
(1960) 01 PAT CK 0003

In the Patna High Court

Case No : Misc. Judicial Case No. 364 of 1958

Burra Kur Coal Co. Ltd.

APPELLANT

Vs

Azimuddin Ashraff and Another

RESPONDENT

Date of Decision : 14-01-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 200

Citation : AIR 1960 Patna 554 : (1960) 1 FLR 134 : (1960) 2 LLJ 434

Hon'ble Judges : V. Ramaswami, C.J.;Kanhaiya Singh, J

Bench : Division Bench

Advocate : Ranen Roy and T.K. Das, for the Appellant; Government Advocate, Government Pleader and B.P. Sinha I, for the Respondent

Final Decision : Allowed

Judgement

Kanhaiya Singh, J.—This is an application by Burra Kur Coal Co., Ltd. having its registered office at Dhanbad, for an appropriate writ under Article 226 of the Constitution for quashing the order of the Chairman, Industrial Tribunal, Dhanbad (opposite party No. 2), dated 28th March, 1958. Azimuddin Ashraff (opposite party No. 1) was employed by the petitioner as Register-keeper of the colliery, and his services were terminated with effect from 26th April, 1957 by a letter which is in the following terms:

"xx xx xx Dated 26th April, 1957. * * * * * Shri Azimuddin Ashraff, Register-keeper, Katras-Choitodih Colliery.

It is regretted that it has become necessary to terminate your services as you have been found, after medical examination by our Chief Medical Officer, to be physically unfit to carry out your duties and there is no prospect in the foreseeable future of your becoming fit to do so."

The opinion of the Chief Medical Officer is as follows:--

" Very old and infirm. No organic disease. Unfit for active duties due to infirmity

on account of old age."

The said, termination will take effect from today and you will be paid one month's salary in lieu of notice in accordance with "Standing Order paragraph 21.

Sd. Illegible.

Manager. "" -- Vide Annexure A.

Paragraph 21 of the Standing Order reads as follows:

"For terminating employment whether, by the management or by an employee notice shall be given in writing by the party concerned.

(a) One month's notice for monthly paid staff.

(b) One week's notice for weekly paid employees."

In accordance with aforesaid paragraph 21 Azimuddin was given one month's salary in lieu of notice. A dispute was raised, and the Conciliation Officer, Dhanbad, after holding proceedings submitted his report to the Government. On this report, the Government of India declined to refer the dispute to an Industrial Tribunal and communicated their decision to Azimuddin by their letter dated 10th September, 1957, which omitting the portions not necessary, is in the following terms:

"Government of India, Ministry of Labour and Employment. No, LRU/55-2 (26 1/57, Dated New Delhi, the 10 Sep. 1957. Subject: Alleged non-payment of retrenchment compensation to Shri Azimuddin Ashraf Register Keeper, Katras Choitodin Colliery.

Sir,

In continuation of this Ministry's letter No. 55-2(26)/57, dated the 10th August, 1957 on the above subject, I am directed to inform you that the Government of India do not consider the above dispute fit for reference to an Industrial Tribunal for adjudication for the reason that there is no question of injustice or unfairness or denial of rights "involved in this case." -- Vide Annexure C.

The matter rested there, and no action was taken either by the workman or by the Conciliation Officer. It is alleged that all of a sudden the petitioner received a notification from the Government dated 11th December, 1957 to the effect that the dispute regarding the termination of service of opposite party No. 1 had been referred to the Industrial Tribunal, Dhanbad, for adjudication. It will appear from the notification that the following two questions were referred to the Tribunal:

"(i) Whether the services of Shri Azimuddin Ashraf, Register Keeper of Katras-Choitodin Colliery, were wrongfully terminated?

(ii) Whether he is entitled to reinstatement and or any compensation or any other relief?" -- Vide Annexure D. ""

On 20th March, 1958, the Chairman, Industrial Tribunal, gave his award (vide Annexure E). The Tribunal has held that the termination of the services of Azimuddin is tantamount to retrenchment, u/s 2(00) of the Industrial Disputes Act, 1947 ("hereinafter referred to as the Act), and, therefore, the termination of his services, without following the conditions precedent to retrenchment, as provided by Section 25F of the Act, was illegal. He accordingly passed the following orders:

""Considering all the circumstances of the case, I think that this is a fit case where the company should be directed to pay the workman Shri Azimuddin retrenchment compensation as prescribed by Section 25P of the Act. This workman has Put in as many as about 26 years of service and I think the company could with good grace have treated this as a case of retrenchment and paid him retrenchment compensation for his past services. I would, therefore, direct that the company shall pay him retrenchment compensation as provided by section 25F of the Act for his past services till the date of his retrenchment on 29-4-1957. I also feel that as the retrenchment was Illegal and as I am not directing his reinstatement, the workman should also be compensated in some measure for the period from the date of his termination of service i.e. 29-4-1957 till the date of this order. I, therefore, direct the company also to pay him half his wages (basic pay and dearness allowance but not bonus) as compensation for the period from 29-4-1957 till the date of this Award as additional compensation.

I also feel that this is a fit case for awarding costs and I award Rs. 100/- as costs in favour of the Union".

It is the legality of this Order which is challenged in this case.

2. The validity or otherwise of the award depends upon the true and correct connotation of the word "retrenchment", and the important question, therefore, that falls for determination is whether the termination of the service of Opposite Party No. 1 in this case amounts to retrenchment. Section 2(00) of the Act defines retrenchment as follows:

""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."

It will be seen that voluntary retirement, retirement on reaching the age of superannuation and termination of the service on the ground of continued ill-

health or as a punishment inflicted by Way of disciplinary action does not constitute retrenchment, as envisaged in Section 2(00). Mr. Ranen Roy appearing for the petitioner put forward the argument that according to strict interpretation, "retrenchment", as defined by section 2(00), must be restricted to discharge of surplus labour or staff, as commonly understood, and it does not embrace a case of termination of the contract of employment for other causes. His submission is that even if the termination of service of opposite party No. 1 does not fall, within the exception embodied in Section 2(00), still it was not a case of retrenchment, as properly understood, because he was discharged from service not as a surplus labour but on account of incapacity to work.

On the other hand, the learned Government Advocate contended that the definition of the expression "retrenchment", as laid down in section 2(00) of the Act, is comprehensive enough to include discharge from service of a workman on account of physical disability. Learned counsel urged that the expression "for any reason whatsoever" in section 2(00) of the Act shows that all cases of termination of service not falling within the exceptions provided therein constitute retrenchment, and since the termination of service of this workman is not covered by the exceptions, it is retrenchment within the meaning of section 2(00) of the Act.

This argument of the learned Government Advocate has prima facie some force, but in view of the latest decision of the Supreme Court, which has interpreted it in a narrower sense, the contention of Mr. Roy must be accepted as correct. The true meaning of the expression "retrenchment" -- as defined by section 2(00) and as used in section 25F of the Act has been laid down by the Supreme Court in *Hariprasad v. A. D. Divelkar* (S) AIR 1957 SC 121 in the following terms:

"For the reasons given above, we hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in Section 2(00) and as used in Section 25F has no wider meaning than the ordinary, accepted connotation of the words: 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 Mills 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.

Mr. Mehta, appearing for respondents Nos. 4 and 5 in Civil Appeal No. 105 of 1956, tried to make a distinction between transfer of ownership with continuation of employment (which according to him did not come within the definition) and termination of service on closure of business. There is in fact a distinction between transfer of business and closure of business; but so far as the definition clause is concerned, both stand on the same footing if they involve termination of service of the workmen by the employer for any reason whatsoever, otherwise

than as punishment by way of disciplinary action. On our interpretation, in no case is there any retrenchment, unless there is discharge of surplus labour or staff in a continuing or running industry".

3. A similar view has been expressed by the Supreme Court also in *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, . Therein, it has been laid down that retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff or the labour force is discharged as surplusage. Following the aforesaid decisions of the Supreme Court, a Bench of the Bombay High Court in *Municipal Corporation of Greater Bombay and Others Vs. Labour Appellate Tribunal of India and Another*, has laid down that the expression "retrenchment" in Section 2(00) and Section 25F of the Act means discharge of surplus labour or staff and does not mean termination of the contract of employment for other causes.

It is manifest, therefore, that the termination of the service of workmen, though not falling under Clause (a), (b) or (c) of section 2(00), not being a punishment inflicted by way of disciplinary action, is still not retrenchment within the meaning of that section, unless the termination of service was on account of surplus labour or staff. Having regard to the test laid down by the Supreme Court, it must be held that the termination of service of opposite party No. 1 cannot be regarded as retrenchment, and the Chairman of the Industrial Tribunal was, therefore, wrong in treating the case of opposite party No. 1 as a case of retrenchment. On this ground alone, the award of the Industrial Tribunal is patently illegal and without jurisdiction and cannot be sustained.

4. Next, Mr. Roy contended that the termination of the service of opposite party No. 1 was not retrenchment, as his case falls under Clause (c) of Section 2(00) of the Act. Under this clause, the termination of the service of a workman on the ground of continued ill-health does not amount to retrenchment. The question is what is the true and correct meaning of the expression "continued ill-health". The opinion of the Chief Medical Officer, on which the termination of his service was rested, was as follows:

"Very old and infirm. No organic disease. Unfit for active duties due to infirmity on account of old age." --(Annexure A)

In other words, because of old age infirmity, opposite party No. 1 was wholly unfit for active duties. This fact is not challenged. The Chairman of the Industrial Tribunal thought that infirmity on account of old age incapacitating a workman from work cannot be regarded as continued ill-health, within the meaning of Clause (c) of Section 2(00). In my opinion, he was wrong. According to Webster's New International Dictionary, "health" means, "state of being hale, sound, or whole, in body, mind, or soul". According to the same dictionary, "hale" means, "free from defect, disease, or infirmity; sound; healthy." Therefore, according to the dictionary meaning "health" does not necessarily mean absence of organic disease. If a person is infirm or not sound either in body or mind or

soul, he cannot be said to possess health. Ill-health obviously means, disease, physical defect of infirmity or unsoundness. A person, who is not free from infirmity or disease, or in other words, is not possessing a sound health for active duties, and if this state of health continues for a long period, he may be said to be suffering from continued ill-health. In this case, according to the medical report, Azimuddin was permanently incapacitated from work due to old age infirmity, and, therefore, it was a case of continued ill-health, as envisaged in Clause (c) of Section 2(00).

If the expression "continued ill-health" is susceptible of a narrower interpretation and means continued illness due to some organic disease, and if retrenchment means nothing but discharge of a portion of labour force as surplusage, then a person not suffering from any disease, but wholly disabled for active duties due to "physical Infirmity or otherwise, will not come within the purview of this Act. The acceptance of the argument of the learned Government Advocate will, therefore, introduce in the Act an anomaly not obviously in the contemplation of the legislature.

In my considered judgment, "continued ill-health" includes any physical defect or infirmity incapacitating a workman for future work for an indefinite period. Therefore, the termination of service of opposite party No. 1 comes within the exception provided in Clause (c) of Section 2(00), and, is, therefore, not retrenchment within the meaning given to the word therein. From this point of view also, the order of the Tribunal is wholly illegal.

5. If it was not a case of retrenchment as held above, then, obviously the provisions of section 25F of the Act which lays down the conditions precedent to retrenchment of workmen are not attracted, and accordingly the question of payment of retrenchment compensation, as held by the Tribunal, does not arise.

6. Mr. Roy also contended that the reference of the dispute to the Industrial Tribunal was wholly incompetent and that after the acceptance of the report of the Conciliation Officer by the Central Government, they were estopped from raking up the question again. He further urged that the order of the Tribunal was beyond the reference, and the order of the Chairman giving opposite party No. 1, in addition to retrenchment compensation, half his wages as compensation for the period from 29th April, 1957, till the date of his award was bad for want of jurisdiction. In the view I have taken of the case, it is not necessary to express any concluded opinion on the other points raised by Mr. Roy.

7. In the result, this application succeeds and must be allowed, A writ in the nature of certiorari must issue to quash the award of the Industrial Tribunal dated 28th March, 1958. There will be no order for costs.

Ramaswami, C.J.

8. I agree.