Central Bank of India

Vs

S. Satyam and Others

Civil Appeal No. 1811 of 1992

(K. Venkataswami, J. S. Verma JJ)

31.07.1996

JUDGMENT

J. S. VERMA, J. –

1. The short question is whether the re-employment of retrenched workmen required by Section 25-H of the Industrial Disputes Act, 1947 (for short 'the Act') is confined only to the category of retrenched workmen covered by Section 25-F who have been in continuous service for not less than one year ? The controversy arises in view of the wide meaning of 'retrenchment' given in its definition contained in Section 2(oo) of the Act to cover all kinds of terminations for any reason whatsoever. This wide meaning is settled by the decision of this Court in Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court [(1990) 3 SCC 682 : 1991 SCC (L&S) 71] On behalf of the appellant (employer) it is contended that the meaning given in the definition of retrenchment contained in Section 2(oo) is to be read subject to the context and the context in Section 25-H indicates that the word 'retrenched' in Section 25-H has the same meaning as it has in Sections 25-F and 25-G, reading Section 25-F along with Section 25-B since they all form a part of the same scheme in Chapter V-A of the Act.

2. It was argued by Shri Pai, the learned Senior Counsel for the appellant that the object of providing for re-employment of retrenched workmen by enacting Section 25-H was merely to provide for the category of retrenched workmen covered by Section 25-F who had been in continuous service for not less than one year and not those who had served for a lesser period and to whom Section 25-F did not apply. The present case relates to workmen who admittedly do not fall in the category of retrenched workmen covered by Section 25-F since they had all worked for a much lesser period. For this reason, Shri Pai contended that this factor alone excludes the applicability of Section 25-H to the respondents (workmen) in the present case. The grant of relief to them by the High Court is challenged primarily on this ground. Alternatively, Shri Pai contended that the respondents were employed only for short periods between 1974 to 1976 and therefore, grant of relief to them in the writ petition filed long thereafter in 1982 is unjustified on the ground of laches as well as prejudice to the other workmen employed during the intervening period who are not impleaded. Shri Pai also referred to Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 (for short 'the Rules') in support of his submission.

3. In reply Shri Ramachandran, the learned counsel for the respondents, contended that the wide meaning of the word 'retrenchment' given in the definition contained in Section 2(oo) cannot be curtailed by the effect of Section 25-F read with Section 25-B since Section 25-F merely prescribes the conditions precedent for retrenchment of the workmen covered thereby and not all the retrenched workmen. He argued that there are no words of limitation in Section 25-H to confine its

application only to the retrenched workmen covered by Section 25-F. His reply to the alternative submission was that it is not a fit case to interfere with the limited relief granted by the High Court.

4. There is no dispute on facts and the question for decision is only one of construction, mainly of Section 25-H of the Act. The controversy relating to the meaning and scope of 'retrenchment' defined in Section 2(oo) is settled by the decision of the Constitution Bench in Punjab Land Development and Reclamation Corpn. Ltd. [(1990) 3 SCC 682 : 1991 SCC (L&S) 71.] It was held : (SCC p. 715, para 68)

> "While naturally and ordinarily it meant discharge of surplus labour, the defined meaning was termination of service of a workman for any reason whatsoever except those excluded in the definition itself."

The kind of termination of service of a workman excluded from the definition is specified in clauses (a) to (c) and it is not disputed before us that none of these exceptions applies in the present case. Shri Pai argued the case on the basis that the termination of service of these workmen amounted to 'retrenchment' as defined in Section 2(oo). It is, therefore, clear that if the definition of 'retrenchment' given in Section 2(oo) is to be applied for the construction of Section 25-H then the requirement of re-employment of retrenched workmen thereby cannot be confined only to the retrenched workmen of the category covered by Section 25-F, under which category the respondents, admittedly, do not fall. The question is whether there is any reason to curtail this definition of 'retrenchment' while construing the meaning of the expression "retrenched workmen" in Section 25-H. In other words, is the provision for re-employment of retrenched workmen confined only to the category covered by Section 25-F and cannot be extended to all retrenched workmen including those not covered by Section 25-F, like the respondents ? It is for this purpose, the appellants relied on Rules 77 and 78 framed under the Act, to suggest that the wider meaning could not be intended in Section 25-H.

5. The relevant provisions are as under :

> # "CHAPTER V-A * * *##
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> 25-B. Definition of continuous service. - For the purposes of this Chapter, -
>
> (1) 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 on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman;
>
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -
>
> (a) for a period of one year, if the workman, during a 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 -
>
> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

* * *##

25-F. 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;

(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 the appropriate Government by notification in the Official Gazette.

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25-G. 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.

25-H. 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."

"INDUSTRIAL DISPUTES (CENTRAL) RULES, 1957

77. Maintenance of seniority list of workmen. - The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice-board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.

78. Re-employment of retrenched workmen. - (1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice-board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered

therefor, to the address given by him at the time of retrenchment or at any time thereafter :

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the seniormost retrenched workmen in the list referred to in Rule 77 the number of such seniormost workmen being double the number of such vacancies :

Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen :

Provided also that if a retrenched workman, without sufficient cause being shown in writing to the employer, does not offer himself for re-employment on the date or dates specified in the intimation sent to him by the employer under this sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.

(2) Immediately after complying with the provisions of sub-rule (1), the employer shall also inform the trade union connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule :

Provided that the provisions of this sub-rule need not be complied with by the employer in any case where intimation is sent to every one of the workmen mentioned in the list prepared under Rule 77."

6. On the rival contentions, the real question for decision is whether the provision for re-employment of retrenched workmen made in Section 25-H should be confined only to the category of retrenched workmen covered by Section 25-F by restricting the meaning of 'retrenchment' in Section 2(oo) for this purpose ? Chapter V-A containing Sections 25-A to 25-J was inserted by Act No. 43 of 1953 with effect from 24-10-1953. This Chapter relates to "Lay-off and Retrenchment". Section 25-F prescribes the conditions precedent to retrenchment of workmen. It applies only to the retrenchment of a workman employed in any industry who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year. Section 25-B defines continuous service for the purposes of this Chapter and it says, inter alia, that a workman shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a 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 240 days. In other words, the expression "continuous service for not less than one year" in Section 25-F has to be so construed by virtue of Section 25-B. The benefit of applicability of Section 25-F can, therefore, be claimed by a workman only if he has been in continuous service for not less than one year as defined in Section 25-B. Any other retrenched workman who does not satisfy this requirement of continuous service for not less than one year cannot avail of the benefit of Section 25-F which prescribes the conditions precedent to retrenchment of workman of this category. Section 25-G prescribes the procedure for retrenchment and ordinarily applies the principle of "last come first go".

7. Section 25-H then provides for re-employment of retrenched workmen. It says that when 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. Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated arranged according to seniority of their service in that category and publication of that list. Rule 78 prescribes the mode of re-employment of retrenched workmen. The requirement in Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment. Shri Pai contends that Rules 77 and 78 are unworkable unless the application of Section 25-H is confined to the category of retrenched workmen to whom Section 25-F applies. We are unable to accept this contention.

8. Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated arranged according to the seniority of their service. The category of workmen to whom Section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list of workmen with reference to the particular category to which they belong. Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of Section 25-F are entitled to be placed higher than those who do not fall in that category. It is no doubt true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman falling in the lower category because of not being covered by Section 25-F can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of Section 25-H to the other retrenched workmen not covered by Section 25-F does not, in any manner, prejudice those covered by Section 25-F because the question of consideration of any retrenched workman not covered by Section 25-F would arise only, if and when, no retrenched workman covered by Section 25-F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of "retrenched workmen" in Section 25-H because of Rules 77 and 78, even assuming the rules framed under the Act could have that effect.

9. The plain language of Section 25-H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of 'retrenchment' given in Section 2(oo). Section 25-F also uses the word 'retrenchment' but qualifies it by use of the further words "workman ... who has been in continuous service for not less than one year". Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman ... who has been in continuous service for not less than one year". It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by

Section 25-F.

10. The next provision is Section 25-H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinary meaning of the word 'retrenchment' used therein. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman.

11. Chapter V-A providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment and, therefore, there is no reason to restrict application of Section 25-H therein only to one category of retrenched workmen. We are, therefore, unable to accept the contention of Shri Pai that a restricted meaning should be given to the word 'retrenchment' in Section 25-H. This contention is, therefore, rejected.

12. The other submission of Shri Pai, however, merits acceptance. All the retrenched workmen involved in the present case were employed for short periods between 1974 to 1976. It was only in 1982 that a writ petition was filed by them to claim this benefit. The other persons employed in the industry during the intervening period of several years have not been impleaded. Third party interests have arisen during the interregnum. These third parties are also workmen employed in the industry during the intervening period of several years. Grant of relief to the writ petitioners (respondents herein) may result in displacement of those other workmen who have not been impleaded in these proceedings, if the respondents have any claim for re-employment. The laches leading to the long delay after which the writ petition was filed in 1982 is sufficient to disentitle them to the grant of any relief in the writ petition. Moreover, there is not even a suggestion made or any material produced to show that on the construction we have made of Section 25-H, the respondents would be entitled to get any relief in the highly belated writ petition after the lapse of several years by way of preference over any person employed during the intervening period. In our opinion, this alone was sufficient for the High Court to decline any relief to them. It was urged by the learned counsel for the respondents that only a limited relief has been granted to the respondents which need not be disturbed. In our opinion, the lapse of a long period of several years prior to the filing of the writ petition is sufficient to decline any relief to the respondents.

13. We allow the civil appeal for the reason given by us and set aside the High Court judgments resulting in dismissal of the writ petition filed in the High Court by the respondents.