

(1979) 09 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 1300 of 1979

Kamleshkumar Rajanikant Mehta

APPELLANT

Vs

Presiding Officer, Central Government Industrial Tribunal No.
1 and Another

RESPONDENT

Date of Decision : 04-09-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F, 2A

Citation : (1979) 39 FLR 329 : (1980) 1 LLJ 336 : (1979) MhLj 874

Hon'ble Judges : V.S. Deshpande, J;B. Lentin, J

Bench : Division Bench

Judgement

Lentin, J.—By this petition under Art. 226 of the Constitution, the petitioner challenges the impugned award dated 12th October, 1978 passed by the 1st respondent, namely, the Presiding Officer, Central Government Industrial Tribunal No. 1, in so far as it does not order the re-employment of the petitioner in the service of the 2nd respondent-Bank, and seeks a direction that the petitioner be reinstated in the service of the Bank with effect from 19th December, 1974 with continuity of service with back wages and all other consequential reliefs.

2. The petitioner was initially appointed by the Bank on 1st February, 1972 as a temporary godown keeper at its Savli Branch by an appointment order dated 1st February, 1972. The petitioner's service was terminated with effect from 25th April, 1972. The Bank thereafter again employed the petitioner from 14th December, 1972 and terminated his service with effect from 31st July, 1973. Thereafter, with effect from 25th October, 1973, the Bank once again employed the petitioner at its Bhadram Branch as godown keeper and clerk without giving any letter of appointment.

3. It appears that one Mahikanta Cotton Gowers Association (referred to hereafter as "the Association") was a constituent of the Bank and that this Association had its godown about 5 furlongs away from the Bank premises.

Credit facility had been extended to that Association by the Bank against pledge of goods stored in that godown. The Association could remove goods from that godown against payment equivalent to the value of the goods removed. One of the duties of the petitioner was to be the godown keeper in respect of this godown in order to ensure against unauthorised removal of the pledged goods stored in that godown. On 25th November, 1974, the Association removed 650 bales of the value of about Rs. 6 lacs against Hundis for half that amount, namely, Rs. 3 lacs. Apparently, this resulted in a deficit of Rs. 10 lacs in the Association's account with the Bank. According to the Bank, such unauthorised removal of 650 bales could possibly not have been made by the Association except with the connivance of the petitioner, who according to the Bank, had also tampered with the Bank's record. On 26th November, 1974, a letter was addressed by the Bank to the petitioner wherein, after making reference to the petitioner's stock memo dated 25th November, 1974, the Bank expressed surprise that delivery of 650 bales had been given to the Association, causing the account of the latter to be out of order. By that letter, the petitioner was called upon to give his explanation how delivery of 650 bales had been given by the petitioner to the Association. The next day, by his letter dated 27th November, 1974, the petitioner gave his explanation, stating that his stock memo dated 25th November, 1974 showing the position of stock as at the close of business on 24th November, 1974 was in order and that he was unable to understand how the query regarding the delivery of 650 bales had come to be made in the Bank's letter of 26th November, 1974. The petitioner further stated that the Association had taken delivery of 650 bales on 25th November, 1974 when the petitioner was attending to the office work at Burden the whole day. The petitioner further stated that apparently the Association took delivery of 650 bales under the wrong impression that it would be able to deposit the necessary funds in the cash credit account and that the petitioner had informed the Association to take delivery only after taking the usual prior permission. The petitioner ended his letter expressing regret for the inconvenience, if any, caused to the Bank.

4. The petitioner was thereafter served with an order dated 18th December, 1974, terminating his service with effect from the following day, namely, 19th December, 1974. The order of termination reads as under :

Under the instruction received from our higher authority, you are hereby informed that, you are discharged from the duties of the Bank of Baroda, Bhadran as Godown-Keeper to attend the M/s. Mahikanta Cotton growers Association, Board, from 19th December, 1974. You may give the charge of stock pledged with us to Mr. Kanubhai Dahyabhai Patel."

5. On 20th December, 1974, the petitioner addressed a letter to the Bank, intimating that pursuant to the discharge order, he had handed over charge to one M. D. Patel. By that letter, the petitioner stated that the termination order had given him a rude shock as he had been serving the Bank as a Godown

Keeper uninterruptedly since the past 14 months from 25th October, 1973 till 19th December, 1974. He further stated that he had worked in various departments including the cash department and also as a typist. The petitioner requested the Bank to reinstate him and to confirm him in the Bank's service with retrospective effect from 25th October, 1973. No reply was vouchsafed by the Bank to that letter.

6. Being aggrieved by the termination order, the petitioner raised an industrial dispute under S. 2A of the Industrial Disputes Act before the conciliation authority. Nothing came of the same, except a failure report. Two references were summarily rejected by the Tribunal for technical reasons on preliminary objections taken up by the Bank. Thereafter, the petitioner once again approached the Central Government for issue of a fresh reference order, which Government did, and the dispute was registered in the Office of the Tribunal as Central Government Industrial Tribunal No. 6 of 1977. The petitioner filed his statement of claim. The Bank filed its written statement and the petitioner filed his rejoinder. Certain preliminary objections raised by the Bank were overruled by the Tribunal and the reference proceeded on merits.

7. On 12th October, 1978, the Tribunal made its award, holding that the Bank had made out a case of loss of confidence in the petitioner. The Tribunal, however, came to the conclusion that the termination of the petitioner's service amounted to retrenchment attracting the provisions of S. 25F of the Industrial Disputes Act, and that the Bank not having complied with the mandatory provisions of that section, the order of termination could not be sustained. The Tribunal concluded by holding that the Association did not exist since 1975, hence the question of re-employment of the petitioner to the post of godown keeper did not arise. It was further held that regard being had to his past record, it was undesirable to ask the Bank to re-employ the petitioner in any clerical post. Taking into consideration all the circumstances of the case, the Tribunal held that the termination of the petitioner's service with effect from 19th December, 1974, was not justified and directed that he should be paid his salary from the date of his termination till the end of 1974.

8. Being aggrieved by that order, the petitioner has filed the present petition seeking the reliefs stated in the opening part of this judgment.

9. Mr. Udeshi, the learned counsel appearing on behalf of the petitioner, urged that the Bank's plea of loss of confidence was an after thought as it was not raised in the order of termination or at any time prior to the filing of its written statement in the third reference. Mr. Udeshi also urged that the Bank had failed to make out any case of loss of confidence in the petitioner and that the findings of the Tribunal to the contrary were unjustified and perverse. Queried Mr. Udeshi : If the Bank had in fact lost confidence in the petitioner, would it not have stated so at the earliest opportunity, namely, when it called upon the petitioner to show cause by its letter dated 26th November 1974 ?" Mr. Udeshi also emphasised the fact, that even in the letter of termination, the Bank had not

stated a single word about any loss of confidence in the petitioner and that all that the Bank had done was to have terminated simpliciter the petitioner's service. Mr. Udeshi repeatedly urged that the plea of loss of confidence by the Bank was an afterthought to which the Tribunal had failed to give sufficient importance.

10. We are impressed by these contentions urged on behalf of the petitioner. It is true that neither in the show cause notice, nor in the order of termination, nor in the written statements in the earlier two references has the Bank made any reference to loss of confidence. However, merely by reason of the fact that loss of confidence has been averred by the Bank in its written statement in the third reference, by itself, is not a ground for brushing it aside as an after-thought. If the Bank had failed to establish loss of confidence, Mr. Udeshi's criticism might well have been justified.. However, in the inquiry before the Tribunal, the Bank was able to establish its plea of loss of confidence. After sifting and analysing the oral and documentary evidence, the Tribunal in no uncertain terms came to the conclusion that the petitioner had even tampered with the Bank record and that as a result of the incident of 25th November, 1974, the Association was unauthorisedly able to obtain delivery of 650 bales of the value of Rs. 6 lacs against hundis for half the amount, namely, Rs. 3 lacs. Mr. Udeshi's criticism that the Tribunal's finding is unjustified and perverse, is equally without substance. Mr. Udeshi took us through the oral evidence adduced and the documentary evidence produced by the parties before the Tribunal. After considering the entire evidence, oral and documentary, and weighing all the pros and cons, the Tribunal has in its detailed and elaborate judgment stated as under :

"..... The pertinent question, however, is the kind of lapse that the workman committed. Delivery of goods was taken during office hours when he was busy in the office. It is difficult for me to believe him that he prepared the delivery order under the instructions of the officiating agent. The important point to be noticed is that on the delivery order is the endorsement of the party concerned having received 650 bales. It does not contain the signature of the agent. Therefore, it is clear. That it was not prepared under the instructions of the agent nor was it submitted to him, nor did he receive it from the agent on the 25th. Rather the truth lies in the evidence of the officiating agent (EW-1) that it was all placed before him on the 26th at 11.00 A.M. along with three hundies. I feel inclined to hold that Shri Mehta after obtaining the signature allowed the party, even without having requisite amount to their credit, to take excess delivery. No doubt he was busy in the office on the 25th for the whole day but he should have first obtained Shri Patel's order and effected the delivery himself. Rather he has taken a false pretext and tried to transfer the blame on Shri Patel."

11. After having perused the evidence and the exhibits with Mr. Udeshi, we do not see that there can possibly be any ground for interference by us with the reasons or findings given by the Tribunal. What Mr. Udeshi was at pains to invite us to do was to re-appraise the evidence and come to our own findings, in

substitution of that arrived at by the Tribunal. We unhesitatingly express our inability to do so. Under the writ jurisdiction, it is not open to us to sit in appeal and re-appraise the evidence and substitute our finding for that of the Tribunal, where no ground available for interference in writ jurisdiction exists. In this case, none does. The Tribunal has weighed all the pros and cons and has taken all the facts and circumstances into consideration before coming to the finding it has done. No case whatsoever for interference has been made out.

12. This brings us to the main bone of contention between the parties. On behalf of the petitioner, it was urged by Mr. Udeshi that termination of the petitioner's service on the ground of loss of confidence would be retrenchment under S. 2(oo) of the Industrial Disputes Act and since the Bank had failed to pay the retrenchment compensation in breach of S. 25F(b) of the Act, the petitioner was entitled to reinstatement with continuity of service, full back wages and other benefits.

13. On the other hand, Mr. Damania, the learned counsel appearing on behalf of the Bank, urged that termination of service on account of loss of confidence does not, and cannot, amount to retrenchment within the meaning of S. 2(oo) of the Act, with the result that the provisions of S. 25F(b) are not attracted.

14. In order to appreciate these rival contentions urged before us, it would be pertinent to analyse the definition of "retrenchment". "Retrenchment" is defined in the Oxford English Dictionary as the act of cutting down, off, or out; curtailment limitation, reduction; the act of excising, deleting, or omitting; the act of economising or cutting down expenditure. It would, however, be trite to say that where an enactment itself provides the meaning, it is from the four corners of the enactment itself that the meaning must be gathered. For that, we turn to S. 2(oo) where "retrenchment" is defined. Section 2(oo) reads as under :

""retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action, but does not include, - (a) voluntary retirement of the workmen, or

(b) retirement of the workmen on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, or

(c) termination of the service of a workman on the ground of continued ill-health;"

In this petition, we are not concerned with sub-clauses (a) to (c). An analysis of this definition in so far as the present controversy is concerned, reveals 4 essential ingredients, namely, (1) there must be a termination of the service of a workman, (2) the termination must be by the employer, (3) for any reason whatsoever, and (4) otherwise than as by way of punishment inflicted by way of disciplinary action. It is the 3rd ingredient that needs dissection and which has

given rise to the controversy between the parties before us. What is the meaning of "for any reason whatsoever" ? On behalf of the petitioner, it was urged that these words are so tremendously wide, so as to include within their scope and ambit any conceivable reason for terminating the services of the workman, including loss of confidence. What we have, therefore, to determine is whether the words "for any reason whatsoever" in S. 2(oo) are so wide in their scope and admit so as to include all sins of commission and omission, with the result that even if the service of a worker is terminated, say, for insubordination, inefficiency or loss of confidence, would the same amount to retrenchment ?

15. We are unable to give the words "for any reason whatsoever" in S. 2(oo), the utterly wide scope and ambit that Mr. Udeshi invites us to do. The essential and basic element of "retrenchment" is surplusage. In other words, when an employer in an existing and running concern or industry, finds that he has staff or labour which is in excess of the number required and hence is surplus, the services of such as are in excess can be terminated and such termination would be retrenchment. The termination of service of workers due to closure of the business or industry cannot be described as retrenchment. Surplusage in a running business or industry is the very basis of retrenchment. When can an employer be faced with the problem of surplusage, i.e. having surplus staff or labour ? The answer is obvious. He may want to cut down on expenditure, he may want to introduce new about-saving devices, are but two illustrations. Such is the motivation for pruning the labour or staff found to be in excess. In that event, the employer can tell his workers, "Amongst you all, A, B and C are in surplus. I, therefore, do not require you. I terminate your services. Take your compensation under S. 25F, and go." That is the concept of retrenchment. It is merely the discharge of surplus staff or labour in a running or continuing business or industry, for certain reasons illustrated above. If the termination is for any other reason, say, for loss of confidence, it is not retrenchment. Thus the expression "for any reason whatsoever" in S. 2(oo), even though seemingly wide, must necessarily draw within its ambit, not any sin of commission and omission on the part of the workman but the concept that the termination of the surplus workers' service is due to reasons such as economy, nationalisation in industry, installation or improvement of new labour-saving machinery or device, standardisation or improvement of plant or technique and the like. It is in conjunction with such reasons that the words "any reason whatsoever" must be read and construed. Thus, even without resorting to the dictionary meaning of "retrenchment", the same meaning can be extracted from S. 2(oo) itself. As observed by the Supreme Court in Hariprasad's case, referred to hereinafter, in using the expression "for any reason whatsoever" in S. 2(oo), what the Legislature tells the employer is that it does not matter why he is discharging the surplus workers or staff; if the other requirements of the definition are fulfilled, then it is retrenchment.

16. The leading authority for this proposition is the case of Hariprasad v. A. D. Divalkar, AIR 1957 S.C. 121, where the determination of the words "for any

reason whatsoever" came up for consideration before a Bench of 5 Judges of the Supreme Court. At page 127 of the report, it was observed as under :

"..... We agree that the adoption of the ordinary meaning gives to the expression "for any reason whatsoever" a somewhat narrower scope; one may say that it gets a colour from the context in which the expression occurs; but we do not agree that it amounts to importing new words in the definition. What after all is the meaning of the expression "for any reason whatsoever" ? When a portion of the staff or labour force is discharged as surplusage in a running or continuing business, the termination of service which follows may be due to a variety of reasons; e.g., for economy, rationalisation in industry, installation of a new labour saving machinery, etc. The Legislature in causing the expression "for any reason whatsoever" says in effect : "It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment." In the absence of any compelling words to indicate that the intention was even to include a bona fide closure of the whole business, it would, we think, be divorcing the expression altogether from its context to give it such a wide meaning as is contended for by learned counsel for the respondents. What is being defined is retrenchment, and that is the context of the definition. It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined."

At page 128 of the Report, it was further observed as under :

"... We do not, however, think that sub-els. (a), (b) and (c) are conclusive of the question before us; they, no doubt, apply to a running or continuing business only, but whether inserted by way of abundant caution or on account of excessive anxiety for clarity, they merely exclude certain categories of termination of service from the ambit termination of service from the ambit of the definition. They do not necessarily show what is to be included within the definition".

We have reproduced the above observations of the Supreme Court in Hariprasad's case at some length because what emerges in bold relief from the decision in that case is that the words "for any reason whatsoever" are not so very wide as to include termination of service on the ground, say, of insubordination or inefficiency or loss of confidence. What emerges from Hariprasad's case is that the expression "for any reason whatsoever" must necessarily be read in conjunction with reasons like, economy, rationalisation in industry, installation of a new labour - saving-machinery, etc. Thus, on the ratio laid down by the Supreme Court in Hariprasad's case, it would be a mistake to hold that loss of confidence could be included in the expression "for any reason

whatsoever" and hence termination of service on that score would amount to retrenchment. Hariprasad's case also brings to the forefront that bona fide closure of business cannot be described as retrenchment. Hariprasad's case also brings to the forefront that the criterion in order to attract the provisions of S. 2(oo) is surplusage in a continuing or running industry, as is highlighted by the following observation at page 132 of the Report :

"..... On our interpretation, in no case is there any retrenchment, unless there is discharge of surplus labour of staff in a continuing or running industry."

17. Coming nearer home, the scope, ambit and meaning of the words "for any reason whatsoever" in S. 2(oo) came up for consideration before a Full Bench of this Court in National Garage, Nagpur (By Managing Director) Vs. Gonsalves J., Following the decision of the Supreme Court in Hariprasad's case, it was held by the Full Bench of this Court that retrenchment within the meaning of the Industrial Disputes Act means discharge of surplus labour or staff in a continuing or running industry, but, if the termination of service is due to any other reason, it will not constitute retrenchment.

18. In The Workmen of the Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Management of the Bangalore, Woollen, Cotton and Silk Mills Co. Ltd., emphasising the criterion of superfluity or surplusage, it was held that the service cannot be said to be terminated unless it was capable of being continued and that if it was not capable of being continued, that is not a termination of the service. It was further held that where the workmen were discharged on the ground of ill-health, it is because they were unfit to discharge the service which they had undertaken to render and not because they had become surplus, with the result that those workmen could not be said to have been retrenched within the meaning of the Act.

19. At this stage, it would be pertinent to look to the scheme of the Act to ascertain whether the word "retrenchment" connotes surplusage and whether it is distinct from a case of ordinary termination or a case of termination for insubordination, inefficiency or loss of confidence or some other reason. In this connection, reference can first be made to S. 2A of the Act. Section 2A reads as under :

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual work man, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute ..."

A plain reading of S. 2A gives a clear and unfailing indication that the Legislature itself had no intention of confusing or identifying retrenchment with other forms of termination of service and that in order to bring the case of an individual worker within the four corners of retrenchment, recourse can only be had to the definition of that word contained in S. 2(oo).

20. Section 25G provides for the procedure for retrenchment, and which can be summarised by the phraseology "last come, first go." Such a procedure would have been inconceivable if termination of service in a case other than surplusage, viz. say, for loss of confidence, was intended by the Legislature to be categorised as retrenchment. This section also brings to the forefront that the centrifugal force revolving round the terminology "retrenchment" is excess or surplusage or superfluity. It is thus in such a case is laid down the procedure that the last person to join must be the first to go. Section 25H makes this even clearer. That section provides for re-employment of retrenched workmen and states that where any workmen are retrenched and the employer proposes to take into his employ any person, he shall, in the prescribed manner, give an opportunity to the retrenched workmen to offer themselves for re-employment and such retrenched workmen shall have preference over other persons. This section, therefore, casts an obligation and makes it mandatory on the employer not only to take back a retrenched worker but also to give preference to such workman over others. It would be anomalous to the point of absurdity and would result in a horrifying situation if an employer, who terminates the service of his workman for the loss of confidence or inefficiency or insubordination and the like, is to be expected, may, to be compelled to re-employ that very worker in the same industry or business and that too in preference to other workmen whose services are not terminated either for loss of confidence, inefficiency, insubordination and the like. Taking Mr. Udeshi's contention to its logical conclusion, it would be ludicrous to expect an employer to terminate the service of an employee for lack of confidence and yet be compelled to employ the same worker in the same industry, despite the lack of confidence for which his services had earlier been terminated. The result would be utter chaos where industry and business would grind to a halt.

21. Chapter VB contains special provisions relating to lay-off, retrenchment and closure in certain establishments. This is a special chapter, the provisions whereof come into force when a certain contingency arises, namely, lay-off, retrenchment and closure. That this chapter should apply to retrenchment is also an indication that the concept of "retrenchment" as defined by S. 2(oo), was not intended by the Legislature to be resorted to in wild abandonment and indiscrimination, to each and every form of termination, but only as a special category not applicable to each and every form of termination of service. Item No. 10 of the Fourth Schedule, which provides for conditions of service for change of which notice is to be given, provides for "rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen." Rule 81 of the Industrial Disputes (Bombay) Rules, 1957, provides for the maintenance of seniority list of workmen and states that the employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated, arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a Notice Board in conspicuous place in the premises of the industrial establishment at least

seven days before the actual date of retrenchment. Form XXIV-A-I of Form of Notice to be given by an employer under clause (c) of sub-s. (1) S. 25N of the Industrial Disputes Act, provides that the employer must state that he proposes to retrench the particular workmen and he has to give a reply against each item mentioned in the annexure. Item 18 of that annexure to which the employer must give his reply is : "Anticipated savings due to the proposed retrenchment."

22. Thus Item No. 10, Rule 81 and Form XXIV-A-I are yet further indications that it was not, and could never have been, the intention of the Legislature to make retrenchment synonymous with termination on grounds like loss of confidence, insubordination or inefficiency. The entire scheme of the Act emphasises this in abundant measure.

23. Mr. Udeshi invited our attention to the decision of the Supreme Court decided by a Bench of 3 Judges in *The State Bank of India Vs. Shri N. Sundara Money*, . As great reliance was placed on that judgment, we shall advert to it at some length. In that case, the services of two employees had been terminated. One of them was re-absorbed, the other was not. Holding that the words "termination for any reason whatsoever" in S. 2(oo) were the key words, it was observed that whatever the reason, every termination spells out retrenchment; hence the sole question is whether the employee's service had been terminated. In para 9 at page 1114 of the report, it was observed as under :

"A break-down of S. 2(oo) unmistakably expands the semantics of retrenchment. "Termination ... for any reason whatsoever" are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated ? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of S. 25F and S. 2(oo). Without speculating on possibilities, we may agree that "retrenchment" is no longer terra incognita but area covered by an expansive definition. It means "to end, conclude, cease." In the present case the employment ceased, concluded, ended on the expiration of nine days-automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from S. 25F(b) is inferable from the proviso to S. 25F(1) (sic) (Section 25F(a) ?). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract S. 25F and automatic extinguishment of service by effluxion of time cannot be sufficient."

It is on these observations that great reliance was placed by Mr. Udeshi. Mr. Udeshi urged that the observations quoted above, enlarged to an indefinite

extent the definition of "retrenchment" as contained in S. 2(oo) and that so wide have the doors of S. 2(oo) been thrown open, that any and every kind of termination of service, be it for insubordination, inefficiency or even loss of confidence, would be retrenchment.

24. We have no hesitation in repelling these submissions. They must be advanced to be rejected. The observations in the State Bank case intended earlier, cannot be read by themselves de hors the context in which they have been made. The observations, made in the State Bank case must necessarily be read in the context of the facts of that particular case and not as general observations to be read for an all sweeping and all embracing effect. There is no doubt that in the State Bank case, the reason for the termination of the service of the two persons therein was surplusage. Two employees were found to be in excess of the number required and hence their services were terminated. This is brought to the forefront by the fact that it also appears in that judgment that one of the workmen was reabsorbed in service as stated in the opening lines of para 5 at page 1113 of the report as under :

"One of the two employees involved in these appeals has been re-absorbed in service and his case is, therefore, of lesser import, but the other is still out in the cold"

Thus the decision of the Supreme Court in the State Bank case having been based on the fact that two of the employees had been relieved of their employment by reason of surplusage, the natural corollary was the attraction of S. 2(oo) of the Act and once that was done, it was held that S. 25F of the Act would be attracted. The State Bank case is not as much an authority as to the definition of "retrenchment" under S. 2(oo) as it is for the result of not complying with the consequence flowing from retrenchment, viz., failure to observe the provisions of S. 25F(b). This is brought to the forefront by the observations in para 10 at page 1115 of the report as under :

"What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows ..."

The decision in the State Bank case has been explained by the Supreme Court in a later decision in Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others, where after analysing the decision in Hariprasad's case, (comprising of a Bench of 5 Judges), it was observed in so many words by the Supreme Court that there was nothing in Hariprasad's case which was inconsistent with what was held in State Bank case. In Hindustan Steel case, it was held that termination of service by efflux of time stipulated in the contract of service amounted to retrenchment and that noncompliance of S. 25F(b) rendered the retrenchment illegal. In that case, though it was urged to the contrary on

behalf of the appellant, it was conceded by the Solicitor General on behalf of the appellant, that the matter was covered by the decision in the State Bank case. It was accordingly observed in the Hindustan Steel case, that the decision in the State Bank case :

"..... as conceded by the Solicitor General, goes against the contention of the appellant and is conclusive on the main question that arises for consideration in this appeal.

"It was further held in the Hindustan Steel case that the proviso to S. 25F(a), namely, "no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service ", would clearly have been unnecessary if retrenchment as defined in S. 2(oo) was intended not to include termination of service by efflux of time in terms of an agreement between the parties. It was finally observed at page 34 of the report -

"..... On the facts of the case before us, giving full effect to the words "for any reason whatsoever" would be consistent with the scope and purpose of S. 25F of the Industrial Disputes Act and not contrary to the scheme of the Act. We do not find anything in Hariprasad's case which is inconsistent with what has been held in State Bank of India v. N. Sundara Money".

Thus the later decision of the Supreme Court in the Hindustan Steel case, has in fact harmonised the decision of the Supreme Court in the State Bank case with the decision of the Supreme Court in Hariprasad's case. Hence Mr. Udeshi is not correct when he says that the decision in the State Bank case is an answer to the decision in Hariprasad's case. They do not conflict; they harmonise as observed in the Hindustan Steel case.

25. At this stage, reference may also be made to the decision of the Division Bench of the Delhi High Court in Shri Ram Institute v. Presiding Officer, (1978) 37 I F & L.R. 1 . In that case, it was held that from the scheme of the Act itself, it can be demonstrated that "retrenchment" means only termination of surplus staff and does not include the discharge of a workman for unsatisfactory work, and that the word "retrenchment" in the Act has been used to denote termination of surplus for reasons of economy, etc., but not for unsatisfactory work. Extending the principle enunciated by the Delhi High Court, we may add, "and not for loss of confidence either ". In L. Robert D'Souza Vs. Executive Engineer, Southern Railway and Another, , the question involved before the Division Bench of the Kerala High Court was whether the termination of service of a casual labourer under the railway administration, brought about by the operation of Rule 2505 of the Railway Establishment Manual by reason of his having absented himself, constituted "retrenchment" so as to attract the provisions of S. 25F of the Industrial Disputes Act. It was held by the Division Bench of the Kerala High Court that inasmuch as the termination of the service of the petitioner was not on the ground that he had become surplus to the requirement of the railway establishment but on a totally different ground,

namely, that he unauthorisedly absented himself and thereby invited the applicability of the provisions for automatic termination contained in Rule 2505 of the Manual, the petitioner could not be said to have been retrenched from service and hence S. 25F of the Industrial Disputes Act was not attracted. Thus it will be seen that in D'Souza's case also, the paramount criterion was surplusage, which was the sine qua non for the Kerala High Court coming to the conclusion that there was no retrenchment within the meaning of S.2(oo) of the Act.

26. It is with this principle enunciated by the Delhi and Kerala High Courts that we are in agreement. Here it may also be stated that the decision in State Bank case was also considered and distinguished both by the Delhi and Kerala High Courts which also held that in the light of the clear and direct pronouncement of the Supreme Court in Hindustan Steel case, there is no inconsistency between the ratio laid down in Hariprasad's case and the State Bank case. The Kerala High Court further observed that the principles laid down in Hariprasad's case and the subsequent ruling that followed it, remain unshaken. We are in respectful agreement with those observations of the Delhi and the Kerala High Courts.

27. Mr. Udeshi relied on the decision of the Supreme Court in Swadesmitran Ltd. v. Their Workmen, AIR 1960 S.C. 763, where it was held that departure from the normal industrial rule of retrenchment, namely, last come first go, without any justification may itself, in a proper case, lead to the inference that the impugned retrenchment is the result of ulterior considerations and as such is mala fide and amounts to unfair labour practice and victimisation. Mr. Udeshi also invited our attention to other decisions, namely, Union of India v. Piru Kishu (1977) LabIC 1236 and Maheshwar Thakur Vs. Union of India (UOI) and Others, . These decisions have nothing to do with the present controversy between the parties. Mr. Udeshi next invited our attention to paras 522(4) and 561 of the Shastri Award. It is unnecessary to advert at any length to any of those paras as they are irrelevant for the purpose of the present controversy and were not referred to in the statement of case at any time earlier.

28. We summarise that the criterion for retrenchment is superfluity or surplusage of labour or staff in a running business caused by any reason whatsoever, such as, economy, rationalisation in industry, installation of new labour-saving machinery or devices standardisation or improvement of plant or technique and the like. Surplusage or superfluity is the fulcrum round which the concept of retrenchment must turn. In a line, if there is no superfluity, there can be no retrenchment.

29. Even in the termination letter addressed by the Bank to the petitioner, there is no statement or even a suggestion of surplusage or superfluity of staff as being the reason for the termination of the petitioner's service. That was a simple letter of a simple termination of service. Hence the inference of surplusage and the concomitant concept of retrenchment attempted by Mr.

Udeshi, cannot be injected into that letter of simple termination of service.

30. Mr. Udeshi finally urged that the finding by the Tribunal that this was a case of retrenchment had not been challenged by the Bank, which had unconditionally forwarded to the petitioner the amount ordered by the Tribunal but which the petitioner had accepted without prejudice to his rights and contentions. Mr. Udeshi also urged that the Bank has admitted in its affidavit-in-reply that the termination of the petitioner's service was by reason of surplusage. Mr. Udeshi invited our attention to para 3 of the affidavit-in-reply where it has been stated by the Personal Officer of the Bank, inter alia, as under :

"..... His (i.e. the petitioner's) employment was of a temporary nature because of temporary increase in work and pursuant to the terms of his appointment on completion of the work for which he was specifically appointed, his services were terminated on 19th December, 1974

31. None of these submissions have any value. For the reasons indicated above, we do not think that the Tribunal is correct when it came to the conclusion that this was a case of retrenchment. Mr. Udeshi cannot rely upon stray and solitary sentences, such as indented above. Mr. Udeshi's contention also does not take into account the very succeeding lines, namely.

"even during his tenure of service as a temporary Godown Keeper, his services were not found satisfactory ..."

In any event, the passage relied on by Mr. Udeshi does not spell out surplusage but only that the petitioner was relieved of his services because the nature of his work which was temporary and for which he was specifically employed, was completed. What also cannot be lost sight of is that the petitioner himself having come to this Court asking for reinstatement on the ground of retrenchment and the Tribunal having held that the provisions of S. 25F(b) had not been complied with by the Bank, it would a fortiori be open to the latter to contend that the question of complying with the provisions of S. 25F(b) did not arise, for this was not a case of retrenchment at all.

32. In the result, the second ground of challenge urged by Mr. Udeshi must also stand repelled.

33. The petition is dismissed and the Rule is discharged. There will be no order as to costs.

34. Mr. Udeshi makes an oral application for leave to appeal to the Supreme Court under Art. 133 of the Constitution. Leave refused.