Anand Bihari and Others

Vs

Rajasthan State Road Transport Corporation, Jaipur and Another

Civil Appeals Nos.1859-63 of 1990

(P.B. Sawant, S.C. Agarwal JJ)

20.12.1990

JUDGMENT

SAWANT J

1. Civil Appeals Nos. 185961 of 1990 are preferred by the workmen, of the Rajasthan State Transport Corporation (hereinafter referred to as the "Corporation,,) against the decision dated March 8, 1989 of a Division Bench of the High Court of Rajasthan and Civil Appeal No. 1862 of 1990 is preferred by another workman against the decision dated March 15, 1989 of the same Division Bench whereas Civil Appeal No. 1863 of 1990 is preferred by the Corporation against the decision dated March 15, 1989 of another Division Bench of the High Court. Since the issues involved in all these appeals are common, we are deciding them all together.

2. The facts of Civil Appeals Nos. 1859-62 are same. The workers in question were appointed as drivers to drive the roadways buses of the Corporation in the region of Ajmer, Jaipur and Bharatpur. They had put in a long service discharging their duties to the satisfaction of the Corporation. Sometime in 1987, their routine medical examination showed that they had developed defective eyesight and did not have the required vision for driving heavy motor vehicles like buses for which they were engaged by the Corporation, The Corporation, therefore, constituted a medical Board and directed the workers to appear before it for testing their eye-sight. The Board found them -totally unfit for driving heavy motor vehicles. The Corporation issued notices to the workmen to show cause as to why their services should not be terminated since they were. found unfit for driving its buses. The workmen submitted their explanations in which they asked for conducting a second test of their eye-sight and also prayed that in case they were found unfit for driving the buses, they should be given some other job in the Corporation. The Corporation after considering the explanation of the workmen came to the decision that since the workmen's eye-sight was not of the standard required to drive the buses they could not be retained in service, and terminated their services. The orders of termination of services were challenged by the workmen before the High Court by filing individual writ petitions, on two grounds, viz., that 'the termination amounted to retrenchment within the meaning of S. 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act) and since the retrenchment was effected without following the mandatory provisions of S. 25F of the Act, it was illegal. Secondly, it was urged that there was an agreement between the drivers' Union (AITUC) and the Corporation on February 21, 1979 where under it was provided that if a driver was found unfit for driving the bus, he should be posted as a helper. In pursuance of the said agreement, the Corporation had also issued a circular on March 10, 1980 providing for giving the job of a helper to an unfit driver. Hence, it was urged that the termination

of the services was illegal on that ground as well. The workmen on these grounds not only prayed for the quashing of the orders terminating their services but in the alternative also prayed for direction to the Corporation to offer them the alternative job of a helper. The Corporation, on the other hand, contended that the termination of the workmen's services did not amount to retrenchment within the meaning of S. 2(oo) of the Act and hence there was no illegality from which the termination orders suffered. The Corporation also stated that there was no agreement between it and the drivers 'Union as alleged, and that the circular dated March 10, 1980 was later on withdrawn. Hence, the workmen could not claim any right under the circular. The High Court upheld both the contentions of the Corporation and dismissed the workmen's writ petitions. However, while dismissing the petitions, the High Court also added that in case the workmen approached the Corporation for absorbing them as helpers, their cases for such absorption be considered sympathetically if they were otherwise found fit and eligible. It is this order which the workmen have challenged before us in these appeals.

3. The facts in Civil Appeal No. 1863 of 1990 filed by the Corporation are that the services of the workman similarly working as a driver were terminated on the ground that he had lost vision of his right eye. He had approached the High Court with the same grievances as the workmen in the other writ petitions. The workman in this case had further pointed out that in fact since he had lost the sight of one eye on March 11, 1986, he was not working as a driver but was working in the maintenance section of the vehicles. For that work, he was not found unfit and yet his services were terminated by the impugned order of February 27, 1988 on the ground of his said incapacity to work as a driver. The High Court by its impugned decision held that although the workman had lost the vision of one eye, he was fit to discharge the duties of any technician or helper or any other employee of that cadre. This was also the report of the Medical Officer and hence the Corporation should have absorbed the workman in any other job according to his capacity instead of terminating his services. The High Court, therefore, quashed the order terminating his services and directed the Corporation to absorb him in the post of a helper or any other equivalent post for which he might be found fit. The Court further directed that the workman should be treated as being in continued service, and the period between the date of the termination of his services and his reinstatement should be treated as leave without pay which may be to his credit or which he may earn in future. It is this order which is challenged by the Corporation in this appeal.

4. Since the workmen were unable to produce any material with regard to the alleged agreement of February 21, 1979 between their Union and the Corporation, the contention based on it was not rightly pressed before us on behalf of the workmen. It was also an admitted position that the ciruclar dated March 10, 1980 issued by the Corporation was withdrawn long before the services of the present workmen were terminated. No arguments were therefore available on its basis and none was advanced. However, what was contended was that in the circumstances of the case the workmen should have been continued in employment in other post such as that of a helper for which they were fit, whether there was an agreement or a circular, or not. We will deal with this contention after we have dealt with the only other contention.

5. The definition of "retrenchment" under S. 2(oo) of the Act is as follows:-

> "2(oo). "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

(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

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health."

There is no dispute before 'us that the only sub-clause of the definition which can cover the present termination of service is sub-clause (c). There was some debate before us as to the exact import of the expression "continued ill-health". While it was urged on behalf of the workmen that ill-health which is spoken of there does not cover the cases of a loss of a limb or an organ or of its permanent use, and covers cases only of a general physical or mental debility or incapacity to execute the work, the argument on behalf of the Corporation was that it would include also cases of a permanent loss or incapacity of a limb or an organ such as eye or eye-sight, ear or hearing capacity, of hand or leg etc. which is necessary for discharging the duty in question. For this purpose, reliance was placed on behalf of the Corporation on a decision of this Court in Workmen of the Bangalore Woollen, Cotton and Silk Mills Co. Ltd. v. Its Management ((1962) 1 LLJ 213). In that case the Court while interpreting the definition of retrenchment has held as follows:-

"The definition, "retrenchment" in S. 2(oo) of the Act means termination of service. A service cannot be said to be terminated unless it was capable of being continued. If it is not capable of being continued, that is to say, in the same manner in which it had been going on before, and it is, therefore, brought to an end, that is not a termination of the service. It is the contract of service which is terminated and that contract requires certain physical fitness in the workmen. Where therefore a workman is discharged on the ground of ill health, it is because he was unfit to discharge the service which he had undertaken to render and therefore it had really come to an end itself. That this is the idea involved in the definition of the word "retrenchment" is also supported by S. 25G of the Act which provides that whereas any workmen are retrenched, and the employer proposes to take in his employ any person, he shall give an opportunity to the retrenched workmen to offer themselves for re-employment and the latter shall have preference over other persons in the matter of employment. Obviously, it was not contemplated that one whose services had been terminated on grounds of physical unfitness or ill-health would be offered reemployment; it was because his physical condition prevented him from carrying out the work which he had been given that he had to leave and no question of asking such a person to take up the work again arises. If he could not do the work, he could not be offered employment again. It would follow that such a person cannot be said to have been retrenched within the meaning of the Act as amended by the Ordinance.

(Emphasis supplied)*

* Not found in original - Ed.

6. Even otherwise, it can scarcely be disputed that the expression "ill-health" used in sub-clause (c) has to be construed relatively and in its context. It must have a bearing on the normal discharge of duties. It is not an illness but that which interferes with the usual orderly functioning of the duties of the post which would be attracted by the sub-clause. Conversely, even if the illness does not affect general health or general capacity and is restricted only to a particular limb or organ but affects the efficient working of the work entrusted, it will be covered by the phrase. For it is not the capacity in general but that which is necessary to perform the duty for which the workman is engaged which is relevant and material and should be considered for the purpose. The expression "ill-health" is defined in the new Collins Concise English Dictionary to mean "not in good health; sick"; in Webster's Comprehensive Dictionary (International Edition) to mean "disordered in physical condition; diseased; unwell; sick"; in the Concise Oxford Dictionary (3rd Edition) to mean "out of health; sick; with disease; with anxiety (of health), unsound; disordered, morally bad", and in Shorter Oxford English Dictionary to mean : "Unsound, disordered; out of health, not well". Therefore, any disorder in health which incapacitates an individual from discharging the duties entrusted to him or affects his work adversely or comes in the way of his normal and effective functioning can be covered by the said phrase. The phrase has also to be construed from the point of view of the consumers of the concerned products and services. If on account of a workman's disease or incapacity or debility in functioning, the resultant product or the service is likely to be affected in any way or to become a risk to the health, life or property of the consumer, the disease or incapacity has to be categorised as ill-health for the purpose of the said sub-clause. Otherwise, the purpose of production for which the services of the workman are engaged will be frustrated and worst still in cases such as the present one they will endanger the lives and the property of the consumers. Hence, we have to place a realistic and not a technical or pedantic meaning on the said phrase. We are, therefore, more than satisfied that the said phrase would include cases of drivers such as the present ones who have developed a defective or sub-normal vision or eye-sight which is bound to interfere with their normal working as drivers.

7. In the view we have taken of the said sub-clause, it is obvious that the termination of the services of the workers in the present case being covered by sub-clause (c) of S. 2(oo) would not amount to retrenchment within the meaning of S. 2(oo) of the Act. Hence, the termination per se is not illegal because the. provisions of S. 25F have not been followed while effecting it.

8. Although the order of termination of service per se cannot be faulted on the ground of the breach of the Act, the important question that still remains to be considered is whether in the circumstances of the case and against the background of the relevant provisions of our Constitution, it can be said that the action of the Corporation is proper, equitable and justified. The facts on record show that all the workmen have put in service with the Corporation for long periods. All of them are above 40 years of age. Their superannuation age is 58 years. There is no dispute that they developed a weak or sub-normal eye-sight or lost their required vision on account of their occupation as drivers in the Corporation. As is commonly known, the drivers of the buses run by the Corporation such as the present one, have to drive the heavy motor vehicles in sun, rain dust and dark hours of night. In the process, they are exposed to the glaring and blazing sun light and becoming and blinding lights of the vehicles coming from the opposite direction. They are required to strain their eye-sight every moment of the driving, keeping a watchful eye on the road for the bumps, bends and slopes, and to avoid all kinds of obstacles on the way. It is this constant straining of eyes on the road which takes its inevitable toll of the vision. The very fact that in a short period, the Corporation had to terminate the services of no less than 30 drivers who are before us shows the extent of the occupational hazard to which the drivers of the Corporation are exposed during their service. It also shows that weakening of the eye-sight is not an isolated phenomenon but a widespread risk to which those who

take the employment of a driver expose themselves. Yet the Corporation treats their cases in the same manner and fashion as it treats the cases of other workmen who on account of reasons not connected with the employment suffer from ill-health or continued ill-health. That by itself is discriminatory against the drivers. The discrimination against the employees such as the drivers in the present case, also ensues from the fact that whereas they have to face premature termination of service on account of disabilities contracted from their jobs, the other employees continue to serve till the date of their superannuation. Admittedly, no special provision is made and no compensatory relief is provided in the service condition for the drivers for such premature incapacitation. There is no justification in treating the cases of workmen like drivers who are exposed to occupational diseases and disabilities on par with the other employees. The injustice, inequity and discrimination is writ large in such cases and is indefensible. The service conditions of the workmen such as the drivers in the present case, therefore, must provide for adequate safeguards to remedy the situation by compensating them in some form for the. all-round loss they suffer for no fault of theirs.

9. It is for this reason that we had suggested to the Corporation to frame suitable scheme of compensatory relief to the drivers. The Corporation has filed two affidavits - one dated 9th October, 1990 by one Shri Navin Chaturvedi, Depot Manager at Delhi and the other dated 17th November, 1990 by one Shri L. N. Shah, Executive Director (Administration) who is also in charge of the present litigation. In paragraph 2 of the first affidavit an amusing statement has been made that "the Corporation considered the difficulties of the drivers who have been terminated from their service under S. 2(oo) of the Industrial Disputes Act" without realising that it has all along been the case of the Corporation that the services of the drivers were not terminated under S. 2(oo) of the Act. This statement shows a total non application of mind and a casual approach to the issues involved in the case. The same attitude is discernible by what is proposed in the latter portion of the said paragraph by way of a relief scheme for the drivers, which is as under:

> "The Corporation after considering the matter sympathetically resolved as under.
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> "Shri L. N. Shah, Executive Director (Admn.) explained the background of the proposal, specifically with reference to the observations made by the Hon'ble Supreme Court on last date of hearing of the case. After detailed discussions and exploring the possibilities of the scheme of rehabilitation for their alternative employment.
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> Resolution No. 51/90 : As a measure of rehabilitation for the drivers terminated on medical grounds, it was resolved that RSRTC may provide margin money loan to the extent of shortfall in the borrowers' own contribution, comprising of (sic.) benefits available under Industrial Disputes Act and inclusive of CPF, Gratuity in case these employees form a a Society duly registered and willingly agree to engage such financed new bus(es) with RSRTC on contract till RSRTC loan along with interest is repaid."
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> In the additional affidavit of 17th November, 1990 Shri L. N. Shah himself has stated firstly that neither the Employees' State Insurance Act (hereinafter referred to as the "ESI Act") nor the Workmen's Compensation Act, 1923 (hereinafter referred to as the "WC Act'), the provisions of which we had suggested should be applied to the drivers, would "strictly speaking" cover the loss of sight in question as "employment injury". as defined in S. 2(8) of the ESI Act. "Loss of sight in question is also not covered in S. 3(2) of the WC Act". The affidavit then proceeds to state that loss

suffered by the Corporation up to 1989-90 is to the extent of Rs. 37. 15 crores and the loss estimated for the current year is Rs. 15 crores. The Corporation on an average operates fleet of 2800 buses and runs approximately 240 lacs kilometres in a month, for which the Corporation is presently having a huge staff of 24,000 and thus the ratio of staff per bus comes to 8.35 which is approximately double the normal ratio of staff. The average operated kilometers by a bus is 276 kilometers per day for which normally 5 to 6 hours 'working of the driver, would be needed. The drain on account of' wages is 42 per cent of the income.

10. In other words, the Corporation has taken an unhelpful stand in the matter. The scheme with which it has come out is both unrealistic and impracticable. The Corporation has not appreciated that what we had asked them was to formulate a scheme of relief which is the legitimate due of the workmen and not a scheme on compassionate or charitable basis. The workmen are not danizens of an Animal Farm to be eliminated ruthlessly the moment they become useless to the establishment. They have not only to live for the rest of their life but also to maintain the members of their family and other dependants, and to educate and bring up their children. Their liability in this respect at the advanced age at which they are thus retired stands multiplied. They may no longer be of use to the Corporation for the job. for which they were employed, but the need of their with the patronage to others intensifies with the growth in their family responsibilities.

11. Although as stated by the Corporation, the workmen are covered by the ESI Act no provision is made there for compensation of the occupational injury such as the present one. Item 4 of Part 1 of the Second Schedule of the ESI Act talks of "loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential" and classifies such injury as permanent total disablement resulting in hundred per cent loss of earning capacity. Items 31, 32 and 32A of Part 11 of the same Schedule refer respectively to (i) "loss of one eye, without complications, the other being normal, (ii) loss of vision of one eye without complications or disfigurement of eye-ball, the other being normal, (iii) partial loss of vision of one eye" and classify all the said injuries as permanent partial disablement resulting in 40, 30 and 10 per cent loss of earning capacity respectively. Item 11 in Third Schedule refers to occupational cataract due to infra-red radiations incurred in "all work involving exposure to the risk concerned" and classifies it as one of the occupational diseases. It is, therefore, clear from the provisions of the ESI Act that the present case, viz., that of sub-normal eye-sight or loss of the required vision to work as a driver would not be covered by the provisions of that Act as an employment injury or as an occupational disease, for no provision is made there for compensation for a disability to carry on a particular job. The present workmen cannot be said to have suffered either a permanent, total or partial disablement to carry on any job or to have developed cataract due to infra-red radiations. The workmen are and will be able to do any work other than that of a driver with the eye-sight they possess. Hence, a provision for a compensatory relief for such workmen has to be made separately on a different basis suitable to the peculiar loss that they suffer on account of the premature retirement necessitated by their unfitness to work as drivers.

12. In view of the helplessness shown by the Corporation, we are constrained to evolve a scheme which, according to us, would give relief as best as it can to the workmen such as the ones involved in the present case. While evolving the scheme and giving these directions we have kept in mind that the workmen concerned are incapacitated to work only as drivers and are not rendered incapable of taking any other job either in the Corporation or -outside. Secondly, the workmen are at an advanced age of their life and it would be difficult for them to get a suitable alternative employment outside. Thirdly, we are also mindful of the fact that the relief made available under the

scheme should not be such as would induce the workmen to feign disability which, in the case of disability such as the present one, viz., the development of a defective eye-sight, it may be easy to do. Bearing in mind all the aforesaid factors, we direct the Corporation as follows:

(i) The Corporation shall in addition to' giving each of the retired workmen his retirement benefits, offer him any other alternative job which may be available and which he is eligible to perform.

(ii) In case no such alternative job is available, each of the workmen shall be paid along with his retirement benefits, an additional compensatory amount as follows:

(a) where the employee has put in 5 years' or less than 5 years' service, the amount of compensation shall be equivalent to 7 days' salary per year of the balance of his service;

(b) where the employee has put in more than 5 years' but less than 10 years' service, the amount of compensation shall be equivalent to 15 days' salary per year of the balance of his service;

(c) where the employee has put in more than 10 years 'but tess than 15 years' service, the amount of compensation shall be equivalent to' 21 days' salary per year of the balance of his service;

(d) where the employee has put in more than 15,years' service but less than 20 years' service, the amount of compensation shall be equivalent to one month's salary per year of the balance of his service;

(e) where the employee has put in more than 20 years' service, the amount of compensation shall be equivalent to two months' salary per year of the balance of his service. The salary will; mean the total monthly emoluments that the workman was drawing on the date of his retirement.

(iii) If the alternative job is not available immediately but becomes available at a later date, the Corporation may offer it to the workman provided he refunds the proportionate compensatory amount.

(iv) The option to accept either of the two reliefs, if an alternative job is offered by the Corporation, shall be that of the workman.

13. The scheme proposed by us in paragraph 12 above disposes of Civil Appeals Nos. 1859-61 of 1990. Since the workmen involved in these appeals have been retired already, in case suitable jobs are available to be offered and the Corporation offers them and the workmen concerned accept them, they would be employed on such jobs from the date they resume their duty. They should be paid proportionate compensation under the above scheme for the interregnum from the date of their retirement till they resume the duty. In case no such job is available then they should be paid the compensatory amount as indicated in the scheme.

14. As far as Civil Appeal No. 1862 of 1990 is concerned, admittedly the workman was given employment as a helper from August, 1985 since he developed weak eyesight on account of an accident in the course of his employment and he was working as such helper till he was retired from

service on and from April 27, 1988. There is no dispute that he was not unsuitable to work as a helper. The termination of his services as a helper was, therefore, clearly unjustified and also illegal being in contravention of the provisions of S. 25F of the Act. The High Court obviously erred in treating his case on par with those of the workmen involved in Civil Appeals Nos. 1859-61 of 1990. The appellant workman will, therefore, be entitled to his retirement benefits as a driver as if he had retired from service as a driver from the date of his employment as a helper. He would further be entitled to be reinstated in service as a helper with all arrears of back wages as a helper. In case he opts for receiving the compensatory amount under the scheme which we have framed above, he may do so for the period beginning from the date from which his services as a helper were terminated.

15. As regards Civil Appeal No. 1863 of 1990 preferred by the Corporation, the impugned decision of the High Court is hereby set aside and the Corporation is directed to give the concerned workman the benefit of the scheme propounded by us. The appeals are disposed of in the above terms. In the circumstances of the case. the parties will bear their own costs.

Order accordingly.

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