ALLAHABAD HIGH COURT

J.K. Hosiery Factory

Vs.

Labour Appellate Tribunal of India

Civil Misc. Write Nos. 851, 859 and 1125 of 1955
(Desai, J.)

24.02.1956

ORDER

Desai, J.

1. This is an application by the J.K. Hosiery Factory a firm manufacturing hosiery in Kanpur, for a writ of certiorari to quash an order dated 26-8-1955 of the Labour Appellate Tribunal, Lucknow Bench, and for any other writ order or direction that may be considered proper. During the pendency of some appeals between the applicant and its workmen in the Labor Appellate Tribunal the applicant, which was carrying on the business on a continuous loss since 1949 and had incurred a total loss of more than Rupees Ten lacs up to the middle of 1953 decided to close down the factory and applied to the Appellate Tribunal for permission to do so and discharge the workmen. Previously it had been laying-off its workmen, from time to time. Before the Tribunal could consider the question of granting permission the applicant withdrew the application on being advised that it was its fundamental right to close down its business and no permission of the Tribunal was required. After withdrawing the application the applicant on 14-8-1953 gave a notice to its workmen that the factory would be closed with effect from 1-9-1953 and another notice terminating their services with effect from that date. The factory was closed on 1-9-1953 and the workmen were discharged. Thereupon two applications were made to the Appellate Tribunal under Section 23, Industrial Disputes (Appellate Tribunal) Act, 1950, one by nineteen workmen and the other, by seventy-four. The applications were disposed of by the Tribunal by its order dated 26-8-1955 which is the order sought to be quashed through this application.

2. The case of the workmen before the Tribunal was that the applicant had laid-off the workmen for an indefinite period through its notice, that the lay-off was tantamount to punishment and as such against the Standing Orders in force in the applicant's business and that consequently they were entitled to be re-instated with full wage for the period during which they remained out of employment. The applicant denied that it had issued any notice for lay-off on 1-9-1953 and contended that it had closed down its business on account of continuous loss since 1949. It referred to its notice of 14-8-1953 warning the workmen that the factory would be closed with

effect from 1-9-1953 and the other notice terminating the workmen's services with effect from the same date. The workmen denied that these notices were given by the applicant.
The Tribunal found that no notice of lay-off was given by the applicant on 1-9-1953, that on the other hand it had given notices on 14-8-1953 for closing down the factory and for terminating the services of the workmen on account of its suffering continuous loss since 1949, that prior to the closure it had been obliged to effect lay-offs from time to time, and that the closure was forced upon the management by the continued loss and also by the unsympathetic attitude of the workmen. The applicant had re-started the factory in October 1954 and had offered to retake those workmen who were prepared to serve it on reduced wages. The offer had been accepted by about twenty-six of the workmen. The Tribunal held that the closure of the factory was of a temporary duration, that the applicant had an inherent right to close down the business, that if an employer closes his business not 'bona fide'but as a mere device, the workmen would be entitled to compensation and re-instatement if he re-opened the business, that closure of the business by the applicant was 'bona fide', its object being to reduce wages in order to prevent the continuous loss, that the termination of the services of the workmen on closure amounted to retrenchment within the meaning of the Industrial Disputes Act, that though Section 25F which was added in the Act after the closure had no retrospective effect, compensation was usually allowed by Tribunals on retrenchment of workmen and that it was proper to compensate the workmen on the principle embodied in Section 25F and Clause 20 (a) of the Standing Orders. Accordingly the Tribunal ordered the applicant to pay the workmen twelve days ‘wages in lieu of notice prescribed by Clause 20(a) of the Standing Orders, and compensation equivalent to fifteen days ‘wages for every completed year of service. Three of the workmen, Meha Prasad Singh, Beni Madho and Har Narain Singh were excluded from the benefit of the order on the ground that they entered into a written agreement with the applicant waiving their right to compensation.

3. Ordinarily the rights and liabilities of an employer and his employees are governed by the terms of contract between the two and the law of contract. Under the Industrial Employment (Standing Orders) Act (No. 22 of 1946) industrial establishments employing more than 99 workmen are required to frame Standing Orders providing for certain prescribed matters, including temporary stoppages of work and rights and liabilities of the parties arising there from, termination of employment and the notice thereof to be given by one party or the other etc., and have them approved by the prescribed authority for adoption in the establishments. The Standing Orders bind the employer and his employees and if an employer does any act in contravention of the Standing Orders, he is liable to be prosecuted and punished. The Standing Orders, thus have the effect of terms of contract between the employers and his employees. To the extent that they have the effect of the terms of contract by force of a statute and not by force of an agreement between the parties, there is a departure from the law of contract. The applicant has framed Standing Orders and they have been approved by the prescribed authority. Rule 16 of them permits it for any trade reason to stop any machine or department for a period not exceeding 12 days in the aggregate in any calendar month without notice and without compensation in lieu of notice. Rule 18 permits it in the event of a strike, to close down the affected department in the

factory. Under Rule 20 the permanent service of any workman may be terminated by giving 14 days'notice or on payment of 12 days'wages in lieu of notice.

4. The Industrial Disputes Act (14 of 1947) provides for referring industrial disputes to Tribunals for adjudication, prohibition of strikes and lock-outs, lay-oil" and retrenchment etc. Lay-oil'is defined in Section 2(kkk) of the Act to mean

> "failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched". "Retrenchment" is defined in Section 2(oo) to mean "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 retirement or termination of the service on the ground of ill-health".

Section 25F prescribes the conditions precedent to retrenchment of a workman; they are that one month's notice or wages for the period of the notice has been given, that he has been paid compensation calculated at a certain rate and that a notice in the prescribed manner is served upon the appropriate Government. This provision has effect notwithstanding anything inconsistent therewith contained in the Standing Orders. The section was added in the Industrial Disputes Act by the Industrial Disputes (Amendment) Act (43 of 1953) on 23-12-1953 after the applicant had closed down the factory and, therefore, was not applicable in the present case. The Industrial Disputes (Appellate Tribunal) Act of 1950 provides for Lab our Appellate Tribunals to hear appeals from awards or decisions from Industrial Tribunals. Thirty days are allowed by Section 10 for the filing of an appeal to the Appellate Tribunal and Section 22 provides that during this period or during the pendency of an appeal no employer shall "discharge or punish, whether by dismissal or otherwise, any workman concerned in such appeal, save with the express permission in writing of the Appellate Tribunal". If an employer contravenes the above provision Section 23 lays down that any employee aggrieved by the contravention may complain to the Appellate Tribunal which shall decide the complaint as if it were an appeal pending before it in accordance with the provisions of the Act and shall pronounce its decision thereon and the provisions of the Act shall apply accordingly.

5. Applications Nos. 851 and 859 of 1955 are by the Hosiery Factory; it has filed two petitions, because there were two applications made to the Appellate Tribunal by the two sets of workmen. Writ Petn. No. 1125 of 1955 is by the workmen from the same decision of the Appellate Tribunal. These three writ petitions are being disposed of together.

6. The first contention of the applicant is that it has not discharged or punished by dismissal the workmen but has terminated their services on account of closure of the factory and that

consequently Sections 22 and 23, Industrial Disputes (Appellate Tribunal) Act do not apply. The words "whether by dismissal or otherwise" in Section 22 govern the word "punishment" only and not also the word "discharge".

Punishment can be in the form of dismissal or suspension or fine or reduction of pay and, therefore, the words could be used with the word "punishment" to make it clear that all forms of punishment are within the scope of the provision. Dismissal necessarily means discharge and, therefore, discharge necessarily includes dismissal and there was no reason for the Legislature to make it clear that discharge means discharge by dismissal and otherwise. The applicant has admittedly not punished the workmen but it has discharged them. Though Section 22 contains nothing to qualify the word "discharge" and seemingly governs all cases of discharge for whatsoever reason, the general scheme of the Act and of the Industrial Disputes Act shows that discharge which must necessarily result from closure of the business is not within the scope of the rule. It is a fundamental right of an employer to close down his business. Under Article 19(1)(f) and (g) a citizen has the right to acquire, hold and dispose of property and to practice any profession or to carry on any occupation, trade or business. If no citizen can be debarred from disposing of his property or from practicing any profession or carrying on any trade or business, he also cannot be compelled to dispose of his property in a particular manner or to practise any particular profession or to carry on a particular trade or business. Freedom to carry on any trade or business would be meaningless in the absence of freedom from an obligation to carry on any other trade or business. If a citizen is compelled to carry on a particular trade or business, it must necessarily affect his right to carry on any other trade or business. The freedoms granted under Article 19 are not absolute; they are subject to reasonable restrictions that may be imposed for one reason or another. Therefore, a citizen may be compelled to carry on a particular trade or business, but that, would be by way of a restriction on his right of freedom from such an obligation. Shri S.C. Khare had to concede that the applicant has a fundamental right to close down his business for any reason. In *Indian Metal and Metallurgical Corporation v. Industrial Tribunal, Madras*[1], it was laid down that nobody can be compelled to carry on any business against his will. If discharge of workmen on account of closure of a business is discharge within the meaning of Section 22, the contention of Sri G.S. Pathak is that Section 22 imposes an unreasonable restriction on the fundamental right to close down the business. I shall come to this conclusion later. At present I am concerned with the question whether discharge on account of closure is discharge within the meaning of the section or not. The apostil of the section reads as follows :

> "Conditions of service etc., to remain unchanged during a certain period."

No question of conditions of service remaining unchanged can arise when the business itself is closed down. It would arise only when the service continues. Section 22 pre-supposes that the business is being carried on during the period of limitation prescribed in Section 10. Though discharge of workmen arises out of closure of a business, discharge on account of closure is not the same thing as closure itself.

Section 22 forbids merely discharge and not closure of a business. There is nothing to suggest that the intention behind the provision was to curtail the fundamental right to close down the business. Under Section 23 an employer is punished for contravening the provisions of Section 22; if a business is closed down, there can be no employer and if there is no employer, there can be no contravention of the provisions of Section 22.

[1] AIR 1953 Mad 93

The applicant re-started the business after a year, but it does not follow from it that when it closed it down, it closed it down temporarily with an intention to re-start it after a year. The Appellate Tribunal was not justified in holding that it was a temporary closure from the mere fact that it lasted less than fourteen months. Whether it was a permanent closure or a temporary closure must be decided with reference to the intention of the applicant at the time of closing it down. A person closing down a business permanently is not debarred by any law from re-starting it on his finding that the circumstances have changed. In the case of Indian Metal and Metallurgical *Corporation v. Industrial Tribunal, Madras*, it was pointed out at page 102 that whether a business should be continued or closed is a matter for the sole consideration of the employer, that the employees are not at all concerned in that matter and that any dispute about continuing the business or closing it down is outside the scope of the Industrial Disputes Act. I am for this reason of the opinion that discharge within the meaning of Section 22 is discharge other than discharge arising out of closure of the business.

7. If, on the other hand, Section 22 forbids discharge of workmen even after closing down the business, it must be held to be an unreasonable restriction and the fundamental right to close down the business. Reasonable restrictions upon the rights conferred by Article 19(1)(f) and (g) can be imposed only in the interests of the general public. Requiring an employer to continue his business or to retain the services of his workmen during the pendency of a appeal cannot be said to be in the interests of the general public. And it is unreasonable to require an employer to continue the business even though it is causing loss to him or to retain in service his workmen on payment even though he can take no work from them. It is true that Section 22 does not impose an absolute bar but imposes a bar in the absence of a permission in writing of the Appellate Tribunal. But there is no justification for requiring an employer even to approach an Appellate Tribunal for permission to close down his business or to discharge workmen. The right given to the Appellate Tribunal to grant or refuse permission is wholly uncontrolled; no principles have been laid down for its guidance in the matter.

8. The Appellate Tribunal conceded that Section 25F, Industrial Disputes Act does not govern the case, because it has no retrospective effect; yet it granted compensation to the workmen as if it governed the matter. There is no law under which it could grant compensation. It could not assume that it had the power from the fact that it was conferred upon it subsequently. It could not apply the analogy of the provisions of Section 25F because jurisdiction cannot be assumed on an analogy but must be specially conferred. If it had power to award compensation but the principles on which the compensation should be calculated were not laid down, it could use any

reasonable analogy for determining the amount of compensation. "But when no power of awarding any compensation was conferred upon it, it could assume power on the ground that later it was conferred upon it. It was also illogical to grant any compensation the workmen did not suffer by closure of the business on account of which they might deserve some compensation. They did not lose anything which they were not liable to lose; if it was the fundamental right of the applicant to close down the business, it means that the workmen were always liable to be discharged on the business being closed.

The definition of the word "retrenchment" is certainly wide enough, but discharge of workmen following closure of a business does not seem to be retrenchment within the meaning of the Act. The provisions of Sections 25G and 25H suggest that retrenchment can take place only in a continuing business. The words "for any reason whatsoever" in the definition, though general, must be limited by the ambit of the definition. In *Watney, Combe, Reid and Co. v. Berners*[2], Viscount Haldane L.C. stated at page 891 :

> "No doubt general words may in certain cases properly be interpreted as having a meaning or scope other than the literal or usual meaning. They may be so interpreted where the scheme appearing from the language of the Legislature, read in its entirety, points to consistency as requiring the modification of what would be the meaning apart from any context, or apart from the purpose of the legislation as appearing from the words which the Legislature has used, or apart from the general law."

The mere fact of a general word being used in a statute does not preclude an enquiry into the object of the statute or the mischief which it was intended to remedy; per Lord Halsbury, L.C., in *Cox v. Hakes*[3], Brett, M.R., in the *Lion Insurance Association v. Tucker*[4], laid it down as a cardinal rule that

> "Whenever you have to construe a statute or document you do not construe it according to the mere ordinary general meaning of the words, but applied to the subject-matter with regard to which they are used."

The Act does not profess to touch an employer's right to close down his business; therefore, it does not deal with the consequence arising out of it. The words "for any reason whatsoever" must, therefore, be interpreted to exclude closure of a business, and conditions (a), (b) and (c) mentioned in Section 25F, do not govern termination of service of employees on closure of business. If even after the enactment of Section 25F no compensation of any kind would be due to an employee who has been discharged on account of closure of business, he would be all the more disentitled to any compensation before the enactment of Section 25F. Under the applicant's Standing Orders an employee is entitled to compensation for a lay-off, but a layoff is entirely different from discharge on closure of business. Lay-off occurs in a continuing business and arises out of an employer's failure, refusal or inability to give employment to a workman on account of shortage of coal, power or raw materials or the accumulation of stocks or the break

down of machinery or for any other reason. Failure etc., to give employment to all the workmen on account of closure of the business is not lay-off. The words "any other reason" in the definition of lay-off mean reasons analogous to those already stated and do not include closure of the whole business. It has been found by the Appellate Tribunal itself that the workmen were not laid-off by the applicant with effect from 1-9-1953. Therefore, whatever compensation they would be entitled to under the Standing Orders for a lay-off cannot be claimed by them when the business is closed down. Closure due to strikes is provided for in the Standing Orders but not closure due to giving up of the business.

[2]1915 AC 885 [4](1883) 12 QBD 176 (136)

[3](1890) 15 AC 506 (517)

The only rule of the Standing Orders that would apply to the discharge of the workmen is R. 20 under which a workman can be discharged on 14 days'notice. The workmen had 14 days notice in the present case. They were, therefore, not entitled to any compensation at all.

9. Under Section 23, Industrial Disputes (Appellate Tribunal), Act an Appellate Tribunal has to decide the complaint of contravention of the provisions of Section 22 made to it as if it were an appeal and pronounce its decision thereon. Under section 15 a decision of an Appellate Tribunal shall be enforceable on the expiry of 30 days from the date of its pronouncement. This means that on the expiry of 30 days, it will be deemed to be substituted for the award or decision of the Industrial Tribunal from which the appeal is heard. Section 23 only lays down the procedure. As regards deciding the complaint of contravention there is no question of the law to be considered by it for deciding the complaint; the complaint simply raises a question of fact whether a certain provision has been contravened or not and the Appellate Tribunal has to decide it as such. If it finds that there has been no contravention, there is an end of the complaint, because nothing further can be done by the Appellate Tribunal. The provisions of Sections 22 and 23 have been discussed by the Supreme Court in the *Automobile Products of India Ltd. v. Rukmaji Bala*[5], An employer wanted to retrench some workmen during the pendency of an industrial dispute before an Appellate Tribunal and applied for permission under Section 22. The Appellate Tribunal granted permission but on certain conditions regarding paying of allowance and compensation. It was held by the Supreme Court that the Appellate Tribunal could grant or refuse permission but could not impose any conditions. Das, J. stated at page 263 that it has jurisdiction to go into the merits of the complaint and grant appropriate relief. What relief can be granted has not been stated. Naturally it can grant only that relief which is permissible under the law of contract or the Industrial Disputes Act or the Standing Orders. An Appellate Tribunal, which is a creation of a statute, has only those powers which are conferred upon it and has no general power to pass any order that it thinks just and proper. The relations between an employer and an employee are governed by the law of contract, the Industrial Disputes Act and the Standing Orders. As I explained in Writ Petn. No. 842 of 1955, D/d. 22-2-1956 All (F) the law of contract applies so far as it is not repealed impliedly by the Industrial Disputes Act and the Standing Orders Act. Neither the Industrial Disputes Act nor the Standing Orders Act make an employer liable to pay compensation to an employee discharged or punished in contravention of the provisions of

Section 22. The Contract Act admittedly does not contain any provision about such compensation. Therefore, an Appellate Tribunal has no power by virtue of Section 23 to award compensation for infringement of the provisions of Section 22. If there were a provision in the Industrial Disputes Act or the Standing Orders to the effect that if a workman is discharged in contravention of a rule prohibiting discharge without permission of a prescribed authority, the Appellate Tribunal could award compensation under Section 23. The Appellate Tribunal has relied upon past practice for granting compensation, but past practice which is against law cannot make good law and the Appellate Tribunal could not derive jurisdiction merely from the wrong exercise of jurisdiction in the past.

[5] AIR 1955 SC 258

10. What would happen if closure of business is a mere pretence need not be considered by me, because the Appellate Tribunal has found that the closure was bona fide and not a mere pretence. It has remarked that the closure was of a temporary duration, but that does not mean that it was not closure of the business at all.

11. The Appellate Tribunal has awarded to the workmen, excluding Malm Singh, Beni Madho and Har Narain Singh, 12 days'wages in lieu of notice prescribed by R. 20 of the Standing Orders and compensation equivalent to 15 days'average wages for every completed year of service. More than fourteen days'notice was given by the applicant and under Rule 20 of the Standing Orders they were entitled to only 14 days'notice. Therefore, they were not entitled to wages in lieu of notice in any case. They were laid-off from 1-8-1955 and had been paid by the applicant compensation for the same. Thus for the days of the notice they had been compensated. The other compensation has been correctly calculated according to Section 25F.

12. The last contention of the applicant is that Saheb Singh and Ram Adhar workmen also have waived their right to compensation by rejoining or by an agreement and they should also have been excluded from the benefit of the compensation.

13. In the other connected Writ Petition No. 1125 the workmen prayed for a writ of certiorari or any other order or direction to quash the order of the Appellate Tribunal in so far as it did not order their reinstatement. The workmen in their complaint under Section 23, Industrial Disputes (Appellate Tribunal) Act had claimed reinstatement, but the Appellate Tribunal did not order their reinstatement. The workmen challenge the finding of the Appellate Tribunal that they were not laid-off but were discharged on closure of business. This is a finding of fact and it cannot be challenged before me. The workmen challenged bona fides of the applicant in closing its business and alleged that it made a show of closing down its business, its real object being to re-employ the workmen on reduced wages. The Appellate Tribunal rightly held that when the business was causing loss, the applicant was within its right in closing it down and in restarting it when it could get labour on reduced wages. The fundamental right to close down the business was not at all affected by the subsequent restarting of the business. The applicant had a fundamental right to restart the business after thirteen months or so. The Appellate Tribunal has

found, as a matter of fact, that the applicant issued a notice of closure of business on 14-8-1953 and gave no notice of lay-off on 1-9-1953. The workmen were, therefore, discharged and not merely laid-of for a short period. As they were discharged, they ceased to be workmen and the applicant was not bound by any law to re-employ them when it restarted the business.

14. Since I have found that Section 22 did not apply to the facts of this case, the Appellate Tribunal had no jurisdiction to pass any order. If the workmen thought that they had been laid-off and were entitled to be reinstated on the business being restarted, they should have taken proceedings under the Industrial Disputes Act. An Appellate Tribunal has no original jurisdiction except as provided in Section 23.

15. In the result this application is allowed and the order of the Appellate Tribunal directing payment of 12 days'wages in lieu of notice and of compensation equivalent to 15 days'average wages for every completed year of service is quashed. Also the order directing the applicant to pay Rs. 100/- as costs to the workmen. The applicant will get its costs of this petition from opposite party No. 2.
Application allowed.