SUPREME COURT OF INDIA

Management of Gordon Woodroffe Agencies Private Limited

Vs.

Presiding Officer, Principal Labour Court

C.A.No.4814-15 of 1999

(N. Santosh Hegde and S.B.Sinha JJ.)

05.08.2004

JUDGMENT

Santosh Hegde, J.

1. Though the cause-title of the appeal shows two civil appeal numbers, we are informed that in reality there is only one appeal challenging the judgment of the High Court of Judicature at Madras which arose from a single industrial dispute before the Principal Labour Court, Madras, hence, even though two civil appeal numbers are given in the cause-title, we treat it as a single appeal against the said judgment of the High Court of Madras. The facts necessary for the disposal of this appeal are as follows:

2. The appellant before us was a trading agency being managed under the name and style of 'Gordon Woodroffe Agencies P. Ltd.' at the then Madras now known as Chennai. Said Company came to be closed w.e.f. 31.5.1984 because it had incurred heavy losses in its business. At that time the appellant had less than 50 workmen. It is also the case of the appellant that the closure being a genuine, it offered to all its workmen, closure compensation as prescribed by law and other legal entitlements like provident fund, gratuity etc. due to the workmen. The appellant also states that many workmen received the said compensation. However, the respondent workmen herein alone chose not to receive the same, primarily contending that they were entitled to alternate employment in a sister concern of the appellant known as 'Gordon Woodroffe Ltd.' which was a manufacturing company. The appellant in regard to this claim of the respondent workmen had contended that Gordon Woodroffe Ltd. was a separate company and the question of providing alternate employment in the said company did not arise. Therefore, according to the appellant, they were only entitled to the closure compensation and other benefits which were already offered to all the employees including the respondent workmen herein.

3. In view of the above dispute between the workmen and the management, the Government of Tamil Nadu in G.O. Ms. No. 1015, Labour Department, dated 10.5.1984 made a reference under section 10(1)) of the Industrial Disputes Act (the Act) for adjudication of the issue relating to justification or otherwise of the stoppage of work in the appellant's establishment

w.e.f. 31.5.1984 as a genuine case of closure or lock-out and to grant appropriate relief, if any.

4. The said dispute came up for consideration before the Principal Labour Court, Madras, which by its order dated 18.3.1985 came to the definite conclusion that the closure of the appellant's establishment cannot be held to be invalid or unjustified. In other words, the Labour Court held that the closure was genuine and justified in law. The Labour Court also came to the conclusion that in the process of closure, the appellant had issued appropriate notices which amounted to substantial compliance of the provisions of the Act, and the reason assigned in the said closure notice was valid. It also came to the conclusion that the contention of the workmen that the act of the appellant was in reality not a closure but a lock-out, was also rejected.

5. Having come to the above conclusion, the Labour Court came to the conclusion that on the facts of this case, there was substantial ground for awarding enhanced compensation to the respondent workmen on compassionate grounds by applying the principle of social justice which according to the Labour Court is linked with industrial adjudication. Therefore, it directed the appellant-management, apart from the closure compensation and other legally payable amounts offered to the workmen, to pay to the respondent-workmen ex gratia amounts in addition to closure compensation and other legal entitlements to which they are entitled, at the rate of 15 days' wages on the last drawn salary for the remaining years of service till the date of superannuation by treating 6 months or more as one year of service. Over and above this, the Labour Court directed a consolidated sum of Rs. 3, 000/- payable as solatium to each one of them.

6. Being aggrieved by the said order awarding additional compensation over and above the compensation legally payable to the respondent-workmen, the appellant herein preferred a writ petition challenging that part of the award whereby additional compensation was directed to be paid by the appellant; while the workmen themselves preferred writ petitions challenging the finding of the Labour Court that the closure of the appellant's establishment was legal and bona fide.

7. The learned Single Judge who heard the writ petitions, agreed with the finding of the Labour Court that the closure of the company was justified as the appellant had incurred huge losses but in regard to the challenge of the appellant as to the grant of additional ex gratia payment, the learned Single Judge agreed with the Labour Court on the ground that most of the workers were clerks, typists, salesmen and godown keepers and they cannot be thrown out suddenly on the streets though the closure is valid in law, hence, it upheld the additional compensation paid to the respondent workmen.

8. On the above basis, the challenge of the appellant as well as the respondent made to the award of the Labour Court came to be dismissed by the learned Single Judge.

9. In an appeal filed before the Division Bench of the said High Court by both the parties, the Division Bench agreed with the Labour Court and the Single Judge by upholding the finding

as to the legality of the closure of the establishment as also in regard to the payment of ex gratia compensation in addition to the compensation legally payable to the respondent workmen.

10. It is in the above factual background the appellant-management is before us questioning the validity of the direction to pay additional ex gratia compensation as awarded by the trial court.

11. Mr. R, Sundervardhan, learned senior counsel appearing for the appellant, submitted that once the Labour Court came to the conclusion that the closure in question was legally justifiable and bona fide and also having come to the conclusion that the appellant had offered the compensation and other legal dues to the workmen concerned promptly, it was not open to the Labour Court to have directed additional ex gratia payment which is not contemplated under the provisions of the Act on the basis of the principle of social justice. He submitted that apart from the Labour Court even the learned Single Judge and the Division Bench of the High Court also fell in error in confirming that part of the award of the Labour Court which directed the payment of such unjustified ex gratia amount. In support of this contention, he relied on two judgments of this Court in the case of M/s. Om Oil and Oil Seeds Exchange Ltd., Delhi v. Their Workmen and N.S. Giri v. The Corporation of City of Mangalore & Ors.

12. In reply, Mr. S.S. Dahiya, learned counsel appearing for the respondents, contended that the courts below were justified in taking into consideration the plight of the workmen who have been thrown out of employment in mid-stream of their lives. He also contended that it was the legal responsibility of the appellant to have absorbed these workmen in suitable posts in its sister company, namely, Gordon Woodroffe Ltd. which as a matter of fact, was one of the service conditions applicable to the workmen. He also tried to contend that the closure itself was illegal and was for collateral reasons.

13. Having heard the learned counsel for the parties and perused the records, we are satisfied that so far as the legality and genuineness of the closure is concerned, the Labour Court after considering the evidence brought on record has given a conclusive finding in favour of the appellant which finding has been confirmed by the learned Single Judge as well as the Division Bench of the High Court and the same has become final.

14. Therefore, we will have to consider whether consequent to such finding of the Labour Court, it can direct payment of further compensation over and above what is contemplated under the Act. The answer to this question is found in the two judgments relied on by learned counsel for the appellant before us. In the case of M/s. Om Oil and Oil Seeds Exchange Ltd. (supra), this Court held:

> "If the management was entitled to retrench 30 workmen and did so after paying wages for the period of notice and retrenchment compensation, we fail to appreciate the grounds on which an order for payment of 50 per cent of the wages in addition to retrenchment compensation may be made. Retrenchment compensation is paid as

solatium for termination of service resulting in unemployment, and if that compensation be paid there can be no ground for awarding compensation in addition to statutory retrenchment compensation.

If the Industrial Tribunal comes to the conclusion that an order of retrenchment was not properly made, and the Tribunal directs reinstatement an order for payment of remuneration for the period during which the employee remained unemployed, or a part thereof may appropriately be made. That is because the employee who had been retrenched for no fault of his had been improperly kept out of employment, and was prevented from earning his wages. But where retrenchment has been properly made and that order has not been set aside, we are not aware of any principle which may justify an order directing payment of compensation to employees properly retrenched in addition to the retrenchment compensation statutorily payable."

15. In our opinion, the ratio laid down in the above case clearly applies to the facts of this case. In the instant case also, the Labour Court came to the conclusion that the closure of the establishment was legally justifiable and the management had as required under the law, offered apart from the compensation payable for the closure, all other statutory dues which some of the employees collected without demur and in the case of respondent- workmen even though the same were offered on time, they did not accept it, therefore, the question of paying any additional ex gratia compensation which is not contemplated under the statute, does not arise. This Court in the case of N.S. Giri (supra) held:

"An award under the Industrial Disputes Act cannot be inconsistent with the law laid down by the Legislature or by the Supreme Court and if it does so, it is illegal and cannot be enforced."

16. Thus, it is clear from the pronouncements of this Court that the Labour Court or for that matter the High Court had no authority in law to direct payment of any additional sum by way of ex gratia payment otherwise than what is provided under the statute when the act of the management in closing down the establishment is found to be valid and all legally payable amounts have been paid or offered in time. In such a situation, contrary to the statute, the principle of social justice cannot be invoked since the Legislature would have already taken note of the same while fixing the compensation payable.

17. For the reasons stated above, this appeal succeeds, the judgments of the courts below are set aside. The appeal is allowed.