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**(1984) 04 MP CK 0003**

**In the Madhya Pradesh High Court**

**Case No :** Letters Patent Appeal No. 14 of 1980

Factory Manager, Central India Machinery Mfg. Company Ltd.,  
Gwalior and another

APPELLANT

Vs

Naresh Chandra Saxena and others

RESPONDENT

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**Date of Decision :** 20-04-1984

**Acts Referred:**

Madhya Pradesh Industrial Relations Act, 1960 — Section 31, 61

**Citation :** (1984) JLJ 472 : (1984) MPLJ 402

**Hon'ble Judges :** H.C. Shrivastava, J;C.P. Sen, J

**Bench :** Division Bench

**Advocate :** S.K. Dube, for the Appellant; H.N. Upadhyaya, for the Respondent

**Final Decision :** Dismissed

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## Judgement

C.P. Sen, J.

This is an appeal under clause 10 of the Letters Patent against the order dated 24-11-1980 in Writ Petition No. 7 of 1979 by H.G. Mishra, J. allowing the petition by holding that the termination of the services of the respondent No. 1 amounts to retrenchment and remitting the case for fresh decision in accordance with the observations made.

The appellant No. 1 is a Public Limited Engineering Company having its factory at Birlanagar, Gwalior. Appellant No. 2 is the Secretary of the Company. The respondent No. 1 was employed as a clerk by the appellants in their factory and worked in that capacity for about 12 years since September 1957. However, his services were terminated by the appellants by order dated 8-5-1969 which reads as under:

We regret to inform you that your services are no longer required with immediate effect. You shall be paid one month's salary in lieu of notice pay. You may collect your dues from our time office.

The respondent No. 1 then submitted an approach application to the appellants on 30-6-1969 as required under M.P. Industrial Relations Act, 1960. As he received no reply, the respondent No. 1 filed an application u/s 31 read with section 61 of the Act for declaring the said termination as illegal as it amounted to retrenchment and without paying retrenchment compensation and prayed for his reinstatement with back wages. The application of the respondent No. 1 was opposed by the appellants saying that the termination was valid and could not be challenged as it is not an order of retrenchment. However, subsequently the written statement was amended and it was alleged that the respondent No. 1's services were terminated under Standing Order No. 11 of Industrial Employment (Standing Orders) Rules 1963, framed under M.P. Industrial Employment (Standing Orders) Act, 1960, as he was inefficient and his work was unsatisfactory. Even after giving several chances for improvement, he did not show any progress in his work. The respondent No. 1 is a proprietor of M/s Hindustan Printers and he is publishing a magazine containing antisocial and anti-national matters. The respondent No. 1 submitted an application for summoning service record which was not produced. The appellants raised an objection regarding the approach application which was accepted and the application of the respondent No. 1 was dismissed but the order was set aside in revision by the Industrial Court. The respondent No. 1 examined himself and two witnesses in support of his case while the appellants examined six witnesses. The Labour Court held that the respondent No. 1's services were terminated under Standing Order No. 11 and it did not amount to retrenchment by relying on the admissions of the respondent No. 1. In revision preferred by the respondent No. 1, the Industrial Court held that it is, in fact, an order of dismissal under Standing Order 12 for misconduct and it did not amount to retrenchment. The respondent No. 1 then filed Writ Petition M.P. No. 7/79 which has been allowed by a Single Bench of this Court which held that the Industrial Court was not justified in holding that the termination of services of the respondent No. 1 does not amount to retrenchment in view of the decision of the Supreme Court in Santosh Gupta Vs. State Bank of Patiala, . So the orders of the Courts below were set aside and the case remanded for deciding the matter afresh.

The appellants contended that (i) the learned Single Judge overlooked the Division Bench decision of this Court in Sunil Kumar v. M.P. R.T. Corpn. 1980 MPLJ 471 that termination of services under Standing Order 11 was not retrenchment within the meaning of section 2 (oo) of the Act and there are two more Division Bench decisions of this Court taking the same view, (ii) The learned Single Judge could not have disturbed the concurrent findings of fact arrived at by the Labour Courts that the termination of services did not amount to retrenchment and (iii), the learned Single Judge ought not to have remanded the case for de novo decision when the findings are already recorded by the Industrial Court on all the issues and no fresh material has been produced for re-consideration. The respondent No. 1 on the other hand submitted that the learned Single Judge relied on latest decisions of the Supreme Court that

retrenchment includes every kind of termination except those not expressly included by the definition. This decision has impliedly overruled the Division Bench decision of this Court. The finding of the Labour Court was perverse, while at one stage it held that it has not been proved that the respondent No. 1 was inefficient and his work was unsatisfactory but wrongly relied on certain admissions of the respondent No. 1 which was not correctly recorded and even those admissions do not prove that the respondent No. 1 was inefficient and his work was unsatisfactory. The Industrial Court gave a new finding that the services of respondent No. 1 were terminated for misconduct which is nobody's case and, therefore, the learned Single Judge was justified in reversing the finding. As the appellants had alleged that the respondent No. 1 was running a printing press, so the case had to be remanded for further enquiry for determination of the quantum of back wages.

Section 2 (oo) of the Industrial Disputes Act, 1947 defines "retrenchment" 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 continuous ill-health.

Chapter V-A regarding lay-off and retrenchment in this Act was added by the amending Act No. 43/53 containing sections 25-A to 25-J, though section 25FF and 25FFF were added by the amending Act No. 41 /56. Section 25F declares that 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 he is paid retrenchment compensation. Section 25J provides that the provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law [including standing orders made under the Industrial Employment (Standing Orders) Act, 1946)]. Standard Standing Order 11 is as under:

Termination of employment and the notice thereof to be given by employer and employee:

(a) When the employment of a permanent employee is to be terminated, he shall be given one month's notice or shall be paid wages for one month in lieu of notice. No employee other than a permanent employee shall be entitled to any such notice or wages in lieu thereof for termination of his services.

(b) The reason for the termination of service shall be recorded in writing and shall be communicated to the employee unless such communication may, in the opinion of the manager directly or indirectly lay the company or the manager or the person signing the communication open to civil or criminal proceedings at the instance of the employee.

In *Hariprasad Shivshankat Shukla and another v. A.D. Divelkar and others* AIR 1957 SC 121 a Five Judges Bench of the Supreme Court held that the word retrenchment, as defined in section 2 (oo) should be understood in its ordinary acceptation to mean discharge of surplus labour or staff by the employer for reasons of economy, rationalisation in industry, installation of a new labour saving machinery etc., and that it did not include the termination of the services of workmen as a result of a real and bona fide closure of business. After the decision of this case, section 25FF and 25-FFF were added by amending Act No. 41/56. Thereafter there are series of decisions of the Supreme Court to hold that retrenchment means termination of services of a workman by the employer for any reason whatsoever otherwise than (a) punishment inflicted by way of disciplinary action but does not include voluntary retirement of workman, (b) retirement of the workman on reaching the age of superannuation and (c) termination of the services of a workman on account of continuous ill-health.

The Supreme Court in *State Bank v. N.S. Money* AIR 1976 SC 4 (sic) has held that "termination for any reason whatsoever" in section 2 (oo) are the key words. Whatever the reason, every termination spells retrenchment. In this case, an employee who was intermittently employed ceased to be in service after expiry of the term mentioned in the last appointment order. It was held that the termination of service amounted to retrenchment. In *Hindustan Steel v. Labour Court, Orissa* AIR 1977 SC 31 relying on the earlier decision it was reiterated that termination of service by running out of time stipulated in the contract of service amounts to retrenchment. Non-compliance of section 25F (b) renders the retrenchment illegal. In the circumstance, the Labour Court was justified in granting the relief of reinstatement with full back wages. In this case, the earlier 5 Judges' Bench decisions in *H.S. Shukla v. A.D. Divelkar* (supra) was considered and it was held that there is no apparent conflict between that decision and the one in *State Bank v. N.S. Money* (supra) because in the earlier case it was bona fide closure of the whole business while in the latter case the question was about the interpretation of the words "termination for any reason whatsoever" for purposes of section 25F. In *Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others*, the Supreme Court held that striking off the name of the workman from the rolls of the management will amount to termination of service falling within the definition of "retrenchment" u/s 2 (oo) attracting section 25F. In *Santosh Gupta v. State Bank of Patiala* (supra), the case which has been relied by the learned Single Judge, the Supreme Court held that the expression "termination of service for any reason whatsoever" in section 2 (oo) covers every kind of termination of service except those not expressly included in section 25F or not expressly provided for by other provisions of the Act such as 25-FF and 25-

FFF. Thus, the discharge-of the workman on the ground that she did not pass the test which would have enabled her to be confirmed was "retrenchment" within the meaning of section 2 (oo) and, therefore, the requirements of section 25F have to be complied with. It was pointed out in this case that in order to provide for the situations which the Supreme Court held were not covered by the definition of "retrenchment" in *H.S. Shukla v. A.D. Divelkar* (supra) the Parliament added section 25FF and 25FFF. Again in *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, the Supreme Court held : Termination of service. Case not covered by any exception in section 2 (oo)--It amounts to retrenchment, Non-compliance of section 25F--Retrenchment ab initio" void. In that case, services of the workman were terminated after completion of his probationary period. In *L. Robert D" Souza v. Executive Engineer, Southern Rly* AIR 1982 SC 854 the Supreme Court held that striking off name of the workman from the roll without anything more, under regulation No. 2505 it constitutes retrenchment. In *Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another*, the Supreme Court held that retrenchment as defined in section 2 (oo) covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. As such, where while discharging a probationer requirements of section 25F had not been complied with, the same is void. Lastly, in *Gammon India Limited Vs. Niranjan Dass*, the Supreme Court held that termination of service on account of recession and reduction in the volume of work, it amounts to retrenchment. That being so, when the pre-requisite for a valid retrenchment as laid down in section 25F was not complied with, the retrenchment bringing about termination of service of employee would be ab initio void. It may be mentioned here that in the last 4 cases the Supreme Court reiterated the view expressed in *Santosh Gupta v. State Bank of Patiala* (supra) and approved the distinguishment of the earlier decision in *H.S. Shukla v. A.D. Divelkar* (supra). Therefore, law is now well-settled by the Supreme Court that termination of service for any reason whatsoever, otherwise than punishment by way of disciplinary action or voluntary retirement or reaching the age of superannuation or on medical ground, amounts to retrenchment.

A Division Bench of this Court in *Sunil Kumar v. M.P. R. T. Corpn.* (Supra) tried to distinguish the two cases of the Supreme Court in *State Bank v. N.S. Money* and *M/s Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa* (Supra) with the decision in *H.S. Shukla v. A.D. Divelkar* (Supra) by saying that the latter decision was by a Bench of 5 Judges while the other three were of the 3 Judges Bench and section 2(oo) remained unamended, but this Court failed to consider that the definition of retrenchment given in *H.S. Shukla v. A.D. Divelkar* (Supra) was amended by section 25FF and 25FFF which were introduced in the Act and that there was no apparent conflict between these 3 decisions as has been observed in *Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa* (Supra). But after the decision of the Division Bench, the Supreme Court in

Santosh Gupta v. State Bank of Patiala has further clarified the matter and this view has been reiterated in four subsequent decisions i.e. Mohanlal v. Bharat Electronics Ltd., L. Robert D" Souza v. Executive Engineer, Southern Railway, Management of K.S.R.T. Corpn., Bangalore, v. M. Boraiah and Gammon India Ltd. v. Niranjan Dass (Supra). Therefore, the view expressed by this Court in the aforesaid decisions is no longer good law and this has been so noted in AIR Manual, Volume 22 at page 629 under Note-1. Relying on the aforesaid decisions, this Court again in Workmen of D.M.C. Ltd. v. G.M. of D.M.C 1980 (2) MPWN 188 reiterated the same view. There is also unreported decision of another Division Bench in J.D. Meghlan v. MPSRT Corpn. MP No. 10 of 1978 decided on 27-2-1979. In all these cases the question involved was the same as in the present case i.e. termination of services under Standing Order 11 for inefficient and unsatisfactory work. But as has been pointed out earlier, these cases are no longer good law and in view of the catena of Supreme Court decisions termination of service under Standing Order 11 also will come within the mischief of retrenchment as defined u/s 2 (oo) and unless section 25 (f) is complied with, the termination will be void. There is also decision of the Orissa High Court in G. Hari Patra v. Presiding Officer I.T. 1976 IF&LR 153, the decision of Delhi High Court in Shriram Institute v. Labour Officer 1978 I F & L R 1 and the decision of the Bombay High Court in K.R. Mehta v. Presiding Officer 1979 IF & LR 153, that termination of service for loss of confidence or for act of omission or commission on the part of workman is not retrenchment but these are also no longer good law.

The Labour Court in the present case held that it has not been proved by the management that the respondent No. 1 was inefficient or his work was unsatisfactory and if this was so there ought to have been written complaints and action taken against him from time to time but no such document has been filed except highly interested testimony of the witnesses. It may be pertinent to note that in the termination order no reasons have been disclosed though it is required to be disclosed for passing an order under Standing Order 11 unless such communication may in the opinion of the management directly or indirectly lay the management open to civil or criminal proceedings. There is no reason why if it was a fact that respondent No. 1 was inefficient and his work was unsatisfactory, it was not disclosed so in the termination order. It is also pertinent to note that in the written statement as originally filed, it was not disclosed that the termination was under Standard Standing Order 11 or because of inefficiency or unsatisfactory work, but this was introduced by way of amendment. Though the amendment would relate back to the date of filing of the written statement, but this cannot be ignored that the appellants did not originally take the stand that the termination was under Standard Standing Order 11. The Labour Court, however, relied on certain admissions in holding that the respondent No. 1 was inefficient and his work was unsatisfactory inasmuch as he admitted that he was once-suspended some years back and he has not been paid increments. It may be mentioned that there is no pay scale prescribed to the employees of the

appellants and so non-payment of the increments do not carry the case anywhere. There is further admission of the respondent No. 1 that for the years 1966, 67 and 68 his work was unsatisfactory and so he was not given increments. According to the respondent No. 1, there is omission of the word "Nahi" after the word "Sahi" and this created a confusion. This cannot be accepted. However, this is of not much relevance in view of the fact that the finding of the Labour Court was set aside by the Industrial Court which held that the termination was by way of dismissal for misconduct which is nobody's case. Such a finding without pleading to that effect is perverse and so the learned Single Judge was justified in reversing the finding. So the finding of the Labour Court stands. Under the circumstances, the Single Judge committed no error in reversing the findings of the Court below.

Accordingly, the appeal fails and it is dismissed. The cost will abide by the result of the case.