

RAJASTHAN HIGH COURT

Rajasthan State Electricity Board

Vs.

Labor Court Rajasthan

Civil Writ Petn. No. 529 of 1962
(D.S. Dave, C.J. and Kan Singh, J.)

02.03.1965

JUDGMENT

Kan Singh, J.

1. This is a writ petition under Article 226 of the Constitution by the Rajasthan State Electricity Board, hereinafter to be referred as the "Board", and is directed against two orders of the Labor Court; the first one dated 9-7-62 (Ex. O), and the second one dated 1-8-62 (Ex. Q), by which, on applications made by respondents Narsanghlal and Dwarka Prasad workmen in an undertaking of the Board, under Section 33-C of the Industrial Disputes Act, 1947, hereinafter to be referred as the "Act", the Labor Court ordered the Board to pay retrenchment compensation to these respondents.

2. The petitioner Board is a public undertaking for the purpose of generation and supply of electricity in the State of Rajasthan and has its power houses at various places. It maintains a power house at Bikaner also. Prior to the formation of Rajasthan the power house at Bikaner was run by the ex- Bikaner State as a State department and on formation of Rajasthan the State of Rajasthan continued to maintain the power house as a departmental undertaking. Sometime in 1957 the Board was constituted as a body corporate and the power houses were taken over by the Board. The employees of the State in these departmental undertakings became the employees of the Board consequent to the transfer of the undertakings to the Board. According to the writ petition, the respondents Nos. 2 and 3, who were employed at the power house when the former Bikaner State was in existence, came to be retired from 8-10-1948. After the retirement they were again re-employed by the State on work-charge basis. The Board did not like to continue old persons in employment as that would adversely affect the efficiency of the undertaking. The Chief Engineer of the Board, therefore,

directed, as a matter of policy, that the services of all employees above the age of 60 years should be dispensed with. The case of the Board is that, on 10-6-60 the Chief Engineer directed the Executive Engineers to dispense with the services of all such employees forthwith and consequently by orders Ex. C and Ex. D, the Executive Engineer of the Board at Bikaner terminated the services of the respondents Nos. 2 and 3, with effect from the afternoon of 8-7-1960 in the case of Dwarka Prasad, and from the afternoon of 15-7-1960 in the case of Narasangh Lal. The respondents Nos. 2 and 3 then filed separate applications before the Labor Court under Section 33-C of the Act. They asserted by these applications that in retrenching them the Board had not followed the provisions of law and in particular retrenchment compensation had not been paid to them as required by Section 25F of the Act. They, therefore, claimed retrenchment compensation and one month's notice pay. The applications were opposed before the Labor Court by the Board on the ground that the Labor Court had no judicata to deal with the matter as the services of the respondents were terminated as a matter of general policy for the reason that they were old and infirm employees and had been re-employed on work-charge basis after their due retirement and consequently it could not be postulated that they were retrenched employees within the meaning of the Act. It was further con-fended before the Labor Court on behalf of the Board that Section 33-C of the Act did not empower that Court to entertain a claim of the nature put forth by respondents Nos. 2 and 3. Under that Section the Labor Court could not adjudicate or determine whether the respondents had any right to receive retrenchment compensation, as, according to the Board, the Labor Court could only deal with the question of computation of the retrenchment benefits if the right to receive such benefits is established elsewhere before a competent forum. The orders of the Labor Court are thus assailed on the following main grounds :

- (1) That the Labor Court has acted without jurisdiction in entertaining the claim. The services of the petitioners, according to the Board, were simply terminated on account of their old age and as there was no question of reducing any surplus staff, the termination did not amount to retrenchment so as to confer jurisdiction on the Labor Court to deal with the matter;
- (2) The finding of the Labor Court that the respondents Nos. 2 and 3 were retrenched is bad on the ground that the Labor Court has drawn wrong conclusions from the documents referred to by it and it had altogether overlooked certain other important documents bearing on the question of retrenchment and thus it has committed an error of law in reaching the

conclusion that the respondents Nos. 2 and 3 were retrenched by the Board;

(3) That Section 33-C of the Act did not empower the Labor Court to determine the dispute whether the respondents Nos. 2 and 3 were entitled to receive any retrenchment compensation under Section 25F of the Act, as according to that Section the Labor Court could only compute the money value of any benefit, if an employee is indisputably held entitled to receive it either by virtue of any award, a settlement or under the provisions of Chapter V-A of the Act, and not otherwise.

3. The writ petition has been opposed by respondents Nos. 2 and 3. It is denied by them that they had been retired earlier on account of their attaining the age of superannuation. They maintain that they were below 50 years in age at that time and have reached the age of 58 years only of late. They assert that no standing orders had been framed by the Board, nor was superannuation age fixed for them and further they were only compulsorily retired and thereafter re-employed. They claimed that they were still quite fit to carry on the jobs hitherto done by them and the Board itself was still having in its service several employees who were past 60 years in age. Further, traversing the grounds taken by the Board in the writ petition, the respondents submit that theirs was a clear case of retrenchment. According to the respondents, the Board had itself admitted in two of its communications that their services were retrenched. They further adverted to the affidavit of one Shri Mathur, an employee of the Board, Ex. M 1, filed before the Labor Court for an admission made therein that there was some reduction in the strength of work-charge employees and, therefore, the Labor Court was, according to them, justified in holding that theirs was a case of retrenchment. It is stressed by them that the finding arrived at by the Labor Court about they being retrenched employees is one of fact and since the Labor Court has come to that finding on the basis of the evidence before it that finding is not open to challenge or further investigation in exercise of the extraordinary powers of this Court under Article 226 of the Constitution. As regards the jurisdiction of the Labor Court under Section 33C of the Act, it is submitted that it was open to the Labor Court not only to go into the quantum of retrenchment compensation, but also to determine the question whether the respondents were entitled to receive any such retrenchment compensation.

4. From the rival contentions of the parties set forth above, it will be clear that the points that call for our consideration are :

- (i) Whether in the facts and circumstances of the case the respondents Nos. 2 and 3 were retrenched or their services were merely terminated. In this behalf we will have to deal with the concept of retrenchment;
- (ii) Whether the Labor Court can be said to have committed any error apparent on the face of the record in coming to the conclusion on the data before it that the services of the respondents Nos. 2 and 3 were retrenched;
- (iii) Whether the Labor Court could properly entertain and deal with the applications made by respondents Nos. 2 and 3 under Section 33-C of the Act. In this regard we have to consider the true scope of Section 33-C of the Act.

We may first deal with points Nos. 1 and 2. The term "retrenchment" is defined by Section 2(oo) of the Act as under:

Section 2(oo) - "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;"
- The definition of the term "retrenchment" is indeed very wide. The first part clearly states what it means, and then its second part excludes by indicating as to under what circumstances the termination of the services of a workman will not amount to retrenchment. The first part of the definition is that retrenchment means the termination by the employer of the service of a workman for any reason whatsoever. The following things that may otherwise fall in this first part will be deemed to be excluded by the second part of this definition and they are :
- (a) termination brought about as a punishment inflicted by way of disciplinary action;
 - (b) voluntary retirement of the workman;
 - (c) 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

(d) termination of the service of a workman on the ground of continued ill-health.

Nobody has contended before us that the case of the respondents Nos. 2 and 3 could conceivably come under the excluding part. It has not been alleged that the workman was retired in accordance with any stipulation in the contract of employment, nor have the services of the respondents been terminated on the ground of continued ill-health. The first part of the definition namely, 'retrenchment means the termination by the employer of the service of a workman for any reason whatsoever' does on first blush seem to embrace the case of the respondents Nos. 2 and 3. Obviously the termination of the service was ordered by the employer and the words "for any reason whatsoever" are wide enough to cover the case of a termination ordered under the circumstances contained in the orders of the Chief Engineer and the Executive Engineer of the Board. Sri H.P. Gupta, the learned counsel appearing for the Board, however, strenuously contends that such a wide meaning is not permissible in view of certain decisions of the Supreme Court, According to him, the ordinary concept of retrenchment will be deemed to be embodied in this statutory definition as well and the ordinary concept of the term "retrenchment" is that it is the dispensing with the employment of surplus staff. Shri Gupta has invited our attention to several decisions which we may now briefly notice.

5. In *Pipraich Sugar Mills Ltd v. Pipraich Sugar Mills Mazdoor Union*¹ their Lordships of the Supreme Court had occasion to consider the meaning of the term "retrenchment" as used in the Act. In that case the Pipraich Sugar Mills Ltd., (shortly to be referred as the 'Mills Ltd', who were running a sugar mill, were facing serious difficulties in running the industry. The Mills Ltd., therefore, gave a notice to the employees and closed the business and in consequence the employment of the workers was terminated. As no compensation had been paid to the workers, an industrial dispute was raised whether the workmen were entitled, to any retrenchment benefits. The Industrial Tribunal to whom the dispute was referred for adjudication came to the conclusion that the closure of the business of the Mills was bona fide. The Tribunal, however, ordered that the workmen were entitled to receive 25 per cent of the net profits of the Mills Ltd., realised by sale of the Mills itself on the basis of a promise made by the Mills Ltd., and consequently the Tribunal gave the award that the workmen were entitled to 25 per cent of the net profits made by the Mills Ltd. The Management appealed against the judgment of the Tribunal before the Labor

Appellate Tribunal, but the latter confirmed it. The matter was then taken upto the Supreme Court by way of special appeal under Article 136 of the Constitution. Two questions were posed for their Lordships' consideration : (i) whether there was an industrial dispute within the meaning of the Act-as could properly be referred to the Industrial Tribunal; and (ii) whether there was a binding agreement between the parties about the sharing; of profits in the sale transaction. About the second question we are not concerned, but in determining the first question in favour of the Mills their Lordships were pleased to observe that a *bona fide* closure of business will not give rise to an industrial dispute. Also their Lordships dealt with the question whether in such a contingency the cessation of employment will fall within the meaning of Section 2(oo) and Section 25F of the Act. Their Lordships were pleased to lay down as follows :

"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. The termination of services of all the workmen as a result of the closure of the business cannot, therefore, be properly described as retrenchment. Though there is discharge of workman both when there is retrenchment and closure of business, the compensation is to be awarded under the law, not for discharge as such but for discharge on retrenchment, and, as retrenchment means in ordinary parlance, discharge of the surplus, it cannot include discharge on closure of business."

6. The point again came to be examined in *Hariprasad Shivshanker Shukla v. A.D. Divelkar*² Hariprasad's case, AIR 1957 SC 121 also related to the termination of employment brought about by closure of business, but their Lordships all the same had occasion to consider the import of the definition of the term "retrenchment" as used in Section 2(oo) of the Act at great length. After quoting the definition, which we have already quoted above,, their Lordships observed as follows :

"Leaving out the excluding sub-clauses (a), (b) and (c) for the time being - these sub-clauses not being directly applicable to the cases under our consideration - the definition when analysed consists of the following four essential requirements - (a) termination of the service of a workman; (b) by the employer; (c) for any reason whatsoever; and (d) otherwise than as a punishment inflicted

by way of disciplinary action. It must be conceded that the definition is in very wide terms. The question, however, before us is - does this definition merely give 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 does it go 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 ? Learned counsel for the appellants contend that the first gives the correct meaning of the definition, while learned counsel for the principal respondents urge that by reason of the wide words used in the definition, the second gives the correct meaning of the expression 'retrenchment.'

There is no doubt that when the Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the legislature; our task is to get at the intention as expressed in the statute. Therefore, we propose first to examine the language of the definition and see if the ordinary, accepted notion of retrenchment fits in, squarely and fairly, with the language used. What is the ordinary, accepted notion of retrenchment in an industry? We have had occasion to consider this question in C. A. No. 247 of 1954, dated 23-10-1956 : AIR 1957 SC 95 where we observed :

"But retrenchment connotes in its ordinary acceptance that the business itself is being continued but that a portion of the staff or the Labor force is discharged as surplus age 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."

It is true that these observations were made in connection with a case where the retrenchment took place in 1951, and we specially left open the question of the correct interpretation of the -definition of 'retrenchment' in Section 2(oo) of the Act. But the observations do explain the meaning of retrenchment in its ordinary acceptance. 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 Labor force is discharged as surplus age in a continuing business, there are (a) termination of the service of a workman; (b) by the employer;

(c) for any reason whatsoever; and (d) 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 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." 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 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 frame work of the ordinary acceptance 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."

7. Shri Mridul, learned counsel for the respondents, submitted that these cases related to a termination of employment brought about as a result of the closure of the business and, therefore the observations of their Lordships should be confined to such cases only. In the present case, however, as there was no closure of business the definition of the term "retrenchment" should have its full play, according to Shri Mridul. He laid emphasis on the principle of construing observations made in precedents to the effect that generality of observations made should be deemed to be cut down by the context of particular facts in relation to which such general observations are made.

8. It is true that general observations made in a case should not be readily applied to another set of facts without keeping in view the facts of the case in which such general observations are made, but if the observations cannot be taken to be intended to be kept within the confines, of the particular facts and the rationale thereof is of wider import then the observations proceeding from the highest Court will have to be given due weight even though they are sought to be applied in a different context. In Hariprasad's case, AIR 1957 SC 121 their Lordships had clearly laid down as a general proposition 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. Their Lordships also laid down that where within the framework of the ordinary acceptance of the word, every single requirement of the definition clause is fulfilled, it should be wrong to take the definition as destroying the essential meaning of the word defined. It cannot also be forgotten that their Lordships were pointedly considering the import of the statutory definition of the term "retrenchment" in relation to its meaning in common parlance. That being the position, we are unable to hold that their Lordships' observations have to be taken strictly within the confines of the particular facts of those cases only. The observations, extracted by us above, lead us to think that the concept of the term "retrenchment" as being discharge of staff surplus to requirements will be taken to have been embodied in the statutory definition of the term "retrenchment" as given in Section 2(oo) of the Act. In applying the definition, therefore, we have to keep in view that there should be discharge of surplus employees and then the prescribed requirements of law should also be satisfied. In a Division Bench case of the Bombay High Court reported as *Municipal Corporation of Greater Bombay v. Labor Appellate Tribunal of India*,³ while interpreting the observations of their Lordships of the Supreme Court in the cases cited above it was observed as follows :

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

This view was affirmed by a Full Bench of the Bombay High Court in *The Managing Director, The National Garage, Nagpur v. J. Gonsalves*,⁴

9. In *Burra Kur Coal Co., Ltd., v. Azimuddin Ashraff*,⁵ while dealing with a case where the services of an employee were terminated on the ground that he was very old and infirm, the learned Judges of the Patna High Court declined to treat it as retrenchment on the ground that the termination of the services was not brought about on account of surplus Labor or staff. The Punjab High Court has also taken the same view vide *Amritsar Rayon and Silk Mills (Private), Ltd. v. Industrial Tribunal, Punjab*,⁶ and *British India Corporation, Limited v. Industrial Tribunal, Punjab*,⁷

10. In the circumstances it will be necessary to see whether in the present case the termination of the service had the necessary attribute of retrenchment in the sense that there was discharge of surplus staff by way of reduction of establishment or otherwise. We have then to see whether the Labor Court has fallen into any I error in overlooking the true character of the term "retrenchment". It is evident from the judgment that the Labor Court pointedly considered the question whether the present cases were those of retrenchment or mere termination of service. Besides advertng to two documents where the officers of the Board had mentioned that the respondents were retrenched the Labor Court took into consideration an affidavit filed by one Sri Mathur on behalf of the Board in reaching the conclusion that the respondents had been retrenched. The following observations from the judgment of the Labor Court will bring out the essentials of its reasoning :

"It seems that a decision was taken by the authorities of the Board to replace retired people employed in the work charged establishment by younger people and it is clear from the endorsement of the Chief Engineer on the document Ex. M-2, that since the full regular strength of ministerial staff had been sanctioned in the retention of retired people who were much above 60 years was not considered desirable. It was following this that general orders dated the 10th June, 1960 (Ex. M-1) were issued. This has actually meant some reduction in the strength of the work charged ministerial establishment as is clear from the affidavit of Shri Mathur himself. It is stated therein that the number of ministerial workers in the work-charged establishment prior to the termination of Shri Dwarka Prasad's services was nine and that it was reduced to six after the termination. Similarly it is stated that in the case of Shri Narasanghlal the strength of work charged establishment was six before his service was terminated and that it was reduced to three after the termination. These workmen had been working for a long period of years after their retirement.

There has evidently been some reduction in the number of work-charged ministerial posts following the termination of these appointments. In other words these posts have practically become surplus, whether by conversion into regular posts or by any other process of departmental or administrative adjustment. By whatever name it is called, I have no doubt that it is a case of retrenchment."

The above passage shows that the Labor Court has not fallen into any error by ignoring the true concept of the term "retrenchment" as elucidated by their Lordships of the Supreme Court. Shri Gupta, the learned counsel for the petitioner, however, strenuously contended that the Labor Court has not properly appreciated the import of the documents before it and has also failed to notice some other documents. The conclusion drawn by the Labor Court, according to Shri Gupta, was manifestly erroneous. We have given earnest consideration to this aspect of the matter, but are unable to come to the conclusion that any case for interference with the findings of the Labor Court, in exercise of our jurisdiction under Article 226 of the Constitution, has been made out in this behalf. In *Kaushalya Devi v. Bachittar Singh*,⁷ their Lordships no doubt observed that a finding based on no evidence is an error of law apparent on record but errors in appreciation of documentary evidence or errors in drawing inferences cannot be said to be errors of law. Such errors, if any, could be corrected only by a Court sitting in appeal, and they cannot be corrected in a writ petition under Article 226 of the Constitution. In *Satyannarayan Laxminarayan Hedge v. Mallikarjun Bhavanappa Tirumale*,⁸ it was observed :

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

It will also be noteworthy to refer to the following passage in *Shri Ambica Mills Co. Ltd. v. S.B. Bhatt*⁹

"Writ of certiorari can be issued not only in cases of illegal exercise of

jurisdiction but also to correct errors of law apparent on the face of the record. Errors of fact, though they may be apparent on the face of the record, cannot be corrected. Though it cannot be easy to lay down an unfailing test of general application it is usually not difficult to decide whether the impugned error of law is apparent on the face of the record or not."

The position has been reiterated by their Lordships of the Supreme Court in a very recent judgment *T. Prem Sagar v. Standard Vacuum Oil Co., Madras*,¹⁰ We have read the affidavit of Shri Mathur. We have also gone through the communications relied on by the Labor Court. One cannot say in the facts and circumstances that the Labor Court could not have drawn the conclusion which it did on the data before it whether there was any reduction of the staff or not and whether in that context the termination of the services of the respondents was or was not in the nature of retrenchment is not a pure question of law. At best, it is a mixed question of law and fact. We are, therefore, unable to hold that any apparent error of law has been disclosed in the present case to justify our interference in exercise of our powers under Article 226 of the Constitution.

11. Turning now to the question whether the Labor Court could properly entertain and deal with the applications made by the respondents Nos. 2 and 3 under Section 33-C of the Act we have to consider the true scope of Section 33-C of the Act in this behalf as already observed by us. Section 33-C of the Act runs as under : Section 33-C. "Recovery of money due from an employer. - (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A, the workman may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such Labor Court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in Sub-Section (1).

(3) For the purposes of computing the money value of a benefit, the Labor Court

may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labor Court and the Labor Court shall determine the amount after considering the report of the commissioner and other circumstances of the case."

It is contended on behalf of the Board that Section 33-C of the Act did not empower the Labors Court to determine the dispute whether the respondents Nos. 2 and 3 were entitled to receive any retrenchment compensation under Section 25F of the Act. Mr. Gupta for the Board argues that under this Section the Labor Court could only compute the money value of any benefit if it can be predicated that he was entitled to it in terms of any award, settlement or under the provisions of Chapter V-A of the Act. Mr. Gupta placed reliance on *Kasturi and Sons (Private) Ltd. v. N. Salivateswaran*,¹¹ In that case their Lordships had occasion to consider Section 17 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955. That Section may be reproduced for facility of comparison with the language of Section 33(C) of the Act already quoted above : Section 17, "Where any money is due to a newspaper employee from an employer under any of the provisions of this Act, whether by way of compensation gratuity or wages, the newspaper employee may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government or such authority as the State Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the collector and the collector shall proceed to recover that amount in the same manner as an arrear of land revenue."

It was observed by their Lordships :

"It is clear that the employee's claim against his employer which can form the subject-matte of an enquiry under Section 17 must relate to compensation awardable under Section 4 of the Act, gratuity awardable under Section 5 of the Act, or wages claimable under the decision of the Wage Board. If the employee wishes to make any other claim against his employer, that would not foe covered by S. 17. As the marginal note shows, the Section deals with the recovery of money due from an employer."

12. Now, Sub-Section (1) of Section 33-C of the Act corresponds to Section 17 of the Working Journalists Act but it will be noticed that Sub-Section (2) of Section 33-C of

the Act does not correspond to Section 17 of the Working Journalists Act, which alone came up for consideration before their Lordships.

13. Mr. Gupta then invited our attention to *Punjab National Bank Ltd., v. K.L. Kharbanda*,¹² That case, however is not of any help on the point under consideration. In that case there was an award and the dispute was whether monetary benefits could be within the scope of Sub-Section (2) of Section 33-C of the Act and it was observed by their Lordships that the word "benefit" used in Sub-Section (2) of Section 33-C is not confined merely to non-monetary benefit which could be converted in terms of money but is concerned with all kinds of benefits whether monetary or non-monetary to which a workman may be entitled. Accordingly, as the award had conferred a benefit on the workman by providing for fixation of pay in the new scale, the dispute about the amount between the parties could be dealt with by the Labor Court as it was in the nature of computation of the benefit in terms of money.

14. The case which is strongly relied on by the respondents is *Central Bank of India Ltd. v. P.S. Rajagopalan*,¹³ in which the earlier cases have been examined. Their Lordships pointed out that Section 33-C (1) provides for a kind of execution proceedings and it contemplates that if money is due to a workman under a settlement or an award, or under the provisions of Chapter VA, the workman need not go to ordinary Civil Court for relief, but he may resort to the summary procedure provided by this Sub-Section. In pointing out the distinction between Sub-Section (1) and Sub-Section (2) their Lordships observed that Sub-Section(1) postulates that a specific amount is due to the workman and the same has not been paid to him. If on the application of the workman, the Government is satisfied that the money is so due, then it would issue the necessary certificate to the Collector and the money would then be realized as an arrear of land revenue. As regards the scope of Section 33-C(2) of the Act, their Lordships proceeded to point out that even monetary benefits are comprehended within the term "benefit" as used in this Sub-Section. This Sub-Section enables the workman to move the Labor Court for computing or calculating the benefits in terms of money. Once the money value of the benefit is rendered then it will be recovered under Sub-Section (1). In referring to Sub-Section (3) of this Section their Lordships pointed out that the Labor Court can appoint a Commissioner for taking evidence as may be necessary for determination of the money value of the benefit. In that case the broad argument that was advanced on the side of the Central Bank of India was that Sub-Section (2) can be invoked by a workman who is entitled

to receive from the employer the benefits there specified, but the right of the workman to receive the benefit has to be admitted and could not be a matter of dispute between the parties in cases which fail under Sub-Section (2). It was stressed that if there was a dispute about the workman's right to claim the benefit, it was required to be adjudicated upon not under Sub-Section (2), but by other appropriate proceedings permissible under the Act, such as by way of raising an industrial dispute. On the other hand, it was contended on behalf of the workman that Sub-Section (2) was broad enough to take in all cases where a workman claimed some benefits and wanted the said benefits to be computed in terms of money. If any employer put forth several defenses to the claim of the workman, then the Labor Court was, according to the submission, competent to try all the questions arising between the workmen and their employers in respect of the benefits that they claimed to be computed in terms of money. In dealing with the rival contentions, their Lordships traced the history of the legislation and observed as under :-

"The legislative history to which we have just referred clearly indicates that having provided broadly for the investigation and settlement of industrial disputes on the basis of collective-bargaining, the legislature recognized that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so, inserted Section 33-A in the Act in 1950 and added Section 33-C in 1956. These two provisions illustrate the cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) of the Act, or without having to depend upon their Union to espouse their cause. Therefore, in construing Section 33-C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of Section 33-C cases which would fall under Section 10(1). Where industrial disputes arise between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance, by reference under Section 10(1). These disputes cannot be brought within the purview of Section 33-C. Similarly, having regard to the fact that the policy of the Legislature in enacting Section 33-C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this Section cases of existing rights which are sought to be implemented by individual workmen. In other words, though in determining the scope of Section 33-C we must take care not to exclude cases which legitimately fall within its

purview, we must also bear in mind that cases which fall under Section 10(1) of the Act for instance, cannot be brought within the scope of Section 34C."

Having made these observations regarding the purpose of Section 33-C their Lordships then with the scope of Section 33-C (2) and made the following observations.

"Let us then revert to the words used in Section 33C(2) in order to decide what would be its true scope and effect on a fair and reasonable construction. When Sub-Section (2) refers to any workman entitled to receive from the employer any benefit there specified, does it mean that he must be a workman whose right to receive the said benefit is not disputed by the employer? According to the appellant, the scope of Sub-Section (2) is similar to that of Sub-Section (1) and it is pointed out that just as under Sub-Section (1) any disputed question about the workmen's right to receive the money due under an award cannot be adjudicated upon by the appropriate Government, so under Sub-Section (2) if a dispute is raised about the workmen's right to receive the benefit in question that cannot be determined by the Labor Court. The only point which the Labor Court can determine is one in relation to the computation of the benefit in terms of money. We are not impressed by this argument. In our opinion, on a fair and reasonable construction of Sub-Section (2) it is clear that if a workman's right to receive the benefit is disputed that may have to be determined by the Labor Court. Before proceeding to compute the benefit in terms of money, the Labor Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labor Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labor Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labor Court answers this point in favor of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of Sub-Section (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The clause "where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be entitled to receive such benefit." The appellant's construction would necessarily introduce the addition of the words "admittedly,

or admitted to be" in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by Sub-Section (2), because he has merely to raise any objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labor Court to entertain the workman's application. The claim under Section 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labor Court by Sub-Section (2). As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution". We must accordingly hold that Section 33C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers. Incidentally, it may be relevant to add that it would be somewhat odd that under Sub-Section (3), the Labor Court should have been authorized to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labor Court under Sub-Section (2). On the other hand, Sub-Section (3) becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labor Court under Sub-Section (2)."

15. The following points emerge from the above observations of their Lordships :
- (1) The procedure for investigation and settlement of industrial dispute on the basis of collective bargaining being already there the legislature has given an individual workman a speedy remedy to enforce his individual rights under Section 33-C of the Act, without the necessity of taking recourse to the provisions of Section 10(J) of the Act, or without having to wait for the union to espouse the cause of the individual.
 - (2) Two cautions have been given by their Lordships for construing the provisions of Section 33C :
 - (i) that the construction of this Section should not be so broad as to bring within

its scope such cases as would normally fall under Section 10(1);
(ii) that having regard to the policy of the legislature in enacting Section 33-C which is to provide a speedy remedy to the individual workman, it should not be so construed as to exclude from the scope of the Section cases of existing rights which are sought to be implemented by individual workman.

16. Even if a dispute is raised about the workman's right to receive the benefit in question, that question can be determined by the Labor Court.

17. This view was reiterated by their Lordships of the Supreme Court in a later case reported as *Bombay Gas Co. Ltd. v. Gopal Bhiva*,¹⁴

18. Mr. Gupta sought to distinguish the above cases on the ground that in the first case the employer wanted to exclude the jurisdiction of the Labor Court merely on the plea that he had not admitted the claim of the worker; and in the second case, there was an award to be interpreted. To our mind, their Lordships have considered the question pointedly whether any dispute about the right to receive the benefit can be determined by the Labor Court under Section 33-C(2) of the Act. In dealing with such cases only the caution given by their Lordships has to be kept in view that the dispute should not be of the kind as can be dealt with under Section 10 of the Act as an industrial dispute, but if it is in the nature of the enforcement of an individual's right, then the Labor Court can deal with the question whether the individual workman had a right to receive the benefits. As in the present case the Labor Court has held that the respondents were retrenched, it clearly follows there from that under Section 25F of the Act, the workmen were entitled to receive retrenchment benefits. Mr. Gupta has tried to resist this interpretation on the ground that Section 25F which, though occurs in Chapter V-A of the Act, does not confer any right as such on the workman to get any retrenchment benefit. Mr. Gupta argues that where a workman is retrenched without giving him retrenchment compensation or notice pay, then the retrenchment shall become void and the workman shall be deemed to be in employment. In such a case it will be for him to approach an Industrial Tribunal. Section 25F runs as under :
Section 25F. "Conditions precedent to retrenchment of workman. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until - (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such

notice, wages for the period of the notice :

Provided that no such notice shall be necessary, if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government."

This Section forbids an employer from retrenching a workman unless he gives retrenchment compensation and either one month's notice or wages for the notice period in lieu of notice. The employer is put under a duty to give compensation and what is the duty of the employer becomes, to our mind the corresponding right of the employee to get that duty performed. What is duty in a certain jural relationship becomes the corresponding right viewed at from the other end of that relationship. The language of the legislation as contained in Section 25F is, to our mind, based on a clear postulation of the right of the employee to get retrenchment compensation or wages for the notice period.

19. Shri Gupta placed reliance in support of his contention on *Vidtal Parappa Murari v. President, Athani Municipality*,¹⁵ It may be noticed that this case does not make any reference to the case of the Central Bank of India, AIR 1964 SC 743 the observations from which have been quoted, by us in extenso.

Shri Gupta then placed strong reliance on a decision of the Gujarat High Court in *Ambalal Shivlal v. D.M. Vin*,¹⁶ The observations in that case do lend support to Shri Gupta's contention and it will be necessary to consider that case.

20. After quoting the observations of then Lordships of the Supreme Court in the Central Bank of India's case, AIR 1964 SC 743 the learned Judges observed as follows :

"Now, this subject came up for consideration before their Lordships of the Supreme Court in the case reported in 1963-2 Lab LJ 89 : AIR 1964 SC 743. The question which arose for decision in that case was whether, when the employer disputes the right of the workman, on the basis of which right the claim is made under Sub-Section (2) aforesaid, the Labor Court has jurisdiction to decide about the existence of that right. Their Lordships held on two grounds

that the Labor Court had such jurisdiction. Firstly, they held that the first clause of Sub-Section (2) did not mean that the Labor Court had jurisdiction to determine the amount at which the benefit is to be computed only in those cases where the right, on the basis of which the benefit was claimed, was admitted by the employer. Secondly, they held that, if any such construction were to be adopted, then, it would place the jurisdiction of the Labor-Court at the mercy of the employer. Their Lordships also referred to that canon of interpretation of statutes which says that, where an Act confers jurisdiction, it also grants impliedly the power of doing all such acts, or employing, such means, as are essentially necessary to its execution which canon is referred to in Maxwell on Interpretation of Statutes, at page 350. Therefore, there is no doubt whatsoever that the question as to whether the Labor Court has or has not the power or jurisdiction to determine the question about the existence of the right on the basis of which the amount at which the benefit is to be computed has been finally determined by the Supreme Court. Therefore, in our judgment, it cannot be now disputed that the Labor Court has got the jurisdiction to determine the question as to whether the right on, which the benefit is sought to be claimed is or is not in existence in any case where the employer disputes that particular right."

This passage does not support Shri Gupta.

21. The learned Judges then considered the question whether a workman can be said to have any existing right to compensation under Section 25F of the Act, if he is retrenched without payment of compensation. In construing Section 25F the learned Judges observed as follows :

"In our judgment, therefore, the correct interpretation of Section 25-F is that it imposes a limitation upon and subjects the power of the employer to retrench his workman to certain conditions which must be satisfied before the power can be exercised and not that it creates a new right in favor of the workman of the type mentioned therein to receive retrenchment compensation. In that view of the matter, the amount of compensation which is claimed by each of the respondents cannot be justified directly under Section 25-F."

According to the learned Judges, therefore, where a workman had been retrenched without payment of compensation the workman will have no right to approach the Labor Court under Section 33C(2) of the Act for the reason, according to the learned

Judges, that there is no existing right to compensation in the workman. In support of their view they have quoted the following observations from the- Supreme Court case *State of Bombay v. Hospital Mazdoor Sabha*,¹⁷

"On a plain reading of Section 25-F(b) it is clear that the requirement prescribed by it is a condition precedent for the retrenchment of the workman. The Section provides that no workman shall be retrenched until the condition in question has been satisfied. It is difficult to accede to the argument that when the Section imposes in mandatory terms a condition precedent, non-compliance with the said condition would not render the impugned retrenchment invalid. The argument which appealed to Tendolkar, J., however, was that the consequence of non-compliance with the requirement of Section 25-F(b) was not to render the impugned retrenchment invalid, because he thought that by Section 25-A a specific provision has been made for the recovery of the amount prescribed by Section 25-F(b). Section 25-1 provides for the recovery of monies due from employers under Chapter V, and according to Tendolkar, J., this provision covers the amount due to the workman by way of compensation under Section 25-F(b). In our opinion this view is untenable. Having regard to the fact that the words used in Section 25-F(b) are mandatory and their effect is plain and unambiguous it seems to us that the Court of Appeal was right in holding that Section 25-1 covered cases of recovery of monies other than those specified in Section 25-F(b), and it is obvious that there are several other cases in which monies become due from the employers to the employees under Chapter V, it is for the recovery of these monies that Section 25-1 had been enacted. Therefore, we see no substance in the argument that the Court of Appeal has misconstrued Section 25-F(b)."

In the *Hospital Mazdoor Sabha's* case, AIR 1960 SC 610 two members of the trade union who were employed as Ward servants in J.J. Group of Hospitals were served notices for termination of their services and their services were terminated after the notice. In their place two persons who were discharged from the Civil Supplies Department of the State were employed. The Ward servants, therefore, filed a writ petition before the High Court of Bombay complaining that retrenchment compensation had not been paid as required by Section 25-F of the Act. They therefore prayed for a writ of mandamus for directing the State of Bombay to reinstate them in their posts. In resisting the writ petition it was contended by the State that the

orders for terminating their services were not void. It was also contended that the J.J. group of Hospitals where the petitioners were employed did not constitute an industry with the result that the provisions of Section 25-F of the Act were not attracted. The writ petition was heard by a learned single Judge, who declined to go into the question whether the J.J. group of Hospitals constituted an industry, he however, disposed of the writ petition on the short point that non-compliance with the provisions of Section 25-F of the Act did not invalidate the said orders. Consequently he dismissed the writ petition. Thereafter, an appeal was taken to an Appellate Bench of the same High Court. The Appellate Bench held that the impugned orders having not complied with the mandatory provisions of Section 25-F of the Act were invalid and inoperative. This, therefore, necessitated the decision of the larger question whether the J.J. group of Hospitals constituted an industry. The appellate Bench came to the conclusion that the J.J. group of Hospitals constituted an industry. On a certificate by the High Court the matter was then brought before the Supreme Court in appeal. It was conceded before their Lordships that the services of the petitioners in that case had been retrenched. It was, however, argued before their Lordships that non-compliance with the provisions of Section 25-F of the Act, made the order of retrenchment invalid, as according to the plain reading of that Section payment of compensation was a condition precedent for the retrenchment of the workmen.

This argument prevailed with their Lordships. The question before us, however, did not directly come up for their Lordships' consideration whether an employee whose services have been retrenched without payment of compensation and who does not want to be reinstated could approach the Labor Court under Section 33-C of the Act for a proper determination of his retrenchment benefits namely, retrenchment compensation. In other words, could the workman be said to be entitled to receive the benefit within the meaning of Sub-Section (2) of Section 33C of the Act ? In our opinion, the observations of their Lordships of the Supreme Court do not go so far as to lead to the conclusion that a claim for retrenchment compensation, however, is not within the framework of an existing right" as observed by the learned Judges of the Gujarat High Court. We are not persuaded to think that it was the intention of the Legislature that where a workman does not want to challenge the order of retrenchment as he does not want to continue in service, he cannot be said to have acquired a right to compensation so as to enable him to approach the Labor Court under Section 33-C of the Act, We do not think the Legislature intended that for redress of an individual grievance like that of getting compensation the workman is required to approach the Industrial Tribunal through the agency of the Government

and the union of workers. For the purposes of Section 33-C to our mind, there is no distinction between claims for compensation based on a settlement or an award or those under the provisions of Chapter V-A of the Act. Where it can be postulated that the right to receive compensation arises under any provision of Chapter V-A of the Act, then that claim is to be treated *pari passu* with claims arising under an award or a settlement. In our view, in a case of retrenchment the right to compensation and notice pay indisputably arises under Section 25-F of the Act which is a provision in Chapter V-A of the Act. Merely because an employer would choose to call a (Particular termination of employment as any thing other than retrenchment will not, to our mind, preclude the Labor Court from settling its true character. It will be only a question of applying the correct law to a given set of facts for coming to the right conclusion as to whether a particular termination did or did not amount to retrenchment within the meaning of law. As observed by their Lordships of the Supreme Court, the purpose of Section 33-C of the Act is to make available to individual workers a speedy remedy to seek redress of then individual grievances. This purpose, in our view, will stand to be defeated if it is held that a Labor Court would be precluded from dealing with the question whether a particular termination did or did not amount to retrenchment within the meaning of the law. In our view, Section 25-F of the Act creates a two-fold right in the workman in case he is retrenched without payment of compensation. The first right is to challenge the order of retrenchment itself as null and void and to seek reinstatement. This he could do only by approaching the Industrial Tribunal. But, the right to get compensation can also be taken to have arisen and if he does not want to ask for any reinstatement then he does have the right to get compensation and get the same computed from a Labor Court.

22. Thus, to our mind, as the right to the claim arose under Section 25-F of the Act which occurs in Chapter V-A thereof, the Labor Court was acting with jurisdiction in entertaining the applications filed by the respondents and in dealing with them.

23. That being so, we do not find any substance in the present writ petition which we hereby dismiss, but looking to the facts and circumstances of the case we leave the parties to bear their own costs.

Petition dismissed.

Cases Referred.

1. AIR 1957, SC 95
2. AIR 1957 SC 121
3. AIR 1957 Bom 188
4. AIR 1962 Bom152
5. AIR 1960 Pat 554
6. 1962-1 Lab LJ 563
7. AIR 1960 SC 1168
8. AIR 1960 SC 137
9. AIR 1961 SC 970
10. AIR 1965 SC 111
11. AIR 1958 SC 507
12. AIR 1963 SC 487
13. AIR 1964 SC 743
14. AIR 1964 SC 752
15. 1964-1 Lab LJ 691 (Mys)
16. AIR 1964 Gujarat 192
17. AIR 1960 SC 610