

(2016) 01 KAR CK 0351

In the Karnataka High Court

Case No : Writ Petition Nos. 5134/2004 (L-TER) and 22124/2005 (L-TER)

Karnataka SC and ST Development Corporation and Others APPELLANT
Vs

Bharathmatha Watch Assembly Unit Employees Union and Others RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(cc), Section 25-F, Section 25-FF, Section 25-G

Citation : (2016) 01 KAR CK 0351

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Somashekar, Advocate for S.N. Murthy Associates, for the Appellant; Raghavendra P. Hegde, Advocate, Vivek Reddy, Sr. Counsel for K.N. Subba Reddy, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—1. The petitioner in W.P. No. 5134/2004 is the Karnataka SC & ST Development Corporation, a Government of Karnataka undertaking ("KSC & ST DC for short). They are assailing the award dated 21.11.2003 in AID No. 3/1988 passed by the Additional Industrial Tribunal, Bengaluru, impugned at Annexure-N to the petition.

2. The dispute was raised by the Bharathmatha Watch Assembly Unit Employee's Union ("BWAUE Union" for short). The Industrial Tribunal ordered absorption of the workmen concerned from the date of the award. The BWAU Employee's Union has filed W.P. No. 22124/2005 seeking that such regularisation of the services be made with effect from 1982. Since the issue relates to regularisation/absorption in both the petitions and the prayers are inter dependant, they are being disposed of by this common order.

3. The parties will be referred to by their names for the sake of convenience and

clarity.

4. The instant case has a chequered history and is the second round of consideration in respect of one of the points which was referred for adjudication before the Labour Court. The KSC & ST DC had started the M/s. Bharathmatha Watch Assembly Unit ("BMWA" for short) as an ancillary unit to H.M.T. Watch factory to assemble the components of watches after training the ladies belonging to the SC & ST category. However, that unit which was dependant on the understanding between H.M.T. and KSC & ST DC, was closed down as it was not viable. During that stage, the disputes arose with regard to certain monetary benefits. One other issue which arose was also as to whether such of those employees were entitled to be absorbed in KSC & ST DC.

5. The Labour Court after consideration, by its award dated 12.08.1992, in so far as A.I.D. No. 03/1988 had allowed the same in part and had directed that the unit be re-opened and reinstate the workers with continuity of service. Both parties to the dispute were aggrieved and were before this Court in W.P. No. 2697/1993 c/w W.P. No. 35535/1992. The learned Judge of this Court through the order dated 26.09.1996 confirmed the award on all other aspects, but set aside the finding in A.I.D No. 3/1988 relating to the question of absorption in order to adjudicate whether the workers of BMWA unit are entitled to be absorbed in the SC & ST DC of the Government of Karnataka. The said order was confirmed by the Hon"ble Supreme Court in Civil Appeal No. 5787/1997 through the order dated 20.03.2002.

6. In the above context, the matter arose for fresh consideration in respect of only one issue which was a part of the reference made at the first instance. The same reads as hereunder;

7. On re-consideration the Labour Court has passed the award dated 21.11.2003 in A.I.D. No. 03/1988. By the said award, the referred issue was held in the affirmative and directed the SC & ST DC to absorb the workers. The SC & ST DC claiming to be aggrieved is before this Court in W.P. No. 5134/2004. The BMWAE Union has on the other hand filed W.P. No. 22124/2005 seeking further benefit of regularisation with effect from 1982 by contending that they are similarly placed as Ms. Soubhagya who according to them has been regularised during that period.

8. In the above backdrop, I have heard Sri Somashekar, learned counsel, Sri Vivek Reddy, learned senior counsel and Sri. T.S. Mahantesh, learned Government Advocate appearing on behalf of the respective parties and perused the petition papers.

9. The very nature of the reference made as extracted above and the remand order made by this Court in the earlier writ petition will by itself disclose that the workers concerned were working in the separate unit and not directly in SC & ST DC and such unit was an ancillary to H.M.T Watch Factory. The fact that the said unit has been closed down is also not a disputed aspect. On such closure,

whether the workers of that unit are to be absorbed in the SC & ST DC which established such unit is the question which calls for an answer. One other aspect which is to be noted at this point is that when the dispute arose, there were 92 workers who were working in the unit and had been discontinued. During the pendency of the petition, a VRS package was offered as a settlement and 89 workers have accepted the same. Only three workers namely Ms. M. Malathi, Ms. S. Prema and Ms. V. Radhamma have not accepted and as such, the consideration relating to absorption remains only to that extent. Even among them, Ms. S. Prema is stated to have died. Hence the question of absorption if any will arise only in respect of two workers.

10. While assailing the award passed by the Labour Court, the learned counsel for KSC & ST DC would contend that the Labour Court has failed to take into consideration the nature of engagement of the workers in a unit which was solely dependent on the assembly of components that was required to be made for HMT. The Corporation in order to provide training and employment had undertaken the project by starting the unit for only that purpose and the functions of that unit did not have anything to do with KSC & ST DC. The documents at Annexure-D series is relied on to indicate the nature and purpose for which the engagement was made. On the agreement with HMT having come to an end, there was no employment and the unit was required to be closed. There is no functional integrality between the said unit and the activities of KSC & ST DC. The KSC & ST DC has its own cadre strength as indicated in Annexure-B1 and the similar work that was being performed by the workers concerned is not available. In that regard the learned counsel refers to the legal position.

11. The learned senior counsel appearing for the workers concerned on the other hand seeks to contend that the Labour Court while considering these aspects of the matter has taken into consideration that there are vacancies in the Group C and D post in KSC & ST DC and in that light has arrived at its conclusion. It is pointed out that with regard to the nature of the appointment as contended, this Court at the first instance through the order dated 26.09.1996 in W.P. No. 2697/1993 has referred to that aspect of the matter and had taken note that the appointment orders are issued by the KSC & ST DC. It is in that light the issue relating to absorption therein was directed to be considered by the Labour Court. Hence, when the Labour Court has taken into consideration all aspects and has arrived at a finding of fact, the same does not call for interference. It is also pointed out that at this juncture, the absorption relates only to two workers and therefore there would be no difficulty for the KSC & ST DC to absorb them and it will be further possible if the deputationists are reverted to the parent department.

12. In a writ petition of the present nature, the position is clear that there is no scope for re-appreciation of evidence except to notice as to whether evidence available has been considered in its correct perspective or as to whether the findings rendered by the Labour Court admits of any perversity. In that regard a

perusal of the consideration made by the Labour Court appears to be contrary to factual position arising in the instant case keeping in view the established legal position. The Labour Court has noticed the evidence of MW-1 to MW-4 with regard to the different nature of the employment and pay pattern of the employees of the KSC & ST DC and the watch unit and that they are not employees of KSC & ST DC merely on the appointment order being issued to the workers. The agreement with H.M.T. was noticed and the circumstance due to which the watch unit was closed was adverted. The evidence is to the effect that the KSC & ST DC keeping in view the object for which it is established, namely for the welfare of SC & ST category had trained the ladies involved in this case in a particular trade and work was provided in an independent unit. The production of watch components is not the business of KSC & ST DC nor is it an industrial establishment in that sense.

13. Though such evidence on record has been noticed, the Labour Court without indicating strong reasons to discard such evidence has come to a conclusion that since the KSC & ST DC has issued the letters of appointment and the financial affairs of the watch unit was being maintained by the KSC & ST DC, the watch unit cannot be considered as an independent unit. The letters at Annexure-D series to which the Labour Court has made the reference will in fact indicate that though the letter is issued by the KSC & ST DC, the clear stipulation is with regard to the training at the Watch assembly unit and such training is to equip the persons belonging to the category for whose benefit the KSC & ST DC is constituted. But, the appointment made under different schemes as a welfare measure for their upliftment cannot be considered as an appointment made by the KSC & ST DC so as to claim employment thereunder. Despite the same, to hold that there is functional integrality without materials on record to that effect will not be justified and such conclusion will have to be considered as perverse.

14. In the above background, it is necessary to notice the decisions relied on by the learned Counsel for KSC & ST DC which are as follows;

"i) The case of *Isha Steel Treatment, Bombay v. Association of Engineering Workers Bombay and Others* (, 1987 (1) LLJ 427) wherein it is observed as hereunder,

"8. It is not necessary that in order to effect closure of business the management should close down all the branches of its business. In *Management of Hindustan Steel Ltd. v. the Workmen & Others*, , [1973] 3 S.C.R. 303 this Court has held that the word "undertaking" used in section 25-FFF seems to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer. Even the closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by the said provision. In deciding the above case this Court relied upon its earlier decision in *Workmen of the Indian Leaf Tobacco Development Company Limited, Guntur v. Management of the Indian Leaf Tobacco Development Co. Ltd., Guntur*, [1970-I-LLJ-343]. In that

case the Court observed that a genuine closure of depots or branches, even though it did not amount to closure of the business could not be interfered with by an Industrial Tribunal. It further held that the closure was stoppage of part of the activity or business of the management and such stoppage is an act of management which is entirely in the discretion of the management. The Court further observed that no Industrial Tribunal could interfere with the discretion exercised in such a matter.

9. It was, however, argued in this case on behalf of the workmen that since the Provident Fund accounts of the employees and the Employees' State Insurance accounts of the two units had common numbers with the authorities concerned and settlements containing similar terms (copies which are not produced before us) has been entered into in 1974 between the management and the workmen of the two units, it should be held that the two units had functional integrality between them. We are of the view that even these factors are not sufficient to hold that the two units were one and the same notwithstanding the fact that the nature of the business carried on in them was the same. In *Indian Cable Co. Ltd. v. Its Workmen*, [1962 1-LLJ-409] this Court has held that the fact that the balance sheet was prepared incorporating the trading results of all the branches or that the employees of the various branches were treated alike for the purpose of provident fund, gratuity, bonus and for conditions of service in general, could not lead to the conclusion that all the branches should be treated as one unit for purposes of section 25-G of the Act.

10. On a consideration of the entire material before it, the Tribunal had reached the conclusion that the closure of the I Unit was bona fide, that it did not have any functional integrality with the II Unit and that there was no victimisation of workmen for their trade union activities. On going through the Award passed by the Tribunal we feel that it had not committed any error in recording the said findings which called for interference at the hands of the High Court under Article 226 of the Constitution of India. We are satisfied that this case is one of bona fide closure of an independent unit of business. The learned Single Judge and the Division Bench of the High Court were, therefore, in error in holding that the termination of service of the workmen in this case amounted to retrenchment and not closure and the case of the workmen had to be considered on remand by the Tribunal in the light of section 25-G of the Act. They overlooked that it would result in a wholly unjust situation in which a corresponding number of workmen in the II Unit would be prejudicially affected even though they had nothing to do with the I Unit."

ii) The case of *District Red Cross Society v. Babita Arora and Others* (2007-III-LLJ-777) wherein it is held as hereunder,

"9. It appears that after the aforesaid decisions of the Supreme Court, the legislature by an amendment made in the year 1982 to the Industrial Disputes Act defined the word "closure" by adding Section 2(cc). Section 2(cc) of the Act reads as under:

"2(cc). "closure" means the permanent closing down of a place of employment or part thereof."

It is, therefore, clear that in order to attract Section 25-FFF it is not necessary that the entire establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25-FFF of the Act. In *J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors.*, AIR 2001 SC 531: (2001) 2 SCC 87: 2001-I-LLJ-561, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In *Maruti Udyog Ltd. v. Ram Lal & Ors.*, AIR 2005 SC 851: (2005) 2 SCC 638: 2005-I-LLJ-853,, it was held as under in para 21 of the report at P. 858 of LLJ:

"21. How far and to what extent the provisions of Section 25-F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25-FF and Section 25-FFF of the 1947 Act leaves no manner of doubt that Section 25-F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if used in Section 25-FF and Section 25-FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25-F of the 1947 Act and not the other consequences flowing therefrom. Both Section 25-FF and Section 25-FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25-FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25-FFF of the Act which has to be calculated in accordance with Section 25-F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was

illegal on account of noncompliance of the provisions of Section 25-F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25-FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

15. If in the light of the observations contained in the above referred decisions the instant facts are noticed, the fact that the watch unit was a separate unit which was dependant on H.M.T. cannot be in doubt. Due to lack of orders from them the unit has been closed. The very reason for which the consideration to be made is, as to whether the absorption is to be made in KSC & ST DC will indicate that work is not available in the unit where the workers were earlier working and the closure of the unit is also not held as bad in law. There is absolutely no evidence to indicate that neither KSC & ST DC is undertaking similar work or that it is managing any other unit which is undertaking similar work. The object with which the KSC & ST DC is established is with the idea of uplifting persons belonging SC and ST communities by assisting them in their economic development. If in that circumstance the letters at Annexure-D series is taken into consideration, though it is issued by the KSC & ST DC it is not in the nature of appointment as employee of KSC & ST DC after completing the recruitment process against the vacancies therein. Keeping in view the objective for which the KSC & ST DC is established, the persons belonging to the said communities are given the opportunity of being trained in a particular trade so that they can avail similar employment opportunities. At that point, since there was an agreement with H.M.T. and the assembled components were to be supplied to them, on training, they were also employed in the watch unit which was set up as an ancillary unit and not as a part of the business of KSC & ST DC.

16. In that view of the matter, if the watch unit had continued to exist as a viable unit no doubt the employment would have continued. But when it is legally closed down by paying them the compensation it is only that the persons who had been assisted by the KSC & ST DC in acquiring the skills of the trade should make use of the same to secure employment in similar industry. On the other hand the absorption of the workforce in the KSC & ST DC itself is neither envisaged nor can it be said that there is functional integrality to consider the Corporation set up for the welfare of the community and an ancillary unit set up to achieve such objective are inter-dependant. If a contrary view is taken it will lead to an anomalous situation where persons being assisted by the KSC & ST DC as a welfare measure would claim right under the Corporation which is neither envisaged nor is it reasonable to accept such contention. Though at this point only two workers are remaining, if the issue of absorption is considered in the context of 97 workers, one cannot imagine that so many persons can be brought on the rolls of KSC & ST DC and if they are brought, for what purpose?

17. Further, taking note of the above aspects what cannot be lost sight is also that this Court in the order dated 26.09.1996 in W.P. No. 2697/1993 though

remanded the matter had also indicated that a reasonable settlement should be arrived at and it was stated that the workers should not fight shy in accepting a reasonable settlement and it should not be viewed that whatever is offered by the management would only be unjust. With the hope that there will be such settlement the matter had been sent back which is a clear indication that absorption was not the only thing which was working in the mind of this Court. As noticed, by way of settlement VRS package was offered and all but the three persons have accepted the same. Though in a normal circumstance the VRS will be applicable to the employees on regular rolls, the same is seen to have been given by way of settlement with the approval of the Government subject to the same being accepted in this petition. Merely because only two among them being available and they can be accommodated, the question of absorbing them will not arise when no such right is available. All that is to be ensured is that the said persons also be paid the same benefits that had been paid to the other workers under the VRS package notwithstanding the fact that they had not voluntarily accepted it as settlement.

18. Since this Court is of the view that the relief of absorption cannot be granted, the question of such absorption being made with effect from 1982 as prayed in W.P. No. 22124/2005 also does not arise. The contention of the learned counsel for KSC & ST DC is that Ms. Soubhagya to whom reference is made has not been absorbed or regularized, but has been selected in the regular recruitment process. There is nothing on record to indicate that she has been regularized and as such granting a similar benefit in any view does not arise.

19. Hence for all the aforesaid reasons, the following:

ORDER

"(i) W.P. No. 5134/2004 is allowed and the award dated 21.11.2003 passed in A.I.D. No. 3/1988 is set aside.

(ii) W.P. No. 22124/2005 is dismissed.

(iii) Notwithstanding the above, the VRS settlement package amount paid to the other workers involved herein shall be paid to Ms. M. Malathi, Ms. V. Radhamma and the legal representative of Ms. S. Prema. The payment shall be made within eight weeks from the date of receipt of a copy of this order.

(iv) The parties shall bear their respective costs."