KERALA HIGH COURT

L. Robert D'Souza

Vs

Executive Engineer

O.P. No. 4401 of 1974

(V.P. Gopalan Nambiyar, C.J., V. Balakrishna Eradi and George Vadakkel JJ.)

09.01.1979

JUDGMENT

Balakrishna Eradi, J.

1. The principal question arising for determination in this case is whether the termination of service of a casual labourer employed under the railway administration brought about by the operation of Rule 2505 of the Railway Establishment Manual (hereinafter called the Manual) by reason of his having absented himself constitutes "retrenchment" so as to attract the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter called the Act). A division Bench of this Court, of which one of us (Eradi, J.) was a member by its order of reference dated 29th September, 1978 referred the case to a Full Bench in view of the importance of the matter.

2. The writ petitioner was working as a casual employee under the Southern Railway administration. According to the petitioner he had been continuously functioning as such from 1948 onwards but this is not admitted by the respondents. It is unnecessary to go into the details of the particulars furnished by the petitioner as to the various places where he worked during different periods. The petitioner has claimed in the original petition that he had acquired temporary status by reason of his having been in continuous employment as "casual labor" for more than six months in the same work or type of work. This contention is refuted by the respondents according to whom the employment of the petitioner was throughout only as casual labor on projects and hence the petitioner was not eligible for the benefit of the temporary status. During the year 1974 when the petitioner was working as a lascar attached to the Assistant Engineer's office at Ernakulam he absented himself from duty continuously for about two weeks from 16-9-1974 onwards. It would appear that the petitioner was at that time the General Secretary of the Southern Railway Construction Workers' Union and that in protest against the alleged inordinate delay on the part of the Central Government in dealing with the union's request for reference of a dispute for industrial adjudication the petitioner had gone on fast in front of the office of the Executive Engineer (Construction), Southern Railway, Ernakulam from 16-9-1974 onwards. According to the averments in the original petition the petitioner broke his fast on 28-9-1974 as a result of the intervention of the Assistant Labour Commissioner and thereafter he reported for duty before the Assistant Engineer on 30-9-1974 and filed a joining report, a copy of

which is produced with the writ petition and marked as Ext. P10. It is alleged in the writ petition that from 39-9-1974 the petitioner was actually working in the Office of the Assistant Engineer till 8-10-1974 on which date he was served with the order Ext. P11 issued by the Executive Engineer (Construction), Southern Railway, Ernakulam (1st respondent) which is in the following terms :-

> You have absented yourself unauthorisedly from 18-9-74 and hence your services are deemed to have been terminated from the day you have absented yourself. Please note.
> 2. Since you are no longer, on the rolls of this office, you should vacate the quarters allotted to you immediately, failing which action will be taken to evict you.

Immediately on being served with the order Ext. P11 the petitioner filed the writ petition seeking to quash the said order and praying for a declaration that he continues in the employment of the railway without any break in service. The grounds raised in the writ petition in support of the challenge against Ext. P11 are that the said order of termination, coming as it did in the background of the facts and circumstances narrated in the original petition, is clearly an act of victimisation for the petitioner's trade union activities and it is a mere colourable exercise of the respondents' power under the provisions of the Manual. It is further contended that the impugned order is ex facie punitive and inasmuch as the petitioner was not given any opportunity to explain why he was absent from 18-9-1974 till 30-9-1974 and no hearing was afforded to him, the action taken under Ext. P11 is violative of Article 311 of the Construction of India and it offends also the principles of natural justice. Though these were the only grounds taken in the original petition a further plea has been put forward in the reply-affidavit filed by the petitioner on 12th February, 1975 that since the petitioner had actually worked for more than 240 days during the period of 12 calendar months preceding the date of Ext. P11 his services could not be validly terminated with-out due compliance with the provisions of Section 25F of the Act. It was this contention that was mainly pressed on behalf of the petitioner at the stage of arguments before the Division Bench as well as before the Full Bench.

3. On behalf of the railway administration it has been submitted in the counter-affidavit that the petitioner was throughout working only as a casual labourer employed on projects and that his claim that he had acquired a temporary status is, therefore, incorrect and untenable. Being a casual labourer the petitioner was not entitled to any leave facilities also. It is further averred in the counter-affidavit that on 16th and 17th September, 1974 the petitioner had requested the Assistant Engineer, under whom he was working, for permitting him to avail compensatory rest which was allowed, but from 18-9-1974 onwards the petitioner was absent from duty unauthorisedly. It is submitted by the respondent that such unauthorized absence amounted to voluntary abandonment of work and that, in any event, the petitioner being only a casual labourer working on projects, who is governed by the relevant provisions of Chapter XXV of the Manual, his service will be deemed to have terminated under Rule 2505 when he absented himself from duty. According to the respondent, since the petitioner's services as casual labourer stood automatically terminated by reason of the operation of the provision contained in Rule 2505 aforementioned the question of giving him an opportunity to be heard did not arise. The petitioner had himself stayed away from work and absented himself from duty and the

respondent has only refused to take him back since the petitioner's services stood automatically terminated under the relevant rule referred to above. On this basis the respondent has submitted in the counter-affidavit that the plea raised by the petitioner that there has been a contravention of the principles of natural justice is devoid of merit and that the further contention raised by the petitioner that Article 311(2) of the Constitution of India has been contravened is also untenable since the petitioner, being only a casual labourer employed on projects, was not holding any civil post under the Union of India and was not, therefore, entitled to the protection of Article 311(2) of the Constitution. The allegation in the original petition that the impugned action has been taken against the petitioner by way of victimisation has been refuted as baseless in the counter-affidavit. According to the respondents the impugned letter Ext. P11 is not an order terminating the service of the petitioner but only a communication intimating to him the fact of termination of service that had already been brought about by the operation of the deeming provision in Rule 2505 consequent on the petitioner's unauthorized absence from duty and calling upon the petitioner to vacate the official quarters which he was occupying. In answer to the contention raised by the petitioner that the termination of his service is illegal since the provisions of Section 25F of the Act were not complied with by the respondents it is submitted by the respondents that the petitioner has not been "retrenched" from the service of the railway and hence Section 25F is not at all attracted to this case. The respondents contend that in order to constitute retrenchment the termination of service of the employee concerned must have been effected on the ground that he had become surplus to the requirements of the employer. It is submitted that in the present case the termination of the petitioner's service was automatically brought about by the operation of the principle laid down in Rule 2505 of the Manual and it was not at all a case of the discharge of an employee on the ground of surplusage. The respondents therefore state that there was no obligation at all for them to comply with the provisions of Section 25F of the Act and that the contention to the contrary advanced by the petitioner is incorrect and unsustainable.

4. We shall first deal with the contention advanced by the petitioner that he was a casual labourer who had acquired temporary status and that hence his services were not liable to be dispensed with except after following the procedure laid down in Rule 2302 of the Manual. The writ petitioner along with some others had previously filed in this Court O.P. No. 409 of 1972 praying for the issuance of a writ of mandamus compelling the present respondents to recognise and give effect to the claims of the writ petitioners therein for being accorded temporary status within the meaning of Rule 2501 of the Manual with effect from the dates of which they had completed six months of continuous service. That writ petition was dismissed by one of us (Gopalan Nambiyar, J., as he then was) by judgment dated 5th March, 1973 holding that the petitioners were employed on projects and hence the duration of their employment, even if it is exceeded six months, did not make them eligible for the grant of temporary status in view of the provision contained in Rule 2501(b)(ii), the validity of which was upheld by this Court. A writ appeal--W.A. No. 218 of 1973-was filed against the said judgment by the present writ petitioner and three others. By the time that appeal came up for hearing the three appellants other than the writ petitioner had been selected for absorption to the permanent cadre of gangmen and they were not, therefore, interested in pursuing the appeal. As far as the present writ petitioner was concerned, the communication Ext. P11 had been issued to him by that time intimating him that his service stood automatically terminated by reason of his absence from duty and the petitioner had already filed the present writ petition before this Court challenging Ext. P11 on the ground, inter alia, that he was a temporary railway employee whose service could be terminated only in accordance with Rule 2302. In view of these developments the Division Bench which heard the

writ appeal dismissed the writ appeal by judgment dated 16th October, 1975 reserving liberty to the 1st appellant (writ petitioner herein) to agitate in the present writ petition--O.P. No. 4401 of 1974--all matters including the grounds taken in that writ appeal. Accordingly counsel appearing on behalf of the writ petitioner has reiterated before us the contention which the petitioner had taken in the writ appeal that he was a casual labourer who had acquired temporary status under Rule 2501(b)(i) of the Manual, Admittedly the aforesaid provision in Rule 2501(b)(i) conferring the benefit of temporary status on casual employees engaged for work other than on projects who continued to do the same work or other work of the same type for more than six months without a break was introduced only in 1962. The judgment in O.P. No. 409 of 1972 shows that before the learned single Judge the present petitioner as well as the other employees who had joined with him in filing that writ petition had all admitted that they were employed on projects. In the claim petition--Ext. P3 filed by the petitioner before the Labour Court, Quilon the petitioner has categorically stated that he had been working in the "construction branch" under different Executive Engineers under the general control of the Chief Engineer (Construction), Southern Railway, Madras from 1-3-1953 till the date of the said application (30-6-1971). It has been categorically asserted in the counter-affidavit that the construction units have no connection with open line works and that all the casual labourers employed in such units are only daily rated labourers engaged in connection with project works. The petitioner has not been able to produce before us any material which would satisfactorily establish that at any time after 1962 the petitioner had worked continuously for six months as casual labourer on any work other than projects, Such being the position, we are unable to uphold the petitioner's contention that he was a casual labourer who had acquired temporary status and that his service could be terminated by the railway administration only in accordance with the procedure laid down in Rule 2302 of the Manual.

5. We then come to the main point argued before us by the petitioner's counsel based on the provisions of Section 25F of the Act. In support of his contention that the termination of the petitioner's service is liable to be declared illegal and void on the ground that it had been effected in violation of Section 25F of the Act counsel for the petitioner relied strongly on the decision of a Division Bench of this Court reported in *L. Krishnan v. Southern Railway*[1] and also on certain observations of the Supreme Court in two recent decisions reported in The *State Bank of India v. Shri N. Sundara Money*[2], and *Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and Ors*[3]. Reference was

[1]1972-II L.L.J. 568 [2] AIR 1976 SC 1111 [3]1977-I L.L.J. I A.I.R. 1977 S.C. 31

also made by the counsel for the petitioner to a still later pronouncement of the Supreme Court in *Delhi Cloth and General Mills Co. Ltd. v. Shambhu Nath Mukherji and Ors*[4]., as well as to a recent decision of another Division Bench of this Court in ***Asst.*** *Personnel Officer, Southern Railway, Olavakkot v. K.T. Antony*[5], It was contended by the petitioner's counsel that the decisions aforecited fully support the stand taken by him that whenever the service of a workman employed in any industry who had continuous service of not less than one year is terminated for any reason whatsoever otherwise than as a punishment inflicted by way of displinary action or by way of voluntary retirement, retirement on superannuation or termination on the ground of continued ill-health, it amounts to "retrenchment" as defined in Section 2(200) of the Act and the provisions of Section 25F get automatically attracted to the case with the result that unless the requirements laid down in that Section are duly complied with, the termination of service of the workman concerned will be illegal and void. On the other hand, the Additional Advocate-General appearing on behalf of the railway administration contended that it is well-established by

the rulings of the Supreme Court that the expression "retrenchment" occurring in Section 25F of the Act connotes only discharge of surplus labour or staff by the employer and that unless the termination of service of the workman concerned is one effected on the ground of surplusage it will not be "retrenchment". In support of this argument reliance was placed by him on the rulings in *Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union*[6], *Hariprasad Shivashanker Shukla and Anr. v. A.D. Divelkar and Ors*[7]. *Hathising Manufacturing Co., Ltd., Ahmedabad and Anr. v. Union of India and Anr*[8]., *The Workmen of the Bangalore Woollen, Cotton and Silk Milla Co., Ltd. v. The Management of the Bangalore Woollen Cotton and Silk Mills Co., Ltd*[9]., and the recent pronouncement of the Supreme Court in Civil Appeal No. 634 of 1975--Judgment dated October 6, 1978. It was submitted by the Additional Advocate General that the true scope of the observations in The *State Bank of India v. Shri N. Sundara Money*, (supra, *Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and Ors.* (supra) and *Delhi Cloth and General Mills Co., Ltd. v. Shambu Nath Mukherji and Ors.* (supra) has to be understood by viewing them against the background of the facts in those cases, the most crucial of which was that the element of discharge on the ground of surplusage was present in everyone of those three cases. On this basis it was submitted by the Additional Advocate General that the observations in those three pronoucements of the Supreme Court do not in any way run counter to the earlier pronoucements of the Supreme Court directly laying down that in order to constitute "retrenchment" for the purpose of Section 25F the workman concerned should have been discharged from service on the ground of his having become surplus to the requirements of the employer's business. The Additional Advocate General also stressed very strongly on the recent unreported judgment of the Supreme Court in Civil Appeal No. 634(ML) of 1975 as containing a reiteration of the aforesaid principle by the Supreme Court and as showing that Krishna Iyer, J., who delivered the judgment in The *State Bank of India v. Shri N. Sundara Money*, (supra) was a member of the Bench which decided Civil Appeal No. 634 (ML) of 1975. It was submitted by the Additional Advocate General that the decision of the Division Bench in *L. Krishnan v. Southern Railway*[10] is based on

[4] AIR 1978 SC 8 [6] AIR 1957 SC 95 [8] AIR 1960 SC 923
[5] 1978-II L.L.J. 254 [7] A.I.R. 1957 S.C. 121 [9] AIR 1962 SC 1363
[10] 1972-II L.L.J. 561

an incorrect understanding of the scope and effect of the decision of the Supreme Court in *Hariprasad Shivashankar Shukla and Anr. v. A.D. Divalkar and Anr.* (supra) and that the dictum laid down by the Division Bench is contrary to the pronouncements made by the Supreme Court.

6. On the facts of this case there is no doubt that the termination of the petitioner's service was not on the ground that he had become a surplus hand. The question to be considered is whether a termination of the service of a workman on grounds totally unconnected with any element of surplusage can constitute, "retrenchment" so as to attract the applicability of Section 25F of the Act. "Retrenchment" has been defined thus in Section 2(oo) of the Act:

> retrenchment means the termination by the employer of the service of a workman for any reason whatsover, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--
> (a) voluntary retirement of the workmen; or
> (b) retirement of the workmen on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in

that behalf; or
(c) termination of the service of a workman on the ground of continued ill-health;

This definition was introduced into the Act by Section 2 of Act 43 of 1953 which came into force on 24-10-1953.

7. The argument advanced on behalf of the petitioner is that inasmuch as the definition in Section 2(oo) states that the termination of a workman by his employer for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action or by way of retirement whether voluntary or on attainment of the age of superannuation or on the ground of continued ill-health constitutes "retrenchment", there is no justification for putting a narrow construction the expression "retrenchment" by introducing a restriction that the termination of service of the workman should have been by way of discharge of surplus labour or staff. In other words it is contended that the width of the statutory definition cannot be cut down by the Court on any general notion as to the content which the expression "retrenchment" had in industrial parlance prior to the introduction of the statutory definition contained in Section 2(oo).

8. The matter is not res Integra since the identical question has come in for direct consideration by the Supreme Court in more than one decision to which we shall presently advert. *Piprach Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union*, (supra), is the earliest decision of the Supreme Court to which reference has to be made in this connection. That was a case which was governed by the Act as it stood prior to its amendment by Act 43 of 1953 by which alone Clause (oo) was inserted in Section 2 of the Act. One of the questions that arose before the Supreme Court in that case was whether the termination of the service of certain workmen employee in a sugar mills effected in consequences of the closure of the business was "retrenchment". Dealing with the said contention Venkatarama Ayyar, J. speaking for the Court said:

> But retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff or the labour force is discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business, cannot therefore, be properly described as retrenchment.
> By the time the case was heard by the Supreme Court Section 2(oo) has been introduced in the Act and based thereon a contention was advanced on behalf of the workmen that the definition of "retrenchment" contained in Section 2(oo) was wide enough to include discharge consequent on the closure of the business and that hence compensation could be awarded, therefore, under Section 25F of the Act. That question was, however, not gone into by the Supreme Court on the ground that Section 2(oo) of the Act had no retrospective operation and that the rights of the parties to the appeal had, therefore, to be decided in accordance with the law as it stood on 21-3-1951 when the workmen were discharged. It was also contended before the Supreme Court on behalf of the workmen that even prior to the enactment of the amending Act--Act 43 of 1953--the Industrial Tribunal and the Labour Appellate Tribunal had generally acted on the view that "retrenchment" included discharge on closure of business and had awarded compensation on that footing. Expressing its inability to agree with the said view taken by the Tribunals

the Supreme Court observed:

> Though there is discharge of workmen both when there is retrenchment and closure to business, the compensation is to be awarded under the law, not for discharge as such but for discharge on retirement, and if, as is conceded, retrenchment means in ordinary parlance, discharge of the surplus, it cannot include discharge on closure of business.

9. The question whether any change in the legal position has been brought about by the introduction of Section 2(oo) in the Act defining "retrenchment", arose for decision before the Supreme Court in *Hariprasad Shivshanker Shukla and Anr. v. A.D. Divelkar and Ors.* (supra) which was decided by a constitution Bench of five Judges. The true meaning of the expression "retrenchment" as defined in Section 2(oo) and the scope of Section 25F of the Act have been very elaborately considered and explained in the judgment of the Court delivered by S.K. Das, J. After extracting the definition contained in Section 2(oo) the learned Judge proceeded to examine the crucial question whether the said definition merely gives effect to the ordinary accepted notion of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or whether it goes so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona fide closure or on the discontinuance of the business by the employer. The two appeals which were jointly dealt with in the judgment, were cases where the services of the workmen have been terminated either on the ground of closure of the employers' business or on the take-over of the business of the employer by the Government. It was urged before the Supreme Court by the counsel for the principal respondents in those appeals that by reason of the wide words used in the definition "retrenchment" must be held to include termination of services of all the workmen in an industry consequent on the closure or discontinuance of business also. Dealing with the said contention the Supreme Court referred to the observations in *Pipraich Sugar Mills Ltd. v. Pipraich Sugar Milts Mazdoor Union*, (supra) wherein the connotation of the expression "retienchment" in its ordinary acceptation had been explained and then proceeded to examine how far the said meaning fits in with the language used in Section 2(oo) and stated thus
:

> "Let us now see how far that meaning fits in with the language used. We have referred earlier to the four essential requirements of the definition, and the question is, does the ordinary meaning of retrenchment fulfil those requirements? In our opinion it does. When a portion of the staff or labour force is discharged as surplus age in a continuing business, there are (a) termination of the service of a workman; (b) by the employer; for any reason whatsoever; and otherwise than as a punishment inflicted by way of disciplinary action. It has been argued that by excluding bona fide closure of business as one of the reasons for termination of the service of workmen by the employer, we are cutting down the amplitude of the expression' for any reason whatsoever' and reading into the definition words which do not occur there. We agree that the adoption of the ordinary meaning gives to the expression ' for any reason whatsoever ' a somewhat narrower scope; one may say that it gets a colour from the context in which the expression occurs; but we do not agree that it amounts to importing new words in the definition. What after all is the meaning of the expression ' for any reason whatsoever' ? When a portion of the staff or labour force is

discharged as surplusage in a running or continuing business, the termination of service which follows may be due to a variety of reasons; e.g., for economy, rationalisation in industry, installation of a new labour-saving machinery, etc. The Legislature in using the expression' for any reason whatsoever' says in effect: It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is 'retrenchment'. In the absence of any compelling words to indicate that the intention was even to include a bona fide closure of the whole business, it would, we think, be divorcing the expression altogether from its context to give it such a wide meaning as is contended for by learned Counsel for the respondents. What is being defined is retrenchment, and that is the context of the definition. It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined. Reference was then made by the learned Judge to some of the other provisions in the Act to see what light was thrown on the two views to be taken of the definition clause by those other provisions in the Act. After examining several of the other Sections in the Act which has relevancy in this context the Supreme Court held that it would be against the entire Scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition the termination of service of all workmen by the employer when the business itself ceases to exist. A contention is seen to have been advanced by the Attorney General on behalf of the Workmen's unions that before the enactment of the amending Act of 1953 (Act 43/53) retrenchment had acquired a special meaning--a meaning which included the payment of compensation on a closure of business--and that the Legislature had given effect to that meaning in the definition clause and a large number of decisions of Industrial or Labour Appellate Tribunals were relied on in support of the said contention. That contention was repelled by the Supreme Court and the legal position governing this aspect was stated thus:

"We consider it unnecessary to examine all the decisions on this point, and it is enough to indicate what we consider to be the correct position in the matter. Retrenchment means discharge of surplus workmen in an existing or continuing business; it had acquired no special meaning so as to include discharge of workmen on bona fide closure of business, though a number of Labour Appellate Tribunals awarded compensation to workmen on closure of business as an equitable relief for a variety of reasons. It is reasonable to assume that in enacting Section 25F, the Legislature standardised the payment of compensation to workmen retrenched in the normal or ordinary sense in an existing or continuing industry....

For the reasons given above, we hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in Section 2(oo) and as used in Section 25F has

no vider meaning than the ordinary accepted connotation of the word: it means the discharge of surplus labour or staff by the employer for any reasons whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business as in the case of Shri Dinesh Mills Ltd. or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the Railway Company.... There is in fact a distinction between transfer of business and closure of business; but so far as the definition clause is concerned, both stand on the same footing if they involve termination of service of the workmen by the employer for any reason whatsoever, otherwise than as a punishment by way of disciplinary action. On our interpretation, in no case is there any retrenchment, unless there is discharge of surplus labour or staff in a continuing or running industry.

This pronouncement of the Supreme Court is clear authority for the position that even under the definition contained in Section 2(oo) the expression "retrenchment" will take in only cases of termination of service of workmen effected by way of discharge of surplus labour or staff.

10. In The *Workmen of the Bangalore Woollen, Cotton and Silk Mills Co. Ltd. v. The Management of the Bangalore Woollen, Cotton and Silk Mills Co., Ltd.*[11], ten workmen had been discharged by the management on grounds of health after proper medical examination. The question arose whether those workmen could be said to

[11] AIR 1962 SC 1363

have been "retrenched" by the management so as to be entitled to the benefit of the provisions of an award of the Labour Appellate Tribunal dated 18th December, 1953. Dealing with that contention the Supreme Court observed;

The question that arises in this appeal is really one of construction of the award of December 18, 1953. Mr. Jha appearing for the workmen based his claim on the definition of the word ' retrenchment' introduced into the principal Act by Ordinance 5 of 1953. That definition was in these terms; 'retrenchment' means the termination of service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action: see Section 2(oo) of the principal Act). Section 25E which was introduced into the principal Act by the Ordinance provided for payment of certain gratuity or compensation for retrenchment. Mr. Jha's contention is that 'retrenchment' means termination of service for any reason other than by way of disciplinary action and, therefore, all workmen whose services had been terminated except by way of disciplinary action were entitled to the compensation under Section 25E in view of the award.

Now the question with regard to these ten workmen is whether they can be said to have been retrenched within the meaning of the definition. It seems to us that they cannot. The award has first to be read along with the dispute referred to connection with which it had been made. That dispute concerned payment of bonus to workmen' discharged as being

no longer required '. It, therefore, clearly contemplated workmen who were surplus but who were otherwise fit and willing to continue in service if their services had been needed. The award settled this dispute. Therefore, it seems to us that the company agreed by it to pay gratuity only to workmen who had been discharged on the ground that their services were no longer required and not to any whose services had been terminated for any other reason. Now when a workman is discharged on the ground that he is medically unfit as happened in the case of the ten workmen with whom alone we are concerned in this appeal, it cannot be said that they had been discharged on the ground that their services were no longer required; on the contrary they were not in a fit condition of health to continue in service at all. Their physical condition prevented them from rendering the service for which they had been employed. The reason for their discharge was that they could not render the services required of them and which under the contracts of service they were bound to render. Their services cannot be said to have been terminated on the ground that such services were not required.

But Mr. Jha says that we have to construe the award by itself. According to him, under the award the company is bound to pay gratuity according to the terms of the Ordinance, and therefore, to all whose services were terminated by way of retrenchment within the definition of that word inserted in the principal Act by the Ordinance. We do not think that this contention either or Mr. Jha is tenable. The definition makes 'retrenchment' a termination of service. It seems to us that a service cannot be said to be terminated unless it was capable of being continued. If it is not capable of being continued, that is to say, in the same manner in which it had been going on before, and it is, therefore, brought to an end, that is not a termination of the service. It is the contract of service which is terminated and that contract requires certain physical fitness in the workmen.

Where, therefore, a workman is discharged on the ground of ill-health, it is because he was unfit to discharge the service which he had undertaken to" render and, therefore, it had really come to an end itself. That this is the idea involved in the definition of the word ' retrenchment' is also supported by Section 25G of the Act which provides that where any workmen are retrenched, and the employer proposes to take in his employ any person he shall give an opportunity to the retrenched workmen to offer themselves for re-employment and the latter shall have preference over other persons in the matter of employment. Obviously, it was not contemplated that one whose services had been terminated on grounds of physical unfitness or ill-health would be offered re-employment; it was because his physical condition prevented him from carrying out the work which he had been given that he had to leave and no question of asking such a person to take up the work again arises. If he could not do the work he could not be offered employment again. It would follow that such a person cannot be said to have been retrenched within the meaning of the Act as amended by the Ordinance.

We, therefore, think that the ten persons who had been discharged on grounds of health--and as to this there does not appear to be any dispute--were not persons who were entitled to any payment under Ordinance No. 5 of 1953.

> This decision also is authority for the position that in order to constitute "retrenchment" the service of the workmen concerned must have been terminated on the ground of surplus age.

11. In *Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen and Ors*[12]. , the Supreme Court had to consider the scope and effect of Section 25FF introduced into the Act by Ordinance No. 4 of 1957 which was subsequently replaced by Act 18 of 1957. Gajendragadkar, J. (as he then was) who spoke for the constitutional Bench that decided the case, while dealing with the factual background which led to the substitution by Ordinance 4 of 1957 of the present Section 25FF in the place of the original Section 25FF which had been inserted in September, 1956 made the following observations:

> It may be relevant to add that this Section (reference is to the original Section 25FF) conceivable proceeded on the assumption that if the ownership of an undertaking was transferred, the cases of the employees affected by the transfer would be treated as cases of retrenchment to which Section 25F would apply. That is why Section 25FF begins with a non obstante clause and lays down that the change of ownership by itself will not entitle the employees to compensation, provided the three conditions of the proviso are satisfied. Prima facie, if the three conditions specified in the proviso were not satisfied, retrenchment compensation would be payable to the employees under Section 25F; that apparently was the scheme which the Legislature had to mind when it enacted Section 25FF in the light of the definition of the word 'retrenchment' prescribed by Section 2(oo) of the Act.

[12] AIR 1963 SC 1489

The validity of this assumption was, however, successfully challenged before this Court in the case of *Hariprasad Shivshanker v. A.D. Divelkar*[13] In that case, this Court was called upon to consider the true scope and effect of the concept of retrenchment as defined in Section 2(oo) and it held that the said definition had to be read in the light of the accepted denotation of the word, and as such it could have no wider meaning than the ordinary connotation of the word and according to this connotation, retrenchment means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and does not include termination of services of all workmen on a bona fide closure of industry or on change of ownership or management thereof. In other words, the effect of this decision was that though the definition of the word ' retrenchment' may perhaps have included the termination of services caused by the closure of the concern or by its transfer, these two latter cases could not be held to fall under the definition because of the ordinary accepted connotation of the said word. This decision necessarily meant that the word' retrenchment' in Section 25FF had to bear a corresponding interpretation. In that case, the employees of the Barsi Light Railway Company Ltd. had made a claim for retrenchment compensation under Section 25FF against the purchaser of the Railway Co., and the employees of the Sri Dinesh Mills Ltd. had made a similar claim against their employer on the ground that the Mills had been closed. There claims had been allowed by the Bombay High Court and the employers had come to this Court in appeal. This Court having held that the word 'retrenchment' necessarily postulated the termination of the employees' services on the ground that the employees had become surplus, allowed the appeals preferred by the employers and held that the employees' claim against the

purchaser in one case and against the employer who had closed his business in the other, could not be sustained. This as a result of this decision, it was realised that if the object of the Legislature in introducing Section 25FF was to enable the employees of the transferor concern to claim retrenchment compensation unless the three conditions of the proviso to the said Section were satisfied, it could not be carried out any longer. The decision of this Court in Hariprasad's case (1957) S.C.R. 121 : (S) A.I.R. 1957 S.C. 121 was pronounced on November 27, 1956. This decision led to the promulgation of an Ordinance No. 4 of 1957. By this Ordinance, the original Section 25FF as it was inserted on September 4, 1956, was substantially altered. Section 25FF as it has been enacted by the Ordinance reads thus:

> Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking, immediately before such transfer, shall be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman had been retrenched;
>
> Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if--
>
> (a) the service of the workman has not been interrupted by such transfer;
>
> (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

[13](1957) S.C.R. 121 : (S) A.I.R. 1957 Section 121

> (c) the new employer is, under the terms of the transfer or otherwise, leagally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer'. In due course, this Ordinance was followed by Act XVIII of 1957 on June 6, 1957. By this Act, Section 25FF as it was enacted by the Ordinance has been introduced in the parent Act. It would be noticed that the Ordinance came into force retrospectively as from December 1, 1956, that is to say, three days after the judgment of this Court was pronounced in Hariprasad's case 1957 S.C.R. 121 : A.I.R. 1957 S.C. 121,
>
> The Solicitor-General contends that the question in the present appeal has now to be determined not in the light of general principles of industrial adjudication, but by reference to the specific provisions of Section 25FF itself. He argues, and we think rightly, that the first part of the section postulates that on a transfer of the ownership or management of an undertaking the employment of workmen engaged by the said undertaking-comes to an end, and it provides for the payment of compensation to the said employees because of the said termination of their services, provided, of course, they satisfied the test of the length of service prescribed by the section. The said part further provides the manner in which and the extent to which the said compensation has to be paid. Workmen shall be entitled to notice and compensation in accordance with the provisions of Section 25F, says the section, as if they had been retrenched. The last clause clearly brings out the fact that the termination of the services of the employees does not in

> law amount to retrenchment and that is consistent with the decision of this Court in Hariprasad's case (1957) S.C.R. 121 : A.I.R. 1957 S.C. 121. The Legislature, however, wanted to provide that though such termination may not be retrenchment technically so-called, as decided by this Court, nevertheless the employees in question whose services are terminated by the transfer of the undertaking should be entitled to compensation, and so, Section 25FF provides that on such termination compensation would be paid to them as if the said termination was retrenchment. The words 'as if bring out the legal distinction between retrenchment defined by Section 2(oo) as it was interpreted by this Court and termination of services consequent upon transfer with which it deals. In other words, the section provides that though termination of services on transfer may not be retrenchment, the workmen concerned are entitled to compensation as if the said termination was retrenchment, This provision has been made for the purpose of calculating the amount of compensation payable to such workmen; rather than provide for the measure of compensation over again, Section 25FF makes a reference to Section 25F for that limited purpose, and, therefore, in all cases to which Section 25FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against the transferee of the said concern.

Thus we find in this decision of the constitution Bench a clear reaffirmation of the principle laid down in Hariprasad's case, (supra) that the definition of "retrenchment" contained in Section 2(oo) of the Act has to be read in the light of the accepted denotation of the word and as such it could have no wider meaning than the ordinary connotation of the said expression, namely, the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action.

12. Applying the principles laid down by the Supreme Court in Hariprasad's case, (supra) a Full Bench of the Bombay High Court held in The Managing Director. The *National Garage, Nagpur v. J. Gonsalves. Automobile Foreman, Nagpur and Ors*[14]*.,* that the term

> "retrenchment" means discharge of surplus labour or staff in a continuing or running industry and that it is only if the termination of services is found to be due to the reason that the workman dis charged was surplus, i.e., in excess of the requirements of the business of the industry concerned that it will amount to retrenchment within the meaning of the Act. It was further held that if the termination of services is due to any other reason it will not constitute ret renchment. To the same effect is the decision of the Punjab High Court in *Goodlass Nerolac Paints (Private), Ltd. v. Chief Commissioner, Delhi and Ors*[15]. The same view has also been taken by the Rajasthan High Court in *Rajasthan State Electricity Board, Jaipur v. Labour Court, Jaipur and Ors*[16].

13. It is, however, contended by the learned advocate appearing for the petitioner that a totally different view regarding the scope of the word "retrenchment" has been taken by the Supreme Court in The *State Bank of India v. Shri N. Sundara Money*[17]*,* and that as per the dictum laid

down therein every termination of service of a workman will constitute retrenchment whatever be the reason for such termination. It is submitted on behalf of the petitioner that the said view has again been reiterated by the Supreme Court, *Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and Ors*[18]. and *Delhi Cloth and General Mills Co, Ltd. v. Shambhu Nath Mukherji and Ors*[19]*.,*

14. We have very carefully studied the aforesaid judgments of the Supreme Court. Though some of the observations contained in Sundara Money's case (supra) may at first sight appear to be wide enough to lend support to the contention advanced by the present writ petitioner, a careful examination of the contextual background against which those observations were made will show that they were only intended to mean that even an automatic termination of service brought about by reason of the expiry of the period fixed in the order of appointment, i.e., by efflux of time and not by any overt act of the employer, will constitute retrenchment in cases which otherwise satisfy all the requirements of the definition. On the facts of the case before the Supreme Court it was expressed in the order of appointment itself that the services of the employee were not required by the employer beyond the period specified therein; in other words he would become surplus to the requirements of the employer after the said date. Hence the requirement that the termination should be on the ground of surplusage was satisfied in that case and the principal question that arose was whether an automatic cessation of service brought about by efflux of time and not by any act
of the employer was outside the concept of retrenchment. The contention advanced before the Supreme Court was that when the order of appointment itself contained a

[14] AIR 1957 SC 121 [16]1966-I L.L.J. 381 [18]1977-I L.L.J. 1 : A.I.R. 1977 S.C. 31
[15]1967-I L.L.J. 545 [17] AIR 1976 SC 1111 [19] AIR 1978 SC 8

stipulation that the service of the employee would come to an automatic termination at the end of the period specified therein, it was not a case of termination of service of the employee by the employer so as to constitute "retrenchment" as defined in Section 2(oo) of the Act. It is while dealing with this contention that the following observations strongly relied on by the present writ petitioner were made by the Supreme Court:

> For any reason whatsoever--very wide and almost admitting of no exception. Still, the employer urges that when the order of appointment carries an automatic cessation of service, the period of employment works itself out by efflux of time, not by act of employer. Such cases are outside the concept of ' retrenchment' and cannot entail the burdensome conditions of Section 25F.... A break down of Section 2(oo) unmistakably expands the semantics of retrenchment. 'Termination for any reason what soever' are the key works. What soever the reason, every termination spells retrenchment. So the sole question is has the employees' service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination, however, produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and

> Section 2(oo), Without speculating on possibilities, we may agree that "retrenchment" is no longer terra in cognita but area covered by an expansive definition. It means 'to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days--automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(1)(sic) (Section 25F(a?). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by efflux ion of time cannot be sufficient words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A preemptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision .

In our opinion, the true scope of these observations made by the Supreme Court can be correctly understood only by viewing them against the factual background and context in which they were made, namely, (1) that it was a case where the appointment order given to the employee itself specified that his services were not required by the Bank after the expiry of the period mentioned therein whereupon the employee would become a surplus hand and (2) that the only contention put forward before the Supreme Court on behalf of the employer was that when the order of appointment carried a stipulation for an automatic cessation of service the period of employment works itself out by efflux of time and it was not a case of termination of service of the workman by the employer so as to constitute retrenchment. On such a study it becomes, in our opinion, quite manifest that what has been laid down in the case is only that even an automatic cessation of service brought about by the expiry of the period specified in the order of appointment will constitute retrenchment and that it is not necessary that an order of termination, as such, should be passed by the employer on the expiry of the said period. It is only in this context that the observation that "termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced" has been made by the Supreme Court. We consider that the further observation that "whatever the reason, every termination spells "retrenchment" must also be understood to have been made only in the said context. The case before the Supreme Court being one where the element of surplusage was duly present, we do not think it correct to assume as we are invited to do by the counsel for the petitioner, that the Supreme Court has intended by this decision to abrogate the principle categorically laid down in the earlier rulings of that Court in *Hariprasad Shivshanker Shukla and Anr. v. A.D. Divelkar and Ors*[20]. and *Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen and Ors. , etc*[21]., that in order to constitute retrenchment under Section 2(oo) the workman concerned should have been discharged from service on the ground of his having become surplus to the requirements of the employer. As already pointed out, the element of discharge on the ground of surplusage was present in The *State Bank of India v. Shri N. Sundara Money* (supra), and hence, naturally, no

question was even raised before the Supreme Court as to whether a termination of service without there being any element of surplusage would constitute retrenchment. It must have been on account of this that the decisions in Hariprasad's case, (supra) and Anakapalle Co-operative Agricultural and Industrial Society's case, (supra) were not even referred to in the judgment. In the light of what we have said we consider that it will be wholly wrong to understand the observations in The *State Bank of India v. Shri N. Sundara Money*, (supra) as laying down any principle inconsistent with what has been laid down by larger Benches of the same Court in Hariprasad's case, (supra) and Anakapalle Co-operative Agricultural and Industrial Society's case, (supra). That this is the position has been made clear by the subsequent pronouncement of the Supreme Court in *Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and Ors.*, (supra). That was also a case of discharge of certain workmen (Head Time Keepers) on the ground that they had become surplus. On the expiry of the periods specified in the orders of appointment issued to the workmen the appellant-company chose not to renew their contract of service pursuant to a policy to "streamline the organisation and to effect economics wherever possible". There was no order terminating their services. The contention of the appellant was that the termination was automatic on the expiry of contractual period of service and since no order of termination had been passed by the employer it did not amount to "retrenchment" and hence Section 25F was not attracted. Following the decision in The *State Bank of*

[20] A.I.R. 1957 S.C. 121

[21] AIR 1963 SC 1489

India v. Shri N. Sundara Money, (supra) the Supreme Court rejected the said contention and upheld the plea of the workmen that the termination of service was illegal since the provisions of Section 25F had not been complied with by the employer. Apparently on finding that the contention raised in the appeal was directly covered against him by the decision in Sundara Money's case, (supra) counsel for the appellant before the Supreme Court had submitted that the said decision was" in apparent conflict with the earlier decision of the Court in Hariprasad's case, (supra) which was by a larger Bench, and Sundara Money's case, (supra) therefore, required reconsideration". Dealing with the said contention Gupta, J. observed:

> In *Harprasad Shivshankar Shukla v. A.D. Divelkar*[22] to which the Solicitor-General referred, one of the questions that arose for decision was whether the definition of retrenchment in Section 2(oo) goes so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona fide closure or discontinuance of his business by the employer?" The question was answered in the negative on the authority of an even earlier case. *Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union*[23], which held that 'retrenchment' connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff of the labour force is discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business cannot, therefore, be properly described as "retrenchment". Following Pipraich Sugar Mills" case it was held in *Hariprasad Shivsankar Shukla v. A.D. Divelkar* (supra) that the words' for any reason whatsoever' used in the definition would not include a bona fide closure of the whole business because 'It would be against the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen by the employer when the

business itself ceases to exist.' On the facts of the case before us, giving full effect to the words ' for any reason whatsoever' would be consistent with the scope and purpose of Section 25F of the Industrial Disputes Act, and not contrary to the scheme of the Act. We do not find anything in Hariprasad's case which is inconsistent with what has been held in *State Bank of India v. N. Sundara Money*, (supra).

In the light of these observations it is clear that the proposition laid down in Harprasad's case, (supra) that the expression "retrenchment" as defined in Section 2(oo) has no wider meaning than the ordinary accepted connotation of the word, namely, "discharge of surplus labour or staff by the employer for any reason whatsoever" has not been in any way departed from the ruling in Sundara Money's case, (supra). If Sundara Money's case were to be understood as laying down that every termination of service of an employee irrespective of the existence of the element of surplusage, (otherwise than as a punishment inflicted by way of disciplinary action) would constitute "retrenchment" then there is obviously a conflict between the said pronoucement and the earlier rulings in Hariprasad's case. In the light of the clear and direct pronouncement of the Supreme Court in *Hindustan Steel Ltd. v. The Presiding Officer,*

[22] A.I.R. 1957 S.C. 121

[23]1956 SCR 872 : AIR 1957 SC 95

Labour Court, Orissa and Ors. (supra) that there is no inconsistency between the dicta laid down in Hariprasad's case and Sundara Money's case, we find no scope at all for any further doubt or speculation on the matter. The principle laid down in Hariprasad's case and the subsequent rulings that followed it remains unshaken.

15. Reference may usefully be made also to a recent unreported judgment of the Supreme Court in Civil Appeal No. 634 of 1975, since reported in 1979-I L.L.J. 1, a copy of which was made available for us by the learned Additional Advocate-General appearing on behalf of the respondents. The appellant in that case (M/s. Avon Services (Production Agencies) Pvt. Ltd.) had set up two factories at Bombay and Ballabhagarh for the manufacture of Fire Fighters Foam Compound. The subject-matter of the appeal related to the Ballabhagarh factory. According to the appellant, this factory when commissioner in 1962, was divided into two sections, namely, (1) manufacturing section and (2) packing material making section. The packing material section was composed of two sub-sections, one manufacturing containers and the other attending to the painting of the containers. The workmen who figured as respondents Nos. 3 and 4 in the appeal, were, according to the appellants, employed in the painting section. On 13th July, 1971 the appellant purported to serve notice on respondents Nos. 3 and 4 and one Mr. Ramani intimating to them that the management had decided to close the painting section effective 13th July, 1971 due to unavoidable circumstances and hence the services of the three workmen would no longer be required and, therefore, they were retrenched. By the said notice the workmen concerned were also informed that they should collect their dues under Section 25FFF of the Industrial Disputes Act from the office of the company. Since 13th July, 1971, respondents 3 and 4 were denied employment by the appellant, A trade union of the employee of the appellant raised a dispute challenging the validity of the said section taken by the management and demanding the reinstatement of the workmen. The Government of Haryana referred the said dispute to the Industrial Tribunal for adjudication. The Tribunal held that respondents 3 and 4 were retrenched

and their case squarely fall under Section 25F of the Act and as the employer had not complied with the prerequisite condition in the said section the retrenchment was invalid. The appellant moved the High Court of Punjab and Haryana for a writ of certiorari but the writ petition was dismissed in limine. The appeal was thereafter taken to the Supreme Court on the basis of Special leave granted to the appellant. In the appeal the appellant had taken certain contentions relating to the validity of the reference made to the Tribunal and also the competence of the Tribunal and a good part of the judgment of the Supreme Court is devoted to the consideration of those contentions. It will suffice for our present purpose to note that those contentions were all overruled by the Supreme Court and that what remained was only the last contention urged on behalf of the appellant that the Tribunal had erred in holding that respondents Nos. 3 and 4 were retrenched from service and that their case was governed by Section 25F of the Act. Dealing with the said contention the Supreme Court observed as follows:

> In the present case the appellant attempted to serve notice dated 13th July, 1971 on respondents 3 and 4 and one Mr. Ramani. In this notice it was stated that the management has decided to close the painting section with effect from Tuesday 13th July, 1971 due to unavoidable circumstances and the services of the workmen mentioned in the notice would no longer be required and hence they are retrenched. The workmen were informed that they should collect their dues under Section 25FFF from the office of the company.
> The tenor of the notice clearly indicates that workman were rendered surplus and they were retrenched. It is thus on the admission of appellant a case of retrenchment.

(underlining supplied)

> Repelling the contention that the painting section was a separate undertaking and that hence it was a case of "closure" falling within Section 25FFF, the Supreme Court held that on the facts available on record it was not shown that the painting section was a separate establishment with separate supervisory arrangement. The following observations made by the Court while dealing with that aspect of the case may usefully be extracted:
> These workmen appear not to have been employed initially as painters. They were doing some other work from which they were brought to painting section. They could have as well been absorbed it in same other work which they were capable of doing as observed by the Tribunal. If painting was no more undertaken as one of the separate jobs, the workmen would become surplus and they could be retrenched after paying compensation as required by Section 25F to style a job of a particular worker doing a specific work in the process of manufacture as in itself an undertaking is to give meaning to the expression 'undertaking' which it hardly connotes....
> In fact, once the container making section was closed down, the three painters, became part and parcel of the manufacturing process and if the painting work was not available for them they could have been assigned some other work and even if they had to be retrenched assurplus,the case would squarely fall in Section 25F and not be covered by Section 25FFF....

(underlining supplied)

> Thus in this decision also stress has been laid by the Supreme Court on the requirement that the workmen concerned must have been discharged on the ground of their having become surplus in order to constitute "retrenchment" under Section 2(oo) of the Act. It is important to notice that the Division Bench of the Supreme Court which rendered the above pronouncement was presided over by Krishna Iyer, J. who had spoken on behalf of the Court in Sundara Money's case, (supra).

16. Our attention has been drawn to an unreported judgment of a Division Bench of the Delhi High Court in Civil Writ No. 851 of 1977, where the learned Judges have after advertising in detail to the observations of the Supreme Court in Sundara Money's case, (supra) and *Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and Ors.* (supra) held that the principle laid down in Hariprasad's case, (supra) that in order to constitute retrenchment there should be termination of service of workmen on the ground of their having become surplus to the requirements of the employer, remains unshaken. We are in complete agreement with the said statement of the legal position.

17. In *L. Krishnan v. Southern Railway*[24] a Division Bench of this Court has expressed the view that termination of service of an employee pursuant to any provision in the standing order or any service condition can constitute "retrenchment" even if it is not a case of discharge of surplus staff and that there is nothing to the contrary laid down in the ruling in Hariprasad's case, (supra). With respect we have to state that this observation of the Division Bench which was in the nature of obiter dicta is based on an erroneous understanding of the true scope and effect of the decision in Hariprasad's case which clearly lays down that retrenchment as defined in Section 2(oo) of the Act means only the discharge of surplus labour or staff by the employer for any reason whatsoever. We must accordingly hold that *L. Krishnan v. Southern Railway*[25] does not lay down the correct law.

18. Two recent decisions of a Division Bench of this Court of which one of us (Gopalan Nambiyar, C.J.) was a member, alone remain to be noticed. One is the case reported in *Asst. Personnel Officer, Southern Railway, Olvakkot v. K.T. Antony*[26] and the other is unreported decision in writ Appeal No. 201/78. In both these cases the Division Bench has proceeded on the assumption that the decision in Sundara Money's case, (supra) is authority for the proposition that even without any element of surplusage termination simpliciter for whatever reason would amount to retrenchment. For the reasons already stated by us this view cannot be regarded as correct and hence these two decisions cannot be accepted as laying down good law.

19. Inasmuch as the termination of service of the petitioner in the case is not on the ground that he had become surplus to the requirements of the railway establishment but on a totally different ground, namely, that he has unauthorisedly absented himself and thereby invited the applicability of the provision for automatic termination contained in Rule 2505 of the Manual, we have to hold in the light of the proceeding discussion that the petitioner cannot be said to have been "retrenched" from service and that hence Section 25F of the Act is not attracted. The petitioner's prayer for a declaration that the termination of his service is illegal and void on the ground of

violation of the provisions of Section 25F of the Act cannot, therefore, be granted.

20-21. The original petition is, therefore, devoid of merits and it is accordingly dismissed. We direct the parties to bear their respective costs.

Gopalan Nambiyar, C.J.

"1. I add a few words of my own to the judgment of my learned brother Eradi, J., delivered on behalf of the Bench. The definition of retirement in Section 2(oo) of the Industrial Disputes Act is undoubtedly couched in wide terms. But to hold that termination in pursuance of a contractual term or a service rule or on grounds of bona fide closure of business and such a like grounds would also pass as retrenchment, jars against the well accepted sense of the term. The

[24]1972-II L.L.J. 568 [26]1978-II L.L.J. 254

[25]1972-II L.L.J. 568

historical evolution of the definition, noticed in the decisions on this aspect should serve to highlight the proper scope and content of the definition, noticed in the decisions on this aspect should serve to highlight the proper scope and content of the definition. Briefly, before the definition was introduced by the Amending Act 43 of 1953, a judicial exposition of the meaning of the term "retrenchment" was offered in the Pipraich Sugar Mills Ltd. Case 1957-I L.L.J. 235. There it was pointed out by the Supreme Court that retrenchment meant nothing more than discharge of surplus labour. After the incorporation of the statutory definition by Act 43 of 1953, the Supreme Court considered the position again in the Sarasi Light Railway Company's case A.I.R. 1957 S.C. 121. It was ruled that despite the width and the amplitude of the definition, the popular acceptation of the term could well fill the bill of the statutory definition, and that there was no justification to interpret the words "for any reason whatsoever" so as to give higher scope and content to the definition. The essence of the definition was that discharge should be on the ground that labour had become surplus; the reason why it became surplus was immaterial. This view was taken by me in O.P. Nos. 2241, 2797, and 3063 of 1967 reported in I.L.R. 1968 Ker. 77. W.A. No. 7 of 1968 against the said judgment was dismissed in limine by M.S. Menon C.J. and P. Govindan Nair, J, The view was reiterated by me again in G.P. Nos. 4401, 4033, 4084, etc., of 1968, dated 17th December, 1968. In the course of my judgment I had referred to the decisions in Burra Kur Coal Co.'s Case , the Managing Director. The *National Garage Nagpur v. Gansalves Automobile Foreman and Ors*[27]*.,* and *Sh. Parsidh's Singh's case A.I.R. 1965 J. and K. 124*, which had ruled that the term inaction of service on the ground of old age and infirmity or on the terms of a standing order, or on reaching the age of superannuation, would not amount to retrenchment. Reference was also made to the judgment of Mathew, J. of this Court (as he then was) in CVA. *Hydross & Son v. Joseph Sanjon* [28]The learned Judge there noticed that all terminations of service is not retrenchment. An appeal was taken against the learned judge's judgment--W.A. No. 126 of 1968. The learned Judges,

on appeal, accepted the suggestion of counsel for the appellants, that the matter may be left to be dealt with by the industrial Court untrammelled by anything said in the judgment of the learned Judge.

22. I skip the many decisions of the Supreme Court noticed in our judgment on behalf of the Bench, and come to the Division Bench ruling of this Court in *Krishnan and Ors. v. The Divisional Personnel Officer, Southern Railway and Anr. 1972-II L.L.J 568*.(Supra) The pronouncement of this question was obiter. The facts of the case make it clear and the Division Bench had found that the termination of service was actually on the ground that labour had become surplus. It, however, examined the question whether a termination simpliciter would amount to retrenchment, and held it would. In the judgment delivered by Eradi J., on behalf of the Bench we have stated that we cannot endorse the view of the Division Bench that its decision was in no way inconsistent with the principles laid down by the Supreme Court in The Sarsi Light Railway Company's case A.I.R. 1957 S.C. 121. The Division Bench ignored

[27] AIR 1962 Bom 152 (FB)

[28] 1967-I L.L.J. 589

paragraph 19 of the judgment of the Supreme Court in the above case. That paragraph was clear and categoric that in no case can there be retrenchment unless there was discharge of surplus labour in a running industry. The judgments in I.L.R. 1968 Ker. 77, and W.A. No. 7 of 1968 and 1967-I L.L.J. 609, were not noticed.

23. The decision of the Supreme Court in Sundara Money's case (supra) has been discussed. Although the principle is widely stated, the decision is in consonance with the principle of the decision in Sarsi Light Railway Company's case. An employee for a limited period was sent out after the expiry of the period without renewing his term of employment. This was attacked as retrenchment. It is plain that the discharge was on the ground that labour was surplus, and that the industry was a continuing industry. The concept of retrenchment as expounded in the Sarsi Light Railway Company's case stood satsified.

24. In *Hindustan Steel v. Labour Court, Orissa*, (supra) the discharge of the workman was for streamlining the administration. His contract for a specified term was allowed to expire automatically, and not renewed at the end of the term. The termination, again, satisfied the principle expounded in Sarsi Light Railway Co. case, In *D.C. and G. Mills v. Shambhu Nath* (supra) the workman's name had been automatically struck off the rolls for continued absence, in terms of a standing order which provided such striking off.

25. In W.A. No. 201 of 1978 a Division Bench consisting of myself and Balagangadharan Nair, J. considered the position, and ruled, in the light of the pronouncement of the Supreme Court in and A.I.R. 1977 S.C. 31, that termination for any reason, irrespective of the discharge of surplus labour, would amount to retrenchment. But neither in that decision, nor in any of the other decisions (See *Assistant Personnel Officer, Southern Railway, Olavakkot. v. K.T. Antony*[29] where the same view has been taken, was there any basic challenge to the view, as has been raised in this case.

26. I agree that we are bound to follow the Five-Judge-Bench decision in Sarsi Light Railway Company's case in preference to Sundaramoney's case (supra) or Hindustan Steel case (supra) or Shambu Nath's case (supra).

Petition allowed.
[29]1978-II L.L.J. 254