

(1967) 02 DEL CK 0017
In the Delhi High Court
Case No : Civil Writ No. 493-D of 1959

Avtar Singh Anand

APPELLANT

Vs

E. Krishna and Others

RESPONDENT

Date of Decision : 21-02-1967

Acts Referred:

Citation : AIR 1968 Delhi 185 : (1969) 2 LLJ 524

Hon'ble Judges : H.R. Khanna, J

Bench : Single Bench

Advocate : S.C. Malik, for the Appellant; Harish Chandar, for the Respondent

Judgement

(1) Avtar Singh petitioner by means of this petition under Article 226 of the Constitution of India has prayed for the issuance of a writ to quash the order dated 17th June 1959 of Labour Court Delhi, respondent No. 1, by which Ram Sarup Sharma respondent No. 2 was held entitled to recover Rs. 2,850 from the petitioner and Inder Singh respondent No. 3 as also their firm Inder Singh, Avtar Singh.

(2) The brief facts of the case are that the petitioner and Inder Singh respondent No. 3 were partners in the business of coal and brickkiln under the name style of Inder Singh Avtarsingh with the offices at Delhi and Jharia. Ram Sarup Sharma respondent No. 2 was employed as a head clerk in that firm and worked as such for 16 years from 1st January 1941 to 15th December 1956. It appears that during the later part of 1956 the two partners of above-mentioned firm fell out and on 20th October 1956 they; applied for separate quotas for themselves. In March 1957 the petitioner brought a suit for dissolution of partnership and rendition of accounts against defendant No. 3 and in that suit a preliminary decree was awarded in the petitioner's favor on 23rd July 1958. In the meantime a notice given by Inder Singh respondent No. 3 to Ram sarup respondent No. 2 terminating the latter's services with effect from 15th December 1956. Respondent No. 2 at that time was drawing a pay of Rs. 300 per men sum .Respondent No. 2 was also offered a cheque for Rs. 450, signed by

the petitioner and respondent No. 3, in full and final settlement of his claim, but respondent No. 2 refused to accept that cheque. A petition u/s 33-C of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) was filed by respondent No. 2 before the Labour Court. According to respondent No. 2 he was entitled to Rs. 4,050 as he had been retrenched from service. His employers were stated to have not paid the amount due in spite of notice. Respondent No. 2, accordingly, prayed that the amount due to him might be computed.

(3) The petition was resisted by the petitioner and respondent No. 3.

(4) The Labour Court allowed the petition in part and computed the amount, due to respondent No. 2, u/s 25-F of the Act, to be Rs. 2,850. The petitioner, respondent No. 3 and their firm were held to be liable to pay the above-mentioned amount. The petitioner thereafter approached this Court to challenge the above-mentioned order.

(5) Before dealing with the respective contentions of the parties it would be useful to reproduce the provisions which have bearing on this case. Clause (00) of Section 2 of the Act defines the word "retrenchment and reads as under:-

"retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, 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".

Section 25-F enumerates the conditions precedent to retrenchment of workmen, and is to the following effect:-

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice: Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service of any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or

such authority as may be specified by the appropriate Government) by notification in the Official Gazette."

Section 25-FFF provides for the compensation to workmen in case of closing down of undertaking, and its sub-section (1), which has a bearing, reads as under:-

"Where an undertaking is close down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking, immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under Clause (b) of Section 25-F shall not exceed his average pay for three months.

Explanation : An undertaking which is closed down by reason merely of financial difficulties (including financial losses) or accumulation of undisposed of stocks or the expiry of the period of the lease of the license granted to it where the period of the lease of the license expires on or after the first day of April 1967, shall not be deemed to have been close down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section ."

It is common case of the parties that the petition, which was filed by respondent No. 2 to the Labour Court, was under sub-section (2) of Section. 33-C of the Act. The aforesaid sub-section is in the following terms:

"Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government". (6) The above provision of law was enacted to provide a speedy remedy to the individual workmen to enforce or execute their existing rights. Dealing with the scope of this section it was observed by Gajendragadkar, j., (as he then was), speaking for the Court, in the case of The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., , that it takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers. The contention, that if the right to receive the benefit, referred to in the sub-section is disputed the Labour Court cannot determine the same, was repelled. The acceptance of such a contention, it was observed, would necessarily mean that it would be at the option of the employer to allow the remedy provided by sub-section (2) of Section 33-C of the Act. It was also observed that the right under

the above provision of law was analogous to the execution of a decree.

(7) Mr. Malik on behalf of the petitioner has argued that as the business of firm Inder Singh Avtar Singh came to an end because of differences between the partners in the end of 1956 and as the services of respondent No. 2 were terminated because of the closure of the aforesaid business, it cannot be said that the respondent No. 2 was retrenched so as to entitle him to retrenchment benefit u/s 25-F of the Act. Reliance in this connection is placed upon Hariprasad Shivshanker Shukla v. A. D. Divelkar, Air 1957 Sc 121. In that case their Lordships considered the definition of the word "retrenchment" as given in Section 2(oo) of the Act in the context of the retrenchment benefit referred to in Section 25-F of the Act and observed:-

".....retrenchment as defined in Section 2(oo) and as used in Section has no wider meaning than the ordinary, accepted connotation of the word; it means the discharge of surplus labour or staff by the employer for any reasons whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business as in the case of Shri Dinesh Mill Ltd., or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the Railway Company". I have given the matter my consideration and am of the view that there might perhaps have been force in the contention advanced on behalf of the petitioner, but I find that by the Industrial Disputes (Amendment) Act No. 18 of 1957, Section 25-FFF, was inserted with a retrospective effect from 28th November 1956. According to Section 25-FFF, which has been reproduced earlier, where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking, immediately before such closure shall, subject to provisions of sub-section (2) of that section with which we are not concerned, be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched. A proviso has been added that, where the undertaking is closed down, on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under Clause (b) of Section 25-F shall not exceed his average pay for three months. The Explanation, however, makes it clear that if an undertaking which is closed down by reason merely because of financial difficulties or accumulation of undisposed of stocks or because of the expiry of the period of the lease or the license granted and the period expires after the first day of April 1957, it shall not be deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer. In the present case the business of firm Inder Singh Avtar Singh was closed not on account of unavoidable circumstances beyond the control of the employers but because of circumstances which were their own creation, namely, inter se differences. As such, the proviso to sub-section (1) of Section 25-FFF would not be attracted. In view of the enactment of Section 25-FFF,

respondent No. 2 had clearly a right to the same amount because of the closure of the firm to which he would have been entitled if the partners of the firm had retrenched him.

(8) Mr. Malik, however, points out that the provision of law, on which reliance was placed before the Labour Court, was Section 25-F of the Act. In this respect, I am of the opinion that reference to the wrong provision of law would not disentitle respondent No 2 to recover the money to which he is otherwise legally entitled. In any case, this Court would not, in exercise of its discretion in a petition under Article 226 of the Constitution of India, interfere with a decision, if substantial justice has been done, on the simple ground that the correct provision of law had not been invoked.

(9) Mr. Malik then contends that the Labour Court had no jurisdiction to give relief to respondent No. 2 under sub-sec (2) of Section 33-C of the Act. Reliance in this context is placed upon a Division Bench (Miabhoy and Shah, JJ.) case of Gujarat High Court, Ambalal Shivalal Vs. Vin D.M. and Others, . In that case it was held that a Labour Court had no jurisdiction to determine a claim for retrenchment compensation. Perusal of that judgment shows that in arriving at that conclusion the learned Judges were influenced by the view that Section 25-F of the Act only creates a limitation on the power of the employer and does not create a new right in workman. It was observed in para 13 of the judgment:

"In our judgment, Therefore, the correct interpretation of Section 25-F is that it imposes a limitation upon and subjects the power of the employer to retrench his workmen, to certain conditions which must be satisfied before the power can be exercised and not that it creates a new right in favor of the workman of the type mentioned therein to receive retrenchment compensation." The correctness of the above dictum has been assailed by Mr. Harish Chandar on the ground that Section 25-F does not merely create a limitation for the employer but it also imposes upon him a liability and this necessarily creates a corresponding right in the employee. Although this submission does not appear to be devoid of force, it is not necessary to dilate upon the matter, because, as stated above, the present case is covered by S. 25-FFF of the Act. The language of Section 25-FFF is substantially different from that of Section 25-F of the Act, and it is clearly stated in S. 25-FFF that the workman shall be entitled to compensation. The word "entitled" clearly shows that a right is created in the workman. In the circumstances, whatever view one may take about the creation of right in workman by Section 25-F of the Act, so far as Section 25-FFF is concerned, there can be hardly any dispute about the creation of such a right. As such, the petitioner can derive no help from Ambalal Shivalal Vs. Vin D.M. and Others, .

(10) The petition, consequently, fails and is dismissed, but, in the circumstances, I leave the parties to bear their own costs.

(11) Petition dismissed.