Gamon India Limited vs Niranjan Dass on 5 December, 1983

Equivalent citations: 1984 AIR 500, 1984 SCR (1) 959, AIR 1984 SUPREME COURT 500, 1984 (1) SCC 509, 1983 LAB. I. C. 1865, 1984 UJ (SC) 195, (1984) IJR 121 (SC), (1984) 1 COMLJ 19, 1983 ICR 482, (1984) 1 LABLJ 233, (1984) 1 LAB LN 90, (1984) 48 FACLR 310, 1984 SCC (L&S) 144, (1984) 64 FJR 60, (1984) 1 SERVLJ 150

Author: D.A. Desai

Bench: D.A. Desai, R.B. Misra, Misra Rangnath

PETITIONER:
GAMON INDIA LIMITED

Vs.

RESPONDENT:
NIRANJAN DASS

DATE OF JUDGMENT05/12/1983

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
MISRA, R.B. (J)
MISRA RANGNATH

CITATION:
1984 AIR 500 1984 SCR (1) 959
1984 SCC (1) 509 1983 SCALE (2)863

ACT:
Industrial Disputes Act 1947, Section 2 (oo) retrenchment-What is-Services terminated on account of recession in work-Termination whether amounts to retrenchment.

HEADNOTE:
The respondent was employed by the appellant-Company as a Senior Clerk till he received a notice terminating his services. The notice stated that on account of reduction in volume of the business of the Company as a result of recession, his services were being terminated.
On a reference by the Government, whether the

retrenchment of the respondent was unjustified or illegal the Industrial Tribunal held that since the conditions for a valid retrenchment have not been complied with, the respondent continued to be in service.

In a petition under Article 226, a Single Judge held that since the termination of the services was consequent upon the closure of the Delhi office, the case would be governed by Section 25 FFF of the Industrial Disputes Act 1947 which does not prescribe payment of compensation as a condition precedent to a valid termination of service by way of retrenchment.

In the Letters Patent Appeal, the Division Bench set aside the judgment of the Single Judge on the ground that the reference to the Industrial Tribunal was to consider whether the retrenchment was illegal or unjustified and therefore it was not open to the Single Judge to come to the conclusion that the case was one of closure governed by Section 25 FFF. The Division Bench therefore restored the Tribunal's award.

Dismissing the Appeal of the Company,

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HELD: 1. The award of the Tribunal was correct and unassailable. The respondent had become surplus on account of reduction in volume of work and that constitutes retrenchment even in the traditional sense of the term [963 H]

Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union, [1956] SCR 172; State Bank of India v. N. Sundara Money, [1976] 3 SCR 160; Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and others, [1977] 1 SCR 586; Santosh Gupta v. State Bank of Patiala, [1980] 3 SCR 340; Delhi Cloth and
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Genral Mills Ltd. v. Shambu Nath Mukerjee, [1978] 1 SCR 591; Mohan Lal v. Management of M/s Bharat Electronics Ltd. [1981] 3 SCR 518; L. Robert D'suoza v. The Executive Engineer, Southern Railway & Anr. [1982] 3 SCR 251, referred to.

2. The pre-requisite for a valid retrenchment as laid down in Section 25 F has not been complied with, and therefor the retrenchment bringing about termination of service is ab initio void. [964 E]

In the instant case, the notice recites that as a result of the recession in the volume of the work of the company, the services of the respondent would not be required by the company after October 14, 1967 and that this notice contemplated by section 25F (a). Not even one word is stated in the notice that the office to which the respondent was attached was in the process of being closed down, so his services would no more be required. [963 D-E]

3. The termination of service for the reasons mentioned in the notice is not covered by any of the Clauses (a), (b) and (c) of Section 2 (oo) which defines retrenchment and it

is now well-settled that where the termination of service does not fall within any of the excluded categories, the termination would be ipso facto retrenchment. It was not even attempted to be urged that the case of the respondent would fall in any of the excluded categories. It is therefore, indisputably a case of retrenchment. [964 C-D]

4 (i). The appellant will have to establish the fact that the respondent has reached the age of superannuation and that physical reinstatement is not possible. [965 A]

(ii). The respondent will be entitled to all backwages including benefit of revised wages or salary if there is revision of pay-scales with yearly increment, revised dearness allowance or variable dearness allowance and all terminal benefits if he was reached the age of superannuation such as Provident Fund, Gratuity etc. Back wages should be calculated as if the respondent continued in service uninterrupted. [965 B-C]

(iii). The respondent has been unlawfully kept out of service. The appellant-company shall therefore pay all the arrears with 12 per cent interest from the date the amount became due and payable till realisation. [965 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1741 of 1980.

From the Judgment and Order dated 16th January, 1980 of the High Court of Delhi at New Delhi, in Letters Patent Appeal No. 25 of 1970.

U.R. Lalit, V.N. Ganpule and Mrs. V.D. Khanna for the Appellant.

Jitendra Sharma for the Respondent.

The Judgment of the Court was delivered by DESAI, J. Respondent Shri Niranjan Dass was employed as a Senior Clerk by the appellant-company as per the appointment order contained in the letter dated April 10, 1962. The letter of appointment inter alia provided that the respondent may be posted any where in India or abroad as per the requirements of the company and it was signed by its Zonal Manager, Central Zone, Delhi. Respondent continued to serve in that capacity when on September 14, 1967, he was served with a notice terminating his services. The notice reads as under:

> "Due to the reduction in the volume of business of the Company as a result of the recession in (sic) services will not be required by the company after the 14th October, 1967, and this may be treated as statutory notice of one month of termination of your service.
>
> Your leave shall run concurrently with the notice period, and you may avail of leave

> due to you, if any, during the notice period.
>
> Personnel Section at Head Office have been advised to settle your dues, and you may write to them in the matter.
>
> We take this opportunity to thank you for your past services, and it is very unfortunate that the present circumstances have compelled us to issue this notice.
>
> Should it be possible for us to offer you a job at any of our works sites at a later date, we shall make you a fresh offer at that time."

Respondent raised an industrial dispute and the appropriate Government by the order dated May 30, 1968 referred the industrial dispute for adjudication to the Industrial Tribunal. The reference was couched in the following language.

> "Whether the retrenchment of Shri Niranjan Dass is unjustified or illegal and if so, what directions are necessary in this respect."

By the award dated February 25, 1969. the Industrial Tribunal held that the retrenchment of the respondent was illegal and unjustified and gave a declaration that he continues to be in service of the appellant-company and is entitled to his wages till he is lawfully retrenched. Appellant-company challenged the award in Civil Writ No. 462 of 1969 filed by it in the High Court of Delhi. A learned Single Judge held that as the Delhi office of the appellant- company was closed, the case of the respondent would be governed by Sec. 25FFF being termination consequent upon closure, and therefore payment of compensation was not a condition precedent and the termination of service was valid, The learned Judge accordingly set aside the award and remitted the matter to the Tribunal to decide what directions, if any, are necessary in respect of retrenchment of the respondent in the light of the discussion in the judgment Respondent preferred Letters Patent Appeal No. 25 of 1970 against the decision of the learned Single Judge. A Division Bench of Delhi High Court held that the reference made by the appropriate Government required the Industrial Tribunal to consider whether the retrenchment was illegal or unjustified and therefore it was implicit in the reference itself that it was a case of retrenchment, validity of which to be examined in the reference and therefore it was not open to the learned Single Judge to change the 'base' of the reference and to come to the conclusion that the case was one of closure of the industrial undertaking governed by Sec. 25FFF of the Industrial Disputes Act. Approaching the matter from this angle, the Division Bench set aside the decision of the learned Single Judge and restored the award made by the Industrial Tribunal. Hence this appeal by the company by special leave.

The Industrial Tribunal held that respondent was retrenched from service by the appellant and the pre- conditions for a valid retrenchment were not complied with and therefore the respondent was entitled to a declaration that he continues to be in service with all the benefits flowing from the said declaration. A learned Single Judge of the High Court interfered with this award holding that the appellant-company had closed its Delhi office and therefore the termination of service was consequent upon the closure and even if it constitutes retrenchment, the case would be governed by

Sec. 25FFF which does not prescribe payment of compensation as a condition-precedent to a valid termination of service by way of retrenchment. In the Letters Patent Appeal at the instance of the respondent, the Division Bench set aside the judgment of the learned Single Judge holding that it was not open to the learned Single Judge to hold that it was a case of closure covered by Sec. 25FFF because it was implicit in the reference that the case was one of retrenchment and the only question with the Industrial Tribunal was called upon to decide was whether the retrenchment was unjustified or illegal. It is not necessary to examine the view expressed by the Division Bench of the High Court whether the assumption underlying an order of reference is unquestionable at the hearing of the reference. The question, however, is whether the learned Single Judge, who interfered with the award of the Tribunal was justified in coming to the conclusion that the case was one of closure covered by Sec. 25FFF or the Industrial Tribunal was right in holding that it is a case of retrenchment covered by Sec. 25F of Industrial Disputes Act. This point can be answered by mere reference to the notice served by the appellant- company on the respondent intimating to him that his services will no more be required effective from October 14, 1967. The notice as a whole has been extracted hereinbefore. The notice recites that as a result of recession in the volume of work of the company, services of the respondent would no more be required by the company after October 14, 1967 and this notice may be treated as a statutory notice as contemplated by Sec. 25F(a). There is not even a whisper in the notice that as the Delhi office is being closed down, the services of the respondent would not be required. An attempt was made while leading evidence before the Industrial Tribunal to show that the Zonal office at Delhi was closed on January 31, 1968 while the Central Zone office was closed somewhere in October, 1967. If by September, 1967, the appellant company had resolved to close the office at Delhi to which the respondent was attached, it is unthinkable that aspect would not be recited in the notice. The necessity for termination of service of the respondent recited in the notice was recession in the work handled by the company. Not even one word is stated in the notice that the office to which the respondent was attached was in the process of being closed down, so his services would no more be required. On a true construction of the notice, it would appear that the respondent had become surplus on account of reduction in volume of work and that constitutes retrenchment even in the traditional sense of the term as interpreted in Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union(1) though that view does not hold the field in view of the recent decisions of this Court in State Bank of India v. N. Sundara Money(2) Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and Others;(3) Santosh Gupta v. State Bank of Patiala;(4) Delhi Cloth and General Mills Ltd. v. Shambu Nath Mukerjee;(5) Mohan Lal v. Management of M/s Bharat Electronics Ltd(6) and L. Robert D'souza v. The Executive Engineer, Southern Railway & Anr.(7) The recitals and averments in the notice leave no room for doubt that the service of the respondent was terminated for the reason that on account of recession and reduction in the volume of work of the company, respondent has become surplus. Even apart from this, the termination of service for the reasons mentioned in the notice is not covered by any of the clauses (a), (b) and (c) of Sec. 2(oo) which defines retrenchment and it is by now well-settled that where the termination of service does not fall within any of the excluded categories, the termination would be ipso facto retrenchment. It was not even attempted to be urged that the case of the respondent would fall in any of the excluded categories. It is there indisputably a case of retrenchment.

It is not disputed that the pre-requisite for a valid retrenchment as laid down in Sec. 25f has not been complied with and therefore the retrenchment bringing about termination of service is ab initio void. Viewed from this angle, the award of the Industrial Tribunal was correct and unassailable and the learned Single Judge was in error in interfering with the same. Undoubtedly, the Division Bench of the High Court has set aside the order of the learned Single Judge and restored the award for reasons of its own. However, for the reasons herein indicated, the decision of the Division Bench in Letters Patent Appeal No. 25 of 1970 is upheld and confirmed and this appeal must therefore fail and accordingly it is dismissed.

In the course of hearing of this appeal, it was stated that the respondent has reached the age of superannuation therefore physical reinstatement in service is not possible. Appellant will have to establish that fact but in the event, the appellant shows that under a valid rule, respondent has reached the stage of superannuation and therefore physical reinstatement is not possible, it is hereby declared that the respondent shall continue to be in service uninterruptedly from the date of the attempted termination of service till the date of superannuation. Respondent would be entitled to all back wages including the benefit of revised wages or salary if during the period there is revision of pay-scales with yearly increment, revised dearness allowance or variable dearness allowance and all terminal benefits if he has reached the age of superannuation such as Provident Fund, Gratuity etc. Back wages should be calculated as if the respondent continued in service uninterrupted. He is also entitled to leave encashment and bonus if other workmen in the same category were paid the same. It appears that the respondent has been unlawfully kept out of service, therefore it is but just that the appellant-company shall pay all the arrears as calculated according to the directions herein given with 12% interest from the date the amount became due and payable till realisation. Appellant shall also pay costs to the respondent quantified at Rs. 5,000. The appellant is directed to pay the amount as herein directed to be paid within 3 months from today.

Mr. Jitendra Sharma, learned counsel for the respondent stated that the costs awarded to the respondent be paid to the Legal Aid Cell set up by Indian Association of Lawyers in collaboration with Womens' Council.

Order accordingly.

N.V.K. Appeal dismissed.