Supreme Court of India
Workmen Of M/S Firestone Tyre & ... vs Firestone Tyre & Rubber Company on 13 February, 1976
Equivalent citations: 1976 AIR 1775, 1976 SCR (3) 369
Author: N Untwalia
Bench: Untwalia, N.L.

PETITIONER:
WORKMEN OF M/S FIRESTONE TYRE & RUBBER CO.OF INDIA (P) LIMIT

Vs.

RESPONDENT:
FIRESTONE TYRE & RUBBER COMPANY

DATE OF JUDGMENT13/02/1976

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
KRISHNAIYER, V.R.

CITATION:
1976 AIR 1775 1976 SCR (3) 369
1976 SCC (3) 819

ACT:
Lay-off-Meaning of-Section 2(kkk) of the Industrial Disputes Act (Act XIV of 1947), 1947.
Lay-off-Right of the management of an Iudsustrial Establishment under the Industrial Disputes Act (Act XlV of 1947), 1947, to lay-off workmen-Section 2(kkk) 25A 25B(2)(i) and 25C of the Act Scope of-Effect of s. 25.j.
Compensation-Lay-off compensation-Whether laid-of workmen who do not come under Chapter VA of the Industrial Disputes Act 1947 by virtue of s. 25A are entitled to any compensation.
Industrial Disputes Act (Act XIV of 1947), 1947-Section 10(1), 33(c)(2), powers of the tribunal court to award layoff compensation.

HEADNOTE:
The respondent-company manufacturing tyres in Bombay, due to the general strike in its factory between the period 3rd March 1967 and 16th May 1967 and again from 4th October 1967 and due to the consequent short supply of tyres had to lay-off 17 out of its 30 workmen in the Delhi distribution office and also some out of its 33 workmen in its Madras distribution office. The workmen in the Delhi and Madras offices were called back to duty on 22nd April 1968 and 29th

April 1968 respectively. The workmen were not given their wages or compensation for the period of lay-off. An industrial dispute was raised and referred to the tribunal by the Delhi Administration even when the lay-off was in operation. The Presiding officer of the Additional Industrial Tribunal, Delhi held that the workmen were not entitled to any layoff compensation. The workmen in Madras filed petitions under s. 33C(2) of the Industrial Disputes Act for computation of their wages for the period of their lay-off. The Presiding officer of the Additional Labour Court, Madras, holding that the lay-off was justified, dismissed their applications.

on appeal to this Court by special leave,

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HELD: (I) The simple dictionary meaning according to the concise oxford Dictionary of the term "lay-ofF' is "period during which a workman is temporarily discharged". Lay-off means the failure, refusal or inability of employer on account of contingencies mentioned in cl. (kkk) of s. 2 of the Industrial Disputes Act, 1947, to give employment to a workman whose name is borne on the Muster Rolls of his Industrial Establishment. It has been called a temporary discharge of the workmen or a temporary suspension of his contract of service. Strictly speaking, it is not so. It is merely a fact of temporary unemployment of the workman in the work of the lndustrial Establihment. Mere refusal or inability to give employment to the workman when he reports for duty on one or more grounds mentioned in cl. (kkk) of s. 2 is not a temporary discharge of the workman. [372A, 374A, B, G]

Gaya Cotton & Jute Mills Ltd. v. Gaya Cotton & lute Mills Labour Union [1952] II Labour Law Journal 37, referred to.

(2)(i) That the power to lay-off a workman is inherent in the definition in cl. (kkk) of s. 2 is not correct, since no words in the definition clause to indicate the conferment of any power on the employer to lay-off a workman can be found. His failure or inability to give employment, by itself militates against the theory of conferment of power. No section in Chapter VA in express language or by necessary implication confers any power, even on the management of the Industrial Establishment to which the relevant provisions are applicable, to lay-off a workman. There is no provision in the Act specifically providing that an employer would be entitled to lay-off his workmen

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for the reasons prescribed by s. 2 (kkk). Such a power, therefore, must be found out from the terms of contract of service or the Standing orders governing the Establishment. [374 B-G]

(ii) In the instant case, the number of workmen being only 3, there being no Standing orders certified under the Industrial Employment (Standing orders) Act (Act 20 of

1946), 1946, and there being no contract of service conferring any such right of lay-off, the inescapable conclusion is that the workmen were laid-off without any authority of law or the power in the management under the contract of service. [374 G-H]

The Management of Hotel Imperial New Delhi & others v. Hotel Workers Union [1960] 1 S.C.R. 476 and V. P. Gindroniya v. State of Madhya Pradesh & ors. [1970] 3 S.C.R. 448, referred to.

Veiyra (MA) Fernandez (CP.) and another [1956] 1 Labour Law Journal. 547, reversed.

Workmen of Dewan Tea Estate and ors. v. The Management [19641 S S.C.R. 548, applied.

Sanghi Jeevaraj Ghewar Chand & ors v. Secretary Madras Challies Grains Kirana Merchants Workers Union and Anr. [1969] 1 S.C.C. 366, distinguished.

(3) If the terms of a contract of service or the statutory terms engrafted in the Standing orders do not give the power to lay-off to the employer, the employer would be bound to pay compensation for the period of lay-off which ordinarily and general would be equal to the full wages of the concerned V workman. If, however, the terms of employment confer a right of lay-off on the management then in the case of an Industrial Establishment which is governed by Chapter VA, compensation will be payable in accordance with the provisions contained therein. But compensation or no compensation will be payable in the case of an Industrial Establishment to which the provisions of Chapter VA do not apply and it will be so as per the terms of employment. [377-B-D]

Kanhaiya Lal Gupta v. Ajeet Kumar Dey and others [1967] II Labour Law Journal. 761 and Steel and General Mills Co. Ltd v Additional District judge Rohtak and others [1972] 1 Labour Law Journal, 2847 approved.

K. T Rolling Mills Private Ltd. and another v. M R Meher and others A.I.R. 1963 Bombay 146. reversed.

(4) In a reference under s. 10(l) of the Act. it is open to the tribunal or court to award compensation which may not be equal to the full amount of basic wages and dearness allowance. But no such power exists in the Labour Court under s. 33C(2) of the Act. Only the money due has to be quantified. If the lay-off could be held to be in accordance with the terms of contract of service. no compensation at all could be allowed under s. 33C(2) of the Act, while in the reference some compensation could be allowed. [378-B-Cl

[In the instant case as regards the workmen in the Delhi case. the court held 75% of the basic wages and dearness allowance would be the adequate compensation for the lay-off period.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2307 of (Appeal by Special leave from the Award dated the 1st April 1969 of the Addl. Industrial Tribunal, Delhi in I. D.- No. 83 of 1968) and Civil Appeals Nos. 1857-1859/70. (Appeals by Special Leave from the Judgment and order dated the 17th November 1969 of the Addl. Labour Court, Madras in claim Petition Nos. 627 and 629 of 1968).

M. K. Ramamurthi and Jitendra Sharma and Janardan Sharma, for the appellants in both the appeals.

S. N. Andley, (Rameshwar Nath and B. R. Mehta in CAs 1857- A 59/70) for respondents in both the appeals.

The Judgment of the Court was delivered by UNTWALIA, J.-As the main question for determination in these appeals by special leave is common, they have been heard together and are being disposed of by this judgment.

Civil Appeal No. 2307 of 1969 The respondent company in this appeal has its Head office at Bombay. It manufactures tyres at its Bombay factory and sells the tyres and other accessories in the markets throughout the country. The company has a Distribution office at Nicholson Road, Delhi. There was a strike in the Bombay factory from 3rd March, 1967 to 16th May, 1967 and again from 4th October, 1967. As a result of the strike there was a short supply of tyres etc. to the Distribution office. In the Delhi office, there were 30 employees at the relevant time. 17 workmen out of 30 were laid-off by the management as per their notice dated the 3rd February, 1968, which was to the following effect:

> "Management is unable to give employment to the following workmen due to much reduced production in the company's factory resulting from strike in one of the factory departments.
>
> These workmen are, therefore, laid-off in accordance with law with effect from 5th February, 1968."

The lay-off of the 17 workmen whose names were mentioned in the notice was recalled by the management on the 22nd April, 1968. The workmen were not given their wages or compensation for the period of lay-off. An industrial dispute was raised and referred by the Delhi Administration on the 17th April, 1968 even when the layoff was in operation. The reference was in the following terms:

> "Whether the action of the management to 'lay-off' 17 workmen with effect from 5th Feb. 1968 is illegal and/or unjustified, and if so, to what relief are these workmen entitled?

The Presiding officer of the Additional Industrial Tribunal, Delhi has held that the workmen are not entitled to any lay-off compensation. Hence this is an appeal by their Union.

We were informed at- the Bar that some of the workmen out of the batch of 17 have settled their disputes with the management and their cases were not represented by the Union in this appeal. Hence this judgment will not affect the compromise or the settlement arrived at between the management and some of the workmen.

The question which for our determination is whether the management had a right to lay-off their workmen and whether the workmen are entitled to claim wages or compensation.

The simple dictionary meaning according to the Concise oxford Dictionary of the term 'lay-off' is "period during which a workman is temporarily discharged." The term 'lay- off' has been well known in the industrial arena. Disputes were often raised in relation to the 'lay-off' of the workmen in various industries. Sometime compensation was awarded for the period of lay-off but many a time when the lay-off was found to be justified workmen were not found entitled to any wages or compensation. In Gaya Cotton & Jute Mills Ltd. v. Gaya Cotton & Jute Mills Labour Union(l) the standing order of the company provided that the company could under certain circumstances "stop any machine or machines or department or departments, wholly or partially for any period or periods without notice or without compensation in lieu of notice." In such a situation for the closure of the factory for a certain period, no claim for compensation was allowed by the Labour Appellate Tribunal of India. We are aware of the distinction betwen a lay-off and a closure. But just to point out the history of the law we have referred to this case.

Then came an amendment in the Industrial Disputes Act, 1947 -hereinafter referred to as the Act-by Act 43 of 1953. In section 2 clause (kkk) was added to say:

> "lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched Explanation-Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause:
>
> Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day: Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day.'"
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> (1) [1952] II Labour Law Journal, 37.

By the same Amending Act, Chapter VA was introduced in the Act to provide for lay-off and retrenchment compensation. Section 25A excluded the Industrial Establishment in which less than 50 workmen on an average per working day had been employed in the preceding calendar month from the application of Sections 25C to 25E. Section 25-C provides for the right of laid-off workmen for compensation and broadly speaking compensation allowable is 50% of the total of the basic wages and dearness allowance that would have been payable 13 to the workman had he not been laid-off. It would be noticed that the sections dealing with the matters of lay-off in Chapter VA are not applicable to certain types of Industrial Establishments. The respondent is one such Establishment because it employed only 30 workmen at its Delhi office at the relevant time. In such a situation the question beset with difficulty of solution is whether the laid-off workmen were entitled to any compensation, if so, what'?

> We shall now read section 25-J. It says: "(1) The provisions of this Chapter shall have effect not withstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing orders) Act, 1946:

Provided that where under the provisions of any other Act or Rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to layoff and retrenchment shall be determined in accordance with the provisions of this Chapter."

The effect of the provisions aforesaid is that for the period of lay-off in an Industrial Establishment to which the said provisions apply, compensation will have to be paid in accordance with section 25C. But if a workman is entitled to benefits which are more favourable to him than those provided in the Act, he shall continue to be entitled to the more favourable benefits. The rights and liabilities of employers and workmen in so far as it relate to lay-off and retrenchment, except as provided in section 25J, have got to be determined in accordance with the provisions of Chapter VA.

The ticklish question which does not admit of an easy answer is as to the source of the power of management to lay-off a workman. The employer has a right to terminate the services of a workman. Therefore, his power to retrench presents no difficulty as retrenchment means the termination by the employer of the service of a workman for any reason whatsoever as mentioned in clause (oo) of section 2 of the Act. But lay-off means the failure, refusal or inability of employer on account of contingencies mentioned in clause (kkk) to give employment to a workman whose name is borne on the Muster Rolls of his Industrial Establishment. It has been called a temporary discharge of the

workman or a temporary suspension of his contract of service. Strictly speaking, it is not so. It is merely a fact of temporary unemployment of the workman in the work of the Industrial Establishment. Mr. S. N. Andley submitted with reference to the explanation and the provisions appended to clause (kkk) that the power to lay-off a workman is inherent in the definition. We do not find any words in the definition clause to indicate the conferment of any power on the employer to lay-off a workman. His failure or inability to give employment by itself militates against the theory of conferment of power. The power to lay-off for the failure or inability to give employment has to be searched somewhere else. No section in the Act confers this power.

There are two small matters which present some difficulty in the solution of the problem. In explanation (1) appended to sub-section (2) of section 25B the words used are:

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

indicating that a workman can be laid-off under the Industrial Disputes Act also. But it is strange to find that no section in Chapter VA in express language or by necessary implication confers any power, even on the management of the Industrial Establishment to which the relevant provisions are applicable, to lay-off a workman. Clause (ii) of section 25E says:

> "No compensation shall be paid to a workman who has been laid-off-
>
> If he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day."

This indicates that there is neither a temporary discharge of the work man nor a temporary suspension of his contract of service. Under the general law of Master and Servants an employer may discharge an employee either temporarily or permanently but that cannot be without adequate notice. Mere refusal or inability to give employment to the workman when he reports for duty on one or more grounds mentioned in clause (kkk) of section 2 is not a temporary discharge of the work man. Such a power, therefore, must be found out from the terms of contract of service or the Standing orders governing the establishment. In the instant case the number of workmen being only 30, there were no Standing orders certified under the Industrial employment (Standing orders) Act, 1946. Nor was there any term of contract of service conferring any such right of lay-off. In such a situation the conclusion seems to be inescapable that the workmen were laid-off without any authority of law or the power in the management under the contract of service. In Industrial Establishments where there is a power in the management to lay-off a workman and to which the provisions of Chapter VA apply, the question of payment of compensation will be governed and determined by the said provisions. Otherwise Chapter VA is not a complete Code as was argued on behalf of the respondent company in the matter of payment of lay-off compensation. This case, therefore, goes out of Chapter VA. Ordinarily and generally the workmen would be entitled to their full wages but in a reference made under section 10(l) of the Act, it is open to the Tribunal or the Court to award a lesser sum finding the justifiability of the lay-off. `-

In The Management of Hotel Imperial, New Delhi & others v. Hotel Workers' Union(l) in a case of suspension of a workman it was said by Wanchoo, J. as he then was, delivering the judgment on behalf of the Court at page 482:

> "Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work. he will have to pay wages during the so-called period of suspension. Where, however. there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that ` the servant is not bound to render service and the master is not bound to pay."

The same principle was reiterated in V. P. Gindroniya v. State of Madhya Pradesh & Ors.(2) We have referred to the suspension cases because in our opinion the principles governing the case of lay-off are very akin to those applicable to a suspension case.

In Veiyra (M. A.) v. Fernandez (C. P.) and another(3) a Bench of the Bombay High Court opined that under the general law the employer was free to dispense with the services of a workman but under the Industrial Disputes Act he was under an obligation to lay him off; that being so, the action of lay-off by the employer could not . be questioned as being ultra vires. We do not think that the view expressed by the Bomby High Court is correct.

There is an important decision of this Court in Workmen of Dewan Tea Estate and ors. v. The Management(4) on which reliance was placed heavily by Mr. M. K. Ramamurti appearing for the appellant and also by Mr. Andley for the respondent. One of the question for consideration was whether section 25C of the Act recognises the common law right of the management to declare a lay-off for reasons other than those specified in the relevant clause of the Standing order. While considering this question, Gajendragadkar, J. as he then was. said at page 554:

> "The question which we are concerned with at this stage is whether it can be said that s.25C recognises a common law (1) [1960] 1 S.C.R. 476. (2) [1970] 3 S.C.R. 448. (3) [1956] I Labour Law Journal, 547. (4) []964] S S.C.R. 548.
>
> right of the industrial employer to lay off his workmen. This question must, in our opinion, be answered in the negative. When the laying off of the workmen is referred to in s. 25C, it is the laying off as defined by s. 2 (kkk) and so, workmen who can claim the benefit of s. 25C must be workmen who are laid off and laid off for reasons contemplated by s. 2 (kkk); that is all that s. 25C means.

Then follows a sentence which was pressed into service by the respondent. It says:

> "If any case is not covered by the Standing orders, it will necessarily be governed by the provisions of the Act, and layoff would be permissible only where one or the other of the factors mentioned by s. 2 (kkk) is present, and for such lay off compensation would be awarded under s. 25C."

In our opinion, in the context, the sentence aforesaid means that if the power of lay-off is there in the Standing orders but the grounds of lay-off are not covered by them, rather, are governed by the provisions of the Act, then lay-off would be permissible only on one or the other of the factors mentioned in clause (kkk). Subsequent discussions at pages 558 and 559 lend ample support to the appellant's argument that there is no provision in the Act specifically providing that an employer would be entitled to lay-off his workmen for the reasons prescribed by section 2 (kkk).

Mr. Andley placed strong reliance upon the decision of this Court in Sanjhi Jeevraj Ghewar Chand & Ors. v. Secretary, Madras Chillies, Grains Kirana Merchants Workers' Union & Anr.(l) The statute under consideration in this case was the Payment of Bonus Act, 1965 and it was held that the Act was intended to be a comprehensive and exhaustive law dealing with the entire subject of bonus of the persons to whom it should apply. The Bonus Act was not to apply to certain Establishments. Argument before the Court was that bonus was payable de hors the Act in such establishment also. This argument was repe11ed and in that connection it was observed at page 381:

> "It will be noticed that though the Industrial Disputes Act confers substantive rights on workmen with regard to lay off, retrenchment compensation, etc., it does not create or confer any such statutory right as to payment to bonus. Bonus was so far the creature of industrial adjudication and was made payable by the employers under the machinery provided under that Act and other corresponding Acts enacted for ,. investigation and settlement of disputes raised thereunder. There was, therefore, no question of Parliament having to delete or modify item S in the Third Schedule to Industrial Disputes Act or any such provision in any corresponding Act or its having to exclude any right to bonus thereunder by any categorical exclusion in the present case."

And finally it was held at page 385:

> "Considering the history of the legislation, the background and the circumstances in which the Act was enacted, the (1) [1969] I S.C.C. 366.
>
> object of the Act and its scheme, it is not possible to accept A the construction suggested on behalf of the respondents that the Act is not an exhaustive Act dealing comprehensively with the subject-matter of bonus in all its aspects or that Parliament still left it open to those to whom the Act does not apply by reason of its provisions either as to exclusion or exemption to raise a dispute with regard to bonus through Industrial adjudication under the Industrial Disputes Act or other corresponding law."

In a case of compensation for lay-off the position is quite distinct and different. If the term of contract of service or the statutory terms engrafted in the Standing orders do not give the power of lay off to the employer, the employer will be bound to pay compensation for the period of lay-off which ordinarily and generally would be equal to the full wages of the concerned workmen. If, however, the terms of r employment confer a right of lay-off on the management, then, in the case of an industrial establishment which is governed by Chapter VA, compensation will be payable in accordance with the provisions contained therein. But compensation or no compensation will be payable in the case of an industrial establishment to which the provisions of Chapter VA do not apply, and it will be so as per the terms of the employment.

In Kanhaiya Lal Gupta v. Ajeet Kumar Dey and others(l) a learned single Judge of the Allahabad High Court seem to have rightly held that in the absence of any term in the contract of service or in the statute or in the statutory rules or standing orders an employer has no right to lay-off a workman without paying him wages. A learned single Judge of the Punjab and Haryana High Court took an identical view in the case of Steel and General Mills Co. Ltd. v. Additional District Judge, Rohtak and others. (2) The majority view of the Bombay High Court in K. T. Rolling Mills Private Ltd. and another v. M. R. Meher and other(8) that it is not open to the Industrial Tribunal under the Act to award lay-off compensation to workmen employed in an 'Industrial Establishment' to which S. 25-C does not apply, is not correct. The source of the power of the employer to lay-off workmen does not seem to have been canvassed or discussed by the Bombay High Court in the said judgment.

In the case of the Delhi office of the respondent the Tribunal has held that the lay-off was justified. It was open to the Tribunal to award a lesser amount of compensation than the full wages. Instead of sending back the case to the Tribunal, we direct that 75% the basic wages and dearness allowance would be paid to the workmen concerned for the period of lay-off. As we have said above this will not cover the case of those workmen who have settled or compromised their disputes with the management. Civil Appeals 1857-1859 (NL) of 1970 In these appeals the facts are identical to those in the other appeal. There were only 33 employees in the Madras office of the respondent company. Certain workmen were laid- off for identical reasons from the (1) [1967] II Labour Law Journal, 761. (2) [1972] 1 Labour Law Journal, 284.

(3) A.I.R. 1963 Bombay, 146.

5th February, 1968. The lay-off was lifted on the 29th April, 1968. The concerned workmen filed petitions under section 33C (2) of the Act for computation of their wages for the period of lay-off. Holding that the lay-off was justified and valid the Presiding officer of the Additional Labour Court, Madras has dismissed their applications for salary and allowances for the period of lay-off. Hence these appeals.

In a reference under section 10 (1) of the Act it is open to the Tribunal or the Court to award compensation which may not be equal to the full amount of basic wages and dearness allowance. But no such power exists in the Labour Court under section 33C (2) of the Act. only the money due has got to be quantified. If the lay-off could be held to be in accordance with the terms of the contract of service, no compensation at all could be allowed under section 33C (2) of the Act, while,

in the reference some compensation could be allowed. Similarly on the view expressed above that the respondent company had no power to lay-off any workmen, there is no escape from the position that the entire sum payable to the laid-off workmen except the workmen who have settled or compromised, has got to be computed and quantified under section 33C(2) of the Act for the period of lay-off.

For the reasons stated above all the appeals are allowed. In Civil Appeal No. 2307/1969 in place of the order of the Tribunal, an order is made on the lines indicated above. And in Civil Appeals 1857 to 1859/1970 the orders of the Labour Court are set aside and the cases of the appellants are remitted back to that Court for computation and quantification of the sums payable to the concerned workmen for the period of lay-off. There will be no order as to costs in any of the appeals.

S.R Appeals allowed:-
Orders in CA 2307/69

modified : CAs 1857-1859/70 remitted hock to the Tribunal.