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INDEX

| Sr. No. | CASE LAWS | Pg. No. |
|---------|---|---------|
| 1. | SANTOSH GUPTA v/s BANK OF PATIALA 29 April, 1980 | 1-6 |
| | | |
| | | |

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CASE-LAW
OF
LABOUR LAW

SANTOSH GUPTA
v/s
BANK OF PATIYALA

Citation 1980 AIR 1219 , 1980 SCC (3) 340

 1980 SCR (3) 884

Parties SANTOSH GUPTA
 v/s

 BANK OF PATIYALA

Court Supreme Court of India

Judgment Date 29 April , 1980

Judges Hon'ble, Reddy, O. O. Chinnappa (J)

FACT OF THE CASE:- The appellant was employed in the State Bank of Patiyala, The mall, Patiyala from July 13, 1973 till August 21, 1974, when her service for were terminated . Despite some breaks in service for a few days, the appellant had admittedly worked for 240 days, in the year preceding 21 August 1974. According to the workman, the termination of her service was "Retrenchment" Within the meaning of that expression in Section 2(oo) of the Industrial Dispute Act, 1947, since it did not fall within any of the expected cases mentioned in Section 2(oo), since there was "Retrenchment", it was

bad for non-compliance with the provision of Section 25F, of Industrial Dispute Act. The contention of the management was that the termination of service was not due to discharge of surplus labour. It was due to the failure of the workman to pass the test which would have enabled him to be confirmed in the service. Therefore, it was not retrenchment within the meaning of section 2(00) of the Industrial Dispute Act. The preceding officer, central the management contention and decided against the workman appellant, hence the appeal by special leave.

ISSUE UNDER CONSIDERATION

The question, however, before us is - does this definition merely give effect to the ordinary accepted notion of retrenchment in an existing or running industry by embodying the notion in apt & readily intelligent words or does it go so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona-fide closure, or discontinuance of his business by the employer?" The question so stated was answered by the learned judges in following ways:

"In the absence of any compelling word to indicate that the intention was even to include a bona-fide closure of the whole business, it would, we think, be divorcing the expression altogether from the context, to give it such a wide,

meaning as is contended for by learned counsel for the respondent : It would be against the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workman by the employer when the business itself ceases to exist . The misunderstanding of the observation and the resulting confusion stem from not appreciating (1) the lead question which was posed and answered by the learned judges & (2) that the reference to discharge on account of surplusage was illustrative and not exhaustive and by way of contrast with discharge on account of transfer or closure of business . "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 appeal apart, the substance is decisive . A termination take place where a term expires either by the active step of the master of the running out of the stipulated term.

COURT OBSERVATION — In Court observation 25F there cannot now be any doubt that the expression 'termination of service for any reason whatsoever' now covers every kind of termination of service except those not expressly

included in S. 2SF or not expressly provided for by other provisions of the Act such as ss. 2SFF & 2SFFF. In interpreting these provisions i.e. 2SF, 2SFF, and 2SFFF one must not ignore their object. The manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the wherewithal to subsist until he finds fresh employment. The non-inclusion of voluntary retrenchment of the workman, retirement of workman on reaching the age of superannuation; termination of the service of a workman on the ground of continued ill-health" in the definition of 'retrenchment' clearly indicate and emphasise what we have said about the true object of 2SF, 2SFF, 2SFFF & the nature of compensation provided by those provisions. The nature of retrenchment compensation has been explained in Indian Hume Pipe Co. Ltd v/s the workman as follows: "As the expression 'retrenchment compensation' indicates it is compensation paid to a workman on his retrenchment and it is intended to give him some relief and to soften the rigour of hardship which retrenchment inevitably causes. The retrenched workman, suddenly & without his fault, thrown on the street & has to face the grim problem of unemployment. At the commencement of his employment a workman naturally expects and looks forward to security of service spread over

a long period but retrenchment destroys his hopes and expectations. Once the object of 2SF, 2SFF & 2SEFF is understood & the true nature of the compensation which those provisions provides is realised, it is difficult to make any distinction between termination of service for one reason & termination of service for another. Be winnowed judicially to suit the social philosophy of the statute, so screened we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite orders one giving employment orders one & other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post-appointment-termination is. Dexterity of diction cannot defeat the articulated conscience of the provision - In Hindustan Steel Ltd v/s the presiding officer, Labour Court, Orissa & Or. the question again arose whether termination of service by exff efflux of time was termination of service with the definition of retrenchment in S. 2 (OO) of the Industrial Dispute Act. Both the earlier decisions of the court in Hariprasad Shivshankar Shukla v/s A.D. Divakar & State Bank of India v/s V.S. Sundaramoney were considered.

Judges then observed that on the facts before them to give full effect to the words "For any reason whatsoever" would be consistent with the scope and purpose of s. 25 of the Industrial Dispute Act. & not contrary to the Scheme of the Act.

JUDGMENT BY THE HON'BLE COMMISSION

The Judgment of the hon'ble Commission is that we hold, as a result of our discussion, that the discharge of the workman on the ground - she did not pass the test which would have enabled her to be confirmed was 'retrenchment' with the meaning of s. 2 (oo) & therefore, the requirements of s. 25F had to be complied with. The order of the presiding officer, Central Govt. Industrial cum-Labour Court, New Delhi is set aside and the appellant is directed to be reinstated with full back wages.

CONCLUSION :-

In opinion of my If it is necessary to look at each of these reasons more closely. Typically economic reasons given for the need for retrenchment include the ability to make money or to retain sufficient funds to continue operation :-