
(1976) 12 MAD CK 0024
In the Madras High Court

Industrial Chemical Ltd.

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 14-12-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 11A, 25

Tamil Nadu Shops and Establishments Act, 1947 — Section 2, 25F, 25G, 25H, 33

Citation : (1977) 2 LLJ 137

Hon'ble Judges : P.S. Kailasam, C.J;V. Balasubramanyan, J

Bench : Division Bench

Judgement

V. Balasubramanyan, J.—These two writ appeals raise questions of some importance in the application of the law relating to retrenchment

of an employee from service.

2. The appellant is a limited company having an office at Madras. The respondent Sankaran was an employee in that office for more than ten

years, in 1970, the company discharged Sankaran from service avowedly as a measure of retrenchment. At that time he was one out of four

assistants in the office, but not the junior most. When serving the notice of retrenchment, the management gave him one month's notice, pay and

retrenchment compensation. But the amount was given by cheque.

3. Sankaran raised an industrial dispute over his retrenchment on reference before the Labour Court he pleaded that there was no warrant

whatever for the management to introduce any measure of retrenchment at the material time. The Labour Court rejected this plea on the score that

the company had incurred losses in its business in 1969 and there was nothing wrong in its desire to effect economies. Sankaran raised two other

contentions based on Sections 25F and 25G of the Industrial Disputes Act, 1947. He urged that the payment of his dues by cheque, instead of in

cash, was not in accordance with Section 25F. Characterizing this plea as a technicality the Labour Court rejected it, observing that the mere fact

that the cheque could be encashed only on the next day would not render the retrenchment invalid. The Labour Court, however, accepted

Sankaran's plea based on Section 25G of the Industrial Disputes Act. It found that in the notice which the management lodged with the State

Government, it had given some reasons as to why it picked out Sankaran for retrenchment while retaining in the office persons subsequently

employed in the category of assistants. But after examining these reasons, the Labour Court held that they did not afford good grounds under the

law for deviating from the principle, "'Last come, first go'". On the basis of this last finding the Labour Court held that Sankaran's retrenchment from

service was invalid. Having recorded this finding, the Court, however, did not think that the circumstances of the case warranted the relief by way

of reinstatement on the contrary, having regard to the management's loss of confidence in Sankaran and the strained relationship between the

parties and in the interest of industrial peace and the smooth working of the office, the Labour Court, in the exercise of its discretion, directed the

company to pay Sankaran an additional sum by way of compensation for non-employment over and above that which had been already received

by him.

4. The award of the Labour Court, on the lines aforesaid, satisfied neither party to the full. In an effort to achieve their respective positions, each

filed a writ petition in this Court. In its writ petition, W.P. No. 2836 of 1972, the company asked for quashing the award in its entirety, contending

that the order of retrenchment ought to have been upheld. Sankaran in his writ petition, W.P. No. 1487 of 1972, asked for a direction to modify

the Labour Court's award and direct his reinstatement in service.

5. The writ petitions came before Mohan, J., for hearing. The learned Judge agreed with all the factual findings of the Labour Court. But he

differed from the view expressed by the Labour Court to the effect that the cheque payment in this case did not violate the terms of Section 25F of

the Industrial Disputes Act, 1947. In doing so, he took note of the fact that at

the time the company handed over its cheque to Sankaran along with the order of retrenchment, the bank had closed its hours of business for the day. The learned Judge rejected the management's contention based on the circumstances that Sankaran accepted the cheque and did not protest against it as a mode of payment. Replying on certain observations of Venkatadri, J., in *Andhra Laundry (Proprietor, R.A. Masilamani) Vs. Additional Labour Court and Others*, , the learned Judge held that it was not open to the employer and employee to contract themselves out of the requirements of Section 25F of the Industrial Disputes Act.

6. On the actual relief, too, awarded by the Labour Court the learned Judge expressed disagreement. He observed that there was no justification for the award of more money compensation, rather than reinstatement, once the Labour Court had held the retrenchment to be bad in law. He did not accept the view of the Labour Court that the strained atmosphere in the office between Sankaran and other members of the staff would afford good ground for not ordering reinstatement. In the event, the learned Judge dismissed the management's writ petition, allowed Sankaran's writ petition and directed the management to reinstate him in service with attendant benefits.

7. The two writ appeals before us have been brought by the management against the judgment of Mohan, J., The first point which Mr. M.R.

Narayanaswami argues for the appellant is that the retrenchment of the respondent Sankaran was not in contravention of Section 25G of the

Industrial Disputes Act. Addressing himself to the construction of the provision, he argues that the Section does not lay down that a senior

employee can under no circumstances be retrenched from service by his employer. According to him, it is a misconception to derive from this

Section any inexorable rule, or even a general principle of retrenchment which finds expression in such popular slogans as ""First come, last go"" and

Last come, first go"". According to learned Counsel, the Section, as it even now stands, leaves the matter of retrenchment very much in the hands

of the employer as one of managerial discretion and managerial decision making. Adverting to the facts, Mr. Narayanaswami points out that in this

case the management did set out its reasons clearly and cogently as to why it was decided to dispense with Sankaran's services rather than those

of any of the other assistants in the office, these reasons, according to learned Counsel's submission, provided justification enough for the

management's decision to oust Sankaran from employment. The Labour Court and the learned Judge, it was argued, were, therefore, not right in

interfering with the discretion properly exercised by the management for reasons duly recorded in the notice of retrenchment.

8. Mr. A. Ramachandran, on behalf of the respondent Sankaran, argued before us that the recording of reasons for retrenchment by the

management did not conclude the matter against the person retrenched or shut out an inquiry into the tenability of those reasons by the Labour

Court or by this Court under Article 226 of the Constitution of India. According to learned Counsel, the very purpose of the requirement u/s 25G,

that the employer should record his reasons for deviating from the principle "Last come, first go" is to render the decision of the management as

well as the reasons therefore justiciable. Mr. Ramachandran pointed out that in this case the reasons put forward by the management in the

annexure to the notice of retrenchment were examined by the Labour Court and were found wanting. There was therefore, every justification for

the Labour Court to interfere with the order of retrenchment passed by the management against the respondent.

9. The principles of retrenchment laid down in Section 25G of the Industrial Disputes Act have come up for application by Courts in numerous

reported decisions. Quite a few of them were cited before us in argument. But we regard them all as just so many different illustrations of the

principles which the statute lays down on the subject of retrenchment, for the Section itself does not present any problems of construction,

couched, as it is, in the following terms.

Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of

workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall

ordinarily retrench the workman, who was the last person to be employed in that category, unless for reasons to be recorded the employer

retrenches any other workman.

10. The Section, when analysed, yields the following principles. The first is that

wherever the employer and the workman have agreed between themselves to abide by a certain procedure for retrenchment in their establishment, then that agreement will prevail and the statutory provisions will not apply. Retrenchment in such establishments will have to strictly conform to the terms of the agreement, and if a question is raised whether any given retrenchment is or is not valid, that question will have to be determined purely as a matter of instruction and application of the terms of the agreement between the parties. The other principle laid down by Section 25G is meant for application to those cases where there does not exist any agreement between the employer and the workmen on the subject of retrenchment. In such cases, the statute supplies the omission, as it were, by laying down the appropriate procedure. But it is clear from the terms of the Section that what it lays down is by no means rigid or uniform. The Section enacts that where retrenchment is to be effected from among category of workmen the individual who happens to have been recruited in that category last would have to be the first to be retrenched, and so on, in that reverse order. But while the Section expects this procedure to be followed normally, and ordinarily, in all establishments where the question of retrenchment is not governed by relative article of agreement, yet it is not laid down as a hard and fast rule to be observed by the employers universally, in all cases of retrenchment, on the contrary, the Section itself recognizes the existence of a discretion in the employer to deviate from this normal procedure and proceed to retrench any workman other than the one who has been taken in employment last. But, under the Section, this discretion can be exercised only if there are reasons for doing so and those reasons are actually disclosed in the concerned notice of retrenchment. The discretion cannot be exercised otherwise.

11. The statutory procedure of retrenchment outlined above is analysed in some of the reported cases as consisting of a general rule and an exception, the general rule being often described in the labour lawyers pidgin, "last come, first go". This manner of understanding Section 25G as containing a rule with an in-built exception has led to a difference in emphasis which one could discern in the dicta of Judges in some decisions, emphasis is laid on the rule, "first come, last go." In others, emphasis is laid on the discretion of the employer. Typical of the line of decisions of the

first kind is that of Subba Rao. J., as he then was, in J.K. Iron and Steel Co. Ltd. Vs. Its Workmen, . His Lordship forcefully stated the position

thus:

If the preferential treatment given to juniors" ignores the well-recognized principle in the industrial law "first come, last go" without arid acceptable

or sound reasoning, a Tribunal or an adjudication will be well-justified to hold that the action of the management is not bona fide

12. The other approach to Section 25G, from the point of view of managerial discretion, is equally forcefully expressed by Shah, J., as he then

was, in the following passage in Om Oil and Oilseeds Exchange Ltd., Delhi Vs. Their Workmen, .

The labour Court inferred mala fides merely because the management departed from the rule, "first come, last go". Whether the management in

departing from the rule has acted mala fide must depend upon the circumstances of the case; It cannot be inferred merely from the departure from

the rule.

13. As we understand the provision of Section 25G of the Industrial Disputes Act, 1947. we think, with respect that the dicta of both Subba Rao,

J., and Shah, J., are but different modes of emphasis of the same statutory principle which might perhaps be restated thus: An employer may

retrench any workman of his from service: If the workman were the last to be employed in his establishment the employer can retrench him with

out assigning any reasons whatever in the notice of retrenchment. If, on the contrary, the workman, was not the last to be employed, the employer

must assign reasons for retrenching him from service and record them in the notice of retrenchment.

14. It seems to us that whichever way the issue as to retrenchment might be tossed about in discussion in individual cases, it must, in every case,

ultimately come down on all fours on Section 25G. It would, therefore, be necessary for purposes of the present case to find out whether the

appellant company can be held to have cleared its position with reference to this statutory provision when it retrenched the respondent Sankaran

from its employment. The record shows that of the four assistants working in the office, Sankaran was by no means the last person to be

entertained in service. It appeared that two at least of the assistants working in

the office were his juniors. This must have been the impelling motivation for the company's appending an explanatory statement to its notice of retrenchment dated June 23, 1970. The reasons stated in the annexure were to the following effect:

Though there are two other assistants who were recruited subsequent to Sri R. Sankaran, they are actually doing the work of "" accountants,

assistants-cum-typists, and one of them is also handling cash receipts and payments, Sri R. Sankaran is not a qualified typist and he was never

entrusted with the cashier's duties. The only other assistant in Madras Sri M. Venkatasubramanian, is senior in service to Sri R. Sankaran.

Accordingly, Sri R. Sankaran is retrenched from service with effect from June 23, 1970.

The above explanation shows that out of four persons described by the class-name ""assistant,"" Venkatasubramanian alone was senior to

Sankaran. The other two employees who belonged to the category of assistants were entertained in service only after Sankaran's appointment.

The company's explanatory memorandum contains no specific reasons with reference to each of these assistants as to why each of them was

retained in service in reference to Sankaran. Without mentioning any name, it is said that one of them was a qualified typist, whereas Sankaran

was not so qualified. It is further mentioned that the assistant who had typewriting qualification also used to handle cash receipts and payments,

whereas Sankaran was never entrusted with cashier's duties.

15. The case of Sankaran before the Labour Court was that he and the other three assistants belonged to the same category, and, between them,

there was no strict allocation of work. Gopal was the last assistant to be entertained in service. Giving evidence in the Labour Court on behalf of

the company, Gopal admitted that, while he was technically qualified as a typist he was employed in the office as one among four assistants. He said

that while he was designated as the cashier, any one could handle cash and, actually, all the assistants in the office used to help each other in this

regard. He admitted that Sankaran himself would have prepared some cash vouchers. He further admitted that Sankaran also used to do typing

work in the office. Sankaran, in the course of his evidence before the Labour Court, stated that Krishnaswami was a qualified stenographer.

Sankaran himself had been put into the sale Section and also in the accounts Section. Besides, while working as an assistant, he used to do typing work too. According to Sankaran, there was no strict allocation of work as between the assistants, and their work was interchangeable. He further stated that Gopal, although technically qualified as a typist, was not appointed as a typist, but was entertained in service only under the category of office assistant.

16. On the aforesaid evidence of Sankaran and Gopal in the witness-box, the Labour Court recorded the finding that of the four assistants in the office, Krishna-swami belonged to another class that of a steno-typist. Venkatasubramanian was admittedly senior to Sankaran. These eliminations left only Sankaran and Gopal in the matter of applicability of Section 25G. Factually, the Labour Court found that Gopal was entertained in service subsequent to Sankaran's appointment. The Labour Court accordingly proceeded to consider the reasons adduced by the management for retaining Gopal, the junior of the two, in employment, while retrenching Sankaran, the senior, from service. According to the Labour Court, the job for which both, Sankaran and Gopal were recruited was the same, namely, that of office assistant. The Labour Court took note of Gopal's evidence to the effect that Sankaran knew typewriting. According to the Labour Court, the mere fact that Gopal had a technical typewriting qualification did not make any difference between him and Sankaran, since both of them were recruited and belonged to the same cadre, that of office assistants. In the result, the Labour Court found no acceptable reason for the company to have deviated from the principle of "last come, first go" u/s 25G. The Labour Court observed that the onus of justifying Sankaran's retrenchment was on the company and the company had failed to discharge that onus.

17. The findings recorded by the Labour Court, as aforesaid, were canvassed by the company before Mohan, J., at the time of hearing the writ petitions. The learned Judge, however, agreed with the reasoning and conclusion of the Labour Court.

18. Before us, Mr. Narayanaswamy, learned Counsel for the management, submitted that the Labour Court's award on this aspect was erroneous on the face of record. He urged that the Labour Court had not properly instructed

itself in the law. He further contended that the Labour Court had proceeded upon a view of the facts, which no reasonable person could entertain. Mr. Narayanaswamy emphasised that Gopal's technical qualification in typewriting provided a justifiable reason for his retention in service. On this basis it was urged that the retrenchment order on Sankaran should have been upheld by the Labour Court.

19. We are unable to accept the contention of the learned Counsel. The award of the Labour Court shows that it had correctly instructed itself in the law when it held that it was for the management to prove how they justified the retention of Gopal while retrenching his senior Sankaran from service. While the management could, in theory, prefer a qualified typist to an inquilines one, the Labour Court rightly drew the inference that could not have been the reason in the present case, since on the evidence on record there was no real allocation of work as between Gopal and Sankaran on the basis of the former's technical qualification as to typing. The Labour Court rightly observed that the management merely clutched at Gopal's typewriting qualification in an effort to justify the retrenchment of Sankaran. while the nature of the work performed by both as assistants were general and non-descript. We feel that the reasoning and conclusion of the Labour Court are unexceptionable The award does not disclose any want of jurisdiction or manifest error of law apparent from the record. We are satisfied that the company in this case acted on no justifiable reason when it retrenched Sankaran from service, while retaining his junior Oopal in employment. Bereft of reason, the retrenchment goes against the principle of Section 25G. of the Industrial Disputes Act, 1947. We have no hesitation, therefore, in holding that the retrenchment of Sankaran is invalid.

20. This conclusion of ours does not, however, dispose of the appeals fully. Two other questions remain to be considered. The first relates to the propriety of the mode of payment of retrenchment compensation which, in this case, was made by the company to Sankaran by means of a cheque The Labour Court, as we have earlier mentioned, summarily rejected the contention of Sankaran on this point as a mere technicality. Mohan, J., in the writ petitions, however, went into the question in some detail. He came to the conclusion that there was a violation of Section 25F(b) of the

Industrial Disputes Act, 1947, in so far as the amount payable to Sankaran at the time of his retrenchment was paid by the company in the form of

a cheque which could only have been encased on the sequent day. The learned Judge rejected the contention of the management to the effect that

by accepting the cheque and by encasing it later Sankaran had waived his objections to the particular mode of payment. According to the learned

Judge, the requirement as to notice pay and retrenchment compensation at the time of retrenchment is a statutory condition precedent, and, as

such, it could not be waived by any party.

21. The precise wording of Section 25F, which has a bearing on this question, is as under:

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....

(a) ...

(b) the workman has been paid, at the time of retrenchment, compensation....

22. The requirement of the Section is that the workman has to be paid compensation at the time of retrenchment. In other words, payment and retrenchment must synchronize and coincide.

23. Mr. Narayanaswamy urged that the issue of the cheque by the company to Sankaran must be regarded, in the circumstances, as equivalent to

payment. He cited in support the authority of a division Bench of this Court in Mohideen Bi and Others Vs. Khatoon Bi and Others, . It may be

mentioned that this decision did not consider the legal position u/s 25F(b) of the Industrial Disputes Act. It was concerned with the construction of

a condition relating to payment prescribed in an auction notice. The condition was in the following terms:

Condition No. 5.-The highest bidder shall pay into the hands of the auctioneers, immediately after the lot is knocked down, a deposit of 25% on

the highest bid amount and shall sign a copy of the conditions of sale acknowledging the bid and shall pay the residue of the purchase money to the

auctioneers, within 15 days from the date of confirmation of sale.

It appeared that the highest bidder in that case deposited Rs. 5,000 in cash and passed a cheque for the balance for Rs. 1,70,000. It further

appeared that the auctioneers were satisfied with the solvency of the bidder, and accepted the cheque. The contention which was raised before the

Court was that the payment by cheque did not comply with the condition No. 5 in the auction notice. This was repelled by Chandra Reddy, C.J.

and Natesan, J., who constituted the Division Bench. The learned Judges observed:

It is too much to contend that a payment by cheque is not a good payment, having regard to the present day practice prevailing in big cities like

Madras.

For holding that issuing a cheque is as good as payment in cash, the Division Bench relied on a judgment of the Bombay High Court in Kirloskar

Bros. Ltd. Vs. Commissioner of Income Tax, Bombay, , where in Chagia, C.J. , observed as follows:

It is also well-settled in commercial practice as I shall presently point out, that a cheque is looked upon as a payment if a creditor accepts a cheque

in place of the country's currency.

24. Mr Ramachandran, however, urged that the general principle enunciated in the above decisions cannot hold good, in a matter arising u/s

25F(b) of the Act. He relied in support on two decisions, one by the Supreme Court. The Supreme Court case is reported in National Iron and

Steel Co. Ltd. and Others Vs. The State of West Bengal and Another, . In that case a workman was retrenched by notice dated November 15,

1958 with effect from November 17, 1958. Under the terms of the retrenchment notice, however, the workman was asked to collect his dues

from the management's cash office ""on November 20, 1958 or thereafter during working hours."" On these facts, the Supreme Court held that

manifestly Section 25F had not been complied with. The Court observed:

If he was asked to go forth, he had to be paid at the time when he was asked to go, and could not be asked to collect his dues afterwards.

25. The above ruling of the Supreme Court was followed by Ramakrishnan, J., in Tamlinad Transports (Private) Ltd. Vs. Mariappan (M.) and

Others, . In that case certain workmen were retrenched on March 5, 1964, but they were asked to go to the office of the management on or after

March 7, 1964, to collect their dues. The learned Judge held that retrenchment of these workmen was not in accordance with the requirements of

Section 2F.

26. In our view, the above two decisions are not useful for our present purpose. In both the decisions it was quite clear on the facts that the

workmen who were retrenched were not paid the retrenchment compensation at the time of retrenchment, within the meaning of Section 25F(b) of

the Act. The notices of retrenchment themselves specifically directed the retrenched workmen to come and collect their dues subsequent to the

dates when they were retrenched. In the present case, however, it is common ground that on the date of the retrenchment, namely June 23, 1970,

Sankaran was personally served with the notice, and along with the notice of retrenchment a cheque for Rs. 4,777.32 was also tendered to him.

Sankaran received both the notice of retrenchment and the cheque at one and the same time.

27. Mr. Ramachandran pointed out that the management passed the cheque in favour of Sankaran after the close of the banking hours on that day,

and hence it could not be encased on that very day. This, according to learned Counsel, could by no means be equated to payment "at the time of

retrenchment" within the meaning of Section 25F(b) of the Act. It was further urged that Sankaran, in fact, raised a protest subsequently as to the

mode of payment of retrenchment compensation by means of a cheque. Although he subsequently encased the cheque, that would not estop him

from urging that the provisions of Section 25F(b) had not been properly complied with by the management.

28. We do not agree with the contentions of the learned Counsel. In the first place, there is no evidence to show that Sankaran protested against

the payment by cheque at the time it was tendered to him along with the notice of retrenchment. It is true that he raised an objection to the cheque

subsequently. But even this belated objection, the terms of which were set out in a letter addressed by Sankaran to the company on June 26,

1976, did not so much as suggest that at the time he had received the cheque he did so under protest for the reason that there was hardly any time

for him to encash the cheque on that day, the bank having closed its business for the day. All that Sankaran represented in that letter was only to

put forth a legal contention of some sort. To quote the relevant portion of the letter:

I am advised that retrenchment compensation should have been paid before retrenchment is effected. When the retrenchment notice was served on me at 4-15 p.m. on 23rd instant (after the close or the banking hours) there was little scope for encashing the cheque.

Sankaran does not say that at the time he received the cheque he received under protest, nor even that he had mental reservations while accepting the cheque. He was merely raising a question of law to the effect that payment by cheque would not amount to payment within the meaning of

Section 25F.

29. For this last proposition put forward by Sankaran in the letter above quoted, and reiterated before us by his learned Counsel we find no

warrant whatever in law. In strict legal theory, a cheque is often described as a conditional payment. But there is nothing preventing parties to a

transaction from accepting payment by cheque as equivalent to payment of cash. In most commercial dealings the agreement to accept a cheque as

payment in cash is almost always implied, having regard to the prevalent commercial practice and the existence of a developed banking system.

There is no reason why the principle should be limited only to transactions inter se between business men and not to payments of substantial

amounts such as retrenchment compensation, etc., where the substantiality of the sum in question would be quite a practical reason against its being

tendered in cash or currency notes on considerations of safety, convenience of carriage, etc.

30. Mr. Ramachandran, however, urged that whatever might be the position of the law merchant and whatever might be the implied terms of

contracts between the creditors and debtors in the field of commerce, the payment contemplated by Section 25F must be held to denote only

payment in the current coin of the realm. No other mode of payment, according to learned Counsel, could be held to fulfil the requirements of the

Section. He represented that not all workmen might be having banking accounts of their own, and in such a situation cheque payments could not

be regarded as payments properly so called, where the payees happen to belong to the working classes. We feel that the argument based on

working class monetary habits is far too general a generalization for us to accept, without any support therefore in statistics or other evidence. It

must be within the experience of many of us that there are people in several sectors of even business and commerce who abhor cheque payments, for reasons best known to themselves. On that account, the legal position of payment by cheque would not become any different. The question before us, as we conceive it, is one of law, and it is to be determined as a matter of construction of the provisions of Section 25F(b). The expression used by the Section is ""paid"", cognate to such expressions as ""payment"", ""payable"", etc. When the statute employs such an expression as this, which is part of common speech, it must be held to have been employed by the Legislature in the popular acceptance of the term. Learned Counsel urged that payment can only relate to payment in cash or in current coin. We are not satisfied that any such restriction can be placed on the expression. There is nothing in Section 25F to show that the word ""paid"" to be understood in any special or limited sense. It follows, therefore, that whatever meaning the expression has under the common law or general law must also be intended to be connoted when employed in the Section. If under the general law a cheque were regarded as payment of money, upon no principle could a similar position be denied for payment by cheque u/s 25F(b).

31. Apparently as an aid to the understanding of the expression ""paid"" occurring in Section 25F(b) of the Industrial Disputes Act, 1947, Mr. Ramachandran relied on certain provisions of the Tamil Nadu Shops and Establishments Act, 1947. He referred to Section 33 of that Act in regard to the manner of payment of wages. He also referred to Section 2(18) of the same Act containing a definition of ""wages"". This definition enacts that by ""wages"" is meant ""all remuneration capable of being expressed in terms of money...payable to a person employed in respect of his employment and includes any sum payable to such person by reason of termination of his employment"". Section 33 insists that all wages ""shall be paid in current coin or currency notes or in both"". Mr. Ramachandran argued that in view of these statutory provisions which apply to the payment of retrenchment compensation also, the handing over of the cheque by the management to Sankaran could not be regarded as payment. We do not accept, as correct, the learned Counsel's contention or his use of the Tamil Nadu Shops and Establishments Act, 1947 as an aid to the

construction of the provisions of Section 25F(b) of the Industrial Disputes Act. Under the State enactment, what we find enacted is a mandatory provision to the effect that wages should be paid in cash and for that purpose wages are inclusively defined so as to include within the scope of the expression retrenchment compensation as well. But we are unable to read those provisions of the Tamil Nadu Act into Section 23F of the Industrial Disputes Act which is a Central enactment. Section 25F must, in our opinion, be construed on its own terms, and to the extent necessary, in the context of the other provisions contained in the Industrial Disputes Act. Its meaning cannot be properly deduced by shifting one's attention to a different piece of legislation passed by a different Legislature. The expression "wages" and the requirement as to their payment in cash are special provisions enacted by the State Legislature for purposes of the shops and Establishments Act. By no stretch of the canons of statutory construction could the special and technical terminology of a different enactment made by a different legislative body be adopted as an aid to statutory construction. Legislative practice, as an aid to construction, also can refer only to the practice of the particular Legislature whose Acts are under consideration. We do not, therefore, feel free to borrow the legislative ideas peculiar to the Tamil Nadu Shops and Establishments Act for understanding the true scope of Section 25F(b) of the Industrial Disputes Act.

32. We have already observed that the expression "paid" occurring in Section 25F of the Industrial Disputes Act must be given its natural meaning as understood under the common law relating to discharge of debts by debtors and creditors. This is because the Industrial Disputes Act itself does not provide for any special definition of the expression "payment" and also because the expression itself is a term of common usage under the general law. If there were some special definition of the term "payment" either in Section 25F or elsewhere in the Industrial Disputes Act then we are bound to apply that definition to payment of retrenchment compensation. In the absence of any such special provision, it would be reasonable to construe the Section in the way we find it that is to say, to draw upon the connotation of the expression "payment" as it obtains in general usage and in legal writings.

33. On this last aspect we derive considerable assistance and guidance from a

decision of the Supreme Court reported in *The Commissioner of*

Income Tax, Bombay South, Bombay Vs. Ogale Glass Works Ltd., Ogale Wadi, .
The question which arose before the Supreme Court in that

case was whether a particular amount of income received by a non-resident company having its registered office in a native State was received in

British India when it received cheques for the amount. The company argued that the posting of the cheques in British India by the remitter cannot

be held to be payment in British India. It was found in that case that the remitter had issued the cheques at the request of the company. Before the

Supreme Court the point was argued as a matter of broader principle, as to whether a cheque may be regarded as an unconditional payment. After

an elaborate discussion of the case law on this subject, as it existed both in India and in England the Supreme Court observed as follows:

That a sum of money may be received in more ways than one cannot be doubted. It may be received by the transfer of coins or currency notes or

a negotiable instrument which represents and produces cash and is treated as cash by businessmen.

On the facts of the case before it, the Supreme Court came to the conclusion that the company received the cheques unconditionally in full

discharge of the liability of the remitter for the price of goods supplied by the company.

34. Adverting to the doctrine that a cheque is only a conditional payment, the Supreme Court explained the position thus:

When it is said that a payment by negotiable instrument is a conditional payment what is meant is that such payment is subject to a condition

subsequent, that, if the negotiable instrument is dishonored on presentation, the creditor may consider it as waste paper and resort to his original

demand.

The learned Judges quoted Byles on Bills, 20th Edition page 23 stating that "a cheque, unless dishonored, is payment.

35. Mr. Ramachandran pointed out that in the present case although the cheque was passed on to Sankaran even on June 23, 1970, it was

actually encashed by him only in September, 1970. It was, accordingly, urged that in the circumstances of the case it could not be held that

payment was made "at the time of retrenchment" within the meaning of

Section 25F(b) of the Act. We do not see how this result flows from the belated encashment of the cheques. It is not suggested that the management gave Sankaran a postdated cheque or that they requested him not to present the cheque for payment till September, 1970 Nor is it suggested that there were not sufficient funds in the Bank to the credit of the management on the day the cheque was tendered to Sankran, namely, June 23, 1970. The true position in law is that when a cheque is accepted by the creditor the date of accepting the cheque must be regarded as the date of payment. In Benjamin on Sale, 8th Edition page 788, it is stated the payment takes effect from the delivery of the bill.

36. In *Rhokana Corporation v. Inland Revenue Commissioners* 1938 A.C. 380 . Lord Maugham dealing with a question which arose u/s 33(1) of the United Kingdom Income Tax Act observed thus:

Apart from the express terms of Section 33, Sub-Section (1), similar conclusion might be founded on the well-known common law rules as to the effect of the sending of a cheque in payment of a debt, and in the fact that though the payment is subject to the condition subsequent that the cheque must be met on presentation, the date of payment, if the cheque is duly met, is the date when the cheque was posted.

To the same effect are the observations of the Supreme Court in *The Commissioner of Income Tax, Bombay South, Bombay Vs. Ogale Glass Works Ltd., Ogale Wadi, ,* a decision which we have already cited. The following further observation would also be in point:

The position, therefore, is that in one view of the matter there was, in the circumstances of this case, an implied agreement under which the cheques were accepted unconditionally as payment, and, on another view, even if the cheques were taken conditionally, the cheques not having been dishonored but having been cashed, the payment related back to the dates of receipt of the cheques and in law the date of payments were the dates of the delivery of the cheques.

37. The above decision of the Supreme Court was followed and adopted in *Commr. of Income Tax, Bombay South, Bombay Vs. Kirloskar Bros.*

Ltd., , which was an appeal against the judgment of Chagla C.J. in *Kirloskar Bros. Ltd. Vs. Commissioner of Income Tax, Bombay, ,* to which we

have made reference in an earlier part of the judgment. In a recent decision of

the Supreme Court in Azamjahi Mills Ltd., Hyderabad Vs. The Commissioner of Income Tax, Hyderabad, , the Court has referred to its earlier decision in Commissioner of Income Tax v. Ogale Glass Works Ltd. (supra) with approval.

38. The above decisions were rendered in cases which arose under the Income Tax Act, but the question of payment of money by cheque was discussed in every one of those decisions not on the technicalities of fiscal legislation, but in terms of the general law, as might be seen from the extracts we have given from the judgments. We feel that in the absence of any special definition in the Industrial Disputes Act cutting down the connotation of the expression ""payment"" or ""paid"" occurring in Section 25 it must receive a meaning which is ordinarily in vogue under the general law.

39. Mr. Ramachandran cited two decisions of the Supreme Court in Workmen of Subong Tea Estate Vs. The Outgoing Management of Subong Tea Estate and Another, , and in Bennett Coleman and Co. (P) Ltd. Vs. Punya Priya Das Gupta, , in support of his contention that the Court should not take note of the subsequent encashment of the cheque by Sankaran for the purpose of considering to what extent the management had complied with the terms of Section 25F(b) of the Act. We have perused both the judgments cited. As we understand those decisions are only authority for the position that the fact that an employee had received the retrenchment compensation would be no bar to his raising up the validity of the retrenchment itself in appropriate proceedings. Neither decision really deals with the question as to when a cheque, which is accepted by a workman without murmur, could be regarded as having effected payment. On this point the authority of the Supreme Court decisions which we have earlier cited would alone be in point.

40. Mr. Ramachandran brought to our notice an unreported judgment of a Division Bench of this Court in The management of Oriental Mercantile Agency, Madras v. The Workmen employed in the Oriental Mercantile Agency and Anr. W.A. No. 113 of 1967 dated March 29, 1974 as a direct and binding authority on the subject of cheque payment u/s 25F(b) of the Industrial Disputes Act. In that case the retrenched workmen were all given cheques by the management at the time of retrenchment. There was no

evidence before the Court in that case to show whether the workmen retrenched had any accounts in any Banks The cheques were all crossed cheques. In those circumstances, the Bench held that even if the workmen had banking accounts of their own, they could not be expected to realize the amounts immediately by encashing the cheques. In the particular circumstances of the case before it, the Bench held: Having regard to the fact that the payment was made by crossed cheque and not in cash we are of the opinion that there was no compliance with the provisions of Section 25F(b).

41. We do not feel persuaded to accept the above determination as a correct statement of the law u/s 25F which is binding on us We may state our reasons as under. The question whether tender of a cheque would amount, in law, to payment of money was by no means the kind of question which the learned Judges could have safely presumed to decide as a matter of first impression, for questions of this kind often arose before the Courts, in the field of contract, under the common law, and under statutory provisions, in any case, for the decision or the discussion of the relevant statutory provisions. The passage we have extracted from the judgment and set out above contains the one and only basis of the decision. With respect, it is no basis at all, for the decision is merely perched on a tacit assumption that the payment u/s 25F(b) must always and ever be in cash. It will be noticed, incidentally, that the Section does not make mention of the expression ""cash"" for a construction to be put upon the Section in that way. Nor is there any discussion in the judgment regarding the jural position of a cheque under general law as a means of effective payment. There is no consideration by the learned Judges of the implication of the expression ""paid"" in the light of any of the provisions of the Act. Last but not least, there is no reference any previous authority of this Court or of the Supreme Court or of any other Court in the land. If the authorities and precedents to which we have referred earlier in this judgment had been cited before the learned Judges, there is little doubt that the learned Judges would have taken those into consideration and would have arrived at a view of Section 25F(b) quite different from the one which they had permitted themselves to entertain, without discussion. In view of these considerations we must hold with respect, that the decision of the Division

Bench had been rendered per incurium in the sense understood in *Young v. Bristol Aeroplane Co. Ltd.* L.R (1944) K.B. 718 and the *The Bengal*

Immunity Company Limited Vs. The State of Bihar and Others, .

42. We may reiterate that our construction of Section 25F(b) is founded not merely on a construction of the expression ""paid"" occurring in that

Section, but also on the basis of what we regard as the settled conception of modern jurisprudence which regards a cheque, not as a conditional

payment but as a payment equivalent to cash effective from the date of tender in all cases where the cheque is subsequently encashed and

appropriated by the payee. We have derived the latter proposition from an unbroken trend of authoritative decisions rendered by the Supreme

Court, which are themselves based on well-accepted principles of law in this country and abroad. To the list of cases which we have already

referred must be added a very recent decision of the Supreme Court reported in *Damadilal and Others Vs. Parashram and Others*, . This was a

case which arose under the Madhya Pradesh Accommodation Control Act, 1961. The question there was whether in payment of rent a cheque

sent by the tenant to the landlord amounted to lawful tender. Gupta, J., speaking for the Supreme Court, laid down the law in the following terms:

It is well-established that a cheque sent in payment of a debt on the request of the creditor, unless dishonored, operates as valid discharge of the

debt and, if the cheque was sent by post and was not on presentation, dishonored the date of payment is the date when the cheque was posted,

The question, however, still remains whether in the absence of an agreement between the parties, the tender of rent by cheque amounts to a valid

discharge of the obligation. Earlier, we have extracted a passage from the High Court's judgment on this aspect of the case. We agree with the

view taken by the High on the point. Rent is payable in the same manner as any other debt and the debtor has to pay his creditor in cash or other

legal tender, but (here can be no dispute that the mode of payment can be altered by agreement. In the contemporary society it is reasonable to

suppose such agreement as implied unless (he circumstances of a case indicate otherwise.

We, therefore, held that the passing of the cheque by the company in favour of Sankaran on June 23, 1970 was an effective payment of

compensation at that very moment of time, which was also the moment of retrenchment, and hence in compliance with the terms of Section 25F of

the Industrial Disputes Act. Since, however, we had earlier held, in agreement with the award of the Labour Court and the judgment of Mohan, J.,

that the retrenchment of Sankaran has contravened the provisions of Section 25F of the Industrial Disputes Act, the net effect of our findings would

be that the retrenchment is illegal and invalid. It follows that W.A. No. 100 of 1976 filed by the management has to be rejected.

43. The subject-matter of W.A No. 99 of 1976 which is against W.P. No. 1487 of 1972 raised the property of the order of Mohan, J., in so far

as he varied the award of the Labour Court and ordered reinstatement of Sankaran in service Mr. Ramachandran, supported the rule issued by the

learned Judge on the score that the Labour Court was in error in thinking that the award of compensation would be the more appropriate relief in

the circumstances of the case He argued that when the Labour Court found the retrenchment to be invalid, the order of reinstatement must follow

as a natural corollary.

44. We do not, however, see why it should be so, as a matter of course or in every case As we understand the Jaw relating to industrial

adjudication, it is open to the Labour Court, in exercise of its jurisdiction, to take note of the several circumstances in the particular case before it

and decide not to grant the relief of reinstatement but grant instead, relief by way of compensation to the workman. It is this principle on which

Section 11A of the Industrial Disputes Act also is based. And there can be no rigid rules governing the exercise of discretion by the Labour Court

in such matters. This is as it should be, in the interests of the success of industrial adjudication in the country. This is not to say that the exercise of

discretion by if Labour Court is not open to review in the emperor Courts of the land. All that is suggested is that the Labour Court's decision in

any given case must not be judged on a priori reason ings, but on its own merits in the light of the facts and circumstances which weighed with that

Tribunal for arriving at its preferential conclusion. In the present case, the Labour Court has given its reasons as to why, in its opinion, to force

Sankaran back into the service would not conduce to good industrial relations. The Labour Court had been taken note of the fact that for some

time past Sankaran and the chief accountant in the company's office had been at loggerheads The Labour Court also took note of the evidence in

the case as to the loss of confidence by the management in Sankaran in the matter of discharge of his duties. We may refer to Sankaran's own

statement both before the Labour Court and in earlier correspondence with the management to the effect that subsequent to March, 1970 he was

literally quarantined and isolated from the rest of the office staff without being assigned any work. In our opinion, the Labour Court was quite

justified in taking note of the bad blood between Sankaran and the other members of the establishment including the Director of the company. On

a consideration of all the circumstances, therefore, which were taken note of by the Labour Court as appearing from its award we cannot say that

the ultimate decision of the Labour Court was perverse in so far as it desisted from directing any reinstatement of Sankaran and ordered

compensation to be paid instead.

45. Mr. Naravanaswamy urged that if the Labour Court's direction ordering compensation rather than reinstatement could not be held to be

perverse, that would leave no scope at all for interference by this Court, for it does not act as an appellate Court, engaged in a regular retrial of the

proceedings brought it before from the file of any subordinate Tribunal or gratuity. He cited the decision of the Supreme Court in *Agnani v. Badri*

Das and Ors. 1963 I L.L.J. 684; to underline his submission that the Court cannot purport to act as an appellate Court, and if it does so, it would

be a very serious infirmity in the exercise of jurisdiction under Article 226 of the Constitution.

46. We agree with the argument of learned Counsel Mohan, J., sought to vary the award of the Labour Court by reference to one or two

decisions of the Supreme Court. We, however, feel that the choice between reinstatement and compensation in any case is not a matter to be

settled either by precedent or by argument, but on a consideration of the special facts and circumstances present in the case. The learned Judge

observed thus:

I am unable to follow the reasoning of the Labour Court in holding that the strained relationship between the writ petitioner and Mahalingam would

be a valid reason for not awarding the relief of reinstatement. If this position is

accepted, invariably the management, will put forth strained relationship against the reinstatement of the workmen.

We do not agree with this line of reasoning. The Labour Court awarded compensation in preference to reinstatement in the light of the materials

put forth before it in evidence. The reasoning of the Labour Court must accordingly be judged on the facts of the case, and its validity cannot be

minimized on the score that it might become a stock explanation of the management in other cases. If the Labour Court is wide awake to its

responsibilities, "stock explanation" of this kind or any kind would have no chance of being entertained in that forum. In any case, overruling the

Labour Court in the present case may not be an efficacious way of preventing stock arguments from taking hold of that Tribunal in subsequent

cases. The only proper way that any Court knows of judging the truth of a case is to concentrate its gaze on the particular facts. That seems to

have been done by the Labour Court in the present case, and we see no reason why this Court should interfere with a conclusion thus arrived.

47. Mohan. J., relied on a decision in *Workmen of United Bleachers v. United Bleachers* 1961 I L.L.J. 529, where, on the facts of the case, one

of us had held that reinstatement could not be denied on the ground that the relationship between the management and the workmen had become

strained. The learned Judge also cited a more recent decision of the Supreme Court in *Tulsidas Paul Vs. The Second Labour Court, W.B.* and

Others, for the position that compensation can be awarded by the Labour Court, in the exercise of its discretion, only in exceptional cases on the

basis of considerations of fairness and justice. The position in law seems to be that once it is found that retrenchment is unjustified and improper, it

is for the Tribunals below to consider to what relief the retrenched workmen are entitled. This position is well-established ever since the decision of

the Supreme Court in *Swadesamitran Limited, Madras Vs. Their Workmen*, . In *The Punjab National Bank Ltd. Vs. Its Workmen*, , the Supreme

Court again observed that:

It is obvious that no hard and fast rule can be said down in dealing with this problem. Each case must be considered on its own merits.

Nevertheless, in unusual or exceptional cases the Tribunal may have to consider whether in the interest of the industry itself, it would be desirable,

or expedient not to direct reinstatement.

In the decision rendered by the Supreme Court in *Tulsidas Paul Vs. The Second Labour Court, W.B. and Others*, , the Court was not unwilling to

regard it as an exceptional situation in a case where it was found that reinstatement of the retrenched workmen would lead to recurrence of trouble in the establishment.

48. We do not, however, regard the decisions aforesaid as laying down any immutable principle of universal application, considering that the

subject-matter of discussion in all (those) cases related to the exercise of discretion by the Labour Court in individual cases.

49. As far as the present case is concerned, when the Labour Court awarded compensation instead of reinstatement, it did not do so on the basis

of any doctrinaire approach to the problem. On the contrary, it concerned itself with the facts which, in its evaluation, disclosed a potentiality of

recrudescence of industrial dispute between the parties in the event of Sankaran's being asked to be taken back in service and the possibility that

the bad treatment he was earlier getting from the management as well as other incomers of the staff, of which he had complained more than once,

would be repeated. These considerations, in our view, cannot be dismissed as irrelevant or unrealistic. We hold that the Labour Court's decision

was quite a sensible decision, in the circumstances, and there was no justification for the learned Judge to have interfered with the award. We,

accordingly, set aside the judgment of Mohan, J., and restore the award of the Labour Court. Writ Appeal No. 99 of 1976 is allowed.

50. Before closing, we must mention that during the pendency of the writ appeals, pursuant to certain interim directions issued by this Court, the

management had paid Sankaran Rs. 11,150 over and above the sum of Rs. 4,777-32 paid to him as retrenchment compensation. Mr.

Narayanaswamy, learned Counsel for the management, informed us that the management had paid these amounts in compliance with the orders of

this Court pending the writ appeals. He represented to us, towards the close of his arguments, that irrespective of the results of the writ appeals the

management had decided not to claim back the amounts already paid by them to the respondent pursuant to the interim orders of this Court. The

practical result of this generous gesture on the part of the management would be

that although we are upholding the award of the Labour Court to the fullest extent, Sankaran would not be under any obligation to return to the management the amount of Rs. 11,150 which he had received during the pendency of the writ appeals, but can retain it to himself.

51. In the circumstances of the case, we make no order as to costs in both the writ appeals.

52. Towards the close of the delivery of the judgment, Mr. Prasad appearing for the respondent. Sankaran, rose and made a submission He said

that on behalf of his client an argument had been addressed before us at the hearing based on Section 25H of the Industrial Disputes Act. It was

submitted that in this judgment we had omitted to deal with it. To the best of the recollection, of at least one of us, Section 25H did not figure in

argument, and because of that, it did not find any place in the notes of argument. Nevertheless, Mr. Narayanaswamy, learned Counsel for the

appellant-company, seemed ready to meet that contention. Accordingly, Mr. Prasad was allowed to mention the point based on Section 25H and

make his brief submission as if in recapitulation. Mr. Narayanaswamy also was given the opportunity of replying to the argument

53. Section 25H relates to the reemployment of retrenched workmen. It says that where any workmen are retrenched, and the employer proposes

to take into his employ any person, he shall, in such manner as may be prescribed, given an opportunity to such of the workmen who had been so

retrenched to offer themselves for re-employment and such retrenched workmen shall have preference over other persons. Mr. Prasad urged that

when the Labour Court desisted from ordering reinstatement in this case, but granted only monetary compensation, the rights of the retrenched

workman u/s 25H were altogether destroyed by a side wind, as it were. He further urged that whatever might be the jurisdiction of the Labour

Court in regard to dismissal and discharge of workmen simpliciter, falling strictly within its powers u/s 11A of the Act, which has been held by

Courts to confer on the Labour Court a discretion to render a decision on the basis of a choice of alternatives between reinstatement and

compensation for loss of employment, that principle could not be applied in a case of retrenchment. According to learned Counsel where a Labour

Court holds that any retrenchment is invalid, it is bound to order reinstatement

under the compulsions of the statute, on indication of which is to be found, according to learned Counsel, in Section 25H of the Industrial Disputes Act.

54. Mr. Narayanaswamy, however, urges that the question of applying Section 25H would only arise where the employer, at some subsequent

point of time proposes to increase his labour force. This being so, it is not a matter which the Labour Court should be bothering itself about as a

relevant consideration at the time of adjudicating on the validity of the retrenchment and at the time of considering whether it would be appropriate

to order reinstatement or award compensation instead. Learned Counsel further argues that the nature of the discretion of the Labour Court even

in cases where the Court holds the retrenchment to be bad in law cannot be taken away merely by a reference to Section 25H of the Act.

55. We have earlier made reference to the decision of the Supreme Court in *Swadesamitran Limited, Madras Vs. Their Workmen*, . That was a

case of retrenchment. The learned Judges seemed to think that it was within the discretion of the Tribunal even in cases of retrenchment either to

order reinstatement or merely grant compensation. Even as a matter of construction and application of Section 25H, we are not persuaded to hold

that the presence of these provisions on Chapter VA makes for a different result. Section 25H would apply only in a case where retrenchment is

held to be valid. It would have no application in a case where retrenchment is held to be invalid. The proper understanding of resulting position that

accrues on the award of the Labour Court in this case is not that Sankaran's retrenchment is held valid, but that it is held in. valid. In this view,

Sankaran cannot, therefore, hold himself as a person eligible for preferential re-employment u/s 25H. There is no substance in the plea based on

this provision and we have no hesitation in rejecting it.

56. Reheard after being posted for being mentioned. There is nothing further to be added to the judgment.