CALCUTTA HIGH COURT

National Iron and Steel Co. Ltd

Vs

Third Industrial Tribunal

(B.N. Banerjee, J.)

02.07.1963

ORDER

B.N. Banerjee, J.

1. The Rule is directed against an award, made by the Third Industrial Tribunal, directing re-instatement of certain retrenched workmen.

2. The petitioner company runs an iron and steel factory at Belur, District Howrah. In the month of April, 1960, the petitioner company laid off twentyseven workmen, including respondents Nos. 3 to 16, on the alleged ground of paucity of work. On the further allegation that there took place no improvement in work, the petitioner company thereafter proposed to retrench the workmen. Thereupon, the respondent No. 2, Belur Iron and Steel Workmens' Union, raised an industrial dispute over the proposed retrenchment and the dispute was dealt with by a Conciliation Officer. As a result of the conciliation proceedings, there was a settlement arrived at between the parties, whereby it was agreed that the proposed retrenchment be put off and the workmen be compulsorily put on leave for a period of two months. Even after the expiry of two months, the petitioner company found no improvement in work justifying the employment of all the workmen, put on leave as aforesaid, and, therefore, retrenched twenty two workmen, including respondent Nos. 3 to 16. This, it was said, was done after due compliance with the provisions of Section 25-F of the Industrial Disputes Act and after intimation to the Labour Commissioner.

3. The retrenchment gave rise to an industrial dispute and the respondent State Government referred the dispute to the Third Industrial Tribunal for adjudication on the following issue:

> "1. Whether the retrenchment of the workmen named in the attached list is justified? To what relief, if any, are they entitled?

List of Workmen.

1. Shri Ajit Das Turner
2. Shri Paresh Singh

--do--
3. Shri Dinanath Missiv Slotter
4. Shri Saila Mulah
--Do--
5. Shri Balai Pan
--do--
6. Shri Satish Roy
--do--
7. Shri Sachin Sett
--do--
8. Shri Pramode Raojan Guha Miller
9. Shri Ram Sagar
--do--
10. Shri Surya Manna
--do--
11. Shri Chintamony Ghose
--do--
12. Shri Nareadranath Ghose
--do--
13. Shri Bishwanath Prasad
--do--
14. Shri Gajadbar
--do--
15. Shri Dibeyendu Roy
--do--
16. Shri Ranjit Chakravory
--do--
17. Shri Niranjan Banerji
--do--
18. Shri Dhubeonarain Singh
--do—

4. By an award, published on November 23, 1962, the Industrial Tribunal found that the retrenchment had been illegally made and made an award for their reinstatement. Out of the workmen directed to be retrenched the petitioner company accepted the finding and the award so far as retrenched workmen Ajit Das, Paresh Singh, Saila Mullah and Satis Roy were concerned but could not reconcile itself to the remaining portion of the award. It is in these circumstances that the petitioner company moved this Court, under Article 226 of the Constitution, praying for a Writ of Certiorari for the quashing of the award and for a Writ of Mandamus restraining the respondents 1 and 17 from giving effect thereto.

5. The grounds on which the Industrial Tribunal found the retrenchment to be illegal were: (i) The retrenchment was effected by notice to the workmen concerned, sent by post of September 1, 1962, but there was nothing to show that the conditions precedent to the retrenchment had been complied with before retrenching the workmen; (ii) the offer to the workmen to collect one month's wages in lieu of notice and the retrenchment compensation, as embodied in the notice itself, did not cure the defect, inasmuch as the notices dated August 31, 1962, were posted only

on September 1, 1962 and did not reach the workmen prior to the date the retrenchment became effective, (iii) there was no proof that the notice at retrenchment, in the prescribed form, was at alt despatched to the appropriate Government Department. This however, the Tribunal held to be a mere irregularity and not a fatal omission.

6. It was contended before me by Mr. Noni Coomar Chakravartti, learned Advocate for the petitioner, that the offer of payment of wages and compensation, as in the notice, was sufficient compliance with the provisions of Section 25-F of the Industrial Disputes Act, which reads as follows:-

> "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) this 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: Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;
> (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 service or any part thereof in excess of six months; and
> (c) notice in the prescribed manner is served on the appropriate Government."

7. The notice, as sent to the workmen concerned, in substance read as hereinbelow quoted:-

> ".....Please, therefore, take notice that your services will no longer be required and you are hereby retrenched with effect from 1st September, 1960.
> You will be paid all your legal dues as under:-
> 1. One month's wages in lieu of notice Rs. np.
> 2. Retrenchment compensation equivalent to 16 days' wages for each completed year of service (as per section 25F of the I. D. Act.) Rs. np.
> 3. Wages for the period of leave earned but not availed Rs. np.
>
> Less lay off compensation already paid (as per sec. 25C of the I. D. Act.) Rs. np.
>
> Less advance paid towards bonus for the year 1958-59 Rs. np.
>
> Less outstanding Special loan salary suspense and House Rent Rs. np.
>
> Rs. np.
>
> Rs. np.
> Please call on the Cashier at 5 P. M. this day or at any time during working hours on the 1st September, 1960, or any subsequent days to collect your dues."

8. Mr. Manas Nath Roy, learned Advocate for respondent No. 2, Workmens' Union, tried to repel the contention with the argument that compliance with the provisions of Section 25-F was condition precedent to the retrenchment of workmen. By embodiment of an offer for payment of

wages and compensation, in the notice of retrenchment itself, that object would not be served and that compliance made. In support of his contention he relied on a decision of the Bombay High Court reported in Devidayal Nanakcband v. State Industrial Court, Nagpur, in which Mudholkar and Kot-wal, JJ., observed as follows:-

> "The heading of Section 25-F leaves no doubt that the observance of the provisions thereof is a condition precedent to retrenchment of a workman to whom the section applies. It would, therefore, follow that before action could be taken under standing order 23, the provisions of Section 25-F had to be complied with. It is not disputed that these provisions have not been complied with. In the circumstances, therefore, the respondent 3 does not get the benefit of standing order 23." He also relied on the decision of the Supreme Court in the case State of Bombay v. Hospital Mazdoor Sabha, in which Gajendragadkar, J., observed as follows:-
>
> "Section 25-F(b) provides that 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 he has been paid at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months. Clauses (a) and (c) of the said section prescribe similar conditions but we are not concerned with them. On a plain reading of Section 25-F (b) it is clear that the requirement prescribed by it is a condition precedent for the retrenchment of the workman. The section provides that no workman shall be retrenched until the condition in question has been satisfied. It is difficult to accede to the argument that when the section imposes in mandatory terms a condition precedent, non-compliance with the said condition would not render the impugned retrenchment invalid."

9. That the conditions in Section 25-F are conditions precedent are beyond dispute. But still then the question remains whether an offer for payment of wages and compensation is equivalent to payment itself and whether by offering such payment, in the letter of retrenchment, the conditions precedent should be deemed to have been complied with. Section 25-F no doubt says that no workman shall be retrenched "until" he has been given either one month's notice or has been paid, in lieu of such notice, wages for the period of notice and that such workman has been paid compensation calculated under Section 25-F(b). But it may be difficult to make a workman accept payment if he will not himself do that. Therefore, an unconditional offer for payment, preceding retrenchment, may be equivalent payment.

10. In the instant case, however, the notice called upon the retrenched workmen to receive payment following their retrenchment. The notice of retrenchment was posted on September 1, 1960, the very day when the retrenchment was to take effect and the workmen were asked to call at the office for receiving payment cither on the same or on any subsequent date. There was little chance for the workmen to receive the letter on September 1, 1961 and call for payment. The notice really amounted to a call to receive payment subsequent to retrenchment. That makes the offer bad and consequently the retrenchment order becomes incompetent.

11. Mr. Chakravartti, no doubt placed strong reliance on the principles enunciated by this Court in *Metal Press Works Ltd v. H. R. Deb*[1], while dealing with Sub-sections (1) and (2) of Section 33 of the industrial Disputes Act, as subsequently approved by the Supreme Court in Straw Board

Manufacturing Co., Ltd. v. Govind, , and contended that it should by held that the payment under Section 25-F, if made or offered to be paid without least possible delay after retrenchment should suffice, I am unable to accept the argument. Under Section 33, the application for approval is not a condition precedent to the action taken and that makes the abovemen-tinned decisions distinguishable.

12. For the reasons stated above I am not inclined to interfere with the award. This Rule is discharged with costs, hearing fee assessed at five gold mohurs.

Cases Referred.

[1](1962) 1 Lab LJ 75 : (AIR 1962 Cal 123)