

(1977) 12 KL CK 0009
In the High Court Of Kerala

C.C. Transport Co. Ltd.

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 13-12-1977

Acts Referred:

Citation : (1978) 2 LLJ 278

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Judgement

V.P. Gopalan Nambiyar, C.J.—The learned Judge against whose judgment this appeal has been preferred, dismissed the writ petition to quash Ext. p6 Award of the Industrial Tribunal, Calicut. The dispute referred for adjudication was termination of service of one P. K. Sreenivasan, checking inspector from 30-8-1971. The appellant before us under whom the writ petitioner was employed was a Fleet owner who owned 32 stage carriages. By Ext. P1 notice it gave notice of termination of eight out of seventeen checking inspectors. That notice set out that it was issued as the financial condition of the company needed certain economy measures (vide Annexure to Ext. P1). This was repeated in the individual notices issued to the workmen (vide Ext. P2). In pursuance of the notices thus issued, eight of the juniormost workmen were retrenched. Seven of them have accepted the notices and the compensation offered, and allowed the matter to rest. P. K. Sreenivasan alone in respect of whom the Industrial Dispute was referred, chose to contest the matter and it was in respect of him that the matter went up before the Industrial Tribunal, Calicut. Exhibit P4 is the statement filed before the Tribunal on behalf of P. K. Sreenivasan. That took the plea that the retrenchment was an act of victimisation. Exhibit P5 statement of the management pleaded that the termination was as a result of " certain economy to reduce the working cost" (vide paragraph 2). In paragraph 8 again this aspect of the matter was a little more fully elaborated. The Tribunal found against the plea of victimisation urged by the workmen. It found that the economy measure pleaded by the appellant was on the ground that the appellant had been incurring loss and that this had not been established. In that view and also in

view of the fact that the fleet strength had not been reduced but had actually increased and that the strength of checking inspectors was also found to have increased, the Tribunal recorded its finding that the retrenchment effected by the management cannot be said to be bona fide. In the light of the said finding it directed re-instatement of the workman P. K. Sreenivasan with back wages.

2. The learned Judge in effect took the view that in writ proceedings there is no ground to interfere with the Tribunal's finding that the retrenchment was not bona fide and, therefore, dismissed the writ petition.

3. Before the learned Judge, on behalf of the appellant, the strongest reliance was placed on the decision in Parry and Co. Ltd. Vs. P.C. Pal and Others, and in particular on the following passage in the said decision :

14. It is well-established that it is within the managerial discretion of an employer to organise and arrange his business in the manner he considers best. So long as that is done bona fide it is not competent of a Tribunal to question its propriety. If a scheme for such reorganisation results in surplusage of employees no employer is expected to carry the burden of such economic deadweight and retrenchment has to be accepted as inevitable, however unfortunate it is. The Legislature realised this position and, therefore, provided by Section 25F compensation to soften the blow of hardship resulting from an employee being thrown out of employment through no fault of his. It is not the function of the Tribunal, therefore, to go into the question whether such a scheme is profitable or not and whether it should have adopted by the employer. In the instant case, the Tribunal examined the propriety of reorganisation and held that the company had not proved to its satisfaction that it was profitable. The Tribunal then held (a) that the scheme was not reasonable inasmuch as the number of agencies given up in Madras was less than that in Calcutta, (b) that though development of manufacturing activity was taken up in Madras, no such activity was undertaken in Kidderpore, and (c) that the company should have developed its manufacturing activity in Kidderpore simultaneously with the surrender of the agencies. It is obvious that while reorganising its business it is not incumbent on the company to develop its manufacturing side at the very place where it has surrendered its agencies, namely, Calcutta, nor to do so at the very same time. These considerations which the Tribunal took into account were totally extraneous to the issue before it and the Tribunal ought not to have allowed its mind to be influenced by such considerations and thereby disabling itself from viewing the issue from proper perspective. It was also beyond its competence to go into the question of propriety of the company's decision to re-organise its business. Having come to the conclusion that the said policy was not actuated by any motive of victimisation or unfair labour practice and, therefore, was bona fide, any consideration as to its reasonableness or propriety was clearly extraneous. Therefore, its finding that the company had failed to establish that it was profitable was incompetent. It is for the employer to decide whether a particular policy in running his business will be profitable, economic or

convenient and we know of no provision in the industrial law which confers any power on the Tribunal to enquire into such a decision so long as it is not actuated by any consideration for victimisation or any such unfair labour practice.

15...If as a result of reorganisation, the number of its existing employees exceeded the reasonable and legitimate needs of the undertaking the management, subject to its obligation to pay compensation, can effect retrenchment. So long as retrenchment carried out is bona fide and not vitiated by any consideration for victimisation or unfair labour practice and the employer comes to the conclusion that he can carry on his undertaking with reasonable efficiency with the number of employees retained by him after retrenchment, the Tribunal ought not ordinarily to interfere with such decision.

(The latter passage was not quoted by the learned single Judge in his judgment but we would like to extract the same).

4. In the light of the principles thus stated by the Supreme Court it appears to us that the question whether the action taken by the appellant can be saved in exercise of the management's right of re-organisation of the business, is an extremely important aspect that calls for consideration. We might have ventured to pronounce on the question. But counsel for the respondent rightly drew our attention to the fact that neither the pleadings nor the discussion of the Tribunal had in any way highlighted or focussed attention on the aspect of the management's right of re-organisation of the business irrespective of consideration of financial loss ; and this is an aspect which requires examination and consideration by the Tribunal. We are inclined to accept this submission of counsel for the respondent. In the interests of justice, we feel that this aspect of the matter requires to be examined. We, therefore, allow this appeal, and set aside the judgment of the learned Judge. O.P. No. 1283 of 1975 will stand allowed and Ext. P6 Award of the Industrial Tribunal will stand quashed. The Tribunal will take back the industrial dispute on file and proceed to dispose of it in accordance with law and in the light of the observations contained in this judgment with particular reference to the question as to whether the action complained of can be justified under the right of the appellant to re-organise its business as an economy measure or otherwise. We make no order as to costs.