
(1965) 09 KL CK 0021
In the High Court Of Kerala

Chandrasekharan

APPELLANT

Vs

Official Liquidator and Another

RESPONDENT

Date of Decision : 27-09-1965

Acts Referred:

Industrial Disputes Act, 1947 — Section 25G

Citation : (1966) 10 KLJ 79 : (1966) 1 LLJ 844

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Judgement

V.P. Gopalan Nambiyar, J.—In the light of the decision in General Secretary, Palai Central Bank Employees' Union v. Official Liquidator, Palai Central Bank, Ltd. 1966-I L.L.J. 533, we agree with the learned Judge that the termination of the services of the 510 employees of the company, in this case, is not "retrenchment" but only a termination of service on the "closure" of the industry.

2. Viewed as a closure, as it is only by stages, we think, that as a principle of justice, equity and good conscience, the principle of "last come, first go" embodied in Section 25G of the Industrial Disputes Act should be followed by the liquidator. In the light of the said principle, the official liquidator will review the termination of the services already made and the rights of 510 employees will be adjusted accordingly.

3. In directing that the principle of "last come, first go" should be followed, we should not be understood as denying altogether any latitude to the official liquidator. Indeed, it has been made clear by the Supreme Court in the decision in Swadesamitran, Ltd., Madras v. their workmen 1960-I L.L.J. 504 at 507-508 that:

The employer may take into account the considerations of efficiency and trustworthy character of the employees, and if he is satisfied that a person with a long service is inefficient, unreliable or habitually irregular in the discharge of his duties, it would be open to him to retrench his services while retaining in his

employment employees who are more efficient, reliable and regular though they may be junior in service to the retrenched work-man. Normally, where the rule, "last come, first go" is thus departed from, there should be reliable evidence preferably in the recorded history of the workmen concerned showing their inefficiency, unreliability or habitual irregularity.... Wherever it is proved that the rule in question has been departed from, the employer must satisfy the industrial tribunal that the departure was justified; and in that sense the onus would undoubtedly be on the employer.

4. In the light of the principles indicated above, the senior most of the employees, if wrongly sent out, would be deemed to be in service and paid as such, and the junior most would be deemed to have been rightly retrenched.

5. The appeal is allowed to the extent indicated above, and dismissed otherwise. No costs.