

(1960) 11 BOM CK 0005
In the Bombay High Court
Case No : Reference (I.T.) No. 98 of 1960

Filmistan (Private) Ltd., Bombay

APPELLANT

Vs

Its Workmen

RESPONDENT

Date of Decision : 01-11-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(5), 2, 25H

Citation : (1961) 1 LLJ 138

Hon'ble Judges : P.D. Sawarkar, J

Bench : Single Bench

Judgement

1. The industrial dispute was referred to me under S. 12(5) of the Industrial Disputes Act, 1947, by Labour and Social Welfare Department Order No. AJF 2559-H, dated 30 April 1960. The demand of the workmen is :

"Sri H. D. Potdar should be paid compensation equivalent to Rs. 227.50 nP. being the amount of wages he has lost on account of the company's failure to call him for work when there was new recruitment on 18 April 1959."

2. The facts of the case are as follows :

Sri Potdar had been employed by the Filmistan (Private), Ltd., first in the year 1951 on a salary of Rs. 115 plus dearness allowance of Rs. 35. In July 1952 his services were terminated. He was taken up again as a moulder on 7 February, 1955 on a salary of Rs. 90 plus dearness allowance of Rs. 35. On 3 September, 1957 the company effected retrenchment of its staff in the moulding department. Consequently, Sri Potdar came to be retrenched. On 18 April, 1959, the company recruited workers in the moulding department; but no intimation was sent to Sri Potdar about the intended recruitment. Sri Potdar came to know about this recruitment in the first week of June 1959. He approached his union with grievance and the union had some correspondence with the management as a consequence of which Sri Potdar was taken up as a moulder on 13 June, 1959. The union contends that on account of Sri Potdar not having been given an

opportunity to be recruited in April 1959, he suffered a loss in wages for a period of two months and that therefore the company should be directed to pay him that amount.

3. The company's contention is that Sri Potdar was a temporary worker; that there was no regular recruitment of workmen on 18 April, 1959; that the company needed some skilled moulders temporarily and that therefore some recruitment of skilled moulders was made on 18 April, 1959; that Sri Potdar was a "B" class moulder and that when there was work available for him he was taken up in June 1959; that the company has thus not contravened the provisions of S. 25H of the Industrial Disputes Act, and that therefore the demand should be rejected.

4. Section 25H reads as follows :

"Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen to offer themselves for reemployment, and retrenched workmen who offer themselves for reemployment shall have preference over other persons."

With this section we must read rule 82 of the Industrial Disputes (Bombay) Rules, 1957. Relevant provisions of this rule are as follows :

"(1) Where any workmen are retrenched and the employer proposes to take into his employ any person, he shall give an opportunity to the retrenched workmen to offer themselves for reemployment in the following manner, that is to say,

(a) if the number of vacancies to be filled is not less than 50, he shall publish in a newspapers circulating in, and in the regional language of, the locality in which the industrial establishment is situated, a notice giving the details of the vacancies to be filled;

(b) in any other case, he shall send by registered post to the last-known address of each of such retrenched workmen eligible for appointment to any such vacancies, a notice giving the details of the vacancies to be filled, and seven days shall have elapsed from the date of publication of such notice, or from the date of the despatch of the last of such notices, as the case may be.

* * *

(3) Whenever a notice has been given under sub-rule (1), the employer shall also simultaneously inform the trade union or unions of workmen connected with the industrial establishment, of the vacancies to be filled giving details thereof."

These provisions show that no distinction is made between a permanent workman who is retrenched and a temporary workman who is retrenched. In both cases, if the employer wants to recruit workmen in the same department, a notice either in a local newspaper or individually to the workman as the case may be must be issued by the management.

5. The general manager of the company who submitted written arguments in this case has raised certain preliminary objections to the maintainability of this reference. It must, however, be stated that these objections have not been raised by the company in the written statement which was originally filed on 12 August, 1960. These objections were sought to be raised by the general manager of the company in a supplementary written statement which he wanted to file on 18 October, 1960, but as Sri C. G. Nadkarni, for the union had already submitted his arguments and as the general manager also had partly submitted his arguments in the case, I held that it was too late for the company to file any supplementary written statement. In spite of this I should like to state. In spite of this I should like to deal with the preliminary objections briefly.

6. The first objection is that this tribunal has no jurisdiction to entertain this reference because Sri Potdar was a temporary workman, because he was not in the employ of the company between 3 September, 1957 when he was retrenched and 13 June, 1959, when he was reemployed and because he could not have been a member of the union during that period. The answer to this objection is found in the definition of the word "workman" given in S. 2(s) of the Industrial Disputes Act. The definition reads as follows :-

"workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward. Whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connexion with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute ..."

Now the present industrial dispute has arisen on account of Potdar's retrenchment and failure of reemployment under S. 25H. Therefore he falls within the definition of the word "workman."

7. The second objection is that this is an individual dispute and that therefore it is not an industrial dispute. Sri Potdar was admittedly an employee in a film industry.

He was designated as a moulder in the setting department. The present union which has espoused his cause is the Film Employees' Association. Now it is obvious that members of the Film Employees' Association have a direct and substantial interest in Sri Potdar who also was a film employee. Sri Nadkarni who is the secretary of this association stated that operatives like cameraman, sound recordist, moulders, carpenters, make-up man, etc., were members of this association. Therefore, it cannot be said that the members of the association had no direct or substantial interest in Sri Potdar's case. I therefore hold that this individual dispute having been taken up by the union of workmen having a direct and substantial interest in Sri Potdar has become an industrial dispute. Therefore there is no substance in the contention that this is only an individual

dispute.

8. The third objection is that Sri Potdar was not a workman but an artist who had to use his imagination more than his hands. In my opinion there is no substance in this objection. Although the moulder in film industry may have to mould figures out of imagination he has to use his hands as much as his brain to bring that figure into being. Therefore he is a man who works with his hands and physical exertion and is therefore a workman as that word is defined in the Act.

9. Having disposed of the preliminary objections we go into the merits of this case. Section 25H and rule 82 makes it incumbent upon an employer to inform retrenched workman that he is intending to recruit workmen in a particular section of his concern. It was contended that as Sri Potdar was a "B" class moulder and as the company wanted only skilled workmen, therefore Sri Potdar could not have been recruited in April 1959. This, however, appears to me to be an afterthought. The union has produced at Ex. U. 2 a copy of an exhibit which was filed before the learned President Sri M. R. Meher in Reference I.T. No. 81 of 1951 as Ex. 5. In that exhibit we find twenty names of workmen of this company with their designations. There are first grade carpenters and second grade carpenters. But as regards moulder no grade is mentioned. Had there been "A" grade moulders and "B" grade moulders that should have been shown in this exhibit. Therefore, I hold that there is no proof that Sri Potdar was only a "B" grade moulder. The company has given a list of eleven moulders and their helpers at Ex. C. 3. These eleven persons were retrenched on 3 September, 1957, Sri Potdar being one of them. Then the company has given a list of 32 workmen in the moulding section of the setting department who were engaged after 18 April, 1959, and I find that serial Nos. 1, 7 and 28 were three of the moulders who had been retrenched on 3 September 1957.

No. 1 was recruited on 20 April 1959.

No. 7 was recruited on 21 May 1959, and

No. 28 was recruited on 11 May 1959.

It is not known whether these three workmen had received any intimation from the management that fresh recruitment was being made. Whatever that may be, there is no doubt in my mind that the company did commit a breach of S. 25H read with rule 82 of the Industrial Disputes (Bombay) Rules, 1957.

10. It was argued that after all this may be a technical breach. I agree with the general manager of the company that it is a technical breach. But when legislature enacts a law and when in exercise of the powers conferred by the legislature Government frames rules, they are enacted or framed for being observed and not for being contravened. If such breaches were to be lightly brushed aside on the ground of their being technical there is every likelihood of a tendency growing up among employers to ignore the provisions of law and to act in contravention of some of the provisions which are enacted to safeguard the

interests of their employees. Upon a careful consideration of the circumstances under which the management failed to give Sri Potdar an opportunity to offer himself for reemployment I have come to the conclusion that the management must pay him compensation for loss of wages to the extent of Rs. 100. This amount should be paid to him within fifteen days of the date of the publication of this award.