Kerala High Court
H.M.T. Limited vs Labour Court on 6 September, 1982
Equivalent citations: (1983) ILLJ 337 Ker
Author: S Poti
Bench: S Poti, G Vadakkal
JUDGMENT Subramonian Poti, Acting C.J.

1. The question raised in both these appeals are more or less similar. The learned single Judge who decided the Original Petition which is subject matter of Writ Appeal No. 194/82 was only following the earlier judgment in O.P.No.2140/81 which is the subject matter of Writ Appeal No. 132/82.

2. In both these cases, the managements which had treated the services of an employee as terminated were the respondents in the Original Petitions and are the appellants in these appeals. In O.P.No.2140/81 the challenge is to an order passed by the Labour Court, Ernakulam in an industrial dispute between the petitioner in the Original Petition and the 2nd respondent therein, the Hindustan Machine Tools Ltd., Kalamassery concerning the termination of service of the workman concerned. It was contended by the workman that his service was terminated without valid reasons and therefore he was liable to be reinstated with all benefits. This was met by the management by reference to Clause 19(4) of the Certified Standing Orders applicable to the management's establishments. That clause provides for loss of lien by a workman by its operation on consecutive absence for a period of 8 days without leave. The Labour Court took the view that no termination as such was involved and therefore the question of retrenchment did not arise. It was found to be only a cessation of the lien by operation of the provisions of the Standing Order. This was challenged in the Original Petition by the workman concerned. In O.P.No.6276/81 from out of which the other appeal arises the challenge by the petitioner was to an order Ext.P3 passed by the General Manager of United Electrical Industries Ltd., a Government owned Company. There again the Company took the view that the lien of the workman terminated and he was off from the rolls with effect from 14.5.1981 on account of the fact that he had overstayed the leave for more than 8 days and therefore under Clause 15(c) of the Standing Orders his lien had to be cut off.

3. In both these cases the question the learned single Judge had to decide was whether the consequence of termination of service arising by reason of the operation of the Certified Standing Order would be a termination falling within the scope of the term 'retrenchment' under the Industrial Disputes Act. The learned single Judge held that it would be and that is the view challenged in these appeals.

4. As early as in the decision in L. Krishnan and Ors. v. The Divisional Personal Officer, Southern Railway and Anr. 1972-II L.L.J. 568 a Division Bench of this Court had expressed the view that the definition of the term 'retrenchment' was wide enough to take within its scope any termination except when it was by way of action for misconduct. That view was not endorsed by a Full Bench of this Court in Robert D'Souza v. Southern Railway 1979-I L.L.J. 211. Though this Court noticed the decisions in State Bank v. N.S. Money 1976-I L.L.J. 478 and Hindustan Steel v. Labour Court 1977-I L.L.J. 1, this Court took the view that the definition of 'retrenchment' had to be read in the light of the accepted denotation of the word and as such it can have no wider meaning than the ordinary

connotation of the said expression, namely the discharge of surplus labour or staff by the employer for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action. The decision of this Court was noticed by the Supreme Court in the decision in Santhose Gupta v. State Bank of Patiala 1980-II L.L.J. 72 and was overruled. The decision of the Full Bench itself was subject of an appeal before the Supreme Court and on appeal the decision was reversed by the decision in L. Robert D'Souza v. The Executive Engineer, Southern Railway and Anr. 1982-I L.L.J. 330.

5. The case in the State Bank of India v. Shri N. Sundara Money (supra) was a case of termination of services of a person on the expiry of the period of appointment. It was contended in that case that when the order of appointment carried the consequence of automatic cessation of service, the period of employment works itself out of efflux of time and that such cases are outside the concept of 'retrenchment'. Dealing with this contention Justice Krishna Iyer speaking for the Bench said:

'Termination...for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term.... Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced.

The contention before us that where termination, as a consequence of loss of lien by the operation of a Standing Order, did not depend on any act on the part of the employer it would not be a retrenchment within the meaning of Industrial Disputes Act, is answered by the decision of the Supreme Court just now adverted to. Standing Orders really represent the terms and conditions governing the employees in the matter of employment and the Industrial Employment (Standing Orders) Act, 1946 in providing for certification of such Standing Orders under Section 5 of the Act is really a regulation of the scope of such Standing Orders. That is evidently intended to effect a supervision over the terms and conditions of service that the employer may choose to impose on the employees, regard being had to the fact that the employer is in a dominant position to dictate his terms to his employees at the time of entry into service, the labour surplus in this country being what it is. When the Standing Orders are so certified they bind the parties as terms and conditions governing the employment and cessation of service on the operation of such terms can in no way be different from the cessation of service under the terms and conditions of the contract of employment. That apart, even then there is termination for some reason. The narrow or restricted meaning sought to be given to the term 'termination' as calling for a positive voluntary act by the employer of passing an order putting an end to the service of the employee is not warranted. The term takes in all cases where there is the factum of termination. Of course certain category of cases could be exempt from the scope of 'termination' as pointed out by the Supreme Court in the decision in L. Rober D'Souza v. The Executive Engineer, Southern Railway and Anr. (supra). Reference may be made in this context to paragraph 6 of the judgment where the court sums up thus:

Therefore, we adopt as binding the well settled position in law that if termination of service of workman is brought about for any reason whatsoever it would be retrenchment except if the case

falls within any of the excepted categories, i.e. (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) voluntary retirement of the workman; (iii) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; (iv) or termination of the service on the ground of continued ill-health. Once the case does not fall in any of the excepted categories the termination of service even if it be according to automatic discharge from service under agreement would nonetheless be retrenchment within the meaning of expression in Section 2(oo).

In this view we see no reason to come to a decision different from that taken by the learned single Judge. The case of the petitioners in both the Original Petitions that they have been retrenched and such retrenchments have not been in accordance with the provision of the Industrial Disputes Act has been rightly upheld by the learned single Judge and that does not call for interference in appeal. The counsel for the appellant in Writ Appeal No. 194/82 submits that it is open to him either to treat the services of an employee who has absented himself for more than the requisite period as terminated or to take disciplinary action and he having chosen to treat the services as terminated is not precluded from taking disciplinary action. This is not a matter on which we are expected to speak at all. We need only consider the validity of the termination order. No other question arises.

6. The learned Counsel for the appellants in both these Writ Appeals make oral applications for certificate for leave to appeal to the Supreme Court. It is submitted by counsel for the appellant in Writ Appeal No. 132/82 that it is not refuted that the question though covered by decision of the Supreme Court is now again before the Supreme Court for consideration by a larger Bench. In this view we certify that a substantial question of law of general importance which needs to be decided by the Supreme Court arises in these cases and we grant leave in both the cases.