J. K. Cotton Spinning and Weaving Mills Company Ltd.

Vs

State of U. P. and Others

Civil Appeal No. 3007 of 1987

(S. Ranganathan, A. M. Ahmadi JJ)

27.07.1990

JUDGMENT

A. M. AHMADI, J. -

1. When the service of an employee is terminated consequent upon the employer accepting the resignation voluntarily tendered by the employee, does the termination so brought about amount to 'Retrenchment' within the meaning of Section 2(s) read with Section 6-N of the Uttar Pradesh Industrial Disputes Act, 1947, is the question which we are called upon to decide in this appeal by special leave. The facts relevant to be stated for the disposal of this appeal are as under :

> Ram Singh was employed by the appellant-company on March 10, 1960 and was posted in the Bradma machine section of the company. His duties were to attend to the printing of shares, pay sheets, registers, ESI cards etc. relating to the appellant-company. On November 1, 1970 he addressed a letter of resignation to the Manager of the appellant company in the following words :
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> "R/Sir,
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> I regret to bring to your kind notice that my family circumstances do not permit me to continue my service and hence I am compelled to sever my connections with these Mills immediately.
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> I, therefore, request your goodself kindly to arrange for the payment of all my dues at an early date."
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> Two days thereafter the wrote another letter to the Manager of the Company which reads as under :
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> "R/Sir,
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> Since I have already tendered my resignation from any services, I request you kindly to depute somebody in the Bradma office taking charge and learning the work, so that the entrusted work may be carried on smoothly.
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> Thanking you so much for making early arrangement as requested."
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> A copy of this letter was endorsed to the Special Executive of the appellant-company for information and necessarily action. On receipt of the above letters, the Manager

of the appellant-company replied as under :

> "The resignation tendered by you vide your letter dated 1st instant, hereby accepted with effect from 16th instant.
>
> Please hand over charge of the company's properties in your possession to Shri R. S. Mathur and collect payment in full and final settlement from the Mills Pay Office."

After the receipt of this letter the charge of the Bradma section was handed over by the employee to the said R. S. Mathur on November 15, 1970. The amount due to the employee by way of salary, allowances, etc. up to November 16, 1970 was worked out but the actual payment was received by the employee on December 22, 1970. He was also paid his service gratuity at the end of February 1971. It appears that the employee raised an industrial dispute and sought a reference under Section 4-K of the State Act. The employee's demand for a reference was initially rejected by the State Government on November 12, 1973 but it came to be accepted subsequently on November 28, 1974. The appellant company thereupon filed a writ petition challenging the said reference made by the State Government but the High Court dismissed the petition on September 7, 1981. Pursuant to the reference, the Labour Court made an award in favour of the employee on January 25, 1984. The Labour Court came to the conclusion that the employee's resignation was not voluntary and, therefore, his services had been wrongly terminated with effect from November 15, 1970. He was ordered to be reinstated. Against this award of the Labour Court the appellant approached the High Court under Article 226 of the Constitution. The High Court came to the conclusion that the employee's resignation was not voluntary and, therefore, his services had been wrongly terminated with effect from November 15, 1970. He was ordered to be reinstated. Against this award of the Labour Court the appellant approached the High Court under Article 226 of the Constitution. The High Court came to the conclusion that the employee had tendered his resignation voluntarily and without any treat or coercion, It also took the view that the claim for overtime wages was an afterthought. However, considering the definition of 'retrenchment' in Section 2(s), the High Court came to the conclusion that the termination of service of the employee fell within the said definition and as the appellant-company had fail to observe the requirements of Section 6-N, the termination of service was clearly invalid. The approach to the High Court is reflected in the following passage of its judgment :

> "This contention raised is that there was no act of the employer in this connection and hence this may not be said to be case of retrenchment of the respondent. To this I do not find possible to agree. There is no denial that the respondent had been in continuous service for not less than one year within the meaning of Section 6-N. According to Section 22(s), retrenchment covers termination by the employer of the service of a workman for any reason whatsoever. To this there are exceptions applicable where the termination is by way of punishment inflicted as a result of a disciplinary action or voluntary retirement of the workman or retirement of the workman on attaining the age of superannuation. The provision is in pari materia with Section 2(oo) of the Central Act. The case does not fall within any of these exceptions. Voluntary retirement may not stand in need of acceptance by the employer; this may be hedged in with certain conditions such as those relating to certain number of years having been put in service and the like, but resignation may be tendered at any time thought it requires acceptance to be effective. There is retrenchment under law where the service of a workman stand terminated for any reason whatsoever. This may not be a consequence directly lowing from an act of the

> employer. The material factor would be whether there is determination of the relationship of employer and workman between the parties. If as a consequence this relationship has ceased or has been brought to an end, there is the resultant termination of the services of the workman."

In support of this view reliance was placed on the decisions of this Court in State Bank of India v. N. Sundara Money ((1976) 1 SCC 822), Hindustan Steel Ltd. v. Presiding Officer, Labour Court, Orissa ((1976) 4 SCC 222), Delhi Cloth and General Mills Ltd. v. Shambhu Nath Mukherji ((1977) 4 SCC 415), Santosh Gupta v. State Bank of Patiala ((1980) 3 SCC 340) and L. Robert D'Souza v. Executive Engineer, Southern Railway ((1982) 1 SCC 645). Reliance was also placed on the decision of the Kerala High Court in Corporation of Cochin v. Jalaji ((1984) 1 LLJ 526 (Ker HC)).

2. Proceeding further the High Court concluded as under :

> "... the present is a case where there was act of the employee also before the termination became effective. As discussed above, the resignation tendered by the respondent could not take effect without the acceptance on the part of the employer. The acceptance was accorded on November 4, 1970, expressly in writing. This clearly is an act of the employer which put a seal to the matter and brought about cessation of the relationship of the employer and the workman. Therefore, there is no escape from the conclusion that it was a case of retrenchment. It remains to be seen on relevant material whether in fact there was compliance made of the requirement of Section 6-N."

However, the order of reinstatement passed by the Labour Court, Kanpur was set aside and the matter was remanded to the Labour Court for a decision on the question whether there was an infraction of Section 6-N. The High Court, however, made it clear that "the issue of resignation shall not be open to readjudication". In other words, the only question which the Labour Court was required to consider was whether the retrenchment was in conformity with Section 6-N of the State Act. Feeling aggrieved by this order the appellant-company has approached this Court under Article 136 of the Constitution.

3. The State Act, i.e., Uttar Pradesh Industrial Disputes Act, 1947 was enacted to provide powers to prevent strikes and lock-outs, to settle industrial disputes and for other incidental matters. Section 2(s) defines the term 'retrenchment' as under;

> "2.(s) 'Retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, but does not include -
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> (i) Voluntary retirement of the workman; or
>
> (ii) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and workman concerned contains a stipulation that behalf."

This definition is in pari materia with the definition of 'retrenchment' found in Section 2(00) of the Central Act, i.e. Industrial dispute Act, 1947 as it stood prior to its amendment by Act 59 of 1984. Section 6-N of the State Act reads as under :

"6-N. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service vice 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 years of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the State Government."

This section substantially reproduces Section 25-F of the central Act. In the Central Act the proviso come-on to be omitted by Act 59 of 1984 and instead clause (bb) came to be added to Section 2 (oo).

4. The first question which we must consider is whether in the back-drop of facts stated earlier it can be said that the services of the employee were terminated by way of 'retrenchment' as understood by Section 2(s) and, if yes, whether the employer was required to comply with the provisions of Section 6-N of the State Act. It becomes clear on a plain reading of the definition of the term 'retrenchment' that it comprises of two part; the first part is the inclusive part which defines retrenchment whereas the second part is in the nature of an exception and excludes two types of cases from the scope and ambit of the said definition. Under the first part termination of an employee's service by the employer for any reason whatsoever, otherwise than by way of punishment inflicted as a disciplinary measure, amounts to retrenchment. Under the second part cases of (i) voluntary retirement and (ii) retirement on superannuation are excluded from purview of the first part of the definition. Termination of service can be brought about in diverse ways by an employer but every termination is not retrenchment as for example, termination of service by way of punishment for proved misconduct. The words 'for any reason whatsoever' are undoubtedly words of wide import and hence termination of service by way of punishment for proved misconduct. The words 'for any reason whatsoever' are undoubtedly words of wide import and hence termination of service by the employer will attract the definition of retrenchment unless it is shown to be penal in nature brought about by way of disciplinary action as falling within one of the two exclusion clauses extracted earlier. In order to counter the employee's contention that he was retrenched from service on the employer having communicated the acceptance of his resignation, the employer has placed reliance on the first clause, namely that the workman had voluntarily retired from service. The letter dated November 1, 1970 written by the employee to the Manager of the appellant-company expressing his desire for resign his job shown that it was a voluntary act on the apart of the employee. This was followed by another letter of November 3, 1970 whereby the workman requested the company to depute someone to take charge of take charge of the Bradma office so that he gets acquainted with the work to ensure a smooth take over. It was on this request of the employee that the appellant-company accepted his resignation by the letter of November 4, 1970 with effect from November 16, 1970. From this correspondence it is crystal clear that the employee desired to serve his relations with the appellant company on account of his family

circumstances. But for this request made by the employee there was no reason for the appellant-company to terminate the contract of service on its own. Just as an employer has a right to terminate the service of an employee, an employee too has a right to put an end to the contract of employment by informing his employer of his intention to give up the job. This right is specifically conferred by clause 21 of the Standing Orders certified under Section 5 of the Industrial Employment (Standing Orders) Act, 1946. This clause reads a under :

> "21. Any permanent clerk desirous of leaving the company's service shall give one month's notice in writing to the Manager unless he has a specific agreement providing for a longer or shorter notice. If any permanent clerk leaves the service of the company without giving notice, he shall be liable to be sued for damages."

Similar clause with reduced notice period is also to be found in the certified Standing Orders for operatives. Therefore, one of the ways terminating the contract of employment is resignation. If an employee makes his intention to resign his job known to the employer and the later accepts the resignation the contract of employment comes to an end and with it stands severed the employer-employee relationship. Under the common law the resignation is not complete until it is accepted by the proper authority and before such acceptance an employee can change his mind and withdraw the resignation but once the resignation is accepted the contract comes to an end and the relationship of master and servant stands snapped. Merely because the employer is expected to accept the employee's resignation it cannot be said that the employer has brought about an end to the contract of employment as to bring the case within the first part of the definition of retrenchment. A contract of service can be determined by either party to the contract of employment so as to bring the case within the first part of the definition of retrenchment. A contract of service can be determined by either party to the contract. If it is determined at the behest of the employer it may amount to retrenchment unless it is by way of punishment for proved misconduct. But if an employee takes the initiative and exercises his right to put an end to the contract of service and the employer merely assents to it, it cannot be said that the employer has terminated the employment. In such cases the employer is merely acceding to the employee's request, may be even reluctantly. Here the employee's role is active while the employer's role is passive and formal. The employer cannot force an unwilling employee to work for him. Under clause 21 of the certified Standing Orders all that the employee is required to do is to give the employer a notice to quit and on the expiry of the notice period his service would come to and end. A formal acceptance of the employee's desire by the employer cannot mean that it is the employer who is putting an end to the contract of employment. It would be unfair to saddle the employer with the liability to pay compensation even where the service is terminated on the specific request of the employee. Such an intention cannot be attributed to the legislature. We are, therefore, of the opinion that where a contract of service is determined on the employee exercising his right to quit, such termination cannot be said to be at the instance of the employer to fall within the first part of the definition of retrenchment in Section 2(s) of the State Act.

5. The High Court has placed reliance on four decisions of this Court to which we may now advert. In Sundara Money case ((1976) 1 SCC 822) the employment was for a fixed duration of 9 days, on the expiry whereof the service was to end. This condition was imposed unilaterally. The employment was to terminate not because of the unilateral condition imposed by the employer. The initiative for the termination, therefore, came from the employer attracting the wide terminology of Section 2(oo). In Hindustan Steel Ltd. ((1976) 4 SCC 222) the termination of service was by efflux of time. Placing reliance on the law laid down in Sundara Money case ((1976) 1 SCC 822) and the proviso to Section 25-F(a), this Court held that the termination of service was by way of

retrenchment. In the case of Delhi Cloth Mills ((1977) 4 SCC 415) the employee's name was taken as automatically removed from the rolls of the company under the Standing Order for continued absence without prior intimation. The striking off the name was clearly an act of the employer resulting in termination of service amounting to retrenchment. Santosh Gupta ((1980) 3 SCC 340) was a case of termination of service on account of her failure to pass the prescribed test. That was the reason for terminating her service. All the same it was the employer's action which resulted in the termination of her service attracting Section 2(oo). In the case of Robert D'Souza ((1982) 1 SCC 645) the termination was founded on the ground of unauthorised absence from duty which clearly was an act of the employer. In all the above cases on which the High Court placed reliance, no question of termination of service on the employee voluntarily tendering his resignation arose for consideration. These cases are, therefore, not helpful since they turn on their own special facts. None of them deals with a case of voluntary resignation tendered by an employee.

6. We may now examine the question from another angle, namely, whether an employee whose resignation has been accepted by the employer falls within the first exclusion clause to the definition of the term 'retrenchment. There can be no doubt that a resignation must be voluntarily tendered for if it is tendered on account of duress or coercion, it ceases it be a voluntary act of the employee expressing a desire to quit service. In the present case the High Court has come to the conclusion that the employee had tendered his resignation voluntarily. Does termination of service brought about by the acceptance of resignation fall within the expression 'voluntary retirement' ? The meaning of the terms 'resign' and 'retire' in different dictionaries is as under :

> #Name of the Meaning of Meaning ofDictionary 'Resign' 'Retire'Black's Law Dictionary Formal renouncement To terminate(5th edn.) or relinquishment of employment or an office. service upon reaching retirement age.Shorter Oxford English To relinquish, surr- The act ofDictionary ender, give up or retiring or(Revised edn. of 1973) hand over (something); withdrawing esp., an office, posit- to or from ion, right, claim, etc. a place or To give up an office or position. position; to retire.The Random House To give up an office, To withdrawDictionary (College edn.) position etc.; to from office, relinquish (right claim, business or agreement etc.) active life.##

7. From the aforesaid dictionary meanings it becomes clear that when an employee resigns his office, he formally relinquishes or withdraws from his office. It implies that he has taken a mental decision to serve his relationship with his employer and thereby put an end to the contract of service. As pointed out earlier just as an employer can terminate the services of his employee under the contract, so also an employee can inform his employer that he does not desire to serve him any more. Albeit, the employee would have to give notice of his intention to snap the existing relationship to enable the employer to make alternative arrangements so that his work does not suffer. The period of notice will depend on the period prescribed by the terms of employment and if no such period is prescribed, a reasonable time must be given before the relationship is determined. If an employee is not permitted by the terms of his contract to determine the relationship of master and servant, such an employment may be branded as bonded labour. That is why in Central Inland Water Transport Corporation v. Brojo Nath Ganguly ((1986) 3 SCC 156, 228) this Court observed as under : (SCC p. 228, para 111)

> "By entering into a contract of employment a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign. A resignation by an employee would, however, normally require to be accepted by the employer in

order to be effective".

8. In the present case the employee's request contained in the letter of resignation was accepted by the employer and that brought an end to the contract of service. The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders tenders his resignation it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement' within the meaning of clause (i) of Section 2(s) of the State Act. In Santosh Gupta case ((1980) 3 SCC 340) Chinnappa Reddy, J. observed as under : (SCC p. 342, para 5)

> "Voluntary retrenchment of a workman or the 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".
>
> (Here the word 'retrenchment' has reference to 'retirement'.)

The above observation clearly supports the view which commends itself to us. We are, therefore, of the opinion that the High Court was not right in concluding that because the employer accepted the resignation offer voluntarily made by the employee, he terminated the service of the employee and such termination, therefore, fell within the expression 'retrenchment' rendering him liable to compensate the employee under Section 6-N. We are also of the view that this was a case of 'voluntary retirement' within the meaning of the first exception to Section 2(s) and therefore the question of grant of compensation under Section 6-N does not arise. We, therefore, cannot allow the view of the High Court to stand.

9. For the above reasons we allow this appeal, set aside the orders of the courts below and hold that the employee is not entitled to any compensation under Section 6-N of the State Act. The appeal is allowed accordingly. No costs throughout.

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