Mis. Swadesamltran Limited, Madras vs Their Workmen on 31 March, 1960

Equivalent citations: 1960 AIR 762, 1960 SCR (3) 144

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, K.C. Das Gupta

PETITIONER:
MIS. SWADESAMLTRAN LIMITED, MADRAS

Vs.

RESPONDENT:
THEIR WORKMEN

DATE OF JUDGMENT:
31/03/1960

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
SUBBARAO, K.
GUPTA, K.C. DAS

CITATION:
1960 AIR 762 1960 SCR (3) 144
CITATOR INFO :
RF 1966 SC1657 (3)
R 1971 SC2171 (5,7)
RF 1981 SC 422 (4)

ACT:
Industrial Dispute-Rule of retrenchment-" Last come first go "-If can be departed from by employer-Protracted litigation and employment of other hands-If a ground for defeating claim for reinstatement.

HEADNOTE:
The management by a notice terminated the services Of 39 workmen as a measure of retrenchment. The workmen went on strike which led to an industrial dispute. The Industrial Tribunal interalia held that the strike was not justified and that the management had made out of a case of necessity for retrenchment and no malafides had been established; but

the principle of last come first go had not been observed in selecting the personnel for retrenchment and ordered the reinstatement Of 15 out of the 39 workmen retrenched. The -Appellate Tribunal confirmed the findings of the Industrial Tribunal with certain modifications by way of compensation. The management came up in appeal by special leave.

Held, that where a case of retrenchment is made out the employer has normally to follow the industrial rule of retrenchment last come and first go; for valid reasons he may however depart from the said rule; in that case he has to show by reliable evidence, preferably from the recorded history of the workmen concerned showing their inefficiency, unreliability or habitual irregularity and can satisfy the Tribunal that the departure from the rule was justified by sound and valid reasons; otherwise the departure from the rule could be treated as being malafidc or amounting to unfair labour practice.

Held, further that once it was found that retrenchment was unjustified and improper it is for the Tribunal to consider to what relief the retrenched workmen will be entitled; ordinarily retrenched workmen would be entitled to claim reinstatement, and the fact that in the meantime the employer has engaged other workmen would not necessarily defeat the claim for reinstatement, nor would the fact that protracted litigation in regard to the dispute has inevitably meant delay defeat such a claim for reinstatement. Therefore the conclusion that 15 workmen were improperly retrenched cannot be sucessfully challenged.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 483 of 1958. Appeal by special leave from the decision dated March 20, 1956, of the Labour Appellate Tribunal of India, Madras, in Appeal No. Bom. 90 of 1952 arising out of the Award dated December 28, 1951, of the Industrial Tribunal, Madras, in Industrial Dispute No. 48 of 1951. 1960. February 11, 12. M. C. Setalvad, Attorney-General of India, B. Ganapathy lyer and G. Gopalkrishnan, for the appellants. This appeal arises from an Industrial Dispute between M/s. Swadesamitran and their workmen. Three items of dispute were referred for adjudication to the Industrial Tribunal at Madras. One of them being whether the retrench- ment of 39 workmen affected by the appellant in May 1951, was justified, and if not, what relief the retrenched workmen were entitled to. The modified award directed the reinstatement of 15 of the retrenched workmen and the question is whether such direction is correct. It has to be remembered that the direction was given on March 28, 1956, in respect of retrenchment made in May 1951, with half their back wages.

The Tribunal erred in applying the rule "last come first go " as if it were an inflexible rule. The management is the best Judge as to who were fit to be retained and who should be sent out. No doubt, if the selection of persons disclosed that the management was guilty of any unfair labour practice, that would have been ground for interference. Tribunal and the Appellate Tribunal found

that the action of management in selecting the personnel was not at all malafide. It cannot be said to be unreasonable if persons are selected for discharge because they had reached an age which would affect their efficiency and so fit for being retrenched. It cannot be the rule that once a workmen is entertained he should be kept on for ever. Moreover, the evidence shows that a committee of three sat for the purpose of making a, selection and they applied their minds to the problem and took into account all factors, viz. length of service, efficiency, defect in eye- sight with regard to very small types and general aptitude for the new kind of work on lino machines. Further, the workmen had themselves settled accounts with the management and drawn whatever was due to them and their claims having been satisfied it was unfair and unjust to direct that they should be reinstated in their old jobs with back wages. The others were found inefficient and irregular in attendance and therefore the selection by the management should not have been interfered with at all by the Tribunal. Principles of social justice do not compel an employer to keep an inefficient or unsuitable and superannuated workman in his service. The principle of I last come first go' should not have been so strictly applied on the facts of this case. The Labour Appellate Tribunal erred in law in directing reinstatement when it did not differ from the conclusion of the Industrial Tribunal that the strike of the respondents was unjustified and that the appellants had acted bona fide in coming to the conclusion that retrenchment of 39 workmen was necessary. It is only if the Industrial Tribunal was satisfied that in retrenching its employees the appellant had acted malafide that it would be open to the Tribunal to interfere with the order of retrenchment passed by the appellant. The order of reinstatement in substance is inconsistent with the findings about the bona fides of the appellant.

The Tribunal further erred in preparing a pooled seniority list to determine the seniority. The management must be given the discretion to run the business in its best interests and it is not for the Tribunal to say that the work done in the several sub-sections of composing department was similar and the workmen can be inter-shifted. Merely because no record was maintained as to the fitness or otherwise of each individual worker prior to the retrench- ment, it was not right to infer that there was no material for the management to judge of the comparative fitness of the workmen under it. In entertaining the grievance of the workmen against their order of retrenchment the Labour Appellate Tribunal has exceeded its jurisdiction. Retrenchment is and must, be held to be a normal management function and privilege, and as soon as a case for retrenchment has been made out liberty and discretion must be left to the employer to select which employee should in fact be retrenched. In holding an enquiry about the Validity of reasonableness of retrenchment of certain specified persons the appellate tribunal had trespassed on the management function and as such exceeded its jurisdiction.

C. Anthoni Pillai, (President, City Printing Press Workers' Union), for the respondents was not called upon to reply.

1960. March, 1. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-This appeal by special leave arises from an industrial dispute between Messrs. Swadesamitran Ltd., Madras (hereinafter called the appellant) and their workmen (hereinafter called the respondents). On November 3, 1951, three items of dispute were referred for adjudication to the Industrial Tribunal at Madras by the Madras Government under s. 10(1)(c) of the Industrial Disputes Act, 1947 (Act XIV of 1947) (hereinafter called the Act). One of these items was whether the retrenchment of 39 workmen

effected by the appellant in May 1951 was justified, and if not, what relief the retrenched workmen were entitled to. It would be relevant to mention briefly the material facts leading to this dispute. It appears that on August 26, 1950, the respondents addressed a charter of demands to the appellant in which eleven demands were made, and they intimated to the appellant that, if the said demands were not granted, they would go on strike. The appellant pointed out to the respondents that it was working at a loss and that proposals for retrenchment and rationalisation were then under its active consideration. It promised the respondents that as soon as its financial condition improved their demands would be Sympathetically considered. Thereupon the demands were withdrawn; but on January 24, 1951, another communication was addressed by the respondents making as many as thirteen demands coupled with the same threat that if the said demands were not granted the respondents would go on strike. A copy of this communication was sent to the State Govern- ment which was requested to refer the said demands for adjudication to the industrial tribunal. The Government, however referred the matter to the Conciliation Officer who found that the demands were not justified. He accordingly made a report on February 22, 1951. Immediately thereafter the respondents wrote to the Government repeating their request for reference, but on April 24, 1951, the Government ordered that no case for reference had been made.

Meanwhile the appellant was taking steps to effect retrenchment in the staff owing to the steep rise in the prices of newsprint and scarcity of supplies, the imposition by the Government of India of a price page schedule and the progressive introduction of mechanisation in the composing section by installation of lino-type machines. When the respondents came to know about this their Union called for a strike ballot and as a result of the ballot the respondents decided to go on strike. A notice in that behalf was issued on May 9, 1951. The appellant then appealed to the respondents not to precipitate matters, promised to consider their demands as soon as its financial position improved and warned them that, if they refused to report for work in accordance with the strike notice, it would deem to amount to resignation of each one of the strikers of his job. The Conciliation Officer who was approached by the appellant also advised the respondents not to go on strike. Nevertheless the respondents went on strike on May 30, 1951. Before the respondents thus went on strike services of 39 members of the staff had been terminated by a notice as a measure of retrenchment with effect from May 18, 1951. It is the retrenchment of these 39 workmen which led to the industrial dispute with which we are concerned in the present appeal.

Before this dispute was thus referred for adjudication the respondents had filed a writ petition in the Madras High Court asking for a writ calling upon the Government to make a reference under s. 10(1)(c) of the Act. This writ application was allowed; but on appeal the Court of Appeal modified the order issued by the original court by substituting a direction that the Government should discharge its duties under s. 12(5) of the Act. On June 12, 1951, the strike was called off by the respondents and they offered to resume work; but by then the appellant had engaged new hands and so it was able to re-engage only some of the respondents who offered to resume work. The failure of the appellant to take into service all its workmen is another item of dispute between the parties; but with the said dispute the present appeal is not concerned. It was as a result of the order passed by the Madras High Court that the present dispute was ultimately referred for adjudication to the industrial tribunal.

The tribunal held that the strike declared by the respondents was not justified and that the appellant was justified in retrenching 39 workmen in question. According to the tribunal, though in retrenching 39 workmen the principle of I last come first go' was not strictly followed, the appellant was justified in departing from the said principle because it was entitled to give preference to " persons mechanically inclined and having good eyesight." That is why the tribunal rejected the respondents' plea that in effecting retrenchment the appellant had indulged in any unfair labour practice. Since the tribunal was satified that the retrenchment of 39 workmen was effected in the usual course for good and sufficient reasons it ordered that the said retrenched workmen were not entitled to any relief. The respondents challenged this award by an appeal before the Labour Appellate Tribunal. The appellate tribunal was satisfied that the impugned finding about the bona fides and the validity of the retrenchment was not justified. It, therefore, remanded the proceedings to the industrial tribunal for deciding afresh the four points formulated by it. Two of these points are relevant for our purpose. One was whether the formula I last come first go' had been complied with, and if it was not, the tribunal was asked to scrutinise in relation to each individual whether the reasons for breaking the said rule were sufficient in his case; and the other was whether the management was motivated by any unfair labour practice or victimisation. Pursuant to this order of remand the industrial tribunal allowed an opportunity to the appellant to lead evidence, and, on considering the evidence, it came to the conclusion that the appellant had made out a case of necessity for retrenchment and that it had justified the extent of retrenchment as pleaded by it. No mala fides in that behalf had been established according to the tribunal. It, however, held that the principle of 'last come first go' had not been observed in selecting the personnel for retrenchment; and it rejected the explanation given by the appellant in retrenching 15 out of the said 39 workmen. That is why it ordered the.appellant to reinstate the said 15 workmen without any back wages. In regard to the remaining 24 workmen no order was made by the tribunal in respect of any compensation payable to them. On receipt of the findings recorded by the tribunal the matter went back to the Labour Appellate Tribunal. Both parties had filed objections against the findings in question. The appellate tribunal considered these objections and held that the appellant had made out a case for retrenching 39 of its employees; but it agreed with the industrial tribunal that the principle of 'last come first go' had not been observed and that no case had been made out to depart from the said principle. That is why it confirmed the finding of the tribunal that the 15 named employees should be reinstated and added that they should be given half the amount of their back wages. In regard to the remaining 24 workmen who had been retrenched, the appellate tribunal directed that they should be awarded compensation at the rate of half a month's wages including dearness allowance for each year of service. It is against this decision that the present appeal has been preferred by special leave.

The first point which the learned Attorney-General has raised before us in this appeal on behalf of the appellant is that the Labour Appellate Tribunal erred in law in directing reinstatement when it did not differ from the conclusion of the industrial tribunal that the strike of the respondents was unjustified and that the appellant had acted bona fide in coming to the conclusion that retrenchment of' 39 workmen was necessary. It is urged that it is only if the industrial tribunal is satisfied that in retrenching its employees the appellant had acted mala fide that it would be open to the tribunal to interfere with the order of retrenchment passed by the appellant; and the argument is that s the order of reinstatement in substance is inconsistent with the findings about the bona fides

of the appellant. In our opinion this argument is misconceived. There are two aspects of the question with which the appellate tribunal was concerned in the present proceedings: Was the appellant justified in coming to the conclusion in exercise of its management function and authority that 39 workmen had to be retrenched; if yes, has the retrenchment been properly carried out ? The first question has been answered in favour of the appellant by both the tribunals below. It has been found that the respondents' strike was unjustified and that for the reasons set out by the appellant retrenchment to the extent pleaded by it was also called for and justified. It is in regard to this aspect of the matter that the appellant's bonafides have Do doubt been found; but the bonafides of the appellant in coming to the conclusion that 39 workmen had to be retrenched have no material bearing nor have they any relevance in fact with the question as to whether the appellant acted fairly or reasonably in selecting for retrenchment the 39 workmen in question. It is in regard to this latter aspect of the matter that concurrent findings have been recorded against the appellant that it acted without justification and the retrenchment of the 15 workmen in question amounts to an unfair labour practice. Therefore, it is not possible to accept the argument that there is any inconsistency in the two findings. They deal with two different aspects of the matter and so they cannot be said to conflict with each other at all.

It is then urged that in entertaining the grievance of the respondents against their order of retrenchment the Labour Appellate Tribunal has exceeded its jurisdiction. The, case presented before us on this ground assumes that retrenchment is and must be held to be a normal management function and privilege, and as soon as a case for retrenchment had been made out liberty and discretion must be left to the employer to select which employees should in fact be retrenched. In holding an enquiry about the.validity or reasonableness of retrenchment of certain specified persons the appellate tribunal has trespasser on the management function and as such has exceeded its jurisdiction. We are not impressed by this argument. It may be conceded that if a case for retrenchment is made out it would normally be for the employer to decide which of the employees should be retrenched; but there can be no doubt that the ordinary industrial rule of retrenchment is I last come first go', and where other things are equal this rule has to be followed by the employer in effecting retrenchment. We must, however, add that when it is stated that other things being equal the rule I last come first go' must be applied, it is not intended to deny freedom to the employer to depart from the said rule for sufficient and valid reasons. The employer may take into account considerations of efficiency and trustworthy character of the employees, and if he is satisfied that a person with a long service is inefficient, unreliable or habitually irregular in the discharge of his duties, it would be open to him to retrench his services while retaining in his employment employees who are more efficient, reliable and regular though they may be junior in service to the retrenched workmen. Normally, where the rule is thus departed from there should be reliable evidence preferably in the recorded history of the workmen concerned showing their inefficiency, unreliability or habitual irregularity. It is not as if industrial tribunals insist inexorably upon compliance with the industrial rule of retrenchment; what they insist on is on their being satisfied that wherever the rule is departed from the departure is justified by sound and valid reasons. It, therefore, follows that, wherever it is proved that the rule in question has been departed from, the employer must satisfy the industrial tribunal that the departure was justified; and in that sense the onus would undoubtedly be on the employer. In dealing with cases of retrenchment it is essential to remember that the industrial rule of I last come first go' is intended to afford a very

healthy safeguard against discrimination of workmen in the matter of retrenchment, and so, though the employer may depart from the rule, he should able to justify the departure before the industrial tribunal whenever an industrial dispute is raised by retrenched workmen on the ground that their impugned retrenchment amounts to unfair labour practice or victimisation.

It appears that in 1946 the Government of India, in-its Department of Labour, formulated certain rules for retrenchment and commended, them to the attention of all employers of labour and trade unions so that disputes on that score may be minimised. Rule 4 amongst the said rules was that as a rule discharge of personnel who are still surplus to requirements should be in accordance with the principles of short service, that is to say, last man engaged should be the first man to be discharged. Due notice or wages in lieu thereof should be given. The same principle has been accepted and applied by industrial tribunals on several occasions (Vide : Indian Navigation & Industrials, Alleppey And Certain Workmen (1); Cuttack Electric Supply Co. Ltd. And Their Workmen (2) ; and Shaparia Dock and Steel Company And Their Workers (3)). We ought to add that the same principle has. now been statutorily recognised by s. 25(g) of the Act. This section provides inter alia that where any workman in an industrial establishment, who is a citizen of India, is to be retrenched, the employer shall ordinarily retrench the workman who was the last person to be employed in the same category, unless, for reasons to be recorded, the employer retrenches any other workman; in other words, by this section a statutory obligation is imposed on the employer to follow the rule, and if he wants to depart from it to record his reason for the said departure.

In support of his contention that the Labour Appellate Tribunal has exceeded its jurisdiction in examining the merits of the retrenchment effected by the appellant, the learned Attorney -General has relied upon certain observations made by this Court in the case of J. K. Iron & Steel Co. Ltd. v. Its Workmen (4). Dealing with the argument of the appellant that the order of retrenchment should be left to the management and that the decision by the management that (1) (1952) II L.L.J. 611.

(2) 1954 1 L.L.J. 723.

(3) (1954) II L.L.J. 208.

(4) Civil Appeal No, 266 of 1958 decided on 11-2-1960.

some employees are better qualified than others should not be questioned by the adjudicator unless he came to the conclusion that the preferential treatment was deemed to be malafide, this Court observed that the proposition involved in the argument was unexceptionable, it was added, that, if the preferential treatment given to juniors ignores the well recognized principles of industrial law of 'first come last go without any acceptable or sound reasoning a tribunal or an adjudicator will be well justified to hold that the action of the management is not bona fide. We do not see how either of the two propositions set out in this judgment can support the appellant's argument before us. The position under the industrial law seems to us to be fairly clear. The management has the right to retrench the workmen provided retrenchment is justified. In effecting retrenchment the management normally has to adopt and give effect to the industrial rule of retrenchment. For valid reasons it may depart from the said rule. If the departure from the said rule does not appear to the

industrial tribunal as valid or satisfactory, then the action of the management in so departing from the rule can be treated by the tribunal as being mala fide or as amounting to unfair labour practice; in other words, departure from the ordinary industrial rule of retrenchment without any justification may itself, in a proper case, lead to the inference that the impugned retrenchment is the result of ulterior considerations and as such it is mala fide and amounts to unfair labour practice and victimisation. That is precisely what this Court has held in the case of J. K. Iron & Steel Co. Ltd. (4). We are, therefore, satisfied that there is no substance in the appellant's contention that the tribunals below have exceeded their jurisdiction in enquiring into the validity of the retrenchment of the 39 workmen in question. There is one more point which may briefly be mentioned in this connection. After the matter was remanded the industrial tribunal has carefully considered the evidence given by the appellant. In fact it is clear from the record that at the original enquiry no evidence had been led by the appellant to justify (1) Civil Appeal No. 266 of i958 decided on 11-2-6o.

the departure from the rule even though it was conceded that the rule had not been followed. The Labour Appellate Tribunal, therefore, fairly gave a chance to the appellant to justify the said departure, and accordingly evidence was led by the appellant. This evidence consists of the testimony of Mr. Lakshminarasimlian, who has been working with the appellant for 32 years. He works as an Assistant Editor, and in addition- attends to press work. He stated that he was having a personal supervision of the entire work and that when retrenchment was actually effected a committee was appointed consisting of himself, the Manager Mr. Ayyangar and the Press Manager Mr. Rajagopala Ayyangar. At the time of the enquiry the Manager was dead. According to the. witness the committee took the advice of the Foremen of various sections in deciding which workmen should be retained and which should be retrenched. The witness gave evidence about the defects in the cases of the 39 workmen who were retrenched; and in support of his oral testimony he filed two statements T-1 and T-2 giving material particulars in respect of all the said workmen. It is admitted that no records were made at the time when the cases of these workmen were examined and so the witness was driven to give evidence merely from memory. The tribunal has held that having regard to the nature of the defects attributed to the several workmen to which the witness deposed it was impossible to accept his testimony as satisfactory, and the tribunal was also not satisfied that it was likely that the witness should have any personal knowledge in regard to the said defects. In the result the tribunal rejected this testimony. It also examined some cases 'in detail, and it was satisfied that the reasons given for retrenching them were demonstrably unsatisfactory. It is on these findings that 'the tribunal came to the conclusion that the appellant had not shown any valid or reasonable ground for departing from the usual rule, and this finding has been accepted by the Labour Appellate Tribunal. In such a case we do not see how in the present appeal the appellant can successfully challenge the correctness of the conclusion that in substance the retrenchment of the 15 workmen amounts to an unfair labour practice and victimisation.

That leaves two minor questions which were formulated for our decision by the learned Attorney-General. He contended that, even if the impugned retrenchment of the 15 workmen in question was not justified, reinstatment should not have been directed ; some compensation instead should have been ordered; and in the alternative he argued that the order directing compensation to the remaining 24 retrenched work- men was also not justified. We do not see any substance in either of these two contentions. Once it is found that retrenchment is unjustified and improper it is for the

tribunals below to consider to what relief the retrenched workmen are entitled. Ordinarily, if a workman has been improperly and illegally retrenched he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workmen would not necessarily defeat the claim for reinstatement of the retrenched workmen ; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This court has consistently held that in the case of wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that the employer has engaged fresh hands (Vide: The Punjab National Bank Ltd. v. The All-India Punjab National Bank Employees' Federation (1); and National Trans.port and General Co. Ltd. v. The Workmen (2). Then as to the compensation awarded to the 15 and 24 workmen respectively, it is a matter of discretion and as such is not open to challenge in the present appeal. In the result the appeal fails and is dismissed with costs. Appeal dismissed

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(1) [1960] I S.C.R. 806.

(2) Civil Appeal NO. 372 Of 1956 decided on january 22, 1957,