

BOMBAY HIGH COURT

Managing Director, The National Garage

Vs.

J. Gonsalves, Automobile Foreman

Special Civil Appln No. 155 of 1960

(Chainani, C J., Kotwal and Shikhare, JJ.)

18.09.1961

JUDGMENT

Chainani, C.J.

1. The question referred to the Full Bench is

"Whether termination of service simpliciter, whether on giving one month's notice under the provisions of a standing order or otherwise, amounts to retrenchment attracting the provisions of section 25-F of the Industrial Disputes Act?"

2. Clause (oo) in section 2 of the Industrial Disputes Act, 1947, defines the word "retrenchment" to mean as follows:

" 'Retrenchment' means 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 -

(a) voluntary retirement of the workman; or

(b) retirement of the workman 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."

Section 25-F provides for payment of compensation when a workman is retrenched. The question, which we have to determine, is whether the termination of services simpliciter, that is, without disclosing to the workman the reasons for his discharge amounts to retrenchment within the meaning of the above definition, so as to entitle the workman to compensation under the provisions or section 25-F of the Act.

3. The above definition has been considered by the Supreme Court in *Hariprasad Shivshankar v. A.D. Divelkar*¹, In that case, the undertaking of a Railway Company was taken over by Government, in consequence of which the Company had to dispense with the services of all its employees. This was, therefore, a case in which the entire business was closed. The Supreme Court held that the termination of services of the workman as a

¹1957 SCR 121 : AIR 1957 SC 121

result of the closure of the business did not constitute retrenchment. Their Lordships examined the definition of "retrenchment" given in clause (oo) of section 2 of the Act and came to the conclusion that the definition does no more than give effect to the ordinary meaning of this word. It was pointed out at page 131 (of SCR): (at p.126 of AIR) that "retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff or the labor force is discharged as surplus age."

4. It was contended in the course of arguments that by so construing the word "retrenchment", the amplitude of the expression "for any reason whatsoever" contained in the definition was being narrowed down. The Supreme Court dealt with this argument as follows at page 132 (of SCR): (at p.127 of AIR):-

"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 color 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 labor force is discharged as surplus age in a running or continuing business the termination of service which follows may be due to a variety of reasons; e.g. for economy rationalization in industry, installation of a new labor-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' 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 acceptance 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 acceptance of the work, 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."

After considering the various arguments, the Supreme Court recorded its conclusions in the following words at page 141 (of SCR) : (at p.132 of AIR):-

"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 25-F has no wider meaning than the ordinary, accepted connotation of the word; it 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

On the same page, it was further observed:-

"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."

In this case, therefore, the Supreme Court held that the word "retrenchment" as defined in clause (oo) of section 2 and as used in section 25F of the Act has no wider meaning than the ordinary accepted connotation of the word, and that it means the discharge of surplus labor or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action.

5. This decision of the Supreme Court was considered by a Division Bench of this Court in the *Municipal Corporation of Greater Bombay v. Labour Appellate Tribunal of India*², decided on 6th February 1957. In this case, as page 420 (of Bom LR) : (at p.193 of AIR), it was observed :

"It is clear from these observations that in their Lordships' view the expression 'retrenchment' meant discharge of surplus labour or staff and did not mean termination of the contract of employment for other causes."

6. The same decision was again considered by another Division Bench of this Court in Spl. Civil Appln. No.949 of 1957, D/-18-9-1957 (Bom). In that case, the decision of the Supreme Court was considered at length and it was held that if the services of a workman "were not terminated because he was in excess of what was needed for the industry", the termination would not amount to retrenchment. The same view was taken in Spl. Civil Appln. No.1640 of 1957, D/-26-9-1957 (Bom). A contrary view was taken by another Division Bench of this Court in *Devidayal v. State Industrial Court, Nagpur*³ and *Deoli v. State Industrial Court Nagpur*⁴, The last two cases were decided on 20th June 1958 and 10th July 1958 respectively i.e., long after the other cases, in which the Supreme Court decision was considered, had been decided. These earlier decisions were not brought to the notice of the learned Judges. The Supreme Court decision also does not appear to have been brought to their notice. If the Supreme Court decision and the earlier decisions of this Court had been pointed out to the learned Judges, it is quite likely that they would have taken a different view.

7. Mr. Sathe, who appears on behalf of the workmen, has referred to the observation of the Supreme Court that in order to give a wider meaning to a word, there must be compelling words to show that a meaning different from or in excess of the ordinary meaning was intended by the

Legislature. He has invited our attention to the amendments made in the Act by the Industrial Disputes (Amendment) Act, 1957 (No. XVIII of 1957), by which, a new section, Section 25FFF, was added, so as to provide for payment of compensation when an undertaking is closed down. Sub-sec.(1) of this section states that when an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall be entitled to compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched. Mr. Sathe has contended that this new section, which according to Section 1(2) of the amending Act, took effect on the 28th day of November 1956, the day following the one on which the Supreme Court gave its judgment, shows a clear intention on the part of the Legislature to enlarge the scope of the definition of "retrenchment" and that "retrenchment" can no longer be held to include only those cases in which there is discharge of surplus labour or staff. He has argued that

²59 Bom LR 413 : (AIR 1957 Bom188)

⁴60 Bom LR 1427 : 1958 Nag LJ 474 : (AIR 1959 Bom 70)

³60 Bom LR 1253 : 1958 Nag LJ 499 : (AIR 1959 Bom 65)

in view of these amendments made in the Act, we must hold that every termination of service, otherwise than by way of punishment, or on account of voluntary retirement of the workman, or on account of his retirement on reaching the age of superannuation or on account of his ill health, constitutes "retrenchment". There is no force in these arguments. It is significant that although the Act was amended in order to get over the effect of the Supreme Court decision, the definition of the word "retrenchment" was not altered. The new Section 25FFF contains the words "as if" and provides that when a business is closed down, the workmen should be paid compensation as if they had been retrenched in other words, even though the termination of their services does not amount to retrenchment within the meaning of the Act, they will be entitled to the same benefits as if there had been retrenchment.

8. Mr. Sathe referred to the decision of the Supreme Court in *State of Bombay v. Hospital Mazdoor Sabha*⁵, This decision is, however, not of any assistance in this case. In that case, it was conceded that the workmen concerned had been retrenched. The question whether the termination of their services amounted to retrenchment did not, therefore, arise for decision.

9. Mr. Sathe also contended that when an employer does not give any reasons for terminating the services of an employee, it must be assumed that the workman was discharged as surplus age. He has contended that in such cases, a presumption should be drawn that the services were terminated on the ground of the workman being surplus. He has argued that a discharge simpliciter, i.e. where an employer has not given any reasons for the discharge, should, therefore, be held to constitute retrenchment. It is not possible to accept these arguments, having regard to the decision of the Supreme Court that retrenchment both in its ordinary meaning and according to the meaning to it by the definition in Section 2(00) means discharge of surplus labour or staff in a continuing or running industry.

10. Mr. Dhabe, who also appears for the workmen, referred to the decision of the Supreme Court in *Chaganlal Textile Mills Private Ltd. v. Chalisgaon Girni Kamgar Union*⁶, In that case, the

services of some workmen had been dispensed with, because they were found to be surplus and retrenchment compensation had also been paid to them. The question when a worker can be said to have been retrenched within the meaning of the Industrial Disputes Act did not, therefore, arise for consideration. The question, which the Supreme Court had to decide, was quite different, whether the change made was legal or not. The decision in this case has, therefore, no bearing on the question, which we have to determine.

11. Mr. Dhabe has also argued that even if, as held by the Supreme Court, we give to the word "retrenchment" its ordinary meaning, it should not be construed so as to mean discharge as surplusage, as, according to its dictionary meaning, retrenchment would also include termination of services for other reasons. This argument cannot be accepted, as in Hariprasad's case 1957 SCR 121 : AIR 1957 Supreme Court 121, the Supreme Court has also mentioned what the ordinary meaning of the word "retrenchment" is. At page 131 (of SCR) : (at p.126 of AIR), it has been observed that retrenchment connotes in its ordinary

⁵62 Bom LR 553 : AIR 1960 SC 610

⁶ AIR 1959 SC 722

acceptation that a portion of the labor or staff is discharged as surplus age. A similar observation has been made at page 141 (of SCR) : (at p.132 of AIR), where it is also stated : "On our interpretation, in no case is there any retrenchment, unless there is discharge of surplus labor or staff in a continuing or running industry."

12. We are bound by the above decision of the Supreme Court. We accordingly hold that retrenchment within the meaning of the Industrial Disputes Act means discharge of surplus labor or staff in a continuing or running industry. The reply to the question referred to us, therefore, will be that the question whether the termination of services amounts to retrenchment must be determined in each case on the facts and circumstances of that case. If the termination of services is found to be due to the reason that the workman discharged was surplus, i.e., in excess of the requirements of the business or the industry concerned, it will amount to retrenchment within the meaning of the Act. If the termination of services is due to any other reason, it will not constitute retrenchment.

Answer accordingly.