J.K. Iron And Steel Co. Ltd. vs Its Workmen on 11 February, 1960

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Bench: K. Subba Rao, K.C. Das Gupta

JUDGMENT

K. Subba Rao, J.

1. This is an appeal by special leave against the award dated May 27, 1957, of Shri J. N. Tewari, Deputy Labour Commissioner, Kanpur. The appellant is a public limited company incorporated under the Indian Companies Act, 1913 carrying on the business of steel makers, re-rollers, foundrymen and steel fabricators since 1939 at Kanpur. For efficient operation of business the appellant-company was divided into various departments, one of them being rolling mill department. The Government of India directed the appellant to transfer its baling hoop factory to Calcutta area as from March 19, 1951. In and about the same time there was acute shortage of scrap which was the raw material for steel making. For the said two reasons, on May 15, 1951, the appellant discharged 128 workmen on the ground that they were surplus. Out of these, 25 workmen received their dues in full satisfaction, of their claims, but the rest of the workmen raised an industrial dispute and the Government of U. P. by its notification dated June 20, 1951, referred the following dispute to Shri J. N. Singh, Additional Regional Conciliation Officer, Kanpur, for adjudication :

> "Whether the retrenchment of the workmen given in the Annexure by M/s. J. K. Iron and Steel Co., Ltd., Kanpur is unjustified? If so, to what reliefs are the workmen entitled?"

On November 1, 1951, the Adjudicator, i.e., the Deputy Labour Commissioner, Kanpur, found that the retrenchment of the workmen was not justified and ordered that all the workmen should be reinstated and "played off" in rotation in accordance with the Standing Orders. Both the parties preferred appeals against the order to the Labour Appellate Tribunal. The Labour Appellate Tribunal rejected the appeal of the appellant and accepted the appeal of the respondents. In the result the Labour Appellate Tribunal set aside the order of retrenchment and ordered that the workmen would be deemed to be still in service and also would be entitled to wages for specified

dates. Thereafter the appellant filed appeals in this Court by special leave and the appeals were disposed of by this Court on December 23, 1955., setting aside the award of the Labour Appellate Tribunal and remanding the case to the Labour Appellate Tribunal for rehearing the appeals. After remand, as the Labour Appellate Tribunal was of the view that it could not remand the case to the Adjudicator, fresh notice was issued by the State Government on September 10, 1956, referring the dispute to the Deputy Labour Commissioner, Kanpur, for adjudication. The Deputy Labour Commissioner gave an award on May 27, 1957, holding that the retrenchment of the workmen was justified; but in regard to the retrenchment of 5 workmen employed in the Punching and Pressing Department he came to the conclusion that the action of the management in retrenching them was mala fide; and in regard to 9 clerks he held that 8 persons junior to them had been retained, but, as out of those 8 persons 3 had been retained on account of their possessing special qualifications, their retention was justified, and in regard to the remaining 5 junior clerks, the management was held to be unjustified in keeping them in service and retrenching their seniors. In the result, the Deputy Labour Commissioner held that 5 workmen in the Punching and Pressing Department and 5 out of the said 9 clerks were wrongly retrenched. The list of those persons who were wrongly retrenched was given as Appendix-A to his award. In the case of 5 persons in the Punching and Pressing Department, he further held that, for the reasons given by him, it would not be advisable to direct their reinstatement and so he directed instead that these 5 persons to be paid 50 per cent. of their wages for the total period of their unemployment from the date of their retrenchment upto the date of the enforcement of the award in addition to the full retrenchment relief to which they were entitled. In regard to the 5 clerks, he came to the conclusion that even in the ordinary course they would have been retrenched in 1953 and therefore ends of justice would be met if they were allowed to get full retrenchment-relief and 50 per cent. of their pay from the date of their retrenchment to September 7, 1953. The Iron and Steel Mazdoor Union did not prefer any appeal questioning the correctness of the award in so far as it went against them. But the appellant-company, as aforesaid, preferred the present appeal by special leave.

2. Mr. Pathak, the learned counsel for the appellant raised before us the following, points : (1) the Adjudicator based his finding that the appellant was guilty of mala fides in-retrenching the 5 persons in the Punching and Pressing Department on another finding, that the said department was part of the workshop and that the latter finding was not supported by any evidence in the case; (2) the Adjudicator in the context of retrenchment should have taken into consideration the functional demarcation of the different categories of workers in a department and not the unity of control for the purpose of administration; (3) the agreement; entered into between the appellant and the workmen, reduced to writing on November 13, 1956, finally disposed of the disputes between the appellant-company ,and the workmen and, therefore, the 10 persons whose dispute is before the Court are also bound by the terms of the said agreement; (4) it is the legal right of a management to retrench its labour force in its discretion and that when it had bona fide retrenched the seniors on the ground that the juniors were specially qualified, the Adjudicator had no jurisdiction to substitute its opinion for that of the management; and (5) in any view, the Adjudicator made an obvious mistake in holding that the retrenchment of Yogeshwar Jha was bad, because, on the basis of his findings, the said person was bound to go.

3. The third question raised may first be disposed of. This point was not raised at any stage of the protracted proceedings of this case and only for the first time it has been raised here. We, therefore, do not feel justified in allowing the learned counsel to raise this contention for the first time before us.

4. To appreciate the contention of the learned counsel on the first question, it is necessary to state the findings of the Adjudicator relevant to the same. The Adjudicator has given the following two definite findings : (i) the action of the management in the case of these 5 persons was mala fide; and (ii) these 5 persons belonged to the Workshop Department and so they should either have not been retrenched at all or if retrenchment was found necessary, 5 junior-most persons of the Workshop Department should have been retrenched. We shall now consider the argument that these two findings are not supported by any evidence placed before the Adjudicator. Taking the question whether the Punching and Pressing Department is part of the Workshop Department, or not we have the evidence of Bishwanath Singh, witness for the retrenched workers, who clearly says that the Punching and Pressing Section is in the workshop. There is also the clear admission by the appellant-company as regards that fact in the year 1948 in an inquiry held by the Regional Conciliation Officer in respect of these workmen and others. Therein the Conciliation Officer in his order records the admission to the effect that it was admitted by the employers' representative that the Punching and Pressing section was only a section of the workshop. It may be mentioned that on the basis of that admission the said Conciliation Officer directed that 3 of the said workmen, viz., Ganga Bishan, Ganga Prasad and Brij Kishore, should be given equivalent posts in the remaining structure of the concern and that if that was not possible, they should be fixed in "posts immediately lower in wages to that they were getting in the section which has to be retrenched", and that the remaining 3 persons, Munni Lal, Bijay Bahadur and Bishwanath Singh, should be provided by the management with posts carrying equal wages. It may be mentioned that these 5 persons, who were directed to be employed in the year 1948, are the same 5 persons who were retrenched in 1951. As against this evidence, which was accepted by the Adjudicator, the learned counsel for the appellant relied upon issue 4(a) referred for adjudication and contended that that issue presupposed that the two departments were different. Issue 4(a) reads : "Was the employment of the workmen mentioned at serial Nos. 12 to 16 in the Annexure terminated as there was no work in the Punching and Pressing Department?" and issue 4(b) reads : "Were the workmen mentioned at Nos. 12 to 16 not employed in the Punching and Pressing Department and were instead employed in the Workshop and were the seniormost workmen there?". It is true that the issue was not happily worded and gives room for the comment made by the learned counsel. But it is clear that issue 4(b) brings out the conflict between the appellant and the respondents. That reflects the contention of the workmen that they were not employed in the Punching and Pressing Department, but were employed in the Workshop. Issue 4(a) only reflects the contention of the employer that the services of the said employees were terminated as there was no work and issue 4(b) is really an answer to issue 4(a). The record also discloses that both the parties understood the issue only in that sense. In paragraph 12 of the written-statement filed by the appellant it is stated that "The employment of the workmen mentioned at serial Nos. 12 to 16 was terminated as there was no work in the Punching and Pressing Department and they had been receiving wages without doing any work whatsoever". Issue 4(a) was based upon this pleading. The Mazdoor Union in paragraph 3 of its written-statement stated that "these workmen were not at all retrenched because there was no work in the Punching and Pressing

Section, because they belong to the Workshop Department as a whole, and there was absolutely no retrenchment in the Workshop Department". This pleading is connected with issue 4(b). Mahalingam, the Secretary of the appellant-company, no doubt says in his evidence that these people, meaning thereby the discharged workmen, did not belong to the Workshop Department and that the Punching and Pressing Department was a separate department. But in the cross-examination he says :

> "The place where the machines of the Punching and Pressing department were installed was not in the same part of the premises as the workshop. Punching and Pressing department was making buckles for baling jute bundles and those buckles were sold out and not used in the Mills. The workshop does machining work and deals only with the parts consumed in the factory itself. The work in Punching and Pressing Department was reduced after war as there was no further demand for our highly priced articles."

It is clear from this evidence that the Punching and Pressing Department also was a part of the Workshop in the sense that certain necessary parts, such as the buckles, were made therein. The agreement already referred to is sought to be relied upon to show that the workmen in the Punching and Pressing Department were not dealt with therein and that if was because it was not part of the Workshop, and that if it was part of the Workshop, the terms of the agreement governed all the employees, including persons in the Punching and Pressing Department. This argument, by implication was not raised at the earliest stage and we do not think that the terms of the agreement help to decide the issue whether the Punching and Pressing Department: was part of the Workshop. The Adjudicator, on the basis of the entire evidence, gave a definite finding that the Punching and Pressing Department was part of the Workshop. It is not possible to say that there is no evidence on the basis of which that finding could be arrived at. If the finding be accepted, the other finding, namely, that the action of the management in the case of the 5 workmen is mala fide would be unexceptionable, for the Adjudicator points out that these 5 persons were retrenched in 1948 and that in spite of the direction of the Conciliation Officer to take them into service, the management did not take any steps to absorb them in the Workshop Department, though admittedly there were juniors to them working there, and finally at the first opportunity the appellant-company discharged them. That finding is also supported by evidence. We, therefore, reject the first contention.

5. Nor can we accept the second contention. Assuming that there are merits in that contention, on which we are not expressing our opinion, that the functional aspect should be the guiding factor in the matter of retrenchment though all the employees belong to the same department, we cannot allow this point to be raised for the simple reason that this has not been raised from 1948 till now. That apart, on the evidence, we cannot say that there is any such functional difference between the employees in both the departments as to make a differentiation in the matter of retrenchment. Both the departments make necessary parts of one whole department and therefore complementary to each other. We are not satisfied, on the evidence placed before us, that there is any such difference between the two sections of the Workshop Department as to compel us to hold that the process of retrenchment should be confined to each of the sections separately.

6. Nor are we impressed with the fourth contention of the learned counsel. It is said that the order of retrenchment should, be left to the management and the decision by the management that some are better qualified I than others cannot be questioned by the Adjudicator unless he comes to the conclusion that the preferential treatment was due to mala fides. The proposition so stated appears to be unexceptionable. 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 the case of the persons employed in the Punching and Pressing Department, for the reasons already stated, the Adjudicator gave a clear finding that the action of the management was mala fide. In regard to the clerks, what is the ground of preference given by the management? It is said that the 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 specifically trained to handle only a particular kind of work. Their work is easily convertible and one can replace another without any dislocation in the department. Unless there is a clear case made out by the management that a particular clerk doing a job similar to that of other clerks in other departments should be retained in preference to his senior clerks, the principle followed, in Industrial Law should be applied. In this case, the Adjudicator accepted the reasons given by the management in the case of 3 persons who were either trained men or were specially selected on the basis of the trust reposed in them by the management. In the former class comes the labour comptometer operator and in the latter the cashier. But in regard to others, the only reason given was that they had gained some experience and the Adjudicator rightly held that it was only a ruse to circumvent the principle. In such circumstances, a tribunal can legitimately hold that so far as they were concerned the retrenchment was not bona fide.

7. The last contention turns upon an alleged mistake made by the Adjudicator. The Adjudicator held that the retrenchment of Sri Amarjit Lal, Sri B. P. Gupta, Sri S. P. Mittal, Sri R. P. Banerjee and Sri Yogeshwar Jha was bad as their juniors were retained. The learned counsel for the appellant relies upon 'the list of clerks "in order of their juniority" filed before the Adjudicator showing the names of the clerks and the dates of their appointment to their respective posts. The learned counsel for the respondents does not question, the correctness of this statement. Serial Nos. 1, 5, 6, 7, 9 to 13 and 18 mentioned in the said list were retrenched. According to the Adjudicator 5 persons should not have been retrenched and therefore persons junior to them should go. The names of the 5 persons are given in the Appendix "A" to the award and they are : (1) Amarjit Lal (Serial No. 18); (2) B. P. Gupta (Serial No. 13); (3) S. P. Mittal (Serial No. 12); (4) R. P. Banerjee (Serial No. 11); and (5) Yogeshwar Jha (Serial No. 10) : (the serial Nos. given are as per the 'juniority' list mentioned above). It is represented to us that serial No. 1, i.e., A.N. Mukerji, the juniormost member, had been retrenched and therefore he does not come into the picture and this was not disputed. Excluding him there are 8 persons who were not retrenched. Serial Nos. 15, 16 and 17, i.e., Piaray Lal, Brahma Lal and Lalta Prasad, were held to have been validly retained though they were juniors to serial No. 18, Amarjit Lal. With the result that 5 persons according to seniority should be retained and 5 juniors should be retrenched. Serial Nos. 18, 13, 12 and 11 shall replace serial Nos. 8, 4, 3 and 2, in which case there would be no place for Yogeshwar Jha. If a place is given to Yogeshwar Jha, Ram Kishan (serial No.

14) will have to go, but that could not be as he is admittedly senior to serial Nos. 13, 12, 11 and 10. The learned counsel for the respondent has not controverted this position. The result is that the order of the Adjudicator in regard to Yogeshwar Jha is set aside.

8. In the result the order of the Adjudicator with the modification in regard to Yogeshwar Jha is confirmed. The appellant will pay the costs of the respondents.