SUPREME COURT OF INDIA

Narkesari Prakashan Karmachari Sangh

Vs.

Shri Narkesari Prakashan Ltd.

(S Agrawal and G Nanavati JJ.)

11.01.1996

ORDER

1. This appeal, by special leave, arises out of an application submitted by Respondent 1, Shri Narkesari Prakashan Ltd., under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") for permission to retrench 19 workmen. Out of these 19 workmen 17 were employed as Hand Compositors and 2 were employed as Depositors in the establishment of Respondent 1. Respondent 1 is publishing a daily newspaper called Tarun Bharat. Respondent 1 had also launched a Hindi daily Yug Dharma but subsequently the management of Yug Dharma was taken over by Rashtriya Vichar Sadhna in 1971 and from 1-11-1988 the business and undertaking of Yug Dharma has been transferred to Yug Dharma Workers Newspaper Pvt. Ltd. On 27-5-1991 the Managing Director of Respondent 1 filed the application under Section 25-N of the Act wherein permission for retrenchment was sought on the basis that the work of hand composing of Yug Dharma had ceased since June 1989 because Yug Dharma Management had made its own arrangement for composition and since then no composing work was being done by the workmen of Hand Composing Section. It was stated that the retrenchment had become necessary on account of change in technology of composing which had been adopted by Yug Dharma because they had installed their own DTP Composing Machines and sufficient job work to feed the Hand Composing Department could not be secured from the market. The said application was opposed by the Narkesari Prakashan Karmachari Sangh, the appellant herein, and it was urged that a notice under Section 9-A of the Act is mandatory and it ought to have been given by the establishment for switching over from hand composing to photo composing method of composition of newspapers and that the proposed retrenchment was null and void being violative of Section 9-A of the Act. It was also submitted that there was work of hand composition with the management of Respondent 1

since the last 40 years and, therefore, it was not correct for the management to say that the workmen were entrusted with the work of composing only Yug Dharma. The Secretary (Labour), Industries, Energy and Labour Department of the Government of Maharashtra, by his order dated 24-7-1991 allowed the said application filed by Respondent 1 and granted permission to retrench 19 workers subject to the condition that the retrenched workmen should be given compensation as specified in Section 25-N within a reasonable period and that preference will be given to them for future recruitment by the company, if any. Instead of seeking a reference under Sub-section (6) of Section 25-N the appellant challenged the order dated 24-7-1991 granting permission for retrenchment by filing a writ petition under Article 226 of the Constitution in the High Court. The said writ petition was allowed by a learned Single Judge by judgment dated 28-8-1991. The letters patent appeal filed by Respondent 1 was allowed and the judgment of the learned Single Judge was reversed and the writ petition filed by the appellant has been dismissed with the modification that the said permission would be confined to 12 workmen only in view of the fact that the management had offered to absorb 7 workmen. It was directed that the 7 workmen would be absorbed on the basis of the test of seniority-cum-suitability of the workmen concerned for the job offered to them.

2. Before the Division Bench of the High Court the main question which was raised was whether the retrenchment of the workmen was a direct outcome of the new technology adopted by Respondent 1, viz., installation of four photo composing machines to deal with the work of hand composing or whether retrenchment was due to non-availability of the hand composing work of Yug Dharma. The learned Judges have found that the four photo composing machines had been installed by Respondent 1 in 1980 and the same became operative in 1982-83. According to the learned Judges even if the claim of the appellant that the said machines started operating from 1985 was accepted, the machines had been operating for more than four years till 1989 and, therefore, the retrenchment of the workmen was not necessitated by the installation of the said machines. The learned Judges have held that retrenchment had become necessary because in June 1989 the company owning Yug Dharma has installed its own machines for composing and had stopped giving work for hand composing of Yug Dharma to Respondent 1 and, thereafter Respondent 1 was not in a position to give any work to hand compositOrs. The Division Bench of the High Court, therefore, held that Section 9-A of the Act had no application in this case. Feeling aggrieved by the said judgment of the High Court the appellant has filed this appeal.

3. The learned counsel appearing for the appellant has urged that the High Court was in error in recording a finding with regard to the non-applicability of Section 9-A of the Act even though there was no evidence before the High Court and the State Government with regard to facts as found by the High Court. The submission of the learned counsel is that as a result of the said decision of the High Court the appellant would be prejudiced before the Tribunal when it seeks a reference against retrenchment of the workmen. We find no merit in this contention. The appellant could have availed of the remedy of a reference as provided in Subsection (6) of Section 25-N of the Act against the order granting permission under Section 25-N. The appellant did not choose to do so, They chose the remedy of moving the High Court under Article 226 of the Constitution and raised the question about non-compliance with the mandatory provisions of Section 9-A of the Act. Since the contention was raised it had to be dealt with by the High Court in the writ petition filed by the appellant. The High Court, after examining the matter on merits, has rejected the said contention. The appellant cannot be heard to make a grievance that the High Court should not have gone into

the merits of the said contention. We, therefore, find no merit in this appeal.

4. The appeal is accordingly dismissed. No orders on costs.