Ramakrishna Ramnath vs The Presiding Officer, Labour Court, ... on 27 February, 1970

Equivalent citations: [1971(21)FLR159], 1973LABLC87, (1970)IILLJ306SC, (1970)3SCC67, 1973 LAB. I. C. 87, (1970) 3 S C C 67, 41 F J R 209, 21 FAC L R 159, (1970) 2 LAB L J 306

Author: G.K. Mitter

Bench: G.K. Mitter, J.M. Shelat

JUDGMENT

G.K. Mitter, J.

1. In this appeal by special leave the appellant challenges the jurisdiction of the Labour Court to adjudicate upon the dispute referred to it and also contends that the finding of that court that there was a closure of the appellant's factory in the circumstances of the case was a perverse one which ought not to be upheld. The third and the last submission put forward was that the Labour Court had gone wrong in its interpretation of the relevant provisions of the Industrial Disputes Act as they stood at the time of the reference.

2. The amount in stake in this appeal is quite an insignificant one but the appeal has been brought as a test case for a number of other similar disputes.

3. The appellant is a partnership firm carrying on the manufacture and sale of bidis at various places in the Vidarbha region of the State of Maharashtra and other places including Nagpur. It employed 4000 men in its factories. On the issue of a notification by the Government of Bombay dated June 11, 1958 under Section 5(2) read with Section 5(1)(b) of the Minimum Wages Act. 1948 the appellant felt that the situation created by the notification was such that the working of the factories had become a financial impossibility. On July 1, 1958 it issued a notice in, writing, sending copies thereof to the Assistant Labour Commissioner, Nagpur, the Labour Officer, Nagpur, and the Secretary of the recognised trade union styled "notice of closure". The relevant portion of this reads as follows:

> As per standing order approved by Labour Commissioner paragraph 11 and also under general power of the employer to close down the business, we beg to inform you that it is our intention to close down our bidi factory and anywhere outside the factory as from 1st July, 1958.
>
> We have been forced to take this step by the action of the Bombay Government in

issuing a notification dated 11th June, 1958.

The minimum rate/rates of wages made payable as from 1st July, 1958 are so excessive and unworkable that it is impossible for any employer to give effect to them. This is so particularly in relation to Clause 6 of the notification. Thus the changes introduced by the notification regarding wages, 'chhat' and other matters are such as to attract the provisions of Clause 11 of the Standing Orders.

Further the employers have under the peculiar circumstances created by the aforesaid notification a right to close the business the working of which has become a financial impossibility.

We hereby therefore further wish to inform you that the aforesaid closure of the bidi making business of the firm will continue as long as the notification dated 11-6-1958 continues in force.

4. Whatever be the reason, the Government notification was withdrawn within the space of a few weeks and the appellant started to work its factories once more from 10th August, 1958 taking in all its employees who were there before the 1st July, 1958. The respondent in this case who was a bidi binder earning Rs. 1.86 per day on an average made an application to the Presiding Officer, Labour Court, at Nagpur, on November 5, 1963 claiming Rs. 334.80 on account of retrenchment and one month's notice pay in of lieu of notice. She stated that the factory was closed as from 1st July, 1958 as a result of which she and other workers had been retrenched. As she had put in 12 years of continuous service before the said date, she claimed computation of the benefit in terms of money under Section 33C(2) of the Industrial Disputes Act (hereinafter referred to as the 'Act').

5. The appellant put in its written statement on 25th September, 1962 which was later amended on 2nd March, 1964. It raised various contentions both of fact and of law, urging, inter alia, that the applicant was not an employee but an independent contractor, that there had been no closure of the business to attract Section 25FFF of the Act and that in any event the dispute could sot he referred to a labour court. The issues relevant for our purpose settled on 20th September, 1965 were as follows:

(1) Does the applicant prove that she had been in continuous service of the opponent for more than one year in that undertaking immediately before the closure ?

(2) If so, does she prove that she is entitled to retrenchment compensation equivalent to fifteen days' average pay for every completed year of service ?

(6) Does the opponent prove that the closure of the factory did not result in the retrenchment of the applicant?

(7) Alternatively, does he prove the closure was on account of unavoidable circumstances beyond the control of the employer ?

6. The Labour Court tried issues 1, 2 and 6 along with a number of others of a similar nature and allowed the claims of all the applicants barring three and held that they were entitled to compensation under the proviso to Section 25FFF and pay in lieu of notice as per schedule attached to the order.

7. The points canvassed on behalf of the appellant before us may be summed up as follows: (1) The disputes which were referred to the Labour Court fell within the jurisdiction of an Industrial Tribunal. The jurisdiction under Section 33C(2) was a limited one and could not embrace a dispute of the nature in the instant case which could only fall under Section 10 of the Act. (2) The issue raised in each case was a fundamental one not limited to mere computation of a benefit in respect of a right envisaged by Section 33C(2)-(3) There was really no closure of the appellant's business but only a lock out or a temporary stoppage of work not attracting the operation of Section 25FFF(A) In order to entitle the applicant to the benefits of Section 25F it was obligatory on her to show that she had worked for 240 days in each year of service for which the claim was made.

8. The subject matter of the first two contentions depends on the interpretation of the ambit of Section 33C(2) read with Section 7 of the Act. Under Section 7(1) the appropriate Government may, by notification in the Official; Gazette, constitute one or more labour courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under the Act. Chapter V-A of the Act headed "Lay off and Retrenchment as in force" on the relevant date contained the following provisions:

> 25B. For the purposes of Sections 25C and 25F, a workman who during a period of twelve calendar months, has actually worked in an industry for not less than two hundred and forty days, shall be deemed to have completed one year of continuous service in the industry.
>
> 25F. 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.

25FF. (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before the

closure shall, subject to the provisions of sub section (2), be entitled to notice and compensation in accordance with the provisions of Section 25F as if the workman had been retrenched:

> Provided that where an undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under Clause (2) of Section 25F shall not exceed his average pay for three months. Section 33C(2) ran as follows:
>
> 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 benefits should be computed may, subject to pay rules that may be made under this Act, be determined by such Labour Court as may be recovered as provided for in Sub-section (1).

9. The above provisions of the Act make it clear that the jurisdiction of a Labour Court is not confined to disputes specified in the Second Schedule but the said court has also to perform other functions as may be assigned to it. If there is a closure of a business within the meaning of Section 25FFF, a workman who has been in continuous service for not less than one year in that undertaking immediately before the closure becomes entitled to notice and compensation in accordance with the provisions of Section 25F, as if he or she had been retrenches. Section 25F specifies the measure of compensation. Under Section 33C(2) a Labour Court specified in that behalf by the appropriate Government has therefore to determine the benefit due to a worker which is capable of being computed in terms of money if Section 25FFF is applicable, to the facts of the case.

10. There have been pronouncements of this Court which put the matter beyond any controversy. In Central Bank of India Ltd. v. P. S. Rajagopalan etc. the main question which engaged the attention of this Court was the construction of Section 33C(2) of the Act. After examining the provisions of the Act from its inception and tracing the successive amendments the Court observed (at p. 150):

> The legislative history to which we have just referred clearly indicate that having provided broadly for the investigation and settlement of industrial disputes on the basis of collective bargaining, the legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so inserted Section 33A in the Act of 1950 and added Section 33C 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 33C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of Section 33C cases which would fall under Section 10(1).
>
> Referring to Section 33C the Court said:

> 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?... 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 Labour Court. Before proceeding to compute the benefit in terms of money the Labour 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 Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour 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 Labour Court answers this point in favour of workman that the next question of making necessary computation can arise. It seems to us that the opening clause of Sub-section (2) does not admit of the 'construction' lot 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.'... 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 an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour 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 Labour Court by Sub-section (2).

11. The scope of Section 33C was again examined in Chief Mining Engineer, East India Coal Co. Ltd. v. Rameshwar and it was said that the scope of Sub-section (2) was wider than Sub-section (1) and Sub-section (2) was not confined to cases arising under an award, settlement or under the provisions of Chapter V-A and there was no reason to hold that a benefit provided by a statute or by a scheme made thereunder without there being anything contrary under that statute or under Section 33C(2) could not fall within Sub-section (2). The main contention urged in that case that Section 33C(2) contemplated recovery of money payable under an award, settlement or under the provisions of Chapter V-A only and not in other statute or scheme framed thereunder was turned down.

12. Counsel for the appellant however relied on the observations of a Bench of this Court in U P. Electric Supply Co. Ltd. v. R. K. Shukla and Anr. (Civil Appeals 1567 of 1968 and 565 to 1026 and 1027 to 1082 of 1969 decided on 30th April 1959). In this case the company held licences issued in 1914 by the Government of U. P. for generating and distributing electricity within the towns of Allahabad and Lucknow. The periods of the licences expired in 1954 and pursuant to the provisions of paragraph 12(1) in each of the said licences and in exercise of the power under Section 6 of the

Indian Electricity Act, 1910, the State Electricity Board, U P., took over the undertaking of the company at Allahabad and Lucknow from the midnight of September 16, 1964. The company accordingly ceased to carry on the business of generation and distribution of electricity in the areas covered by the original licences. All the workmen of the undertakings at Allahabad and Lucknow were taken over in the employment of the Board with effect from September 17, 1964, without any break in the continuity of employment. 443 workmen employed in the Allahabad undertaking filed before the Labour Court applications under Section 6-H(2) of the U.P. Industrial Disputes Act, 1947, for payment of retrenchment compensation and salary in lieu of notice. The company challenged before the Labour Court its jurisdiction to entertain and decide applications for awarding retrenchment compensation and urged that the workmen had not in fact been retrenched and had been taken over by the Board without break in continuity and on terms not less favourable than those enjoyed by them with the company, According to this Court it was common ground that there was no interruption resulting from the undertaking being taken over by the Board and the agreements between the Board and the workmen to admit the workmen into employment of the Board were reached before the undertakings of the company were taken over. The Court noted the contention of the company that the terms and conditions of service applicable to workmen after the transfer were not in any way less favourable to the workmen than those applicable to them immediately before the undertakings were taken over and that the employer to whom the ownership or management of the undertakings were so transferred was, under the terms of the transfer or otherwise, legally liable to pay the workmen, in the event of their retrenchment, compensation on the basis that their services had been continuous and had not been interrupted by the taking over. The workmen disputed that claim. According to this Court:

> The Labour Court could award compensation only if it determined the matter in controversy in favour of the workmen: it could not assume that the conditions of the proviso to Section 6-0 were fulfilled. Section 6-0 is in terms negative. It deprives the workmen of the right to retrenchment compensation in the conditions mentioned therein. The company asserted that the conditions precedent to the exercise of jurisdiction did not exist. The workmen asserted the existence of the conditions. Without deciding the issue, the Labour Court could not compute the amount of compensation payable to the workmen on the assumption that the workmen had been retrenched and their claim fell within the proviso to Section 6-0".

It was in this set up that the Court observed:

> Where however the right to retrenchment compensation which is the foundation of the claim is itself a matter which is exclusively within the competence of the Industrial Tribunal to be adjudicated upon on a reference, it would be straining the language of Section 33-C(2) to hold that the question whether there has been retrenchment may be decided by the Labour Court. The power, of the Labour Court is to compute the compensation claim to be payable to the workmen on the footing that there has been retrenchment of the workmen,, When retrenchment is conceded and the only matter in dispute is that by virtue of Section 25FF liability to pay compensation has arisen the Labour Court will be competent to decide the question.

> In such a case the question is one of computation, and not of determination, of the conditions precedent to the accrual of liability. Where, however, the dispute is whether workmen have been retrenched and compensation of the amount is subsidiary or incidental, in our judgment, the Labour Court will have no authority to trespass upon the powers of the Tribunal with which it is statutorily invested.

13. The concluding portion of the above observations cannot be considered dissociated from the setting in which they were made. As was pointed out in the case of the Central Bank (supra) the examination of the claim under Section 33-C(2) may in some cases have to be preceded by an enquiry into the existence of the right. A mere denial of the fact of retrenchment would not be enough to take the matter out of the jurisdiction of the Labour Court.

14. In this case the written statement of the appellant before the Labour Court does not even show that there was any plea that there had been a lay-off or a lock-out. All that was said in paragraph 9 was that "the closure in accordance with the notice, i.e., 1st July. 1958, does not fall within the scope of Section 25FFF of the Act". No such issue was even raised before the Labour Court. By issue 7 the appellant contended that the closure was on account of unavoidable circumstances beyond the control of the employer, and issue 6 related to the question as to whether the closure had resulted in the retrenchment of the applicant. These two issues, in our opinion, go to show that the fact of closure was not challenged but an attempt was made to establish that the closure was within the meaning of the proviso to Section 25FFF(1) or otherwise that the closure was of such a type as did not really amount to retrenchment.

15. It was urged before us that there could be no closure because the appellant was merely protesting against irresponsible Government action and had no intention to close the business permanently.

16. In our opinion, the express terms of the notice, preclude such contention. Nobody could say on the 1st July, 1958 that the Government would think fit to withdraw the notification and the first paragraph of the notice shows that under the general power of the employer to close down the business the appellant was informing all concerned that it was proceeding to do so as from 1st July, 1958. The Labour Court had jurisdiction to make a preliminary enquiry as to whether there had been a closure of the business and the text of the notice made the determination of the question quite a simple affair.

17. A fair attempt was made before us to contend that the finding of the Labour Court as to closure was perverse and that it was only a stoppage of work within the meaning of Standing Order No. 11 or a lock-out. As already noted, the question of lock-out was not even mooted when the issues were settled nor was any plea taken that there had been a temporary cessation of work under Standing Order No. 11. By the notice the employer gave the employees to understand that the factory would not function because the Government notification had made the running of it a financial impossibility.

18. In our view the decision of this Court in Kalinga Tubes Ltd, v. Their Workmen A.I.R (1959) S.C.R 19, does not help the appellant. There the management of the appellant gave notice that as a direct

consequence of the continued and sustained illegal activities of the workmen and their pre-concerted and pre-meditated acts by illegally keeping confined and forcibly resisting the exit of the staff and officers of the company in the administrative office building for many hours and the consequent refusal by the officers and supervisory staff of the company to carry on their work being reasonably apprehensive of their safety it had become impossible to run the factory. On this plea the company notified that there would be a complete closure of the factory with effect from 3rd October, 1967. There the real question was whether the Explanation to Section 25FFF was applicable to the facts of the case and the court came to the conclusion that it was not possible to hold that the closure of the undertaking was due to unavoidable circumstances beyond the control of the appellant and as such the appellant was liable to pay compensation under the principal part of Sub-section (1) of Section 25FFF of the Act. On the facts of this case we find ourselves unable to hold that the undertaking was closed down on account of the unavoidable circumstances beyond the control of the employer within the meaning of Section 25FFF.

19. The contention that a workman has to establish that he had worked for 240 days in all the years for each year the compensation was claimed is without force. It is significant to note that by the first issue before the Labour Court the applicant was only called upon to prove that she had been in continuous service of the appellant for not less than 240 days immediately before the closure. In our opinion the issue had been properly framed. Section 25FFF lays down that in order that a workman may claim the benefit of the provision he must establish that he has been in continuous service for not less than one year in that undertaking immediately before the closure. As soon as this is done he becomes entitled to notice and compensation in accordance with the provisions of Section 25F as if he had been retrenched subject to the provisions of Sub-section (2). Sub-section (2) of Section 25FFF is not applicable to this case. Section 25F(b) lays down that a workman cannot be retrenched unless he had been paid compensation equivalent to 15 days' average pay for every completed year of service or any part thereof in excess of six months. Further no such workman can claim the benefit of the provision for compensation unless he can show that he has been in continuous service for not less than one year under the employer. Under Section 25B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year. However the compensation to be paid to the workman under Clause (b) of Section 25F is not to exceed his average pay for three months. In the case of the respondent it was found by the Labour Court that she had worked for eight years and but for the proviso to Section 25F she would have been entitled to four months' pay.

All the contentions urged on behalf of the appellant therefore fail and the appeal must be dismissed with costs.