M/S. Om Oil & Oilseeds Exchange Ltd., ... vs Their Workmen on 28 March, 1966

Equivalent citations: 1966 AIR 1657, 1966 SCR 74, AIR 1966 SUPREME COURT 1657, 1966 2 LABLJ 324, 1966 (13) FACLR 7, 1966 2 SCWR 396, 1965-66 29 FJR 69, 1967 2 SCJ 132

Author: J.C. Shah

Bench: J.C. Shah, K.N. Wanchoo, S.M. Sikri

PETITIONER:
M/S. OM OIL & OILSEEDS EXCHANGE LTD., DELHI

Vs.

RESPONDENT:
THEIR WORKMEN

DATE OF JUDGMENT:
28/03/1966

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
WANCHOO, K.N.
SIKRI, S.M.

CITATION:
1966 AIR 1657 1966 SCR 74
CITATOR INFO :
R 1980 SC1454 (6)

ACT:
Industrial Law-Retrenchment-Rule of "first come last go". When can be departed from-Employees properly retrenched-Compensation payable.

HEADNOTE:
The respondents (workmen of the appellant) raised on industrial dispute and pleaded before the Labour Court that the appellant's action in retrenching some of its employees was mala fide, as the appellant did not follow the "first come. last go" rule. The appellant justified its action on the ground that the appellant had recorded valid reasons for

departing from the rule. The reasons were that, one of the employees retained was the only person capable of looking after the appellant's share work and court work, another was the only typist with the appellant, a third was the record keeper who alone knew where the different types of records were kept, and the other two were peons who were retained as chowkidars because, there was no other person who could do that work. The Labour Court accepted the respondents' contention, ordered the reinstatement of those employees who were affected by the departure from the rule, and directed that those employees who were properly retrenched should be paid in addition to the retrenchment compensation under s. 25F of the Industrial Disputes Act, 1947 , which had been paid by the appellant 50 % of their wages as compensation till the date when the award, became enforceable.

In appeal to this Court.

HELD:(i) The Labour Court was in error in inferring mala)ides merely because the management departed from the rule of "first come, last go."

Where other things are equal, the ordinary industrial rule has to be followed by the employer, but the rule is not immutable. It is for the management to ascertain who, on retrenchment, should be retained in the interests of the business, and the industrial tribunal will not interfere with the decision of the management, unless preferential treatment is actuated by mala fides. Preference given to the retained employees on the ground of mere experience may justify an inference of mala fides; but in the present case, the employees retained had, beside experience, special skill, or aptitude in the Particular branch of the business of the appellant they were attending to, and the management had retained them because of that skill, or aptitude. [76 E-F 79B-E].

Swadesamitran Ltd. V. Their Workmen, [1960] 3 S.C.R. 144 and J.K. Iron and Steel Company Ltd. v. its Workmen. [1960] 2 L.L.J. 64, referred to.

(ii) Where retrenchment has been properly made and that order has not been set aside, there is no justification for directing payment of compensation to employees Properly retrenched in addition to the retrenchment compensation statutorily payable. [8O E].

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 131 of 1966. Appeal by special leave from the Award dated, the September 10, 1965 of the Labour Court, Delhi, in I.D. No. 23 of 1965. M. C. Setavad, B. P. Maheshwari and M. S. Narasimhan, for the appellant., Madan Mohan, for the respondents.

The Judgment of the Court was delivered-by Shah, J. The appellant is engaged in carrying on the business of regulating forward trade in groundnut oil and mustard-seed, and is recognised as an Exchange under the provisions of the Forward Contract Act, 1952. On June 1, 1964 the Government of India issued an order prohibiting trading in diverse commodities including groundnut oil and mustard-seed, and in consequence thereof no further business could, be carried on through. the appellant Exchange. On July 17, 1965 the appellant served notices of retrenchment upon 30 out of its 37 employees and paid them salary for the period of notice and retrenchment compensation under s. 25F of the Industrial Disputes Act 14 of 1947. The workmen then raised an industrial dispute. Conciliation proceedings to solve the dispute having failed, the Delhi Administration referred to the Labour Court the dispute whether retrenchment of the workmen by the appellant was unjustified and illegal. The workmen pleaded that retrenchment "on the ground of the ban imposed on forward trading in groundnut oil and mustard-seed was mala fide" and that in retaining seven workmen the appellant did not follow, without any adequate ground, "the first come last go" rule, and on that account all the workmen were entitled to be reinstated with full wages from the date of determination of employment and with continuity of service. The appellant denied that in retrenching the workmen the management had acted mala fide, or that retrenchment amounted to an unfair labour practice. The appellant further submitted that retrenchment of the workmen was not liable to be challenged, because some junior members of the staff were retained, since the Company had recorded in the resolution its reasons for departing from the rule "first come, last go", and had "adhered to the principles contained in s. 25F of the Industrial, Disputes Act as far as possible".

At the hearing of the reference before the Labour Court, Delhi, counsel for the workmen conceded that the appellant was justified in retrenching its employees and that the number of employees required to carry on the work after the imposition of a ban against the business of the appellant could not exceed the number retained by the appellant. Counsel however contended that since the appellant failed in effecting retrenchment of the workmen to observe the principle of "first come, last go", the order in its entirety was illegal. The Labour Court accepted the contention of the workmen and held that departure from a principle which was part of the law relating to industrial employment rendered the retrenchment of all workmen unjustified and improper and on that account retrenchment of clerks and peons who were affected by the departure from the rule was "illegal and mala fide". In the view of the Labour Court, workmen Nos. 1 to 14 and 16 to 23 in Ext. W-1-the List of Seniority-were so affected. The Labour Court ordered that as the appellant required only four clerks in- cluding the Accountant R. N. Seth, the Accountant and three senior clerks Shiv Das Sharma, Kishan Lal Grover and Surinder Singh be retained, and that the senior clerks named be reinstated with full "back wages", subject to adjustment of compensation money paid to them against their salary. The Court also directed that clerks Nos. 4 to 14 be paid, in addition to the retrenchment compensation received by them "50 per cent of the wages as compensation for the period they remained in unemployment up till the date when the award became enforceable", but they may not be reinstated, and that peons Tara Shanker and Om Prakash be reinstated with full wages and peons Nos. 18 to 23 in Ext. W-1 be paid in addition to the retrenchment compensation, "50 per cent of the wages they would have been entitled to." With special leave, the Company has appealed to this Court. It is an accepted principle of industrial law that in ordering retrenchment ordinarily the management should commence with the latest recruit, and progressively retrench

employees higher up in the list of seniority. But the rule is not immutable, and for valid reasons may be departed from. It was observed by this Court in Swadesamitran Ltd. v. Their Workmen(1) 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 "first come, last go", and where other things are equal, this rule has to be followed by the employer in effecting retrenchment.

The question then is whether in departing from the rule, the management had acted mala fide, or that its action amounted to an unfair labour practice. The Tribunal has to determine in each case whether the management has in ordering retrenchment acted fairly and properly and not with any ulterior motive: it cannot assume from mere departure from the rule that the management was actuated by improper motives or that the management had acted in a manner amounting to an unfair labour practice. Nor has the Tribunal authority to sit in appeal over the decision of the management if for valid and justifiable reasons the management has departed from the rule that the senior employees may be retrenched before his junior in employment (1) [1960] 1 L.L.J. 504.

The management of the appellant has recorded a resolution which sets out the reasons for retention of the employees Ram Lal Sethi, Jagdish Pershad, Kidar Nath Thukral, Om Prakash Juneja, Jai Narain, Budhpal Singh and Laljimal. About Ram Lal Sethi the Company has stated that he was looking "after the accounts" and income-tax cases of the Company and he was the only Accountant in the service of the Company and the senior-most employee in the Accounts Section. The Labour Court has upheld his retention, and nothing more need be said about him. Jagdish Pershad was, it was stated, looking "after the share work, collection of building rent and court work and the realisation of rents"

> and that he was "in charge of the share work for the last many years". The Labour Court was of the view that a clerk employed in general office duties may be styled as a general assistant, and that the posts of clerks are interchangeable and since clerks are not trained to handle any Particular kind of work, the reasons given by the management for retaining this and other clerks cannot be accepted. However there was not in the employment of the Company any other clerk who could competently handle "share work" and attend to "court work". Clerical work ordinarily does not require specialisation and clerks may be transferred from one department to another without detriment to the business. But if a clerk has been working in a branch of the business and he is shown to possess special aptitude for a particular duty, performance of which requires application and experience, the management may in the interests of the business while retrenching others retain him even if he is junior to others. The rule of "first come, last go" is intended to secure an equitable treatment to the employees when, having regard to the exigencies of the business, it is necessary to retrench some employees. But in the application of the rule the interests of the business cannot be overlooked. The rule has to be applied where other things are equal. The management of the business must act fairly to the employees, where however the management bona fide retains staff possessing special aptitude in the interests of the business, it cannot be assumed to have acted unfairly merely because

the rule "first come, last go"

is not observed. If retention of a clerical employee is regarded as necessary by the management in the interests of the business, that opinion cannot be discarded merely on the ground that the clerk concerned is not the seniormost. There is nothing on the record to show that there was, among the senior employees, a clerk possessing the aptitude which Jagdish Pershad possessed. Kidar Nath Thakural was doing "typing work" and he was retained because he was the only typist with the Company. Our attention has not been invited to any evidence that there were other typists who were senior to him and they had been retrenched. A typist is undoubtedly a clerk in a business concern but that does not mean that every clerk, unless specially trained, can become a competent typist. Om Prakash Juneja was retained because he was looking after the records of the Company and was "fully conversant as to where different type of records" were "lying", and that this employee was doing the work satisfactorily. A record-keeper's work in a business cannot be performed efficiently without special training or long experience. It would be difficult to hold that in retrenching employees, if the management retains an efficient record-keeper in preference to a senior clerk who has no training or experience in record-keeping, the management acts mala fide or improperly, or perpetrates an unfair labour practice.

The Labour Court was of the view that retention of junior clerks in service could not be sustained on the ground that they had gained experience in a particular branch of clerical work. To accept that ground of preference, observed the Labour Court, was to destroy the rule "first come, last go" itself, since clerks are not specially trained to handle only a particular kind of work, and their work is easily convertible and one can replace another without dislocation in the department. For ordinary clerical work this is undoubtedly true, but even among the clerical staff if a degree of specialisation is necessary for discharging clerical duties efficiently retention of a junior clerk on the ground that the duty performed by him requires experience, and aptitude, will not expose the management to a charge of mala fide, or perpetration of an unfair labour practice.

It was submitted than in J. K. Iran and Steel Company Ltd. v. Its workmen(1) this Court has hold that in the matter of retrenchment of clerical staff, departure from the rule "first come, last go" may not be recognised when it is sought to be justified on the ground that the workman retained has experience of a particular branch of the clerical work, and reliance was placed upon the following observations of Subba Rao, J.

> "But if the preferential treatment given to juniors ignores the well recognized principle in the industrial law that the "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.... In regard to the clerks, what is the ground of preference given by the management? It is said that junior clerks, who were retained, have experience in a particular branch of clerical work. To accept this ground of preference without more is to destroy the principle itself. It may be that the clerks entrusted with such works may continue to do the same work till a readjustment of the work is made. There is no particular or scientific skill required in one class of work rather than in another. Clerks are not specially trained to handle (1)

(1960) 2 L.L.J. 64.

only a particular kind of work. Their work is easily convertible and one can replace another without any dislocation in the department." But the judgment does not enunciate a different principle. Ordinarily it is for the management to ascertain who on retrenchment should be retained in the interests of the business and the Industrial Tribunal will not interfere with the decision of the management, unless preferential treatment is actuated by mala fides. Where those retrenched and those retained are doing substantially the same kind of work and no special skill or aptitude is required for doing the work which the retained clerk is doing, preference given to the retained clerk on the ground that he has some ex- perience in the branch may justifiably raise an inference of mala fides. Apparently in J.K. Iron and Steel Company's case,(1) the work required to be done by the clerks retained needed no special aptitude, and the clerks retrenched could as well do the work which was done by the clerk retained. It was in those circumstances that the Court held that mere experience in a particular branch requiring no special aptitude was not sufficient to justify departure from the rule "first come, last go".

In the present case the four clerks retained had, beside ex- perience, special skill and aptitude in the particular branch of the business of the appellant they were attending to, and the management had retained them because of that skill or aptitude. The Labour Court inferred mala fides merely because the management departed from the rule "first come, last go". Whether the management in departing from the rule has acted mala fide, must depend upon the circumstances of the case : it cannot be inferred merely from departure from the rule.

We may turn to the cases of the three peons, Jai Narain, Budhpal Singh Laljimal. Retention of Jai Narain has been upheld by the Labour Court and, nothing more need be said about him. The other two peons are Budhpal Singh and Laljimal who were working as chowkidars. They are said to be "the senior-most chowkidars", and there is no evidence to show that there were in the employment of the Company other persons who could have worked as chowkidars. Peons Budhpal Singh and Laljimal were retained because they were the "senior-most chowkidars". Retention of the "senior-most chowkidars" would not be interfered with by the Tribunal in the absence of clear proof of mala fides. It cannot be assumed without more that every peon can do the work of a chowkidar. The management may ordinarily require the chowkidar to possess good physique and ability to maintain watch over the building and its assets. There is no evidence that the two peons Tara Shanker and Om Prakash had ever worked as chowkidars or were suitable for work as chowkidars. The order (1) [1960] 2 L.L.J. 64.

of reinstatement of Tara Shanker and Om Prakash will stand vacated.

The second part of the order directing that clerks from Nos. 4 to 14 and peons from Nos. 18 to 23 in the seniority list, shall be entitled in addition to the retrenchment compensation already paid to them 50 per cent of the wages as compensation for the period they remained unemployed is wholly indefensible. These employees had been properly retrenched: that was conceded before the Labour Court. It was also conceded that for carrying on the business of the appellant after imposition of the ban by the Central Government, not more than seven employees were required. If the management

was entitled to retrench 30 workmen and did so after paying wages for the period of notice and retrench- ment compensation, we fail to appreciate the grounds on which an order for payment of 50 per cent of the wages in addition to retrenchment compensation may be made. Retrenchment compensation is paid as solatium for termination of service resulting in unemployment and if that compensation be paid there can be no ground for awarding compensation in addition to statutory retrenchment compensation. If the Industrial Tribunal comes to the conclusion that an order of retrenchment was not properly made and the Tribunal directs reinstatement, an order for payment of remuneration for the period during which the employee remained unemployed, or a part thereof may appropriately be made. That is because the employee who had been retrenched for no fault of his had been improperly kept out of employment, and was prevented from earning his wages. But where retrenchment has been properly made and that order has not been set aside, we are not aware of any principle which may justify an order directing payment of compensation to employees properly retrenched in addition to the retrenchment compensation statutorily payable. The appeal is therefore allowed and the award made by the Labour Court is substituted by the following award:

> "That retrenchment of the workmen was not unjustified or illegal and the workmen are not entitled to any relief".

In the circumstances of the case, there will be no order as to costs.

Appeal allowed.