Supreme Court of India
Hindustan Steel Ltd vs The Presiding Officer, Labour ... on 15 September, 1976
Equivalent citations: 1977 AIR 31, 1977 SCR (1) 586
Author: A Gupta
Bench: Gupta, A.C.

PETITIONER:
HINDUSTAN STEEL LTD.

Vs.

RESPONDENT:
THE PRESIDING OFFICER, LABOUR COURT, ORISSA AND ORS.

DATE OF JUDGMENT15/09/1976

BENCH:
GUPTA, A.C.
BENCH:
GUPTA, A.C.
CHANDRACHUD, Y.V.
GOSWAMI, P.K.

CITATION:
1977 AIR 31 1977 SCR (1) 586
1976 SCC (4) 222
CITATOR INFO :
F 1980 SC1219 (12,13)
RF 1980 SC1896 (153)
RF 1981 SC 422 (3)
RF 1981 SC1253 (8)
E 1982 SC 854 (5,6)
D 1983 SC 865 (6)
R 1983 SC1320 (8,9,11)
R 1984 SC 500 (2)
E 1990 SC1808 (5)

ACT:
Industrial Disputes Act 1947--Sec. 2(00)--Meaning of retrenchment---Can termination of service by efflux of time covered by the expression retrenchment.

HEADNOTE:
The respondents were employed as Head Time Keepers for a period of 3 years. Pursuant to an alleged policy to stream-line the organisation and to affect economies wherever possible, the appellant chose not to renew the contracts of service of the Head Time Keepers. There was no order terminating their services. According to the appellant the termination was automatic on the expiry of the contractual

period of service. The respondents raised an industrial disputs which was referred by the Government of Orissa to the Labour Court. The Labour Court vacated the orders of termination and held that they were entitled to reinstatement with continuity of service and full back wages. The Labour Court came to the conclusion:

(1) that the respondents were retrenched without complying with the provisions of section 25F of the Industrial Disputes Act and, therefore, retrenchment was contrary to law.

(2) The termination was as a result of unfair labour practice adopted by the appellant employer and was not bonafide.

(3) It was not proved that the respondents had alternative employment after they were released from service.

The appellant challenged the award by filing a Writ Petition in the Orissa High Court and contended:

(1) That the services of the, respondents came to an end by efflux of time and that it was not a case of retrenchment.

(2) That it was for the workmen to prove that they had tried to minimise their losses by obtaining employment elsewhere.

(3) The Labour Court erred in awarding full back wages to the respondents without satisfying himself that they had been employed.

The High Court over-ruled the above contentions and dismissed the Writ Petition.

In an appeal by Special Leave the appellant contended: (1) that the services of the respondents came to an end by efflux of time and that such termination of service did not fall within the definition of retrenchment in section 2(00) of the Industrial Disputes Act.

(2) That the present appeal is covered against the appellant by the decision of this Court in the State of Bank of India v.N. Sundara Money but the said decision was contrary to an earlier decision of a larger Bench in the case of Hari Prasad Shiv Shankar Shukla.

Dismissing the appeal,

Held: Section 2(00) which defines retrenchment makes it clear that the retrenchment means the termination by the employer of service of a workman for any reasons whatsoever. Under 8. 25F(a) no workman who has been in continuous

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service for not less than one year under an employer can be retrenched unless he has been given one month's notice or wages in lieu thereof. A proviso to section 25F(a) says that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service. The proviso would be quite unnecessary if the retrenchment as defined by section 2(00) was intended not to

include termination of service by efflux of time in terms of an agreement between the parties. [589B-H, 590A]

2. Hari Prasad Shukla's case does not run counter to the decision in the case of State Bank of India. In that case what this Court held was that termination of service on account of the cessation of the industry itself in a bona-fide closure or discontinuance of his business by the employer does not amount to retrenchment-E][590B-

State Bank of India v.N. Sundara Money, [1976(3) SCR and Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor [1956] Union S.C.R. 872 ; followed Hariprasad Shivashankar Shukla v. A.D. Divikar, [1957] S.C.R. 121; explained.

3. In the Writ petition filed by the appellant in the High Court the finding that the respondents had no alternative employment was not challenged. The question of mitigation of loss was not raised before the Labour Court. The High Court, therefore, rightly refrained from exercising its discretionary jurisdiction in favour of the employer. [590 G-H, 591A-B]

JUDGMENT:

CIVIL APPELLATE JURSDICTION: Civil Appeal No. 1580 of 1970.

Appeal by Special Leave from the Judgment and Order dated 14-8-69 of the Orissa High Court in O.J.C. No. 21/65. L.N. Sinha, Sol. Genl. of India, Santosh Chatterjee, G.S. Chatterjee and D.P. Mukherjee; for the Appellant.

P.S. Khera; for Respondent No. 4.

Gobind Das, (Mrs.) S. Bhandare, M.S. Narasimhan, A.K. Mathur and A.K. Sharma; for Respondent No. 5. B.P. Singh and A.K. Srivastava; for Respondent No. 6. The Judgment of the Court was delivered by GUPTA, J. Respondents Nos. 3, 4 and 5 had been employed as Head Time Keepers in the Rourkela Unit of Hindustan Steel Limited, appellant herein. The third and the fourth respondents were appointed on September 24, 1959 and September 14, 1959 respectively, each for a period of three years. The fifth respondent was also appointed for a period of three years from July 15, 1957 but as Time Keeper, not Head Time Keeper. In his case the period was extended after the expiry of three years from time to time till October 15,1962. In the meantime he had been promoted from Time Keeper to Head Time Keeper with effect from November 3, 1960. Pursuant to an alleged policy to "streamline the organisation and to effect economies wherever possible", the appellant chose not to renew the contracts of service the Head Time Keepers who were eight in number including these three respondents. There was no order terminating their services;

6---1234SCI/76 according to the appellant the termination was automatic on the expiry of the contractual period of service. The afore- said three respondents raised an industrial dispute through

their Union, respondent No. 6, Rourkela Mazdoor Sabha. The dispute whether the termination of the services of the three respondents was justified and, if not, to what relief they were entitled, was referred by the Government of Orissa for adjudication to the Labour Court of Orissa, Bhubaneswar. The Presiding Officer of the Labour Court by his award dated December 12, 1964 vacated the orders of termination passed against these three respondents and held that they were entitled to "reinstatement with continuity of service" and also to "full wages for the period between the date of their release from service and the date or dates of their rein- statement". The award is based on the following findings:

(i) the three respondents had been retrenched from employment, and the requirements of section 25F of the Industrial Disputes Act not having been satisfied, the retrenchment was contrary to law;

(ii) in terminating the services of these employees the management had adopted unfair labour practice and the action of the employer was not bonafide; and that.

(iii) it had not been proved that they had any alternative employment after they were released from service.

The appellant challenged the award by filing a writ petition in the Orissa High Court. It was contended before the High Court that the services of these employees had come to end by efflux of time, that the management had not terminated their services and as such these were not cases of retrench- ment. Another submission made on behalf of the management was that the employees not having proved that they had made efforts to minimize their losses during the period of unemployment, the award for payment of full back wages was erroneous, The High Court overruled both the contentions and dismissed the writ petition. In this appeal by special leave the appellant questions the correctness of the deci- sion of the High Court.

The main question in this appeal is whether the three respondents had been retrenched by their employer as found by the Labour Court. If these were cases of retrenchment, the order of reinstatement made by the Labour Court was obviously a valid order as, admittedly, the condition precedent to the retrenchment of workmen laid down in section 25F of the Industrial Disputes Act had not been satisfied. The contention raised on behalf of the appellant both here and in the High Court was that the services of the three respondents came to an end by efflux of time and that such termination of service did not fall within the defini- tion of retrenchment in section 2(00) of the Industrial Disputes Act. The Solicitor General appearing for the appellant frankly conceded that this appeal was covered by a recent decision of this Court, State Bank of India v.N. Sundara Money,(1) and the decision 1976(3) S.C.R.

was against the contention of the appellant. He however submitted that this decision which was rendered by a Bench of three Judges was in apparent conflict with an earlier decision of this Court, Hariprasad Shivshankar Shukla v.A.D. Divikar, (1) which was by a larger Bench and that Sundarn Money's case therefore required reconsideration. Retrenchment has, been defined in section 2(00) of the Industrial Disputes Act as follows:

"2. (00). "retrenchment" means the termina- tion by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by away of disciplinary ac- tion, but does not include--

(a) voluntary retirement of the workman; or

(b) 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; or

(c) termination of the service of a workman on the ground of continued ill-health;"

Analysing this definition in State Bank of India v.N. Sun- darn Money, (supra) this Court held:

"Termination.. for any reason whatsoever are the key words. Whatever the reason, every termina- tion spells retrenchment. So the sole question is has the employee's service been terminated ? .. 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.

..... an employer terminates employment not merely by passing an order as the service runs. He can, .do so by writing a composite order, one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A preemp- tive provision to terminate is struck by the same vice as the post-appointment termination." This decision, as conceded by the Solicitor General, goes against the contention of the appellant and is conclusive on the main question that arises for consideration in this appeal. It may also be noted that section 25F(a) which lays down that no workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer unless he has been given one month's notice or wages in lieu of such notice, has a proviso which says that "no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termi- nation of service".

(1) [1957] S.C.R. 121.

Clearly, the proviso would have been quite necessary if retrenchment as defined in section 2(00) was intended not to include termination of service by efflux of time in terms of an agreement between the parties. This is one more reason why it must be held that the Labour Court was right in taking the view that the respondents were retrenched con- trary to the provisions of section 25F.

In Hariprasad Shivshankar Shukla v.A.D. Divikar, (supra) to which the Solicitor General referred, one of the ques- tions that arose for decision was whether the definition of retrenchment in section 2(00) goes "so far beyond the ac- cepted notion of retrenchment as to include the termination of service of all workmen in an industry when the industry itself ceases to exist on a bonafide closure or discontinu- ance of his business by the employer ?" The question was answered in the negative on the authority of an even earlier case, Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor

Union,(1) which held that "retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the stall or the force is discharged as surplusage and the termination of services of all the workmen as a result of the closure of the busi- ness cannot therefore be properly described as retrench- ment". Following Pipraich Sugar Mills' case it was held in Hariprasad Shivshankar Shukla v. A. D. Divikar (supra) that the words "for any reason whatsoever" used in the definition would not include a bonafide closure of the whole business because "it would be against the entire scheme of the Act to give the definition clause relating to retrench- ment such a meaning as would include within the definition termination of service of all workmen by the employer when the business itself ceases to exist". On the facts of the case before us, giving full effect to the words "for any reason whatsoever" would be consistent with the scope and purpose of section 25F of the Industrial Disputes Act, and not contrary to the scheme of the Act. We do not find anything in Hariprasad's case which is inconsistent with what has been held in State Bank of India v.N. Sundara Money (supra).

Another point made on behalf of the appellant was that the Presiding Officer of the Labour Court was wrong in awarding full back wages to the respondents without satisfy- ing himself that they had been unemployed after they were released from service by the appellant and, further, that they had taken all reasonable steps to mitigate their losses consequent on their retrenchment. The Labour Court has found that it had not been proved that the respondents had any alternative employment. In the writ petition filed by the appellant in the High Court, the finding that the re- spondents had no alternative employment was not challenged. From the judgment of the High Court it appears that the submission on the propriety of awarding full back wages to the respondents was confined to the ground that the respond- ents had not proved that they had tried to mitigate their losses during the period of unemployment. In the special leave petition also what has been urged is that the High Court should have held that the respondents were not enti- tled to full back wages unless they succeeded in proving that they (1) [1956] S.C.R. 872.

tried to secure alternative employment but failed. The Labour Court awarded full back wages to the respondents on the finding that they had been illegally retrenched. It does not appear that the question of mitigation of loss for deprivation of employment had at all been raised before the Labour Court. The High Court therefore refrained from exercising its "discretionary jurisdiction in favour of the employer" and proposed not to "deprive the workmen of the benefit they had been found entitled to by the Presiding Officer". That the respondents were unemployed cannot now be disputed. In these circumstances the High Court was justified, in our opinion, in refusing to interfere on this point.

The appeal fails and is dismissed with costs.

P.H.P. Appeal dismissed.