Workmen Of American Express ... vs Management Of American Express ... on 28 August, 1985

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Bench: O. Chinnappa Reddy, V. Khalid

JUDGMENT

O. Chinnappa Reddy, J.

1. The Workmen of American Express International Banking Corporation who sponsored the cause of their fellow workman B. Ravichandran in an Industrial Dispute are the appellants in this appeal by special leave of this court. The American Express International Banking Corporation terminated the services of the workman on October 31, 1975. It is common ground that the provisions of Section 25-F of the Industrial Disputes Act were not complied with. According to the management it was not necessary to comply with the provisions of Section 25-F as the workman concerned was not in continuous service for not less than one year as prescribed by Section 25-F read with Section 25-B of the Industrial Disputes Act. The tribunal upheld the contention of the management. The workman have preferred this appeal.

2. The facts very briefly are that the workman joined the service of the American Express International Banking Corporation on November 4, 1974 as a typist-clerk in a temporary capacity and was employed as such, with a number of short breaks, till October 31, 1975 when his services were terminated. According to the workman excluding the breaks in service, he 'actually worked under the employer' for 275 days during the period of 12 months immediately preceding October 31, 1975 whereas according to the employer he actually worked for 220 days only. The difference between the two computations is due to the circumstance that the workman has included and counted Sundays and other paid holidays as days on which he 'actually worked under the employer', while the employer has not done so. The question for consideration is whether Sundays and other holidays for which wages are paid under the law, by contract or statute, should be treated as days on which the employee 'actually worked under the employer' for the purposes of Section 25-F read with Section 25-B of the Industrial Disputes Act. Section 25-F of the Industrial Disputes Acts reads as

follows :-

> 25-F. 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-
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> (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.
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> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent of fifteen days, average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
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> (c) notice in the prescribed manner is served on the appropriate Government (for such authority as may be specified by the appropriate Government by notification in the Official Gazette).

Section 25B defines and explains what is continuous service is as follows :

> 25-B. For the purposes of this Chapter,-
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> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
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> (2) where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
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> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
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> (i) one hundred and ninety days in the case of a workman employed below ground in a mine: and
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> (ii) two hundred and forty days, in any other case;
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> (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine and

(ii) one hundred and twenty days, in any other case.

Explanation-For the purposes of clause(2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the Industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Section 16, 17 and 18 of the Delhi Shops and Establishments Act, 1954 which provide for 'close-days', 'Weekly holidays' and "Wages for the holidays' may also be extracted here and are as follows :

Section 16(1) Every shop and commercial establishment shall remain closed on a close day.

(2) In addition to the close day every shop and commercial establishment shall remain closed on three of the National Holidays each year as the Government may (by notification in the Official Gazette) specify.

(3)(i) The Government may, by notification in the Official Gazette, specify a close day for the purposes of this section and different days may be specified for different classes of shops or commercial establishments or for different areas.

(ii) Notwithstanding anything contained in Sub-section (1), the occupier of any shop or a commercial establishment may open his shop or commercial establishment on a close day, if such a day happens to coincide with a religious festival, 'or the Mahurat day', (the day of the commencement of the financial year of the establishment concerned), provided a notice to this effect has been given to the Chief Inspector at least twenty-four hours before the close day and that in lieu thereof the shop or the commercial establishment is closed on either of the two days immediately preceding or following that close day.

Section 17. Every employee shall be allowed at least twenty four consecutive hours of rest (weekly holiday) in every week, which shall, in the case of shops and commercial establishments required by

this Act to observe a close day, be on the close day.

Section 18. No deduction shall be made from the wages of any employee on account of the close day Under Section 16 or a holiday granted Under Section 17 of this Act.

If an employee is employed on a daily wage, he shall none the less be paid his daily wage for the holiday and where an employee is paid on piece rates, he shall receive the average of the wages received during the week.

3. The learned counsel appearing for the parties cited in the course of their submissions the decisions of this court in the Surendra Kumar Verma v. the Central Government Industrial Tribunal-cum-Labour Court, New Delhi and Anr. , Lalappa Lingappa v. Laxmi Vishnu Textile Mills Ltd. Sholapur , Mohan Lal v. Management of Bharat Electronics Ltd. , Jeewan Lal Ltd. v. Appellate Authority, Payment of Gratuity Act 1984 (2) LLJ 464 and Sakhkkar Mills Mazdoor Sangh v. Gwalior Sugar Mills Ltd .

4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and 'Human Rights' legislation are not to be put in procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its mis-application must be recognised and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes. (We have borrowed the words from Lord Wilbei force's opinion in Prenn v. Simmonds 1971 (3) AER 237). In the same opinion Lord Wilberforce pointed out that law is not to be left behind some island of literal interpretation but is to enquire beyond the language, un-isolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, Surendra Kumar Verma v. Central Government Industrial Tribunal cum-Labour Court, we had occasion to say, "Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is, not to make inroads by making etymological excursions".

5. Section 25-F of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The qualification for relief Under Section 25-F. is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-B of the Industrial Disputes Act. In the present case, the provision which is of reliance is Section 25-B(2)(a)(ii) which to the extent that it concerns us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. The expression which we are required to construe is 'actually worked under the employer'. This expression, according to us, cannot mean those days only when me workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied

contract of service or by compulsion of statute, standing orders etc. The learned counsel for the Management would urge that only those days which are mentioned in the Explanation to Section 25-B(2) should be taken into account for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression 'actually worked under the employer'. The explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. If the expression 'actually worked under the employer' is capable of comprehending the days during which the workman was in employment and was paid wages-and we see no impediment to so construe the expression-there is no reason why the expression should be limited by the explanation. To give it any other meaning then what we have done would bring the object of Section 25-F very close to frustration. It is not necessary to give examples of how 25 F may be frustrated as they are too obvious to be stated.

6. The leading authority on which reliance was placed by the learned counsel for the Management was Lalappa Lingappa and Ors. v. Laxmi Vishnu Textile Mills Ltd. We may straightaway say that the present question whether Sundays and paid holidays should be taken into account for the purpose of reckoning the number of days on which an employee actually worked, never arose there. The claim was under the Payment of Gratuity Act. All permanent employees of the employer claimed that they were entitled to payment of gratuity for the entire period of their service, that is, in respect of every year during which they were in permanent employment irrespective of the fact whether they had actually worked for 240 days in a year or not. The question there was not how the 240 days were to be reckoned ; the question was not whether Sundays and paid holidays were to be included in reckoning the number of days on which the workmen actually worked ; but the question was whether a workman could be said to have been actually employed for 240 days by the mere fact that he was in service for the whole year whether or not he actually worked for 240 days. On the language employed in Section 2(c) of the Payment of Gratuity Act, the court came to the conclusion that the expression 'actually employed' occurring in Explanation I meant the same thing as the expression 'actually worked' occurring in Explanation II and that as the workmen concerned had not actually worked for 240 days or more in the year they were not entitled to payment of gratuity for that year. They further question as to what was meant by the expression 'actually worked' was not considered as apparently it did not arise for consideration. Therefore, the question whether Sundays and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workmen could be said to have actually worked was not considered in that case. The other cases cited before us do not appear to have any bearing on the question at issue before us.

7. On our interpretation of Section 25-F read with Section 25-B, the workmen must succeed. The workman Shri B. Ravichandran is therefore directed to be reinstated in service with full back wages. The appellants are also entitled to their costs.