
(1995) 05 DEL CK 0088

In the Delhi High Court

Case No : CW 921 of 1993

Management of Jor Bagh Distributors Pvt. Ltd.

APPELLANT

Vs

Workmen

RESPONDENT

Date of Decision : 01-05-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 9A

Citation : (1997) 3 LLJ 191

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : O.C. Mathur and M. Dias, for the Appellant; Raj Birbal and B.R. Nigam, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—In this writ petition filed under Article 226 of the Constitution of India award, Annexure P-8, dated December 28, 1992 Passed by Respondent No. 2, the Presiding Officer, Labour Court VII, Tis Hazari. Delhi is under challenge at the behest of the management of M/s, Jor Bagh Distributors Pvt. Ltd. (herein after referred to as the Management).

2. On receipt of a report submitted by the Conciliation Officer u/s 12(4) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), the Secretary(Labor ,Delhi Administration, on being satisfied that an industrial dispute existed between the Management and its workmen, represented by the Mercantile Bank Association (for short "the Union") and that the same deserved to be referred for adjudication to a Labour Court, constituted under the Act, in exercise of powers conferred by Section 10(1)(c) and Section 12(5) of the Act, referred for adjudication to the Labour Court the following dispute.

"Whether the retrenchment of S/Sh. Deepak Som...(names of 57 workmen are stated) is legal and justified and, if not, to what relief are they entitled and what directions are necessary in this respect?"

On receipt of reference the Labour Court issued notice to the parties. A joint statement of claim was preferred by the workmen through the aforementioned Union on November 21, 1983. Written statement thereto was submitted by the management on April 27, 1984. The workmen filed rejoinder to the written statement on April 20, 1984. The workmen in their joint claim alleged that M/s. Parle Exports Private Ltd.(for short "Parle") opened a factory at 60, Shivaji Marg, Moti Nagar, New Delhi for the manufacture and marketing of their special brand of aerated waters, viz., Gold Spot, Rim Zim, Soda etc. some time in 1965, In 1966 Parle organized M/s. Delhi Bottling Co. P. Ltd. and transferred the business, i.e., manufacture and sale of their products in Northern India to the Delhi Bottling Co. P. Ltd., which had four departments, namely, production sales, publicity and garage. Delhi Bottling Co. Pvt. Ltd. appointed M/s. Vijay Anand Associates Pvt. Ltd. as their agents for publicity, garage, carpentry and sales from April 1, 1973 to June 1, 1974 and transferred employees in these departments to the said agency and continuity of services with protection of length of their service. Agency was later taken over over by Olrite Agency Pvt. Ltd. in 1974 and thereafter by JorBagh Distributors Pvt.Ltd., which later on was taken over by D.K. Agencies and again it reverted back to Jor Bagh Distributors Pvt.Ltd. (The Management).

3. It was alleged that the Management is an agency of Delhi Bottling Co. Pvt. Ltd. The license for manufacturing and marketing of aerated products of Parle in the Union Territory and other parts of Northern India was with the Delhi Bottling Co. Pvt. Ltd. and not with the Management. The Industry, as such is the Delhi Bottling Co. Pvt. Ltd. and the Parle Exports Pvt. Ltd. It was employing 373 workmen in 1982 and was an establishment covered by the provisions of Chapter V-B of Act. President of the employees Union had served a demand notice dated December 7, 1982 on the Management, protesting against illegal lock out and requesting the Management to allow the workmen to resume duty. Matter was referred to the Conciliation Officer for his intervention, u/s 12 of the Act, with a request to issue prohibitory orders u/s 10(3) with the reference of dispute over the bonus for the year 1982. Along with the claim statement, a letter of espousal and letter of authority signed by 95 workmen employed by the Management was filed with the Conciliation Officer.

4. It was alleged that Management, while acknowledging the demand notice dated December 7, 1982 through their letter dated December 13, 1982 had stated there was no lock out in the establishment but the workmen were retrenched due to re-organisation of business and not as surplus to the requirement of the Management. It was also asserted that workmen were offered notices of retrenchment and payment in cash towards notice pay and retrenchment compensation on December 7, 1982 but the workmen had refused to accept the same on December 7, 1982 the workmen were asked to continue to work as contractors on daily wage basis and were asked to accept termination of services after giving up all their claims, including re-instatement/re-employment against a receipt to that effect. Workmen rejected the offer of the

Management. It was alleged that workmen were neither issued notices of retrenchment, nor offered notice pay and retrenchment compensation on December 7, 1982. Management had neither sufficient cash with them, nor sufficient amount, in their bank, to disburse notice pay and retrenchment compensation and that is how the matter was referred for adjudication.

5. It was alleged that rationalization and re-organisation, resulting in retrenchment must follow with a notice of 21 days u/s 9A of the Act. Service of notice u/s 9A of the Act, being mandatory pre-requisite, had not been complied with by the Management and Therefore, retrenchment of the workmen was illegal, void and inoperative. It was also alleged that retrenchment had been effected by the Management without complying with the provisions of Section 25G of the Act and, thus, was bad in law. The industry was employing more than 300 workmen and was covered by Chapter V-B of the Act. It was not a case of closure of business and the provisions of Section 25N of the Act had not been complied with. Management paid notice pay, retrenchment compensation u/s 25F and other dues some time in April or May, 1993. Thus, the subsequent payment was not a due compliance of the mandatory pre-requisite of Section 25F of the Act. Even if it be assumed that it is covered by the provisions of Section 25F of the Act, the retrenchment being not covered by Section 25N, the same was bad in law.

6. In answer to this statement of claim the Management submitted brief history and some facts leading to retrenchment of workmen. It was alleged that in 1982 the Management, on reviewing the whole situation of the business, done by it in the past, considered expedient and in the interest of business to re-organise its affairs. It was pursuant to this policy decision of the company that the Management, keeping in view the interest of the business and having regard to the economies of the operation, in terms of rationalisation, its existing route structure, decided to reduce the number of routes to be operated upon by it. To give effect to this policy decision, the Management decided to reduce its man power by retrenching the surplus workmen and in view of the said reduction of routes 57 workmen were retrenched w.e.f. December 8, 1982. It was after reviewing the whole business position and the market requirement of soft drink, marketed by the company, that the Management had come to the conclusion that within its territory there was lower demand for its product in the market as such it was uneconomical for the company to run its business by retaining the entire man power and workmen. In the circumstances the reduction of the man power by way of retrenchment had otherwise become inevitable. It was in these circumstances that the management retrenched the surplus dead weight of man power from each category and accordingly issued retrenchment notices on December 7, 1982 to its 18 salesmen-cum-drivers and 39 sales loaders/helpers, informing that, in view of the re-organisation of its existing route structure whereby number of routes to be operated by the company stand reduced and having regard to the economies of the operation and in the interests of business their services with company had been rendered surplus to its requirement and

accordingly they were retrenched w.e.f.. December 8, 1982.

7. It is also alleged that the Management along with retrenchment notices dated December 7, 1982 tendered cash amounts towards retrenchment compensation computed, at the rate of 15 days' pay for every completed year of service and one month's wages in lieu of one month's notice to all 57 retrenched workmen. By the same letter the retrenched workmen were also informed about their other dues, if any, that they could collect the same from Personnel Department immediately. Management had also apprehended that persons, who were to be retrenched w.e.f. December 8, 1982 might not accept the compensation, Therefore, letters had been addressed on December 6, 1982 to the Assistant Labour Commissioner requesting him to depute some of his officers to the company premises to witness the fact that the Management tendered in cash the retrenchment compensation and other dues, as required under law to all the 57 workmen and with a view to facilitate smooth disbursement of the amount. The workmen, however, refused to accept their notices. As all the 57 workmen had refused to accept retrenchment notices and the statutory amount in cash, when the same was tendered to them on December 7, 1982, Management felt compelled to once again to write another letter on December 7, 1982 to Assistant Labour Commissioner. It was requested that some officer be deputed so that dues could be disbursed. The workmen again refused to accept the retrenchment notice and compensation. Accordingly bank drafts along with notices were sent to 57 retrenched workmen through registered post. Accordingly it was alleged that respondent-management duly complied with all the requirements of Section 25F of the Act and the action of the Management in retrenching the workmen was perfectly valid, legal and justified.

8. It was also alleged that after the workmen had refused to accept the retrenchment notice and other legal dues, when tendered to them personally in cash and also when the same were sent to them by registered post, approached the Management and requested that, having regard to their old service with the company they may be given some extra amount in addition to the amount, of retrenchment compensation, notice pay and gratuity and their retrenchment be also accordingly converted into voluntary resignation. Several meetings and negotiations took place between the retrenched workmen, their representatives and the representatives of the company, including Director of the Company. During the said meetings workmen even conceded that they were convinced that the grounds for their retrenchment were genuine and bonafide. At the same time the workmen were approaching the Management only for some additional ex-gratia payment to be made to them. The Management alleged that the retrenchment of the workmen, covered by the reference, accordingly was converted into voluntary resignations and the workmen were accordingly paid substantial amounts ex gratia, in addition to the statutory amounts, payable to them by the Management. In the light of this background it was alleged that reference had become infructuous and incapable of being adjudicated upon as all the persons named in the reference had taken their full and final dues, including

retrenchment compensation, one month's notice pay and other legal dues plus additional amounts towards ex gratia payment by amicably executing memorandum of settlement, which has been acted upon by the Management and the concerned workmen.

9. Management also challenged the legality and validity of the reference on the ground that matters relating to retrenchment of workmen fall within the exclusive jurisdiction of the Industrial Tribunal under Schedule-III of the Act, as such the Labour Court would have no jurisdiction to take cognizance or to adjudicate upon the matters of reference. It was also alleged that reference letter dated April 7, 1983 was illegal and bad in law and without application of mind since workmen, covered by the reference had voluntarily entered into memorandum of settlement under intimation to the concerned Labour authority and thereby converted their retrenchment into voluntary resignation and the workmen having fully acted upon the memorandum of settlement by accepting payment made to them by virtue of settlement and having accepted substantial amount, Therefore, reference made mechanically, without application of mind was bad in law. It was also alleged that all materials, including letters along with relevant documents had been duly sent by the company to the Labour authorities, informing them that workmen, covered by the reference had settled their dues and no dispute existed despite that, reference had been made.

10. It was also alleged that statement of claim having not been signed and verified by the workmen concerned, in accordance with mandatory provisions of law, same cannot be considered or looked at. On merits, the Management denied that M/s. Parle Export P. Ltd., manages the entire affairs or that the Management was an agency of Delhi Bottling Co. P. Ltd. It was alleged that Management is an independent limited company, having an independent management to manage its affairs. The management also denied that the workmen were the members of the Union. It was also alleged that the same very workmen had been, on many occasions, negotiating with the management and raising their demands through another union styled as General Mazdoor Congress and, thus, it was alleged that the Union had no locus standi to espouse the present case on behalf of the workmen. It was alleged that the Management was employing only 220 workmen, during the relevant time, which was less than 300 workmen and as such the provisions of Chapter V-B of the Act were not attracted. The Management denied that the retrenchment in respect of 57 workmen was covered by Item 11 of Schedule - IV. Management also denied that the provisions of Section 9-A of the Act were applicable. No notice, according to it was required to be given, in case of retrenchment effected, after complying with the provisions of Section 25-F of the Act.

11. Presiding Officer of the Labour Court on the pleading of the parties framed various issues. As regards its jurisdiction it was held that since retrenchment was of 57 workmen only, Therefore, appropriate Government could make reference to the Labour Court by virtue of Section 10 of the Act. It was held that the

respondent Management wanted to re-organise its business by reducing the number of routes from 52 to 30, as a result of which 57 workmen had become surplus, who were to be retrenched w.e.f. December 8, 1982 and the fact that the Management had reduced its routes which action of Management had not been challenged on behalf of the workmen, either in the application or during evidence. Therefore, it was not at all necessary to go into other aspects of the case. It was held that Section 25-F of the Act had sufficiently and duly been complied with and thus, retrenchment was held to be legal. While recording this finding it was held that though retrenchment compensation was not received by workmen on December 8, 1982, but in view of the decision in *The Management of Indian Compressors Makers Corporation Vs. D.D. Gupta and Others*, , retrenchment cannot be said to be illegal on the ground that retrenchment compensation u/s 25-F of the Act was not tendered simultaneously with the retrenchment notice, since according to the findings, Management had taken requisite steps in getting the bank draft prepared and sending the retrenchment compensation along with notices through registered post at the last known address of the workmen.

12. The Labour Court further held that workmen had utterly failed to prove that provisions of Chapter V-B were attracted in this case. Case of the Workmen, it was held, was not covered by Item 10 of Schedule-IV, since according to the Labour Court surplus of workmen on account of reduction in routes would not mean rationalisation, standardization or improvement of plant and technique, namely, to make the functions of respondent Management viable. That is why number of routes were reduced from 52 to 30 and some of the routes were given to some other company. This according to the Labour Court was done by the Management after due deliberations and calculations and not all of a sudden. It was not a case where plant and machinery had broken down, which was not likely to be repaired or replaced. Respondent Management could very well had given notice u/s 9-A of the Act to the affected workmen in respect of the change of service condition. This not having been done, the change in service condition could not be effected and consequently reduction by way of retrenchment, thus, became illegal. It is on this basis that retrenchment was held to be illegal, otherwise a finding had been recorded that there has been sufficient compliance of the provisions of Section 25-F of the Act. On the plea of the Management on the question of settlement, the findings of the Labour Court were that settlement had been admitted on behalf of the workmen by its authorised representation but subject to certain objections but it was not stated as to what was the objection to the settlement. According to the findings, it stood duly proved on record that though the settlement was between 36 workmen and the Management and same was also accepted by rest of 21 workmen, as they also accepted the payment by virtue of settlement, the question which remained was that how far this settlement would make an illegal retrenchment into a legal one. The Labour Court also held that a settlement, arrived at between an employer and workmen otherwise than in due course of conciliation proceedings, would be

binding upon the parties to the agreement and since settlement in the present case was also arrived at, otherwise than in the due course of conciliation proceedings, was binding upon the workmen and the Management also. But according to the Labour Court the settlement would not stop the workmen now from contending that retrenchment was illegal, as notice about change, as required by Section 9-A was not given by the respondent Management. Had the workmen been told that they were being paid ex-gratia payment because they would not be entitled to challenge the retrenchment on the ground including that of Section 9-A or Section 25-N of the Act, then it would have been a different matter. Thus, according to the impugned award retrenchment will not become legal because of settlement. Holding the retrenchment to be illegal for want of service of notice u/s 9-A of the Act, it was also held that the workmen were not entitled for any back wages, even if retrenchment is held to be illegal. Holding the retrenchment to be illegal workmen were held entitled to reinstatement in service without any back wages. It is this award which is under challenge in this petition.

13. I have heard counsel for the parties and gone through the entire record.

14. The main submission on behalf of counsel for the petitioner has been that the subject matter of dispute relates to retrenchment of 57 workmen which falls within the purview of Schedule -III, Item 10 of the Act as such reference to Labour Court was without jurisdiction. The order of reference did not indicate that the dispute was not likely to affect more than 100 workmen. Reference ordinarily must have been to a Tribunal and not to a Labour Court. Reference to Labour Court, thus, was invalid, Reliance is placed upon a decision of a Division Bench of Mysore High Court in Abdul Rahiman Sahib (T.) Vs. State of Mysore and Others, .

15. No doubt a dispute, as regards retrenchment of workmen is a matter falling within Schedule-III to the Act and u/s 10(1)(d) the reference normally should be to an Industrial Tribunal for adjudication, but the proviso to Section 10(1)(d) makes it permissible for the appropriate Government to make reference to a Labour Court, even if the dispute relates to a matter specified in Schedule-III, when it is not likely to affect more than 100 workmen and the appropriate Government consider it fit to refer it to a Labour Court. The ratio of the decision relied upon is that, the opinion to be formed by the appropriate Government that the dispute was not likely to affect more than 100 workmen and Therefore, it was proper to make a reference to Labour Court, must be displayed by the order of reference, but in a proper case the formation of opinion could be demonstrated by independent evidence. In the facts and circumstances of the instants case, when on the face of it, the dispute pertains to retrenchment of only 57 workmen, namely, less than 100, it will not be permissible to draw an inference that the appropriate Government did not apply its mind in forming the requisite opinion. When on the face of it the dispute was not likely to affect any other workman, in the absence of any other material, the appropriate

Government will be deemed to have applied its mind and irrespective of the fact that the order of reference does not show that such an opinion was formed, the reference to the Labour Court and not to the Industrial Tribunal was perfectly valid. This submission, thus, has no substance.

16. The next submission of learned counsel for the petitioner has been that the terms of reference were that whether the retrenchment of workmen named therein is legal and justified and if not to what relief they are entitled and what directions are necessary in this regard. The Labour Court had to confine its adjudication to the question of retrenchment only and it was not permissible for it to have entertained any dispute, during adjudication, as to the Items 10 and 11 of Schedule-IV or to Section 9-A of the Act. In the absence of any specific reference having been made as regards the alleged Item 10 or Item 11, the Labour Court ought not to have proceeded to make any adjudication thereon. It is contended that the award, thus, is bad in law in so far as it pertains to the adjudication relating to Items 10 and 11 of Schedule-IV and Section 9-A of the Act.

17. There cannot be any dispute on the proposition that the powers of a Labour Court or an Industrial Tribunal to adjudicate upon a reference must be confined to the terms of reference and the same cannot be enlarged by entertaining any dispute falling under any other item in the Schedule to the Act. It is a settled proposition of law that the jurisdiction of Labour Court/Industrial Tribunal is limited to the points referred and it cannot go into those questions, not referred to it, which otherwise are required to be adjudicated upon on a specific reference under the Act. Reference if any, on this proposition, is required, may be made to a decision of the Supreme Court in *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, . A full Bench of this Court in *Indian Tourism Development Corporation Vs. Delhi Administration and Others*, , while construing the provisions of Section 10(4) of the Act held that the jurisdiction of Labour Court/Industrial Tribunal is limited to the points referred and it cannot go into those questions, not referred to it, which otherwise are required to be adjudicated upon on reference under the Act. The Court held.

"...the jurisdiction of the Labour Court/ Industrial Tribunal in Industrial Disputes is limited to the Points specifically referred for its adjudication and the matters incidental thereto and it is not permissible to go beyond the terms of the reference. An industrial adjudicator constituted under the Act is not vested with any inherent power or jurisdiction. It exercises such jurisdiction and power only upon and under order of reference limited to its terms. It cannot travel beyond the terms of reference except for ancillary matters."

18. The facts as disclosed above, in the instant case are that the Management had retrenched the workmen concerned because they had been rendered surplus to its requirements and it was the retrenchment which was challenged. It was on that basis that a reference was sought and made that whether retrenchment of workmen, named therein, was legal and justified and if not, to what relief they

are entitled and what directions are necessary in this respect. Items 10 and 11 Schedule-IV of the Act read with Section 9-A of the Act were not subject matter of reference. Neither the rationalisation, standardisation or improvement of plant or technique was the subject matter of dispute or reference, nor the increase or reduction in the number of persons employed or to be employed in any occupation or process or department or shift, occasioned by circumstances, over which employer has no control, was the subject matter of reference. Items 10 and 11 of Schedule-IV or the matters relating thereto are such on which, reference, if sought, it required to be made to an Industrial Tribunal and not to a Labour Court. These are not matters which can be ancillary or incidental to the reference in question. As such it was not permissible for the Labour Court to have gone to the extent of making an adjudication upon the question that whether the dispute fell under Item 11 of Schedule- IV for which notice u/s 9-A of the Act was required to be served upon the workmen in advance before taking any action for retrenchment. On the reference of retrenchment, the Labour Court had to confine itself on the question whether the same was legal and justified.

19. Findings in the award are that sending of retrenchment notices and bank drafts by registered post by the Management was sufficient compliance with the provisions of Section 25-F of the Act. Notices were not received by the workmen. Having come to this conclusion, the Labour Court was not further required to make any further adjudication on such of the questions, which had not been referred to it. The management had retrenched the workmen, since according to the Management they had been rendered surplus to its requirement, having regard to the economic operation and in the interest of business, consequent upon the re-organisation of its business, in terms of rationalising its routes structure whereby the Company stood reduced. There cannot be any manner of doubt that it is within the managerial discretion of an employer to organise and arrange its business, in the manner, it considers best. So, long as that is done bonafide it is not competent for a Tribunal under the Act to question its propriety. If such a scheme for re-organisation results in surplusage of employees, no employer is expected to carry the burden of such economic dead weight and retrenchment had to be accepted as inevitable, however unfortunate it is, so long as it is not vitiated by considerations of victimisation or unfair labour practice. In *Parry and Co. Ltd. Vs. P.C. Pal and Others*, the ratio of the decision in *D. Macropollo and Co. (Private) Ltd. Vs. D. Macropollo and Co. (Private) Ltd. Employees' Union and Others*, , was followed on this proposition that in case scheme to re-organise had been adopted by an employer for reasons of economy and convenience and it had been introduced in all the areas of its business, the fact that its implementation would lead to the discharge of some of the employees would have no material bearing on the question as to whether the re-organisation has been adopted by it bonafide or not. The Industrial Tribunal considering the issue of retrenchment should not attach any importance to the consequence of re-organisation. Resultant discharge and retrenchment would have to be considered as inevitable though unfortunate consequence of such a

scheme which the employer, acting bonafide, was entitled to adopt. The Court held:

"It is well established that it is within the managerial discretion of an employer to organise and arrange his business in the manner he considers best. So long as that is done bonafide it is not competent of a tribunal to question its propriety. If a scheme for such reorganisation results in surplusage of employees no employer is expected to carry the burden of such economic dead-weight and retrenchment has to be accepted as inevitable, however unfortunate it is. The Legislature realised this position and Therefore provided by Section 25-F compensation to soften the blow of hardship resulting from an employee being thrown out of employment through no fault of his. It is not the function of the Tribunal, Therefore, to go into the question whether such a scheme is profitable or not and whether it should have been adopted by the employer."

20. Before the Labour Court, in the instant case, re-organisation or the scheme adopted by the company was not the subject matter; The subject matter was the retrenchment of workmen, whether it was legal or justified and if not, to what relief they were entitled. The Labour Court was required to see whether compliance has or has not been made of the provisions of Section 25-F of the Act. The Labour Court travelled beyond its jurisdiction in permitting arguments to be raised before it on behalf of the workmen that Items 10 and 11 of Schedule-IV were attracted. It was on that basis that the Labour Court concluded that since number of workmen was reduced, in order to effect economy, to make the function of the management viable and number of routes were reduced from 52 to 30 and some of the routes are given to some other company, which was done by the Management after due deliberations and calculations and not all of a sudden and it was not a case where plant or machinery had broken down which was not likely to be repaired or replaced which could be said to be a circumstance over which employer might not be having any control and thus, Management could very well have given notice u/s 9-A of the Act to the affected workmen in respect of change of service condition, as per item 11 Schedule-IV. The Labour Court held that having not done so, the Management could not effect change in service condition and, thus, the consequent reduction in strength by way of retrenchment became illegal. These conclusions arrived at by the Labour Court are clearly beyond the scope of reference. The question whether the Management could or could not change the service conditions was neither the subject matter of reference, nor ancillary or incidental thereto. It was only the retrenchment of the workmen, whether it was legal and justified, which was the reference, which alone ought to have been answered.

21. On the question of settlement the award has held that a settlement arrived at between the employer and the workmen, otherwise than in the course of conciliation proceedings would be binding upon the parties to the agreement. It was also held that though the settlement had proved on record that though the settlement was between 36 workmen and Management, but in fact all the

retrenched workmen had accepted the same by accepting the additional ex-gratia payment and executing receipts in respect of the additional amount. It, however, proceeded to remark that assuming that a valid settlement had been arrived at between 36 workmen and the Management and that the same had also been accepted by the remaining 21 workmen, on acceptance of the additional payment by virtue of settlement, but this valid settlement would not make the illegal re-trenchment into legal one. This inference and conclusion, the Labour Court arrived at on the premise that it was incumbent for the Management to have served notice u/s 9-A on the workmen that their retrenchment was illegal, because of non-service of notice u/s 9-A of the Act, Therefore, a valid settlement would not make an illegal retrenchment as a valid one. These conclusions of the Labour Court, as observed, were beyond the scope of the reference. Labour Court also came to conclusion that settlement was arrived at with majority of workmen and all retrenched employees, had derived benefit thereunder. On coming to these conclusions reference itself became infructuous and redundant.

22. Irrespective of the above position, it is not in dispute that the Labour Court recorded a finding that in so far as retrenchment of the workmen was concerned it was perfectly legal and justified in as much as retrenchment notices had been duly sent by the Management along with the cheques for the amount due and the mere fact that retrenchment compensation u/s 25-F was not tendered simultaneously, the same will not make retrenchment illegal and in coming to this conclusion the Labour Court rightly places reliance upon a decision of this Court in *Indian Compressors Makers Corporation v. D.D. Gupta and Ors.* (supra). There is no dispute on this aspect. The Labour Court also observed as a matter of fact that the Management wanted to reorganise its business by reducing the number of routes from 52 to 30 as a result of which 57 workmen had become surplus, they were to be retrenched with effect from December 8, 1992. The fact that the Management had reduced its routes had not been challenged either in the application by the workmen or during evidence. Accordingly the Labour Court concluded that it was not at all necessary to have produced any further evidence or resolution by which this particular decision was taken by the Board of Directors and the respondent Management. In view of these conclusions also it was not permissible for the Labour Court to proceed further in invoking the aid of Item 11 of Schedule-IV of the Act. The scope of the inquiry had to be confined within the parameters of the decision of Supreme Court in *Workmen of Subong Tea Estate Vs. The Outgoing Management of Subong Tea Estate and Another*, , wherein five propositions were laid down as follows: (at page 338-339)

"(1) that the management can retrench its employees only for proper reasons, which means that it must not be actuated by any motive of victimisation or any unfair labour practice. (2) that it is for the management to decide the strength of its labour forces, for the number or workmen required to carry out efficiently the working of his industrial undertaking must always be left to be determined by the management in its discretion. (3) if the number of employees exceeded the

reasonable and legitimate needs of the undertaking it is open to the management to retrench them. (4) workmen may become surplus on the ground of rationalisation or economy reasonably or bonafide adopted by the management or on the ground of other industrial or trade reasons, and (5) the right to effect retrenchment cannot normally be challenged but when there is a dispute about the validity of retrenchment the impugned retrenchment must be shown as justified on proper reasons, i.e., that it was not capricious or without rhyme or reason."

23. When the Labour Court in the instant case had already come to a conclusion that decision had been taken bonafide adopted by the management, it could not go beyond that and thereafter ought to have confined itself about the legality of the retrenchment, since the policy was not subject matter of dispute. Moreover, questions falling under Items 10 and 11 of the Schedule-IV are such over which Labour Court would have no jurisdiction. Jurisdiction, if any, would have been that of the Tribunal or virtue of Provisions of Section 7 of the Act.

24. Since the only ground, on which the Labour Court held the retrenchment of the workmen to be illegal, namely, violation of Section 9-A of the Act, which provision could not have been made applicable to the facts and circumstances of the case, in the absence of any reference and lack of jurisdiction, in view of the limited reference, which had been made, there is no other option left except to quash and set aside that part of the award made by Labour Court. The Labour Court rightly came to the conclusion that Section 25-F had been duly complied with. It may also be noticed that during the course of arguments in this Court also, it was not challenged on behalf of the workmen that there has been no compliance of Section 25-F. The entire stress had been on the question of serving a notice u/s 9-A and for that the retrenchment as illegal. Since that was not a question on which reference was made or sought, the Labour Court was not required to go into that question. Having gone to such matters, it acted beyond its jurisdiction. It was only the question of legality of the retrenchment, which was the subject of the retrenchment, which as per the claims lodged by the workmen before the Labour Court was on grounds other than Section 9-A which points were held against the workmen by the Labour Court. The Labour Court came to the conclusion that there has been due compliance of Section 25-F of the Act and Chapter V-B was not applicable.

25. In View of these conclusions the award deserves to be quashed and set aside, which is hereby quashed and set aside holding the retrenchment to be legal and justified and workmen not entitled to any relief. Consequently the rule is made absolute by allowing writ petition and quashing the impugned award. Parties left to bear their own costs.