(1997) 09 P&H CK 0164

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 7041 of 1997

Lalita Kumari APPELLANT

Vs

The Presiding Officer and Another RESPONDENT

Date of Decision : 18-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1), 2, 25F, 25FF, 25FFA

Citation : (1998) 2 ILR (P&H) 111

Hon'ble Judges : N.K. Sodhi, J;N.K. Agrawal, J

Bench : Division Bench

Advocate : R.K. Malik, for the Appellant; Surya Kant, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—Petitioner was initially appointed on 10th August, 1984 as clerk -cum-typist in the Vocational Training Centre of the Red Cross Society at Karnal. She resigned on 16th April, 1987. Thereafter, she again requested for an employment as clerk-cum-typist in the same Vocational Training Centre. Pursuant to her request, she was given a fresh appointment on temporary basis as Accounts Clerk-cum-typist on 14th June, 1988. In the letter of appointment issued to her she was told that she was being appointed for the project in Red Cross Vocational Training Centre, Karnal and that her continuity in service was dependent upon receipt of 90% grant from the Social Welfare Department of the Haryana Government. It is no longer in dispute before us that the State Government withdrew the grant to the Vocational Training Centre and, therefore, the Centre had to close down in July, 1994 and the services of all the employees working therein including those of the Petitioner were terminated. Petitioner raised an industrial dispute regarding her termination and the same was referred for adjudication to the Presiding Officer, Labour Court, Panipat. This reference was made under Sub-clause (c) to Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, as amended up-to-date and hereinafter called the Act. The case set up by the Petitioner was that the termination of her services amounted to ''retrenchment'' within the meaning of the Act and since the provisions of Section 25-F had not been complied with the termination was illegal and the same was liable to be set aside. She claimed re-instatement with full back wages and continuity of service.

2. The Red Cross Society contested the claim of the workman and stated that her services were terminated on account of the closure of the Vocational Training Centre where she had been employed and, therefore, the Provisions of Section 25-F were not attracted and that the case was governed by the provisions of Section 25-FFF. According to the management, the compensation payable to the Petitioner in terms of Section 25-FFF had been paid and, therefore, she was not entitled to any further relief.

3. On a consideration of the oral and documentary vidence led by the parties, the Tribunal as per its award dated 10th January, 1997 held that the Petitioner was appointed in the Vocational Training Centre which project had been closed and since the Compensation as required by Section 25-FFF had been paid the termination of her services was perfectly valid and in accordance with law. Consequently, the reference was answered against the workman and in favour of the management. It is against this award that the present petition has been filed under Article 226 of the Constitution.

4. We have heard counsel for the parties. It was strenuously urged before us by the learned Counsel for the Petitioner that the termination of the services of the Petitioner did not fall u/s 25-FFF of the Act and that it amounted to retrenchment. The argument indeed is that the District Red Cross Society was continuing its activities within the district and merely because the Vocational Training Centre was closed down did not mean the closure of the ''undertaking'' by the District Red Cross Society so as to attract the provisions of Section 25-FFF. It was argued that the termination of the services of the Petitioner was retrenchment'' within the meaning of the Act and since the provisions of Section 25-F were not complied with the same was illegal. He placed reliance on the observations of the Supre Court in Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, .

5. Having given our thoughtful consideration to the contention advanced by the learned Counsel for the Petitioner, we find no merit in the same. Section 25-FFF of the Act deals with compensation to be paid to workmen in case of closing down of an undertaking. It provides that where an undertaking is clos;ed down for any reason whatsoever then every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure is entitled to notice and compensation in accordance with the provisions Of Section 25-F as if the workman had been retrenched. A perusal of this Section makes it clear that it comes into operation "where an undertaking is closed down.... The word ''undertaking'' as used in this section has not been defined in the Act. This expression occurs in Sections 25-FF, 25-FFA, Section 25-FFF, 25-0

and 25-R. Section 25-F uses the word ''industry'' while Section 25-G uses the words ''industrial establishment''. Since these two sections are cognate, the words ''industrial establishment'' as used in Section 25-G have to be understood to mean ''industry'' as used in Section 25-F. ''Industry'' has been defined in Section 2(j) of the Act which, inter alia, includes an undertaking. Thus, ''undertaking'' is a narrower concept than ''industry'' In other words, ''industry'' is a whole of which an ''undertaking'' is a part. The expression ''undertaking'' as used in the definition of ''industry'' was given a restricted meaning by the Constitution Bench of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . Thus, the expression in the context of Section 25-FFF must mean a separate and distinct business or commercial or trading or industrial activity. The word ''undertaking'' as used in Section 25-FFF, in our opinion, has been used in its ordinary sense meaning any work, enterprise, project or business undertaking. According to the Webster''s New Twentieth Centry dictionary, this expression means "any business, work, project etc. undertaken." It is not intended to cover the entire industry or business of the employer. Closure or stoppage of a part of the business or activity of the employer would, in law, be covered by this section. ''Undertaking'', however, cannot comprehand an infinitesimallyj small part of a manufacturing process. The question whether what is closed down is an undertaking \\ or only a very small part thereof will have to be decided on the facts of each case and no uniform rule can be laid down in this regard.

6. In the instant case, the Vocational Training Centre which was receiving 90% aid from the State Government was closed down on account of the stoppage of the grant from the State Government, it is common case of the parties that the entire Centre has closed down and the services of all the employees employed therein had been terminated. The Vocational Training Centre by itself was an undertaking of the District Red Cross Society and when this was closed down the services of the Petitioner were terminated: Her case squarely falls within the provisions of Section 25-FFF of the Act. It is not necessary that the entire activity of the District Red Cross Society should have come to an end in the district before the provisions of Section 25-FFF could be attracted. The contention of the Petitioner would have carried some weight if only a part of the Vocational Training Centre had been stopped. In that eventuality, it could be argued that the termination of the services of some of the employees would amount to retrenchment as they would become surplus. But that is not the situation here. This being so, the termination of her services was legal and valid and no fault can be found with the impugned award. We, however, hasten to add that our observations should not be understood to mean that an undertaking cannot be closed down in stages.

7. In Avon Services'' case (Supra) the three workmen were doing work of painting the containers which were being manufactured by the Company. The Company decided to buy containers from the market and the painters became surplus. The undertaking continued and it was in that context that the learned

Judges observed that there was nothing to show that painting containers was a separate establishment or that it had some separate supervisory arrangement. The painters having become surplus, the termination of their services amounted to retrenchment. In the case before us, the Vocational Training Centre closed down as a whole. Avon Services'' case (supra) is, therefore, of no help to the Petitioner.

8. In the result, the writ petition fails and the same stands dismissed. There is no order as to costs.