

(1957) 06 KL CK 0018
In the High Court Of Kerala

General Produce Ltd.

APPELLANT

Vs

Ambalapuzha Talak Headload Conveyance Workers" Union
and Another

RESPONDENT

Date of Decision : 13-06-1957

Acts Referred:

Industrial Disputes Act, 1947 — Section 1, 2, 25F, 25FFF

Citation : (1957) 2 LLJ 447

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Judgement

M.S. Menon, J.—Exhibit A is an award of the industrial tribunal, Alleppey, dated 15 November 1956, in a dispute between the petitioner-the General Produce, Ltd., Alleppey-and its workmen. One of the directions in the award is that the workmen concerned should be paid wages in lieu of notice and retrenchment compensation u/s 25F of the Industrial Disputes Act, 1947. The contention of the petitioner is that the award in so far as it directs payment of retrenchment compensation has to be quashed by an appropriate writ or direction in that behalf.

2. On 29 July 1954 the petitioner issued a notice to the effect that it was closing its business on account of financial losses and that the services of the workmen will not be required with effect from 30 July 1954. The petitioner repeated the contention that the closure was for financial reasons before the tribunal and urged that such a closure did not attract the provisions of Section 25F of the Industrial Disputes Act, 1947. The tribunal states this contention as follows in Para. 4 of its award:

They (the management) further contend that Section 25F is inapplicable to the facts of this case because the closure was for genuine financial reasons;

The workmen questioned the existence of any financial necessity for effecting the closure. They said;

The plea of closure of the business on trade reasons is denied as it is against admitted facts and circumstances of the case. [Paragraph 5 of the award.]

3. The learned Counsel for the workmen submitted before me that the right to get retrenchment compensation has to be resolved in the light of the alteration in the law effected by the Industrial Disputes (Amendment) Ordinance, 1957 (No. 4 of 1957), and drew my attention to Section 25FFF(1) which was introduced into the Industrial Disputes Act, 1947, by the said Ordinance:

Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of Sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25F as if the workman has been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the total compensation to be paid to the workman shall not exceed his average pay for three months.

4. Sub-section (2) of Section 1 of the Ordinance says:

It shall be deemed to have come into force on the first day of December 1956.

and it should be clear from that provision that the amendments introduced by the Ordinance cannot possibly have any application to termination of services effected-as in this case-prior to 1 December 1956.

5. The controversy, therefore, has to be resolved according to the Industrial Disputes Act, 1947, as it stood on the date the business was closed and the workmen discharged, or in other words, in the light of Section 2(oo) and 25F of that enactment. Section 2(oo) 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

and Section 25F is in the following terms:

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 till-

(a) the workman has been given one month's notice in writing indicating the

reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government.

6. In 1957 I L.L.J. 243 at 252 [a successful appeal from the decisions of the Bombay High Court in K.N. Joglekar and Others Vs. Barsi Light Railway Co. Ltd., and A.D. Divekar Vs. Dinesh Mills Ltd. and Others, the Supreme Court said:

retrenchment as defined in Section 2(oo) and as used in Section 25F has no wider meaning than the ordinary, accepted connotation of the word : it means the discharge of surplus labour or staff by the employer for any reason 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....

7. The tribunal has not Considered the question as to whether the closure of the business was bona fide or not. What it did was to say that even if the closure of the business was bona fide, retrenchment compensation was still admissible u/s 25F of the Industrial Disputes Act, 1947:

Mr. Kuncheriyar (counsel for the workmen) on the other hand has referred me to K.N. Joglekar and Others Vs. Barsi Light Railway Co. Ltd., Bombay High Court (D.B.) wherein their lordships have held that retrenchment compensation can be awarded to workmen on closure of business even on valid ground. The same principle has been followed by their lordships of the Labour Appellate Tribunal in 1956 I L.L.J. 187 at 193. Therefore, I hold that the workmen mentioned in issue 1 are entitled to get retrenchment compensation." [Paragraph 9.]

This Is clearly wrong and it follows that that portion of the award which deals with the liability of the petitioner to pay retrenchment compensation has to be quashed and the tribunal directed to record a finding as to whether the retrenchment was real and-bona fide and deal with the case In the light of that finding. Order accordingly.

8. It is true that the Supreme Court's decision gave rise to strong criticism [see 1957 S.C.A. Notes vii] and the obvious object of Ordinance No. 4 of 1957, as stated in 1957 S.C.A. Notes xxix was to override the Supreme Court's judgment in 1957 I L.L.J. 243. The provisions of the Ordinance, however, being not applicable to this case as pointed out in Para. 4 above, the controversy has to be resolved, as already stated, in accordance with Sections 2(oo) and 25F of the Industrial Disputes Act, 1947, as interpreted by the Supreme Court in 1957 I

L.L.J 243.

9. I express no opinion on the merits of the case and if the tribunal comes to the conclusion that retrenchment compensation is legally admissible on the basis of its findings nothing that I have hereinbefore stated should be construed as preventing it from awarding the same amount of compensation as has been given in the award impugned before me.

10. The petitioner had made a deposit in the Central Bank of India, Ltd., and handed over the receipt to the Tahsildar of Ambalapuzha as security for the due performance of his obligation, [if any under the award. The learned Counsel for the petitioner agrees that the said amount will not be withdrawn until the controversy is resolved and that it will be available for payment of retrenchment compensation in case the tribunal directs that such compensation should be paid.

11. The petition is allowed in the manner and to the extent indicated above; but in the circumstances of the case without any order as to costs.