Anand Bihari And Ors vs Rajasthan State Road Transport ... on 20 December, 1990

Equivalent citations: 1991 AIR 1003, 1990 SCR SUPL. (3) 622, AIR 1991 SUPREME COURT 1003, 1991 (1) SCC 731, 1991 AIR SCW 284, 1991 LAB. I. C. 494, 1991 (1) UJ (SC) 385, 1991 (1) UPLBEC 52, (1990) 4 JT 794 (SC), 1991 SCC (L&S) 393, (1998) 3 LABLJ 1209, (1991) 16 ATC 449, (1991) 1 CIVLJ 476, (1991) 1 CURLR 525, (1991) 1 LAB LN 603, (1991) 1 SERVLR 575, (1991) 1 UPLBEC 52, (1991) 2 ACJ 848, (1991) 2 CURLJ(CCR) 3, (1991) 78 FJR 153, (1991) 62 FACLR 81, (1992) 1 ACC 496, (1992) 1 TAC 526

Author: P.B. Sawant

Bench: P.B. Sawant, S.C. Agrawal

PETITIONER:
ANAND BIHARI AND ORS.

Vs.

RESPONDENT:
RAJASTHAN STATE ROAD TRANSPORT CORPORATION,JAIPUR THROUGH IT

DATE OF JUDGMENT20/12/1990

BENCH:
SAWANT, P.B.
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SAWANT, P.B.
AGRAWAL, S.C. (J)

CITATION:
1991 AIR 1003 1990 SCR Supl. (3) 622
1991 SCC (1) 731 JT 1990 (4) 794
1990 SCALE (2)1286

ACT:
Industrial Disputes Act, 1947 : Sections 2(00) & 25-F. Retrenchment--State Road Transport Corporation--Drivers--Occupational hazards Development of defective, weak or sub-normal eye-sight in the course of employment--Pre-mature termination of services--Held termination was not retrenchment and consequent compliance with section 25-F not necessary--But termination held unjustified and inequitable--Scheme formulated by the Supreme Court.for relief to drivers--Directions for giving retirement bene-

fits, providing alternative jobs and payment of compensatory amount proportionate to length of service rendered by the drivers.

Retrenchment--Exceptions--Section 2(00) sub-clause (c)--Expression "continued ill-health"--Meaning and Scope of--Includes cases of drivers who have developed defective or sub-normal vision during the course of employment.

Employees' State Insurance Act, 1948 : Section 2(8)--Second Schedule--Part I--Item 4 Part II--Items 31,32 and 32A--Third Schedule--Item 11.

State Road Transport Corporation--Drivers--Development of sub-normal eye-sight or loss of required vision during the course of employment--Held not an "employment injury" or "Occupational disease".

Workmen's Compensation Act, 1923: Section 3(2).

HEADNOTE:

The appellants (in C.A. No. 1859-61) were appointed as drivers and had put in a long service to the satisfaction of the respondent Corporation. Subsequently on their medical examination it was found that they had developed defective eye-sight i.e. they did not have the required vision for driving the buses. The respondent Corporation issued notices to them and after considering their explanation ter-

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minated their services on the ground that they were unfit for driving buses. The appellants filed Writ Petitions in the High Court challenging their termination order contending that their termination was illegal because (i) the termination amounted 10 retrenchment within the meaning of section 2(00) of the Industrial Disputes Act, 1947 and it was without compliance with the mandatory provisions of Section 25-F of the Act; (ii) pursuant to the agreement between the Workers' Union and the Corporation, the respondent-Corporation was bound to provide the alternative jobs to the unfit drivers. The High Court dismissed the Writ Petitions. Hence these appeals by the Workmen-drivers.

In the connected appeal (C.A. No. 1862) the driver developed weak eye-sight on account of an accident in the course of his employment. He was given employment as a helper but subsequently his services as a helper were terminated. He filed a Writ Petition in the High Court challenging his termination which was dismissed. Hence appeal by the workmen-driver.

In the other connected appeal (C.A. No. 1863) the services of a driver were terminated on the ground that he had lost vision of his right eye. He fried a Writ Petition in the High Court challenging the order of termination contending that ever since the loss of sight of his one eye, he was working as a helper and though he was not found unfit, yet his services were terminated. The High Court quashed his

termination order and directed the Corporation to absorb him as a helper. Against this order of the High Court the Corporation flied an appeal before this Court.

In appeals to this Court it was contended on behalf of the appellants; (i) since the expression "continued iii-health" as used in clause (c) of section 2(00) of the Industrial Disputes Act, 1947 does not cover the cases of a loss of limb or an organ or its permanent use and covers cases only of a general physical or mental debility or incapacity to execute the work, their termination not being covered by the said clause amounted to retrenchment which was illegal for non-compliance with Section 25-F; (ii) the workmen should have been given alternative jobs irrespective of the fact whether there was an agreement or not between the Corporation and the Union to provide alternative jobs to unfit drivers.

Disposing the appeals, this Court,

HELD: 1. The expression "ill-health" used in sub-clause (c) of

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Section 2(00) of the Industrial Disputes Act, 1947 has to be construed relatively and in its context. It must have a bearing on the normal discharge of duties. It is not any illness but that which interferes with the usual orderly functioning of the duties of the post which would be attracted by the sub-clause. Conversly, even if the illness does not affect general health or general capacity and is restricted only to a particular limb or organ but affects the efficient working of the work entrusted it will be covered by the phrase. For it is not the capacity in general but that which is necessary to perform the duty for which the workman is engaged which is relevant and material and should be considered for the purpose. Therefore, any disorder in health which incapacitates an individual from discharging the duties entrusted to him or affects his work adversely or comes in the way of his normal and effective functioning can be covered by the said phrase. The phrase has also to be construed from the point of view of the consumers of the concerned products and services. If on account of a workman's disease or incapacity or debility in functioning, the resultant product or the service is likely to be affected in any way or to become a risk to the health, life or property of the consumer, the disease or incapacity has to be categorised as all-health for the purpose of the sub-clause, otherwise, the purpose of production for which the services of the workman are engaged will be frustrated and worse still in cases such as the present one they will endanger the lives and the property of the consumers, Hence the Court should place a realistic and not a technical or pedantic meaning on the said phrase. Therefore, the said phrase would include cases of drivers such as the present ones who have developed a defective or sub-normal vision or eye-sight which is bound to interfere with their normal

working as drivers. Accordingly the termination of the services of the drivers in the present case being covered by sub-clause (c) of Section 2(00) would not amount to re-trenchment within the meaning of Section 2(00) of the Act. Hence the termination per se is not illegal because the provisions of Section 25-F have not been followed while effecting it. [63 ID-H, 632A-D]

Workmen of the Bangalore Woolien, Cotton and Silk Mills Ltd. v. Its Management, [1962] 1 L.L.J. 213, referred to.

New Coilings Concise English Dictionary; Webster's Comprehensive Dictionary (International Edition),' Concise Oxford Dictionary (3rd Edition); and Shorter Oxford English Dictionary, referred to.

2. It is also clear from the provisions of the Employees State Insurance Act that the cases of sub-normal eye-sight or loss of the

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required vision to work as a driver would not be covered by the provisions of that Act as an employment injury or as an occupational disease, for no provision is made there for compensation for a disability to carry on a particular job. The present workmen cannot be said to have suffered either a permanent, total or partial disablement to carry on any job or to have developed cataract due to infra-red radiations. The workmen are and will be able to do any work other than that of a driver with the eye-sight they possess. [635E-F]

3. There is no dispute that the drivers developed a weak or subnormal eye-sight or lost their required vision on account of their occupation as drivers in the Corporation. They have to drive the heavy motor vehicles in sun-rain, dust and dark hours of night. In the process they are ex-posed' to the glaring and blazing sun light and beaming and blinding lights of the vehicles coming from the opposite direction. They are required to strain their eye-sight every moment of the driving, keeping a watchful eye on the road for the bumps, bends and slopes, and to avoid all kinds of obstacles on the way. It is this constant training of eyes on the road which takes its inevitable toil of the vision. The very fact that in a short period, the Corporation had to terminate the services of no less than 30 drivers shows the extent of the occupational hazard to which the drivers of the Corporation are exposed during their service. It also shows that weakening of the eye-sight is not an isolated phenomenon but a wide-spread risk to which those who take the employment of a driver expose themselves. Yet the Corpo-ration treats their cases in the same manner and fashion as it treats the cases of other workmen who on account of reasons not connected with the employment suffer from ill-health or continued ill-health. That by itself is discrimi-natory against the drivers. The discrimination against the employees such as the drivers in the present case, also ensues from the fact that whereas they have to face pre-mature termination of service on account of disabilities

contracted from their jobs, the other employees continue to serve till the date of their superannuation. There is no justification in treating the cases of workmen like drivers who are exposed to occupational diseases and disabilities on par with the other employees. The injustice, inequity and discrimination is writ large in such cases and is indefensible. [632F-H, 633A-D]

4. The workmen are not denizens of an Animal Farm to be eliminated ruthlessly the moment they become useless to the establishment. They have not only to live for the rest of their life but also to maintain the members of their family and other dependants, and to educate and bring up their children. Their liability in this respect at the
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advanced age at which they are thus retired stands multiplied, They may no longer be of use to the Corporation for the job for which they were employed, but the need of their patronage to others intensifies with the growth in their family responsibilities. [634H, 635A-B]

5. No special provision is made and no compensatory relief is provided in the service condition for the drivers for pre-mature incapacitation. The service conditions of the workmen such as the drivers in the present case, therefore, must provide for adequate safeguards to remedy the situation by compensating them is some form for the all-round loss they suffer for no fault of theirs. [633C-D]

5.1. In view of the fact that the Corporation took an unhelpful stand in the matter of formulating a scheme of relief which is the legitimate due of the workmen and not a scheme on compassionate or charitable basis, the Supreme Court itself evolved a scheme for giving relief to the workmen-drivers keeping in view the points (i) that the workmen concerned are incapacitated to work only as drivers and are not rendered incapable of taking any other job either in the Corporation or outside; (ii) that the workmen are at an advanced age of their life and it would be difficult for them to get a suitable alternative employment outside; (iii) and that the relief made available under the scheme should not be such as would induce the workmen to feign disability which, in the case of disability such as the present one, viz., the development of a defective eyesight, it may be easy to do, Accordingly, the Supreme Court directed that the Corporation shall in addition to giving each of the retired workmen his retirement benefits, offer him any other alternative job which may be available and which he is eligible to perform and in case no such alternative job is available each of the workman shall be paid along with his retirement benefits an additional compensatory amount proportionate to the length of service rendered by the employees and the balance of their service. [634G, 635H, 636A-G]

6. The termination of services of helper (in C.A.No. 1862) was unjustified and also illegal being in contraven-

tion of the provisions of Section 25-F of the Act. The High Court erred in treating his case on par with cases of other drivers. The appellant-workman will, therefore, be entitled to his retirement benefits as a driver from the date of his employment as a helper. He would further be entitled to be reinstated in service as a helper with all arrears of back wages as a helper. In case he opts for receiving the compensatory amount under the scheme framed by this Court, he may do so for the period beginning from the date from which his services as a helper were terminated. [637D-F]

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7. The decision of the High Court impugned in C.A. No. 1863 is set aside and the respondent-Corporation is directed to give the concerned workman the benefit of the scheme propounded.

JUDGMENT: