

CALCUTTA HIGH COURT

Alex. A. Apcar

Vs.

M.N. Gan

Civil Revn. Case No. 2236 of 1957

(P.B. Mukharji, J.)

15.05.1959

JUDGMENT

P.B. Mukharji, J.

1. This is an application by Dinesh Vrajllal described as the proprietor to Alex. A. Apcar (Junior) and Co. under Article 226 of the Constitution for a writ of certiorari challenging the decision of the Fourth Industrial Tribunal dated 1-6-1957. The point before the Industrial Tribunal was :

"Is the discharge of Sri Ram Sundar Mitra justified? To what relief is he entitled?"

The Industrial Tribunal came to the conclusion that the employee was discharged without notice with effect from May 24, 1956 and that such discharge amounted to retrenchment for which the discharged employee was entitled to compensation at the statutory rate. He, therefore, allowed him compensation under Section 25F of the Industrial Disputes Act by ordering (1) one month's notice pay at the rate last drawn; (2) four months' pay i.e. 15 days' average pay for each completed year of service; and (3) admitted dues on account of unpaid salary according to the Company's written statement, i.e. Rs. 47/10/6 pies.

2. On behalf of the petitioner, this award is challenged on the ground that the period of service taken from 1947 has not been correct. The petitioner joined the business of Alex. A. Apcar (Junior) and Co. in 1951. He was, therefore, not liable for the workman's service in that Company from 1947. The petitioner's argument is based on change of ownership. This business was formerly a partnership business. The petitioner joined as a partner in 1951. Then later on by deed of dissolution, he has become the sole proprietor. I am unable to accept the petitioner's contention that there has been a "transfer" within the meaning of Section 25F or 25FF of the Industrial Disputes Act. A change of partnership by inclusion or retirement of partner, although legally changes the constitution of the firm, does not mean a change of business or employer within the meaning of these two sections of the Industrial Disputes Act. In this particular case, the business was the business of Alex. A. Apcar Junior and Co. The deed of partnership dated 3-3-1955, describes that this business of Alex. A. Apcar (Junior) and Co. was continuing from before. The deed of dissolution dated 6-3-1956 between the present petitioner Dinesh Vrajllal

and Abraham Frederick Cohen in its very first clause shows : "The said business shall henceforth be carried on by the said Dinesh Vrajllal alone". It is plain, therefore, that the business was being continued in the same name and for the same purpose and with the same object. The Tribunal has noticed this fact and has further noticed the fact that even under this deed of dissolution, the petitioner has undertaken to pay all the dues and liabilities of Shri Cohen in the business. The Tribunal also has found as a fact that this has nothing to do with the present dispute. The Tribunal relied on a material evidence which was a certificate marked Ex. A which shows that the respondent workman was with this business since 1947. I am, therefore, not satisfied that there has been any transfer of business in the sense to attract the operation of Section 25FF.

3. It was contended that on a reading of Section 25F, the "continuous service" mentioned there was to be not less than one year under a single employer. It was, therefore, argued that as the employer was changed by the constitution, re-constitution and dissolution of the Firm, converting it to a sole proprietorship business, therefore, this section operated as a bar for awarding any retrenchment compensation to the present workman under that section. Now, the words, "an employer", do not, in my opinion, mean change of partnership as meaning change of employer within the meaning of this section. Partners are proprietors of A Firm and the words "partnership" or "firm" are only a compendious and comprehensive name for the plurality of the proprietors with certain legal incidents attached to it by the Partnership Act. When therefore these plural proprietors become a single proprietor, there is no change in the "employer" within the meaning of Section 25F and of Section 25FF of the Industrial Disputes Act, provided the business remains the same. There is a definition of "employer" in Section 2(g) of the Industrial Disputes Act which is not helpful for the present purpose. The employer in this case is really the business of Alex. A. Apear (Junior) and Co. That business has continued throughout. Otherwise, it will mean that some private arrangement of modification of the Articles of Partnership deed without the knowledge of any workmen would be transferring their services from one employer to another and creating a break in their services, a result which I do not think was intended by Section 25F or 25FF. When Section 25FF speaks of transfer of undertaking, I do not think it introduces a case of changing constitution of a partnership firm or its dissolution to convert it into a sole proprietorship. This point is not exactly covered by any previous decision. Reference may, however, be made to the decision of the case of *Kay's Construction Co. v. Its Workmen*¹, At page 210, there are observations which support the view which I am taking,

4. The petitioner at one stage tried to urge that retrenchment was not within the jurisdiction of the Tribunal but later gave it up. That must be recorded with this statement that the petitioner's own case before the Tribunal was that the driver was unwilling to stay and resigned from his job by handing over the key of the car and went away. That certainly makes it come under retrenchment within the meaning of Section 2 (00) of the Act. I do not think the petitioner can be heard now to contend otherwise.

5. For these reasons, the petition must be dismissed and the Rule discharged. Interim order, if any, is vacated. There will be no order as to costs.

Petition dismissed.

¹AIR 1959 SC 208