Supreme Court of India
Hindustan Steel Works ... vs Hindustan Steel Works ... on 10 February, 1995
Equivalent citations: 1995 AIR 1163, 1995 SCC (3) 474
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
HINDUSTAN STEEL WORKS CONSTRUCTION LIMITED ETC. ETC.

Vs.

RESPONDENT:
HINDUSTAN STEEL WORKS CONSTRUCTION LIMITED EMPLOYEES' UNION

DATE OF JUDGMENT10/02/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SINGH N.P. (J)
SEN, S.C. (J)

CITATION:
1995 AIR 1163 1995 SCC (3) 474
JT 1995 (2) 410 1995 SCALE (1)814

ACT:

HEADNOTE:

JUDGMENT:

1. These two appeals are preferred against the judgment of a Division Bench of the Andhra Pradesh High Court allowing Writ Appeal No. 1 529 of 1984 filed by the Respondent-Union and dismissing Writ Appeal No. 1 528 of 1984 preferred by the Appellant-Management. The matter arises under the Industrial Disputes Act.

2. The appellant-Hindustan Steel Works Construction Limited is a company wholly owned and controlled by the Gov- ernment of India. It is engaged in the construction of industrial and engineering plants both within the country and abroad. Among other works, it had undertaken the construction of a steel plant at Bokaro in the State of Bihar, construction of a superalloy project and a nuclear fuel complex at Hyderabad. It has also undertaken some works at Visakhapatnam. For its Hyderabad projects. it engaged about 230 workmen. These works were completed by January, 1980 except for some very minor works.

3. Apprehending that the workers may be retrenched on the completion of the works at Hyderabad, the respondcnt-Union had a meeting with the Management of the appellant- corporation on September 5, 1979. The minutes of the meeting read as follows:

> "The Union mentioned that there are 230 workers in Hyderabad Unit of HSCL. Even though the work is coming to an end at Hyderabad, they stated that since the company is getting work in Vizag it should be possible for the management to transfer all the 230 workers from Hyderabad to Vim& including those belonging to non-transferable categories. The Union felt that there should not be any difficulty for the Management to agree to this because both Hyderabad and Vizag are in the same State and the number of workers involved is not much.
>
> It was pointed out from the Management's side that to the extent of requirement that will arise immediately at Vizag in the transferable categories, transfer from Hyderabad will be done. However, in case of non-transferable categories, they may have to be retrenched at Hyderabad and re-employed at Vizag if requirements arise there later. The management offered that, from the non- transferable categories, if anyone is suitable for skilled job, selection could be made out of them for the immediate requirement of skilled categories at Vizag in place of recruiting from outside."

4. Accordingly, 130 workers were transferred to Visakhapatnam but the remaining 100 could not be absorbed at any other place. It is not clear from the record - nor does it appear to have been gone into at any stage - whether these 100 workers belong to transferable categories or to non-transferable categories.

5. On March 28, 1981, the appellant issued a notice of retrenchment stating that inasmuch as the construction works undertaken at Hyderabad have come to an end, the workmen as per the annexure to the notice have become surplus and are being retrenched. On the same day, indi-

vidual notices for retrenchment were issued in accordance with Section 25F of the Act making available the retrenchment compensation and one month's pay in lieu of notice.

6. Four writ petitions were filed in the High Court of Andhra Pradesh challenging the said retrenchment. They were dismissed in view of the alternative remedy of reference provided by the statute. By G.O.M.S. No.276 dated April 27, 1982, the Government of Andhra Pradesh referred the following two questions for the adjudication of the Industrial Tribunal, Hyderabad:

> "(1) Whether the demand of Hindustan Steel Works Construction Limited Employees Union Hyderabad, for the absorption of the hundred workmen, retrenched on 28.3.198 1, at Visakhapatnam and other works in the country is justified? If so, to what relief, the workmen are entitled?

> (2)Whether the action of the management in transferring and continuing junior workmen in other works, while retrenching senior workers recruited for the construction works at Hyderabad, is justified? If not, to what relief, the workmen arc entitled?

7. Both the parties led evidence before the Tribunal, after considering which the Tribunal recorded the following findings:

(1)that the appellant is a single undertaking. He several units of the appellant really constitute parts of the same undertaking;

(2)retrenchment of the workmen, even before the completion of works at Hyderabad is unlawful. They should be absorbed in other units;

(3)it also appears that juniors to the retrenched workers were being continued. It is a violation of Section 25-G.

8. On the above findings, the Tribunal directed reinstatement of the said workers (the 100 workers who were before the Tribunal) with full back wages, continuity of service and other consequential benefits.

9. The appellant questioned the award by way of a writ petition in the Andhra Pradesh High Court. It was allowed by a learned Single Judge who found that the establishment at Hyderabad is a separate establishment. The learned Judge held that the fact that some of the workers were transferred from Bokaro to Hyderabad or from Hydrabad to Visakhapatnam does not militate against the Hyderabad unit being a separate undertaking. The Management's right to transfer an employee is distinct from the right of the worker to claim transfer or absorption in another unit, held the learned Judge. He held further that out of the 100 employees, three employees who were transferred from Bokaro stand on a different footing while the remaining ninety seven who were recruited at Hyderabad cannot claim parity with the aforesaid three worker.;. The writ petition was accordingly allowed and the award of the Industrial Tribunal quashed except to the extent of the aforesaid three workers. Two writ appeals were preferred against the said judgment, one by the appellant insofar a.-. it upheld the award with respect to three workers aforesaid and the other by the Union insofar as the judgment set aside the award with re- spect to the remaining ninety seven workmen. In view of the contentions urged before it, the Division Benc held that three questions arose for consideration. The three questions as set out in the impugned judgment are.

> "(1) Whether any Industrial dispute under Section 10 of the Industrial Disputes Act can be raised out of closure of the Establishment? If so, whether the reference is bad? (2)When once it is held that there is a closure of the establishment whether the question of absorption does arise? (3)Whether the establishment at Hyderabad is a separate one? If so, whether the retrenchment on closure Of such establishment is proper or not?

10. The Division Bench found that (1) "there is no closure of company's establishment and, therefore, the management cannot successfully assail the validity of reference on the ground that it does not raise an industrial dispute". The Bench observed, "nowhere the word closure has been used denoting that the establishment at Hyderabad is closed. The word "surplus" used in the notices is the very antithesis to closure". The Bench also held, on the basis of Exhs.D-23 to 27 and W57, that works at Hyderabad were not over by the date of notices of retrenchment. (2) In view of the finding on the first question, the second question does not arise and that "it is incumbent on the. part of the company to absorb workmen sought to be retrenched"; and (3) "there is functional integrality between the workmen at Vizag unit and the units at Hyderabad. The service conditions of the workmen in all the units are uniform. There is unity of employment, control, administration and ownership and so there is functional integrality, which makes the Company as the single undertaking. If that be so, the conclusion which is irresistible, is that the units at Hyderabad are not separate establishment but they are all components of one single establishment. If that be so, the inevitable conclusion is that the provisions enacted in section 25-G of the Act which ordains that, whenever there is a retrenchment in any establishment, the rule of seniority must prevail and govern the situation. The com- pany in our undoubted view has been maintaining zonal seniority list and zone being the base for the inter transfers and promotions of the workmen working in the Southern zone, brought in from out of the said zone, they will have to yield by way of preference to the workmen belonging to the southern zone."

11. Accordingly, the Division Bench set aside the judgment of the learned Single Judge and restored the award of the Industrial Tribunal in full. It is, however, necessary to notice an important distinction between the finding of the Tribunal and the finding of the Division Bench. While the Tribunal held that since all the units of the appellant constitute one single establishment, the retrenched workmen are entitled to be absorbed at Visakhapatnam or at other places, as the case may be, the Division Bench held that since seniority is maintained zone-wise, these retrenched workmen are entitled to be absorbed at Visakhapatnam in preference to the work-men brought from outside the southern zone. It is true that the Tribunal too refers to zonal seniority but it does not restrict the right of absorption to the southern zone.

12. The first question that must be an-

swered is, whether the works at Hyderabad had come to an end? We have been taken through the relevant material. It clearly discloses that both the works had come to a close; only certain very minor works remained to be done which were assigned to private contractors. Indeed, both the workmen and management were acting on the assumption that the works had come to an end. The retrenchment notices say so; the questions referred to the Tribunal are based upon the said assumption. If the works at Hyderabad were not completed, question of absorption of these workmen elsewhere would not have arisen. We, therefore, agree with the management- appellant that the works at Hyderabad had indeed come to a close.

13. The next and important question in this case is whether the units at Hyderabad are independent establishments or are they parts of the larger establishment of the appellant. This question cannot be treated as a pure question of fact. The Industrial Tribunal has taken one view which has been set

aside by the learned Single Judge, whose view in turn has been upset by the Division Bench. It is in these circumstances that we are obliged to go into the said question. The tests relevant in this behalf have been laid down by this Court in a number of decisions. Thou hit is not necessary to refer to all of them, a brief reference to a few of them would be in order.

14.In Management Hindustan Steel v. Workmen (1973 (3) S.C.R.303), this Court made the following observations in the context of Section 25FFF (subsection (2) whereof contains a special provision applicable to undertakings set up for construction of buildings and other construction works):

> "The word undertaking as used in s.25FFF seems to us to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer as was suggested on behalf of the respondent' Even closure or stoppage of a part of the business or activities of the employer %would seem in law to be covered by this sub-section. The question has indeed to be decided on the facts of each case. In the present case the Ranchi Housing Project was clearly a distinct venture undertaken by the appellant and it had a distinct beginning and an end. Separate office was apparently set up for this venture and on the completion of the project or enterprise that undertaking was closed down. The Tribunal has actually so found. Its conclusion has not been shown to be wrong and we have no hesitation in agreeing with its view."

15. In the Workmen of the Straw Board Manufacturing Co. Ltd. v. M/s. Straw Board Manufacturing Company Ltd (1974)(3)S.C.R.703), this Court held:

> "The most important aspect in this particular case relating to closure, in our opinion, is whether one unit has such componential relation that closing of one must lead to the closing of the other or the one cannot reasonably exist without the other. Functional integrality will assume an added significance in a case of closure of a branch or unit. That the R.Mill is capable of functioning in isolation is of very material import in the case of closure. There is bound to be a shift of emphasis in application of various tests from one case to another. In other words, whether independent functioning of the R.Mill can at all be said to be affected by the closing of the S.Mill..... Me fact of the unity of ownership, supervision and control and some other common features, which we have noticed above, do not justify a contrary conclusion on this aspect in the present case. There is considerable force in the submission of Mr.Chitaley that the R.Mill is a different line of business and the closure of the S.Mill has nothing to do with the functioning of the R.Mill. The matter may be absolutely different when in an otherwise going concern or a func- tioning unit some workmen's services were terminated as being redundant or surplus to requirements. That most of the conditions of service of the two Mills were substantially identical can be easily explained by the fact that, being owned by the same employer and the two units being situated in close proximity, it will not be in the interest of the management and peace and well being of the Company to treat the

> employees differently creating heart burning and discrimination. For the same reason, there is no particular significance in this case even in the applica- tion of the standing orders of the Company to the employees of the R.Mill which because of the non-requisite number of employees employed in the latter, is not even required under the law to have separate standing order. It is, in our opinion, a clear case of closure of an independent unit of a company and not a closure of a part of an establishment."

16.This decision was followed in Isha Steel Treatment, Bombay v. Association Of Engineering Workers, Bombay & Anr. (1987 (2) S.C.R.414).

17.It has been held repeatedly that all the tests evolved in the several decisions of this Court need not all be satisfied in every case. One has also to look to the nature and character of the undertaking while deciding the question. The tests evolved are merely to serve as guidelines. Now, let us look at the appellant-company. It is a government company wholly owned and controlled by the Government of India. Its job is to undertake construction works both in India and abroad. The construction works are not permanent works in the sense that as soon as the construction work is over the establishment comes to a to an end at that place. In such a case, functional integrality assumes significance. The nature of the construction work may also differ from work to work or place to place, as the case may be. It is not even suggested by the respondent- Union that there is any functional integrality between the several units or several construction works undertaken by the appellant. It is not suggested that closure of one leads to the closure of others. There is no proximity between the several units/works undertaken by the appellant; they are spread all over India, indeed all over the world. It would thus appear that each of the works or construction projects undertaken by the appellant represent distinct- establishments and did not -constitute units of a single establishment. The Division Bench, however, was influenced by the fact that (i) when the workers are transferred from one unit to other unit they carried their seniority with them; (ii) the orders of appointment say that the employees are liable to be transferred to one place to other; that indeed, forty three out of hundred workers concerned herein were brought to Hyderabad on transfer from other places and

(iii) initially, Hyderabad and Visakhapatnam were under the same administrative control and that when they were separated the workers were not asked to exercise their option to remain in one or the other unit. In our opinion, however, the fact that the Management reserved to itself the liberty of transferring the employees from one place to another did not mean that all the units of the appellant constituted one single establishment. In the case of a construction company like the appellant which undertakes construction works wherever awarded, does that work and winds up its establishment there and particularly where a number of local persons have to be and are appointed for the purpose of a particular work, mere unity of ownership, management and control are not of much significance. Having regard to the facts and circumstances of this case and the material on record, the conclusion is inevitable that the units at Hyderabad were distinct establishments. Once this is so, workmen of the said unit had no right to demand absorption in other units on the Hyderabad units completing their job.

18. Counsel for the parties raised certain questions of law before us with reference to certain provisions in Chapters V. A and V-B of the Act, but in the particular facts and circumstances of this case, we arc not inclined to allow the parties to raise contentions not urged before the High Court. We have confined our attention only to those issues which were urged before and dealt by the High Court.

19. We are told that by virtue of the Tribunal's award, all the hundred workers are being paid wages over the last more than ten years even though there is no work for them to do. The situation is undoubtedly one which calls for rectification.

20. For the above reasons, the appeals are allowed except with respect to three workers concerned in Writ Appeal No. 1528 of 1984 on the file of the High Court of Andhra Pradesh. No costs.

CIVIL APPEAL NOS. 789-90 AND 791-92 OF 1987:

21. These appeals are preferred directly against an award of the Additional Industrial Tribunal, Bangalore in A.I.D.No.48 of 1991 and A.I.D.No.25 of 1983. The special leave petitions were evidently entertained and leave granted in view of the pendency of C.A.GNo.4079-80 of 1985 and C.A.No.41 IS of 1984, as would be eident from this court's order dated March 23, 1987. The first two appeals, C.A.Nos.789-90 of 1987 are preferred by the employees while the other two appeals, C.A.Nos.791-92 of 1987 are preferred by the Management. We shall refer to the workmen as the respondents and the Management as the appellant in these appeals.

22. In the year 1977, the respondents workmen were working at Bokaro Steel City unit of the appellant-corporation. In view of the exigencies of the work at Bokaro, about four hundred workers including 104 respondents were proposed to be transferred to Kudremukh unit in Karnataka and Bhilai unit in Madhya Pradesh. The workers proposed to be transferred were apprehensive that after their transfer to Kudremukh and Bhillai, they may be retrenched. This apprehension was allayed by a circular issued by the Management on November 9, 197 saying that the "rumours that the workers would be retrenched on transfer to Bhillai and Kudremukh..... is baseless".

23. In the year 1980-8 1, about two hundred workers including the respondents herein were transferred to Kudremukh unit. On March 27, 1981, 175 workers including the respondents were retrenched on the ground that they were surplus. On a dispute being raised by the appellants, the Government of Karnataka referred the following question to the Additional Industrial Tribunal, Bangalore for adjudication:

"Is the Management of Hindustan Steel Works Construction Limited, Kudremukh Malleshwara, Chickmaglur - District justified in retrenching 101 workmen with effect from 27.3.1981?"

24. Pending disposal of the said dispute, the respondents applied for interim relief. The Tribunal granted the same at the rate of sixty per cent of their wages with effect from November 1, 1982. That order was challenged by the Management before the High Court of Karnataka. A learned Single Judge, by his order dated April 22, 1983, modified the order of the Tribunal and directed that the

Management shall pay interim relief at the rate of one third of their wages for a period of three months from the month of April, 1983. The order of the learned Single Judge was left undisturbed by the Division Bench.

25. While the dispute was pending before the Tribunal at Bangalore, the Industrial Tribunal, Hyderabad made its award in I.D.No.21 of 1982 (subject of Civil Appeal Nos.4079-80 of 1985). The allowing of a writ petition filed by the Management against the award of the Hyderabad Tribunal and the setting aside of the judgment of the learned Single Judge by the Division Bench of the Andhra Pradesh High Court (-referred to in our order in Civil Appeal Nos.4079-80 of 1985) all took place during the pendency of the present dispute before the Bangalore Tribunal. The workmen filed the copies of the judgment of the Division Bench of the Andhra Pradesh High Court before the Tribunal and asked for a similar relief. The workmen also brought to the notice of the Tribunal the interim orders passed by this court in the aforesaid appeals. By its award dated July 31, 1986, the Tribunal held that though the retrenchment of 104 workmen by the Management was unjustified, the workmen are not entitled to an order of reinstatement in view of the facts and cir- cumstances of the case but only to compensation equal to three months' wages in addition to the retrenchment compensation already paid to them. Paras 35 and 36 of the Tribunal's award, relevant on this aspect, read thus:

> "The last point for consideration would be regarding the nature of the relief that should be granted to the workmen. Normally, if retrenchment is held as invalid, they are entitled to reinstatement with consequential benefits. But, when we the facts of these references, it will be clear that the management will be placed in a predicament and great hardship will be caused if the rule of reinstatement is adhered to. The management has to work up the seniority of all these workmen and their fitment in an appropriate scale at this distance of time. If the different units are facing the burden of excess manpower the reinstatement of these workmen will be an additional burden which should not be normal imposed. Apart from that, it would cause a considerable confusion and unrest amongst all the concerned defeating the very object of Section 250 of the Industrial Disputes Act. In similar cir- cumstances in the workmen of National Radio and Electronics Company Vs- Presiding Office, Labour Court, Writ Petition No. 6334 of 1974, the Karnataka High Court has awarded compensation to the workmen as redressal of their grievances. in the Industrial Chemicals ltd. Vs- Labour Court, Madras, 1977 (ii) LLJO 13 7, it has been held as follows:- "It is settled position of law that once it is found that retrenchment is unjustified and improper it is for the Labour Court to consider what relief the retrenched worker is entitled to. It is open to the labour Court, in exercise of its jurisdiction, to take note of the circumstances, in the particular case and decide not to grant the relief of reinstatement, but grant instead of relief by way of compensation to the workmen. " It follows therefore that, whenever the re- trenchment is held to be unreasonable and improper and if their reinstatement works great hardship on the management, then the Court may grant compensation to them. Hence, the workers in these references are entitled to compensation.

36.For the reasons foregoing, in my opinion, the management has not justified the reasonableness or proprietary of the re- trenchment of these workmen. The retrenched workmen should be awarded a compensation of three months wages each in addition to the retrenchment compensation which is already paid to them."

26. It is this award which is questioned by the workmen as well as the management in these appeals.

27 The appellants have not been able to satisfyous that the several reasons given by the Tribunal for not directing reinstatement of the appellants-workmen are incorrect as a fact or that they are irrelevant or impermissible in law. That the respondent-Corporation is groaning under the weight of surplus and excessive man-power is not denied as a fact; indeed, it is an indeniable fact. The Industrial Tribunal is entitled to take note of the said fact and to mould the relief to suit the justice of the case. In exercise of this court's power under Article 136 of the Constitution, it is not open to us to substitute our opinion for that of the Industrial Tribunal unless we find that the reasons given by it in the paras aforesaid are either incorrect factually or irrelevant or impermissible in law. Since we are not able to say so, these appeals are dismissed. The appeals filed by the Management also fail and are dismissed. No costs. CIVIL APPEAL NO. 4115 OF 1984:

28. This appeals by workmen is preferred against the award of the Labour Court, Mysore dated November 11, 1992.

There are as many as 239 appellants in this appeal. They were recruited locally by the respondent-corporation at Kudremukh and for the purpose of Kudremukh unit. They were retrenched on September 24, 1980. On an industrial dispute being raised by the appellants, the Government of Karnataka referred the following two questions to the Labour Court: "(1) "ether 239 retrenched workmen asstated in the Annexure are justified in demanding reinstatement with back wages and continuity of service? (2) If not, to what other relief the above said workmen are entitled to?'

29. On a consideration of the material placed before it, the Tribunal held that the retrenchment was not legal but having regard to the facts and circumstances of the case, it did not think it appropriate to order reinstatement and other incidental ben- efits. In lieu thereof, it granted compensation equal to the wages of two months in addition to wages of one month already paid exclusive of the retrenchment compensation. Para 44 of the award brings out the reasons for not granting the relief of retrenchment, back wages and continuity of service. It reads:

"44. The worken have contended that senior have been retrenched, though many juniors have been retained. Not a single incidents has been shown as to show was the said junior retained at Kudremukh even after 24-9-1980. If some of the persons who had been already transferred were juniors to these persons, it has been already held that as on 15-9-1980, they were no longer in the service of the 11- Party establishment of Kudremukh and it can not be said that they were still the juniors of these workmen. However, the facts and circumstances of the case make it clear that on 2 points the management is not on a firm ground. The first of them is that the management has not proved that only the seniors were transferred irrespective of the unit seniority or otherwise, though

they had professed to do so in their various meetings with the unions. Secondly, the retrenchment compensation and wages in lieu of one months notice have not been paid either earlier to or at the very moment of the time of retrenchment. The learned counsel for the management referred to the case of Workinen of Coimbatore Pioneer "B" Mills Ltd. Vs- Labour Court and others (1980 (1) LLJ 503) and contended that in every case, there need not be any order of reinstatement and that even if it is found that there is some lacuna, the Tribunal may not order for reinstatement and especially in view of the fact that the II-Party management is labouring under a heavy load of surplus labour force. The fact of the reported case disclose that the Labour Court has held that the retrenchment was bonafide, but that there was non-compliance of clause (b) of Section 25F. In that context, the Hon'ble High Court had enhanced the compensation to two months wages and the Hon'ble, Supreme court of India added a sum of Rs.750/- to each worker in lieu of reinstatement. In my view, for such infirmity as discussed above, the workman of the present case should be paid a fair and reasonable compensation of wages of two months, in addition to the %%- ages of one month already paid (exclusive of the retrenchment compensation).

30. The reason once again is the "heavy load of surplus labour force" with the Management. It is not shown that the said reason is either incorrect as a fact or irrelevant or impermissible in law.

31. For the above reasons, this appeal also fails and is accordingly dismissed. No costs.