

(1995) 02 CAL CK 0001
In the Calcutta High Court
Case No : A. No. 804 of 1993

Guest Keen Willams Ltd.

APPELLANT

Vs

The Fifth Industrial Tribunal and Others

RESPONDENT

Date of Decision : 08-02-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1996) 3 LLJ 825

Hon'ble Judges : Vidya Nand, J;Prabir Kumar Majumdar, J

Bench : Division Bench

Advocate : Bhaskar Gupta, Partha Sarathi Sengupta, for the Appellant; P.N. Chatterjee, Saibal Mukherjee and Nilov Sengupta, for the Respondent

Final Decision : Allowed

Judgement

Prabir Kumar Majumdar, J.—This appeal is against the judgment and order dated August 26, 1993, passed by a learned Single Judge of this Court on an application challenging the award passed by the 5th Industrial Tribunal, West Bengal. The issue in the award case before the 5th Industrial Tribunal, West Bengal was whether the management was justified in retrenching the workmen named in the attached list? What relief, if any, were the workmen entitled to? The 5th Industrial Tribunal by the said order held that the order of retrenchment of the 32 concerned workmen was invalid, void, ab initio and not justified. The Tribunal directed that the concerned workmen would- however, not be entitled to reinstatement as the same would jeopardise the administration of the company, but they would be entitled to backwages on the terms stated in the award, namely :--

(a) The 10 concerned workman under reference who died during the proceeding would be entitled to full back wages including other allowances from the date of retrenchment till the respective dates of their death or the age of superannuation whichever is earlier;

(b) Those concerned workmen who are deemed to have retired on attaining the age of superannuation during the continuance of proceeding, would be entitled to full back wages including other allowances till the dates of their superannuation;

(c) Those concerned workmen, namely. Phani Mohan Karmakar, Atul Krishna, Kundu, Madhusudan Chatterjee, Nirmalendu Dey Sarkar, Samirendra Dutta, Krishna Pada Sarkar, Sankar Kumar Sen Sharma, Debi Prosad Mitra, R.N. Dey, Parimalendu Ghosh, Bimal Chandra Chatterjee, Prabir Kumar Mukherjee who are gainfully employed in other concerns, would be entitled back wages including allowances from the date of retrenchment till the date of their respective employment in other concern where they are gainfully employed.

2. The appellants have challenged the said award by filing a writ petition in the Court of first instance. It was the contention of the appellant before the Trial Court that said 32 employees were working in a particular unit of the appellant company and on the closure of such unit the services of the said 32 workmen who, according to the appellant company, were terminated and the company had paid substantial amount as ex-gratia, payment, to the said 32 employees, whose services were terminated. It was the contention of the appellant before the Court of first instance that if this termination was equated as retrenchment in view of the finding that the said employees were not officers but workmen that the payment of the said amount should be considered as compensation towards retrenchment.

3. The respondents sought to justify the award made in their favour inter alia, contending that this is a clear case of retrenchment within the meaning of Industrial Disputes Act, 1947, (hereinafter referred to as the Act) and under the relevant provisions of the Industrial Disputes Act they were entitled to retrenchment compensation as they were held to be workmen within the meaning of the said Act.

4. The learned Trial Judge by the said judgment and order observed that the Writ Court under Article 226 of the Constitution does not sit in appeal upon the decision of the statutory authority. The learned trial Judge also observed that the writ Court has to examine the decision making process and if it does not find any error of jurisdiction or any perversity of the order, the Writ Court, would not be inclined to interfere with the order as a matter of course. The learned Judge also observed that a litigant is expected to see the finality of the litigation thereof within the limited scope of interference by the Writ Court and the Writ Court being essentially a Court of equity has to consider the points of grievance of the parties in their proper perspective. The learned Judge made an interim order staying the operation of the award on the condition that 50% of the back wages, as directed by the Tribunal should be released to the workmen, within the time stated in the order. The learned Judge also gave directions for filing of the affidavits.

5. Being aggrieved by the said judgment and order, the appellant company has

preferred the present appeal. At the time of admission of the appeal, the Court of Appeal directed that a sum of Rs. 5,000/- should be paid to each of the workmen in respect of category 8 and in case of death of any workmen, the said sum shall be paid to his widow or nominee, after the widow or the nominee is identified by a respectable person of the locality and on the consideration there would be a stay of the judgment and order dated August 26, 1993, Later by another order the Division Bench continued the said interim order and gave directions for filing of the Paper Book. The appeal has now come up before us for disposal. It was agreed by both the appellant as also the respondents that the entire writ application be heard on the basis of the papers on record as incorporated in the Paper Book and also should consider whether the impugned award of the 5th Industrial Tribunal, West Bengal, could be sustained or not.

6. The appellant company took a decision in May 1968 to close down its undertaking engaged in the manufacture of Railway track materials for the Indian Railways involving several departments along with allied offices and the services attached there to. This decision, could not, however, be implemented on account of some litigation alleged to have been filed by a member of the affected employees' union. After the said litigation being over, the appellant company permanently and effectively closed the said undertaking by a notice dated July 3, 1969. By the said notice the services of the concerned 32 Junior Management staffs were terminated in accordance with their individual contracts of service, as is the case of the company. The employees concerned were paid their contractual dues; namely, pay in lieu of notice, leave and Provident Fund and in addition the appellant company paid to each of 32 Junior Management staff ex-gratia sum of money to mitigate their hardship.

7. As found by the Court of first instance that some Title Suits were filed before this Court and also in the City Civil Court, Calcutta by the said 32 affected employees challenging the said order of the appellant company terminating their services. Some of the Civil Suits were withdrawn and another Title Suit being Title Suit No. 3519 of 1969 was filed by one of the employees before this Court praying for cancellation of the termination and decree for a huge amount of damages, Meanwhile, the respondent No. 2, the State of West Bengal in the exercise of powers conferred upon it u/s 10 of the Industrial Disputes Act, 1947, issued an order of reference dated July 20, 1971, referring for adjudication of the dispute between the petitioner company and its junior management staff represented by respondent No. 4, the Association of Junior Management Staff by the respondent No. 1, the 5th Industrial Tribunal, and the issue referred to was as follows:-

"Whether the management is justified in retrenching the workmen named in the attached list? To what relief, if any, are the workmen entitled?"

8. Against the said reference, the appellant company moved a writ application under Article 226 of the Constitution before this Court and a Rule being Civil Rule No. 2276(W) of 1972, was issued and the proceedings before the Tribunal was

stayed pending disposal of the Rule. The said Civil Rule was disposed of by a judgment dated March 11, 1977, and the Tribunal was directed to decide the points raised by the petitioner company against the said reference as preliminary issue. The matter went back to the Tribunal and the point for determination was whether there was any closure of the undertaking of the company and whether the persons named in the order of reference was workmen within the meaning of the said Act. The Tribunal by the order No. 65 dated June 15, 1979, held that there was only one Single undertaking or establishment which used to run several allied businesses at the same place at 97, Andul Road, Howrah and there had been no closure of the undertaking of the company and all the persons named in the order of reference were workmen within the meaning of the Act.

9. Challenging the said order of the Tribunal, the appellant company filed another writ application under Article 226 of the Constitution of India before this Court being Matter No. 898 of 1979, and an ad interim order was passed staying the operation of the order of the Tribunal. Affidavits were filed and the matter was disposed of by allowing the application in part and the Tribunal was directed to consider the evidence and materials on record to decide the preliminary issue whether the said 32 employees were workmen within the meaning of the said Act. The said matter being Matter No. 898 of 1979, was kept pending. Ultimately, at the final hearing of the said application, by a judgment dated March 3, 1986, the learned Judge held that there was a genuine closure of the undertaking and on that ground the rule was made absolute. The matter ultimately went up to the Supreme Court by a SLP against the said judgment and order dated March 3, 1986. The Supreme Court allowed the appeal and set aside the said judgment and order dated March 3, 1986 and directed the matter to go back to the Tribunal to determine the issue whether the said 32 employees were workmen and the other points raised. The appellant company filed a review petition before the Supreme Court. Finally, the Tribunal took up the reference for hearing at length and came to the conclusion that there was closure of the undertaking and the retrenchment made was invalid, unjustified, void and ab initio. The Tribunal thereafter made the directions as referred to above.

10. The said award was challenged by the appellant company by an application under Article 226 of the Constitution of India before the Court of first instance. As stated above, the learned Judge of the Court of first instance dismissed the said application filed by the appellant, inter alia, holding that the Court exercising jurisdiction under Article 226 of the Constitution does not sit in appeal upon the decision of the statutory authority and the Writ Court can only examine the decision making process and if it does find any error of jurisdiction then the Court would not be inclined to interfere with the orders as a matter of course. The Court of first instance, however, made an interim order after giving directions for affidavit, but before the said writ application could be finally disposed of by the Court of first instance, the appellant has preferred the present appeal from the said interim order passed by the Court of first instance.

11. Mr. Bhaskar Gupta, learned Senior Advocate, followed by Mr. Partha Sengupta, Senior Advocate on behalf of the appellant has submitted that the order of reference before the Industrial Tribunal was whether the management was justified in retrenching the said 32 employees of the appellant company held to be workmen. It is submitted that if it is a case of retrenchment and if it is held to be so then the workman would be entitled to the benefit of Section 25F of the Industrial Disputes Act. It is submitted on behalf of the appellant that said Section 25F of the said Act has two parts; (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; and (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 continuous service) or any part thereof in excess of six months. Apart from that, notice in the prescribed manner should be served on the appropriate Government.

12. Mr. Gupta on behalf of the appellant has submitted that in the instant case the said 32 employees had been given sufficient compensation with prior notice and it does not matter whether such compensation be termed as ex-gratia payment or retrenchment compensation. It is submitted by Mr. Gupta that if they are treated as workmen, as has been held by the Court including the Supreme Court, then before terminating their services, one month notice should be given to the concerned employees stating the reasons for terminating their services or pay in lieu of such notice and apart from that the workmen should be paid at the time of retrenchment compensation which shall be equivalent to 13 days' average pay. Mr. Gupta submits that the amount that has been paid to the said 32 employees, be it under the cover of ex-gratia payment or otherwise, is more than retrenchment compensation as would be payable in terms of Section 25F of the said Act. Mr. Gupta has also submitted that the learned Tribunal in making the award has gone wrong in holding that the payment made by way of ex-gratia payment at the time of terminating the services of the said 32 employees cannot be equated in law to the retrenchment compensation, as contemplated in Section 25F of the said Act. The further submission of Mr. Gupta is that the appellant company, however, treated those 32 employees as belonging to the Junior Managerial Staff and when the appellant company decided to close down the unit in which those employees were employed, the company gave notice to terminate the services of those employees after paying all dues admissible to them including Provident Fund and other dues and besides that they were paid a substantial amount as compensation compensating the said 32 employees for loss of their employment in the undertaking of the appellant company. It is true, as submitted by Mr. Gupta, that if those 32 employees were treated as workmen by the appellant company then the appellant company could adopt the procedure, as has been adopted in the instant case, as contemplated in Section 25F of the said Act. i.e. the requisite notice and the retrenchment compensation, which the company is bound to pay under the provisions of the said Act, if the

termination of employment is retrenchment within the meaning of the said Act. Mr. Gupta drawing our attention to the definition that retrenchment in Section 2(00) of the said Act submits that retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise as a punishment inflicted by way of disciplinary action. He, however, points out that this definition would, however, not be applicable in case of voluntary retirement of the workman, or retirement of the workman on reaching the age of superannuation, or termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry, or the termination of the services of the workmen on the ground of continued ill health. It is submitted by Mr. Gupta that in the instant case none of such eventualities arose as the termination of the services of the said 32 employees is on the grounds and reasons as stated in the notice.

13. Mr. Gupta has referred to a decision of the Supreme Court in *The Indian Hume Pipe Co. Ltd. Vs. The Workmen and Another*, Referring to this decision of the Supreme Court, Mr. Gupta has submitted that even after enactment of Section 25F of the said Act the workman is entitled to benefit of gratuity scheme and other scheme like Provident Fund apart from retrenchment compensation. It is the argument of Mr. Gupta on the basis of the said Supreme Court decision that the whole object of payment of retrenchment compensation is to give some relief and to soften the rigour of hardship which the retrenchment inevitably causes. He argues that in the instant case, the services of the said 32 employees were terminated not due to any fault of those employees and so the statute intends that some compensation should be given to them and that would be the retrenchment compensation in terms of said Section 25F of the said Act. It is argued by Mr. Gupta that the whole object of retrenchment compensation is to give some protection to enable them to tide over the hard period of their unemployment. Therefore, according to Mr. Gupta whatever payment over and above other admissible dues made to the retrenched employees, be it termed as ex-gratia payment or otherwise would be the retrenchment compensation if it is a compensation satisfying the requirements of Section 25F of the said Act. It is the submission of Mr. Gupta that in the instant case the payment made by way of ex-gratia payment as it is called is not the payment which the employees are entitled under the terms of their service. Mr. Gupta also submits that here in the instant case the management has taken the decision of parting with the services of said 32 employees after great deliberation and as, according to the management, retention of the said unit in which those employees were working was not commercially possible, and the management ultimately decided to terminate the services of those employees after payment of adequate compensation which in a sense was more than the compensation payable as retrenchment compensation within the meaning of the said Act. It is the argument of Mr. Gupta of behalf of the appellant that the learned Tribunal in the instant case has no authority to sit in appeal over the decision of the

management if for valid and justifiable reasons the management has departed from the Rule that the senior employee may be retrenched before his junior employee as is the rule in Section 25F that "First Come last go". Mr. Gupta in this connection has referred to a decision of the Supreme Court in *Om Oil and Oilseeds Exchange Ltd., Delhi Vs. Their Workmen*, It is also submitted on behalf of the appellant that the principle "First Come last go" cannot be made applicable totally ignoring the business interest of the company and it is almost a recognised principle that the employer is the best person to decide as to how he should manage his business and if there is no mala fide intent in re- shaping its business, no interference is called for.

14. The substance of the argument on behalf of the appellant is that even if the said 32 employees are treated as workman their services have been terminated in accordance with the requirements of Section 25F of the said Act. It is submitted that the requisite notices have been given and the compensation as computable u/s 25F of the said Act has also been paid to each of the said 32 employees at the time of termination of their services. It is argued that in fact the amount that has been paid to the said 32 employees are more than what would be payable as retrenchment compensation u/s 25F of the said Act.

15. Mr. Pramatha Chatterjee, assisted by Mr. Narayan Bhattacharyya appearing for the respondent workmen has argued that retrenchment cannot be equated with termination of services. Mr. Chatterjee argues that it is true that every retrenchment is termination of services but such termination should be in the circumstances as contemplated in Section 25F of the said Act. He submits that if the termination of service is on account of closure then the other provision of the Act namely, Section 25FFF of the Act would be applicable. He draws our attention to Section 25FFF of the said Act wherefrom it appears that when an undertaking is closed down for any reason whatsoever, every workman who has been in continuous services 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 had been retrenched; provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under Clause (b) of Section 25F, shall not exceed his average pay for three months.

16. It is argued on behalf of the respondent workmen that the amount paid to the said 32 employees as ex-gratia payment cannot be or should not be treated as retrenchment compensation within the meaning of the Act. It is argued on behalf of the respondent workman that the appellant terminated the services of said 32 employees treating them as belonging to managerial staff outside the category of workmen within the meaning of the Act and such payment, as has been paid by the appellant company, was not intended to be paid as; retrenchment compensation within the meaning of the said Act. Mr. Chatterjee argues that such payment made by way of ex-gratia payment was made not

under any statutory obligation, but by way of voluntary payment which the employer was not obliged to pay either under the terms of the service or under any statutory provision. Therefore, according to Mr. Chatterjee, learned Advocate appearing on behalf of the respondent workmen, this amount cannot be treated as retrenchment compensation by any means within the meaning of Section 25F of the said Act. It is finally argued by Mr. Chatterjee on behalf of the respondent workmen that admittedly said 32 employees had been held as workmen by the Court and if they are treated as workmen then their termination of services would be the termination of services amounting to retrenchment within the meaning of the said Act. If it is a case of retrenchment then the requisite conditions of Section 25F should be complied with before terminating the services of the workman concerned. It is submitted by Mr. Chatterjee that it may be said that there is Notice as required u/s 25F of the said Act but admittedly mere has been no payment of - "Retrenchment Compensation" within the meaning of said Act, paid by the appellant company to the said 32 employees and since the Tribunal has held in the instant case that such retrenchment was not justified in law. his clients are entitled to retrenchment under and as computable under the said Act even if the employer had made any voluntary payment to the said employees besides other dues admissible to them under the contract of services or otherwise.

17. Mr. Pramatha Chatterjee, learned counsel appearing on behalf of the respondent workmen has cited a few cases in support of his contention noted above. The first case he cited is a decision of the Supreme Court in the case of State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, This decision is relied on by Mr. Chatterjee in support as his contention that the Writ Court is not sitting as a Court of appeal in the instant matter and, as such, the Writ Court cannot interfere with the findings arrived by the Tribunal, if they are not perverse or that no reasonable and prudent man can make such finding on the materials on record. It is, therefore, the submission of Mr. Chatterjee that the Trial Court rightly refused to interfere with the findings of the Tribunal in the impugned award, and this Court should not disturb or interfere with the Trial Court's judgment and order upholding the impugned award. Supreme Court in this case has inter alia, observed that judicial review under Article 226 cannot be converted into an appeal and the judicial review is directed, not against the decision, but is confined to the examination of the decision making process. The learned counsel for the respondent workmen has also cited a few other decisions reported in 1994 (1)HN 467, S.G. Chemicals and Dyes Trading Employees" Union Vs. S.G. Chemicals and Dyes Trading Limited and Another,

18. We have considered the respective submissions of the appellant as also the respondent. We have already indicated above that this appeal is against the ad interim order passed by the learned Trial Judge giving certain directions. We have also indicated above that the parties agreed in this Court that the entire writ application may be heard and disposed of by this Court.

19. The issue before the Tribunal was whether the management was justified in retrenching the workmen named in the attached list? What relief, if any, were the workmen entitled to? As stated above, the issue concerned 32 employees who were held to be workmen in an earlier litigation and was ultimately endorsed by the Supreme Court. It appears to us that the question that calls for determination is as to interpretation of Section 25F of the Said Act and whether the Tribunal was right in interpreting Section 25F to mean that "Ex-gratia" payment made by the management to the said 32 employees when their services were terminated could be taken as retrenchment compensation within the meaning of the Act. It was the contention on behalf of the respondent workmen before the Tribunal that the statutory and legal obligation of the management was to make payment of: retrenchment compensation as contemplated by Section 25F of the Act and it was of no consequence whether there has been any payment, may be in the form of Ex-gratia payment or otherwise.

20. It was further contended on behalf of the respondent workmen that such so called ex-gratia payment made by the management to the workmen not out of any statutory obligation but voluntarily by the management. The Tribunal accepted the contention made on behalf of the respondent workmen that ex-gratia payment had nothing to do with the retrenchment compensation and it was simply a payment out of grace, favour or indulgence and not under any legal obligation.

21. The ex-gratia payment as it appears from Concise Oxford Dictionary means payment as an act of grace without acceptance of liability. The Tribunal also referred to some other dictionary from where it would appear that ex-gratia means out of grace or as a matter of grace, favour or indulgence. It, therefore, appears that the payment made by way of ex-gratia payment is not payment under any legal obligation. The management paid such compensation as they took them as managerial staff and not workmen and, such payment was made as ex-gratia payment as the management made the payment in order to help the employees who had faced with sudden hardship on account of termination of services which has to be brought about due to some exigencies of situation. It is clear that such payment was not made by the management under any legal obligation. The management was not bound to pay such ex-gratia payment and the employees concerned could not have claimed such amount as of right. But if it is a case of retrenchment, coming within the contemplation of Section 25F, of those employees as workmen, then such retrenchment resulting in termination of services of those workmen could not be a valid retrenchment until the pre-conditions as laid down in Section 25F of the Act were fulfilled.

22. It is not settled and there cannot be any controversy that these 32 employees were workmen within the meaning of the Act and if there was any termination of services of those workmen, amounting to retrenchment within the meaning of the Act, then such workmen could be entitled to be paid at the time of retrenchment which should be equivalent to 15 days' average pay for every

completed year of continuous services or any part thereof in excess of six months thereof, as contemplated by Section 25F of the Act. It has been held by series of decisions that non-compliance of mandatory condition of Section 25F would render impugned retrenchment invalid and inoperative. It is, therefore, true that once the mandatory preconditions of this section have been complied with, the retrenchment cannot be challenged for non-compliance of those conditions. The pre-conditions, as indicated above, are that at the time of retrenchment, one month's pay in lieu of notice and the retrenchment compensation is paid to the concerned workmen. This retrenchment compensation and one month's pay in lieu of notice, should be paid at the time of retrenchment,

23. It is the submission on behalf of the appellant that there was notice of termination of service and besides other dues, those employees concerned were paid compensation, be it described as ex-gratia payment or otherwise. Therefore, according to the learned counsel for the appellant, there has been full compliance with the mandatory conditions as contemplated by Section 25F of the Act. The whole object of payment of retrenchment compensation, as explained by the Supreme Court in *Indian Hume Pipe Company Limited v. The Workmen* (supra), is to give some relief and to soften rigour of hardship which the retrenchment inevitably possess. In the instant case the services of said 32 employees were terminated not due to any fault of those employees. So, the Statute intended that some compensation should be given to them and that should be the compensation as contemplated by Section 25F. Now, the question whether the said ex-gratia payment which, as claimed by the appellant, was far more in excess of the compensation payable as retrenchment compensation within the meaning of Section 25F of the said Act. Therefore, it appears that at the time of termination of services of those 32 employees, there was a notice of termination of services and also it is not in dispute that where such notice was not given, three months' pay was also paid in lieu of such notice, besides adequate monetary compensation to the employees concerned. Therefore, if such termination of services of those workmen was taken as a retrenchment u/s 25F of the Act, the management complied with all the mandatory conditions, namely, that the notice or three months' pay in lieu of notice and compensation on account of such termination of service.

24. It is true that when such payment by way of compensation was made, the management did not treat that termination of services as retrenchment within the meaning of Section 25F of the Act, as those employees were although treated belonging to managerial staff. The management decided to pay compensation calling it as ex-gratia payment in order to give relief to those workmen from hardship due to such sudden termination of services, not on account of the fault of those employees. It, therefore, appears to us that the management had in the contemplation that since those employees were not workmen, according to the management, and as such they were not entitled to any retrenchment compensation within the meaning of the Act, the management

decided to pay the amount by way of compensation or ex-gratia payment commensurate with the position of those employees. It is also true that those 32 employees accepted such payment and at that point of time they did not raise any dispute that they were not workmen and that they were entitled to retrenchment compensation in terms of Section 25F of the Act. Later on they simply challenged the termination of services raising it as an industrial dispute and there they contended that they were workmen and that they could only be retrenched in the manner as laid down in Section 25F of the Act. As we have stated above that this Court held them not to be workmen, but ultimately the Supreme Court held that those 32 employees were workmen within the meaning of the said Act.

25. If those 32 employees are workmen within the meaning of the Act, then if their services are terminated amounting to retrenchment within the meaning of Section 25F of the Act, then they would be entitled to notice or one month's pay in lieu of notice and compensation on the computation as indicated in Section 25F of the Act. If their case is taken as retrenchment within the meaning of Section 25F, then all the mandatory conditions are fulfilled by the management, namely, notice or one month's pay in lieu of notice and retrenchment compensation.

26. In the facts of the case we, therefore, hold that on the interpretation of Section 25F of the Act that before terminating the services of those 32 employees all the mandatory conditions as contemplated by Section 25F of the Act, were complied with namely, the notice or one month's pay in lieu of notice and the compensation.

27. It appears from the award that the Tribunal by its award held that the retrenchment was invalid as the mandatory conditions were not fulfilled. The Tribunal, however, held that the concerned workmen should not be entitled to reinstatement which would jeopardise the administration of the company, but they should be entitled to back wages of the terms as indicated in the award. We have set out above, the operative portion of the impugned award. As we have found no interpretation of S.25F of the Act and on the facts of the case that the mandatory conditions of Section 25F of the Act have been complied with by the management and, as such, the termination of services of those 32 workmen amounting to retrenchment within the meaning of the Act was valid, the said 32 employees, the respondent workmen in this appeal are not entitled to any further sum as has been directed by the Tribunal by its impugned award.

28. During the pendency of the proceedings both before the Trial Court as also before this Appeal Court, it has been brought to the notice of the Court that some employees have died in the meantime, some employees had taken employment elsewhere and considering the said fact, the Tribunal had directed the management to pay the back-wages in the manner as indicated in the award.

29. Considering the facts of the case, we direct that whatever payment has been

made by the management in terms of the award and also in terms of the interim order passed by the Trial Court from time to time, the company should not realise or recover the amount already paid in terms of the award or in terms of the interim orders passed by the Appeal Court from time to time. As it appears to us that the retrenchment compensation as contemplated by Section 25F of the Act, has been paid by the management to the said 32 employees, at the time of termination of their services, may be it is under the description of ex-gratia payment there would be no further entitlement of compensation by those 32 employees or their heirs and legal representatives. The learned Trial Judge, however, refused to interfere with the award on the ground that the Writ Court was not sitting in appeal over the findings of the Tribunal by the impugned award, but we feel that since the very decision making process was made by the Tribunal on the basis of the interpretation of Section 25F of the Act, the Tribunal took some predant view not commensurate with the object for which the said Section 25F of the Act was introduced. We, therefore, feel that some interference is called for and on the reasonings as indicated above, we feel inclined to interfere with the impugned award and set aside the award as we hereby do.

30. We set aside the judgment and order of the Trial Court. The appeal is allowed. There will be no order as to costs.

31. Parties are to act on the signed copy of the operative portion of this judgment and order, on usual undertaking.

Vidyanand, J.

32. I agree.