Andhra Pradesh. It retrenched nine of its clerks - Respondents 1 to 9 herein. Respondents 1 to 4 were retrenched on 1-10-1978 and respondents 5 to 9 were retrenched on 22-9-1978 on the ground that the business of the management did not warrant the continuance of its heavy establishment. All the respondents challenged the orders terminating their services in an appeal filed under S. 41(1) of the State Act before the appellate authority. The appellate authority set aside the orders of

retrenchment by nine separate judgments delivered on August 1, 1979 and directed the reinstatement of the respondents with full back wages. Aggrieved by the decision of the appellate authority the management, the petitioner herein, filed nine appeals before the Labour Court, Guntur under S. 41(3) of the State Act. The Labour Court allowed the appeals filed against respondents 5 to 9 and set aside the orders which had been passed by the first appellate authority. It however, dismissed the appeals filed against respondents 1 to 4 holding that the orders of retrenchment were bad in law since employees junior to these respondents had been retained in service. It, however, directed that any amount paid to respondents 1 to 4 as notice pay and gratuity etc. under S. 40 of the State Act on account of the termination of their services may be deducted from the back wages payable to them. Aggrieved by the decision of the Labour Court respondents 5 to 9 filed writ petition No. 163 of 1981 on the file of the High Court of Andhra Pradesh and the management, the petitioner herein, filed writ petition No. 6151 of 1980 before the High Court against respondents 1 to 4. The learned single Judge who heard the said two writ petitions dismissed Writ Petition No. 163 of 1981 filed by respondents 5 to 9 and allowed Writ Petition No. 6151 of 1980 filed by the management against respondents 1 to 4. The learned single Judge took the view that respondents 5 to 9 could not claim the benefit of S. 25F of the Central Act in a proceeding initiated under S. 41 of the State Act and dismissed their writ petition. He, however, allowed the writ petition filed by the management and remanded the case to the Labour Court to rehear the case after permitting respondents 1 to 4 to implead four other employees, namely, Seetharamaiah, Rajagopal Rao, Krishna Murthy and Khader Husain, who were alleged to be seniors to respondents 1 to 4 and hearing them on the question of inter se seniority between them and the said four other employees. The learned Judge, however, observed that if S. 25F of the Central Act was applicable to the cases 'I have no doubt that these orders of termination would have to be set aside, because S. 25F denies the rights of the employer to terminate the service of an employee without payment of retrenchment compensation' and that compensation had not been paid in accordance with S. 25F. But he found that S. 25F of the Central Act was not applicable to proceedings under the State Act. Aggrieved by the decision of the learned single Judge respondents 1 to 4 and respondents 5 to 9 filed writ appeal Nos. 892 of 1983 and 893 of 1983 respectively before the Division Bench of the High Court. The common contention urged by both the groups of employees, who were appellants in these two appeals, was that the question of their retrenchment was governed by S. 25F of the Central Act and since the orders of retrenchment had not been passed in conformity with the provisions of S. 25F of the Central Act the said orders were liable to be set aside and they were entitled to be reinstated. The Division Bench accepted the above contention of respondents 1 to 9 and allowed both the appeals holding that the orders of termination were unsustainable. Aggrieved by the decision of the Division Bench of the High Court the petitioner has filed these Special Leave Petitions under Art. 136 of the Constitution.

3. The only question which arises for decision in this case, as mentioned above, is whether the retrenchment of an employee in an establishment governed by the State Act is governed by the provisions of S. 40 of the State Act or by the provisions of Chapter V A of the Central Act which deals with lay-off and retrenchment. For purposes of convenience S. 40 of the State Act is set out below :

"40. Conditions for terminating the services of an employee and payment of gratuity : - (1) No employer shall without a reasonable cause and except for misconduct terminate the service of an

employee who has been in his employment continuously for a period of not less than six months without giving such employee, at least one month's notice in writing or wages in lieu thereof and in respect of an employee who has been in his employment continuously for a period of not less than five years, a gratuity amounting to fifteen days' average wages for each year of continuous employment.

(a) the expression 'wages' does not include overtime wages :

(b) the expression 'average wages' means the daily average of wages for the days an employee actually worked during the thirty days immediately preceding the date of termination of service ;

(c) an employee in an establishment shall be deemed to have been in continuous employment for a period of not less than six months, if he has worked for not less than one hundred and twenty days in that establishment within a period of six months immediately preceding the date of termination of the service of that employee ;

(d) where the total continuous employment is for a fraction of a year or extends over a fraction of a year in addition to one or more completed years of continuous employment, such fraction, if it is not less than a half year shall be counted as a year of continuous employment in calculating the total number of years for which the gratuity is to be given.

(2) Where a gratuity is payable under subsection (1) to an employee, he shall be entitled to receive his wages from the date of termination of his service until the date on which the gratuity so payable is actually paid subject to a maximum of wages for two months.

(3) An employee, who has completed the age of sixty years or who is physically or mentally unfit having been so declared by a medical certificate, or who wants to retire on medical grounds or to resign his service, may give up his employment after giving to his employer notice of at least one month in the case of an employee of sixty years of age, and fifteen days in any other case; and every such employee and the dependant of an employee who dies while in service shall be entitled to receive a gratuity as provided in subsection (1). He shall be entitled to receive the wages from the date of giving up the employment until the date on which the gratuity so payable is actually paid, subject to a maximum of wages for two months.

(4) The services of an employee shall not be terminated for misconduct except, for such act or omissions and in such manner, as may be prescribed."

4. Sub-section (1) of S. 40 of the State Act imposes a restriction on the right of the employer of an establishment governed by the State Act to terminate the services of an employee. It says that an employer shall not without a reasonable cause (except for misconduct) terminate the service of an employee who has been in his employment continuously for a period of not less than six months without giving such employee, at least one month's notice in writing or wages in lieu thereof and in respect of an employee who has been in his employment continuously for period of not less than five years, a gratuity amounting to fifteen days' average wages for each year of continuous employment. In the case of misconduct neither one month's notice or wages in lieu thereof nor gratuity need be paid on the termination of his services. There are no other restrictions on the right of the management to terminate the services of an employee in an establishment governed by the State Act which is enacted by the State legislature in exercise of the powers conferred on it under Entry No. 22 of List III of the Seventh Schedule of the Constitution. The Central Act was enacted by the Central legislature before the commencement of the Constitution and it is also traceable to an Entry in the Government of India Act, 1935 corresponding to Entry No. 22 of List III of the Seventh Schedule to the Constitution. When the Central Act was originally enacted, it merely provided for investigation and settlement of industrial disputes by establishing a machinery for collective bargaining, mediation and conciliation, investigation, arbitration, adjudication and other allied matters. Chapter V-A - lay-off and retrenchment, making provision for payment of compensation for lay-off, retrenchment and closure and on transfer of undertakings was not there. It was introduced by way of amendment in the year 1953. Ss. 25F, 25G, 25H and 25J of the Central Act which are relevant for purposes of this case read as follows :-

"25F. Conditions precedent to retrenchment of workmen - 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-

(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 :

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service ;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as

may be specified by appropriate Government by notification in the Official Gazette."

"25G. Procedure for retrenchment - Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."

"25H. Re-employment of retrenched workmen - Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

"25J. Effect of laws inconsistent with this Chapter- (1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law (including standing orders made under the Industrial Employment (Standing Orders) Act, 1946).

Provided that where under the provisions of any other Act or rules, orders, notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matter under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State insofar as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen insofar as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter."

5. Section 25F of the Central Act deals with the conditions precedent to retrenchment of workmen non-compliance with which will be fatal to any order of retrenchment. S. 25G of the Central Act prescribes the procedure for retrenchment and under it an employer shall ordinarily retrench a workman in accordance with the rule of 'last come, first go' unless for reasons to be recorded the employer retrenches any other workman. S. 25H of the Central Act requires the management to show preference to retrenched workmen over others, where any workman is retrenched and the management proposes to take into its employ any person again for work, where the retrenched

workman offers himself for re-employment. This indeed is a substantial right. S. 25J of the Central Act which is very material for our purpose provides that provisions of Chapter V-A of the Central Act shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946. The proviso to sub-section (1) of S. 25J of the Central Act provides that where under the provisions of any other Act or rules, orders, notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under the Central Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matter under the Central Act. Sub-section (2) of S. 25J of the Central Act is more categorical as regards the effect of Chapter V-A of the Central Act on any other law which may be in force in any State. It provides that nothing contained in Chapter V-A of the Central Act shall be deemed to affect the provisions of any other law for the time being in force in any State insofar as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen insofar as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of Chapter V-A of the Central Act.

6. The learned single Judge who decided the writ petitions formulated three points for his consideration, namely, (i) whether respondents 1 and 9 were 'workmen', (ii) whether the management could be treated as an 'industry' and (iii) whether the three conditions laid down by S. 25F of the Central Act would be applicable to the proceedings under the State Act. He found that both the authority under S. 41(l) of the State Act and the authority under S. 41(3) of the State Act had proceeded on the assumption that the Central Act was applicable to proceedings under the State Act. On a consideration of the submissions made on behalf of the management, the learned single Judge felt that it was not possible to hold that respondents 1 to 9 were not 'workmen' and, the management was not an 'industry' as defined in the Central Act. Having said so the learned single Judge proceeded to decide the third question namely whether S. 25F of the Central Act could be enforced under the provisions of the State Act. The learned single Judge held that "there is no scope either in the language of S. 40 or its implication making it obligatory to read the condition of S. 25F as a part of S. 40 of the Shops and Establishments Act'. Then he proceeded to hold that since the conditions under S. 40 of the State Act had been fulfilled in the case of the respondents 5 to 9, the termination was legal. But in the case of respondents 1 to 4 since it had been alleged that their juniors had been allowed to continue in service the learned Judge felt that the matter required further consideration and hence remanded the case because he was of the view that the above question had to be decided before recording a finding on the question whether the termination was for a reasonable cause. The learned single Judge was however of the view that if Section 25F of the Central Act was applicable 'I have no doubt that these orders of termination would have to be set aside because S. 25F denies the right of the employer to terminate the services of an employee without payment of retrenchment compensation.' The learned single Judge gave the following reasons for holding that S. 25F was not applicable to proceedings under the State Act: (i) that the statutory authorities created under S. 41(l) and S. 41(3) of the State Act being creatures of the statute had no right to apply the provisions of S. 25F of the Central Act to proceedings before them and (ii) that whereas the rights under the Central Act could be agitated by a reference to a Labour Court, the right agitated under S. 41(l) and S. 41(3) was a personal right. We find it difficult to agree with the learned single Judge on both these grounds. It is already seen that the learned single Judge has found that the Respondents were 'workmen' and the management was an 'industry' as

defined in the Central Act. We have explained earlier the effect of S. 25J of the Central Act. Sub-section (1) of S. 25J of the Central Act lays down that Chapter V-A shall have effect notwithstanding anything inconsistent therewith contained in any other law. The proviso to that sub-section however saves any higher benefit available to a workman under any law, agreement or settlement or award. Sub-section (2) of S. 25J however makes a distinction between any machinery provided by any State law for settlement of industrial disputes and the substantive rights and liabilities arising under Chapter V-A of the Central Act where a lay off or retrenchment takes place. It provides that while S. 25J would not affect the provisions in a State law relating to settlement of industrial disputes, the rights and liabilities of employers and workmen insofar as they relate to lay off and retrenchment shall be determined in accordance with Chapter V-A of the Central Act. It is thus seen that S. 41(1) and S. 41(3) of the State Act prescribes alternative authorities to settle a dispute arising out of a retrenchment. Those authorities may exercise their jurisdiction under the State Act but they have to decide such dispute in accordance with the provisions of Chapter V-A. The learned single Judge omitted to notice the effect of S. 25J of the Central Act. Sub-section (2) of S. 25J of the Central Act which makes the procedure for securing relief under S. 41(l) and (3) of the State Act available to a workman emphasises that the rights and liabilities arising out of retrenchment shall be decided in accordance with Chapter V-A of the Central Act. The said rights can be enforced by a workman personally by himself filing an appeal under S. 41(l) of the State Act. It is not necessary that a reference should be sought under the Central Act by collective action of workers. The effect of S. 25J(2) of the Central Act has been considered by this Court in Sawatram Ramprasad Mills Co. Ltd. V. Baliram Ukandaji, (1966) 1 SCR 764: (AIR 1966 SC 616). In that case the question for decision was whether the C. P. and Berar Industrial Disputes (Settlement) Act, 1947 was applicable to the case involving the determination of the rights and liabilities of the management and workmen in the case of lay-off or whether the provisions of Chapter V-A of the Central Act were applicable. The Court found that the C. P. and Berar Industrial Disputes (Settlement) Act, 1947 contained no provisions either for recovery of money or for compensation for lay-off and held that if a workman had a claim arising in a lay-off it could only be dealt with under the Central Act. In that case no question similar to the one involved here was however in issue.

7. In Pest Control India Pvt. Ltd. v. Labour Court, Guntur, (1984) 1 Andh Pra WR 277 the Andhra Pradesh High Court has very recently laid down that in considering whether the termination of service of an employee by way of retrenchment is legal or justified, it is open to the authority under S. 41 of the State Act to determine whether S. 25F and S. 25G of the Central Act were complied with or not and to set aside the orders of termination and to grant appropriate relief if it is found that there was no compliance with Ss. 25F and 25G of the Central Act. The Division Bench of the High Court while reversing the decision of the learned single Judge has relied on the above decision.

8. We shall now proceed to consider the merits of the contention that the State Act which is a later Act and which has received the assent of the President should prevail over the provisions of Chapter V-A of the Central Act. The above contention is based on Art. 254(2) of the Constitution and the argument is that the provisions of S. 40 which deal with termination of service in a shop or an establishment contained in the State Act which is enacted by the State Legislature in exercise of its powers under Entry 22 of List III of the Seventh Schedule to the Constitution being repugnant to the provisions contained in Chapter V-A of the Central Act which is an earlier law also traceable to

Entry 22 of the List III of the Seventh Schedule to the Constitution should prevail as the assent of the President has been given to the State Act. It is true that the State Act is a later Act and it has received the assent of the President but the question is whether there is any such repugnancy between the two laws as to make the provisions of the Central Act relating to retrenchment ineffective in the State of Andhra Pradesh. It is seen that the State Act does not contain any express provision making provisions relating to retrenchment in the Central Act ineffective insofar as Andhra Pradesh is concerned. We shall then have to consider whether there is any implied repugnancy between the two laws. Chapter V-A of the Central Act which is the earlier law deals with cases arising out of lay-off and retrenchment. Section 25J of the Central Act deals with the effect of the provisions of the Chapter V-A on other laws inconsistent with that Chapter. Sub-section (2) of S. 25J is quite emphatic about the supremacy of the provisions relating to the rights and liabilities arising out of lay-off and retrenchment. These are special provisions and they do not apply to all kinds of termination of services. Section 40 of the State Act deals generally with termination of service which may be the result of misconduct, closure, transfer of establishment etc. If there is a conflict between the special provisions contained in an earlier law dealing with retrenchment and the general provisions contained in a later law generally dealing with terminations of service, the existence of repugnancy between the two laws cannot be easily presumed. In Maxwell on the Interpretation of Statutes, (12th Edn.) at page 196 it is observed thus :

"Now if anything be certain it is this, "said the Earl of Selborne L. C. in The Vera Cruz, (1884) 10 App Cas 59 at p. 68 "that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so." In a later case, Viscount Haldane said : "We are bound............to apply a rule of construction which has been repeatedly laid down and is firmly established. It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to."

9. We respectfully agree with the rule of construction expounded in the above passage. By enacting S. 25J(2) Parliament, perhaps, intended that the rights and liabilities arising out of lay-off and retrenchment should be uniform throughout India where the Central Act was in force and did not wish that the States should have their own laws inconsistent with the Central law. If really the State Legislature intended that it should have a law of its own regarding the rights and liabilities arising out of retrenchment it would have expressly provided for it and submitted the Bill for the assent of the President. The State Legislature has not done so in this case. Section 40 of the State Act deals with terminations of service generally. In the above situation we cannot agree with the contention based on Art. 254(2) of the Constitution since it is not made out that there is any implied repugnancy between the Central law and the State law.

10. The result of the above discussion is that if the employees are 'workmen' and the management is an 'industry' as defined in the Central Act and the action taken by the management amounts to 'retrenchment' then the rights and liabilities of the parties are governed by the provisions of Chapter V-A of the Central Act and the said rights and liabilities may be adjudicated upon and enforced in proceedings before the authorities under S. 41 (1) and S. 41(3) of the State Act.

11. We may incidentally observe that the Central Act itself should be suitably amended making it possible to an individual workman to seek redress in an appropriate forum regarding illegal termination of service which may take the form of dismissal, discharge, retrenchment etc. or modification of punishment imposed in a domestic enquiry. An amendment of the Central Act introducing such provisions will make the law simpler and also will reduce the delay in the adjudication of industrial disputes. Many learned authors of books on industrial law have also been urging for such an amendment. The State Act in the instant case has to some extent met the above demand by enacting S. 41 providing for a machinery for settling disputes arising out of termination of service which can be resorted to by an individual workman. In this connection we have one more suggestion to make. The nation remembers with gratitude the services rendered by the former Labour Appellate Tribunal which was manned by some of our eminent Judges by evolving great legal principles in the field of labour law, in particular with regard to domestic enquiry, bonus, gratuity, fair wages, industrial adjudication etc. The Industrial Disputes (Appellate Tribunal) Act, 1950 which provided for an all-India appellate body with powers to hear appeals against the orders and awards of Industrial Tribunals and Labour Courts in India was repealed in haste. If it had continued by now the labour jurisprudence would have developed perhaps on much more satisfactory lines than what it is today. There is a great need today to revive and to bring into existence an all-India Labour Appellate Tribunal with powers to hear appeals against the decisions of all Labour Courts, Industrial Tribunals and even of authorities constituted under several labour laws enacted by the States so that a body of uniform and sound principles of Labour law may be evolved for the benefit of both industry and labour throughout India. Such an appellate authority can become a very efficient body on account of specialisation. There is a demand for the revival of such an appellate body even from some workers' organisations. This suggestion is worth considering. All this we are saying because we sincerely feet that the Central Act passed forty years ago needs a second look and requires a comprehensive amendment.

12. It is not disputed that S. 25F of the Central Act has not been complied with in this case and hence the Division Bench of the High Court was right in holding that all the terminations were illegal. All the Respondents are, therefore, entitled to be reinstated in service with full back wages as held by the authority under S. 41(l) of the State Act.

13. These petitions are dismissed.

Petitions dismissed.