

**(2007) 12 SC CK 0115**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No"s. 5834-35 of 2007 (Arising out of SLP (C) No"s. 15799-15800 of 2003) and Civil Appeal No. 5840-41 of 2007 (Arising out of SLP (C) No"s. 15801-15802 of 2003)

Hondaram Ramchandra

APPELLANT

Vs

Yeshwant Mahadev Kadam (dead) through L.Rs.

RESPONDENT

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**Date of Decision :** 12-12-2007

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10(1), 25F, 25FFF, 33(C2)

**Citation :** (2008) 5 ALT 7 : (2008) 1 AWC 874 Supp : (2008) 116 FLR 362 : (2008) 1 JT 60 : (2008) 1 LLJ 860 : (2008) 1 PLJR 256 : (2007) 14 SCALE 641 : (2007) 14 SCC 277 : (2009) 3 SLJ 312 : (2008) 1 UPLBEC 28

**Hon'ble Judges :** S. B. Sinha, J;H. S. Bedi, J

**Bench :** Division Bench

**Advocate :** Shekhar Naphade, Shivaji M. Jadhav, Himanshu Gupta, Brij Kishor Sah and Rahul Joshi, for the Appellant; K. Sarada Devi, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

S.B. Sinha, J.—Delay condoned.

2. Leave granted.

3. A limited notice was issued by this Court as to whether the High Court was right in directing reinstatement of the respondents-workmen instead of directing payment of compensation in terms of Section 25FFF of the Industrial Disputes Act, 1947.

4. Appellant had a sales office at Mulji Jetha Cloth Market, Mumbai. Respondents-workmen were employed therein. The said shop was closed. The factum of the closure of the shop is not in dispute. What is disputed is as to whether it was done in the year 1983 or 1991. Upon closure of the said shop, the respondents were transferred to work in a factory at Goregaon which did not belong to the respondents. An application for payment of wages was filed against the appellant

before the Prescribed Authority. The said application was dismissed, inter alia, on the premise that the respondents had refused to join their duties at the transferred place. A domestic enquiry was purported to have been held in April, 1984 on the premise that the respondents had neither reported for duties at Goregaon nor at Mumbai. The services of the respondents were terminated in December, 1985. In January, 1986, the premises in which the sales office was being run was admittedly handed over to another Company.

5. An industrial dispute was raised by the respondents demanding their reinstatement with full back wages as well as continuity in services. A reference was made by the appropriate Government.

6. A preliminary issue was raised as to whether in the said reference, the domestic enquiry conducted against the respondents was fair and proper. The said preliminary issue was decided in favour of the employer and against the workmen by an order dated 5.12.1996. The parties to the reference, thereafter adduced their evidences before the Industrial Court.

7. By an award dated 31.7.1996, the Presiding Officer of the Labour Court, Mumbai held that the termination of the services of the respondents was proper and valid and, thus, were not entitled to any relief. Questioning the correctness of the said award, the workmen filed writ applications. A learned single Judge of the High Court of Bombay allowed the said writ petitions being W.P.No.1693 of 1997 and W.P.No.1691 of 1997 by a judgment and order dated 30.08.1999 setting aside both the awards opining:

I do not find any merit in the contention advanced on behalf of respondent No.1. Firstly, as stated hereinabove, there is nothing to show that a proper Domestic Enquiry has been held. Secondly, there is no evidence on record to indicate that transfer constituted service condition. Thirdly, the evidence on record clearly indicates that Khanna Textile Industry was a separate legal entity vis-à-vis respondent No.1 and under the circumstances, the workman cannot be asked to join separate legal entity. I have gone through the entire record. There is no proof to show that the findings of the Enquiry Officer were forwarded to the chargesheeted employee. The findings on record show that the petitioner was asked to work for a separate legal entity, without terminating his services in accordance with law and without paying him compensation u/s 25F of the Industrial Disputes Act, 1947. He was also not paid gratuity. He was also not paid wages during the period when the Enquiry was going on. Taking into account the above facts, the Labour Court erred in dismissing the Reference.

8. An intra court appeal was preferred there against wherein, inter alia, a contention was raised by the appellant that the sales office of the appellant having been closed, no award of reinstatement could have been passed. The said appeal was dismissed by a Division Bench of High Court by reason of the impugned judgment dated 11.01.2000.

A review application preferred there against has also been dismissed by an order

dated 17.01.2003.

9. Mr. Shekhar Naphade, learned senior counsel appearing on behalf of the appellant, submitted that keeping in view the admitted fact that the sales office of the appellant was closed, the workmen were entitled only to the amount of compensation payable in terms of Section 25FFF of the Industrial Disputes Act, 1947 and not the relief of reinstatement with back wages.

It was urged that even the learned single Judge in the judgment noticed:

Shri Khanna has further deposed that he has sold the Sales Office. The evidence of Shri Khanna clearly indicates that Khanna Textile Industry was a separate legal entity to which the workman was sought to be transferred.

Our attention was also drawn to the written statement filed on behalf of the appellant wherein it was averred:

There is no relation between the shop and the Goregaon factory. Prior to the 3-4 years from today, the said place of my work was sold by the company and prior to the sale the place of work was given by the employer on leave and licence to the 3rd party near about 10 years.

It was furthermore brought to our notice that the following contentions were raised before the Division Bench of the High Court, as would appear from the Memo of Appeal:

That there is total non application of mind on the part of the learned single judge in observing that there is no evidence on record to indicate that transfer constituted service condition and that Khanna Dyeing was a separate legal entity vis-à-vis appellant herein. Had the Learned Single Judge appreciated the fact that asking the first Respondent to resume duties at Goregaon factory was an offer of alternate employment due to closure of sales office where the first respondent was employed, he ought to have come to the conclusion that the action on the part of the Appellant was bonafide and with intention to secure employment of the Respondent and that the Appellant was constrained to terminate the service of the first Respondent for not attending his duties.

10. It appears from the records that the following contention was also raised in the review petition:

The petitioner submits with great respect that this fact was through oversight not gone into by the learned Division Bench. Had this fact been considered by the Learned Division Bench and the Learned Single Judge having held that the Respondent's job was a non-transferable one, it is respectfully submitted that reinstatement with the Petitioner company would not have been granted. Also payment of back wages would not have been granted. The Respondent at best was entitled to closure compensation.

11. The learned Counsel for the respondents, on the other hand, contended that the respondents have filed an application u/s 33(C2) of the Industrial Disputes

Act, 1947 before the Labour Court, Mumbai which is pending. It was argued that the respondents may not be entitled for their reinstatement but would indisputably be entitled to back wages in lieu of reinstatement.

It was further submitted that the closure of the unit was affected only in 1991 and not in 1983.

12. From the records, it appears that the sales office of the appellant had been closed down. We have noticed here to before that there exists a dispute as to whether the said closure, for all intent and purport, was effected in 1983 or 1991. The High Court evidently committed an error in not taking into consideration the factum of closure of the business from the premises of the appellant, for the purpose of grant of relief. If the undertaking of the appellant had been closed down, the workmen were entitled to compensation only in terms of Section 25FFF of the Industrial Disputes Act, 1947 and not the relief of reinstatement with back wages.

13. The question of passing an award directing reinstatement with full back wages, in the aforementioned fact situation, did not and could not arise. However, the purported order of transfer was evidently not a legal one. Appellants furthermore initiated a domestic enquiry against the respondents. It was held ex parte. On the basis of the report made by the Enquiry Officer in the said domestic enquiry alone the services of the respondents were terminated. It was at this stage a reference was made by the appropriate government for adjudication of the dispute raised by the respondent herein in terms of Section 10(1)(c) of the Industrial Disputes Act, 1947.

14. Two questions arise for our consideration.

Firstly, whether the closure was affected in the year 1983 or 1991? Secondly, whether the amount of compensation should be computed as if the establishment of the appellant was closed in 1983 or 1991, as the case may be, or are the workmen entitled to some other reliefs?

15. Ordinarily, we would have remitted the matter back to the High Court for consideration of the matter afresh to determine the said questions. Our attention, although, has been drawn to the evidences brought on record, it is difficult for us to arrive at one or the other opinion in regard to the question as to when the establishment of the appellant was closed. In the aforementioned premise it is also not possible for us to determine the effect of termination of service of the workmen.

16. We are, therefore, of the opinion that the interest of justice would be subserved if the Labour Court, where the application of the respondents u/s 33(C2) of the Industrial Disputes Act, 1947 is pending, should be directed to determine the aforementioned questions as the said court can determine the said questions more effectively. For the said purpose, the Labour Court would permit the parties to adduce fresh evidence. We would request the Presiding Officer,

Labour Court to pass an award as expeditiously as possible.

17. We, however, direct that the appellant, in the meanwhile, shall pay a sum of Rs.25,000 each to the concerned workmen within four weeks from the date of receipt of this judgment by way of litigation expenses. The said amount may also be deposited before the concerned Labour Court.

18. With the aforementioned observations and directions, this appeal is disposed of. No costs.