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**(1959) 08 MAD CK 0031**  
**In the Madras High Court**

Mysore Vegetable Oil Product Ltd.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

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**Date of Decision :** 06-08-1959

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2, 33C

**Citation :** (1961) 2 LLJ 508

**Hon'ble Judges :** Balakrishna Ayyar, J

**Bench :** Single Bench

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**Judgement**

Balakrishna Ayyar, J.—The Mysore Vegetable Oil Products, Ltd., is the petitioner. In February 1938, N.R. Reddi, the respondent 2 joined the services of the petitioner as clerk at Bangalore, In 1942 he was transferred to Madras and he was working there as accountant till the end of February 1956. His duties during this period were mainly maintenance of general ledgers, journals, stores ledger and the preparation of drafts and letters in connexion with maintenance of his accounts. The branch manager was in sole charge of the factory as well as the office till the end of February 1956. In that month the company decided to close down the Vanaspathi section of the factory and to continue to work only the expeller section. As a result of that decision the company retrenched a number of workers and clerical staff. The regular manager of the Madras Branch was also retrenched. On 27 February 1956 the company passed an order which so far as it relates to N.R. Reddi is in these terms:--

Consequent upon the termination of the services of Sri M.A. Narasimham, chemical superintendent and acting branch manager and other staff in the Madras factory, the following arrangements are ordered for relief:

Sri N.R. Reddy, accountant, Madras factory will take charge from Sri M.A. Narasimham of the office and also from the office staff on the 29 February 1966 and relieve them.

In July 1956. N.R. Reddy was served with a notice intimating that his services

would be terminated with effect from 14 July 1966 and on that date he was retrenched. He then applied to the labour court. Madras, u/s 33C(2) of the Industrial Disputes Act praying that the amount of compensation due to him might be ascertained and determined. The labour court determined the amount payable as Rs. 1,800, The company has come to this Court for the issue of a writ of certiorari to quash this decision of the tribunal. Learned counsel for the petitioner raised in the main three points:

(1)The labour court has no jurisdiction to commute the amount of retrenchment compensation in respect of a retrenchment; which was effected before 13 September 1956 when the Industrial Disputes Act was amended so as to include Section 33C(2);

(2) the respondent is not entitled to compensation in a case like the present where there has been a bona fide closure of business; and

(3) the respondent 2 is not a workman within the meaning of the word as defined in Section 2(s) of the Industrial Disputes Act.

So far as the first two points are concerned they were not taken before the labour court, and I do not think I should allow the petitioner to raise these points here. So far as the third point is concerned the contention of the learned Counsel for the petitioner was that at the time the order of retrenchment took effect, the respondent 2 was occupying a managerial position and that, therefore, he was not a workman within the term of the definition. The labour court went into this question and found that the work of supervision formed a minor part of the duties of the respondent 2, and that such work by itself would not make him a manager. On the evidence the tribunal was inclined to hold "that even after February 1956, the respondent 2 continued to do the same work which he had been performing previously and that he was also looking after some additional work like supervising the work of the other clerks, disbursing salaries and replying to the letter received by the concern according to the instructions from the Bangalore office.

2. The tribunal, therefore, concluded:

On the evidence I am inclined to hold that his main duties at the time of the termination of his service were only clerical and that he must be deemed to be a workman as defined in the Act.

It has not been controverted before me that before the order, dated 27 February 1956 was issued, the position of the respondent 2 was only that of a workman within the definition of that word in Section 2(s) of the Act. By virtue of that order certain additional duties were imposed upon him. The order itself shows that the arrangement made hereunder were essentially of a temporary nature. The words used are "the following arrangements are made for relief." The expression for relief makes it very plain that the arrangement was essentially temporary so that the permanent incumbent could be relieved. That order did

not substantially alter the status of the respondent 2. In a matter of this kind temporary arrangements must be ignored. One illustration will make my meaning plain. When a District Munsif or a Subordinate Judge is transferred, the order to transfer frequently directs to hand over charge to the head clerk of the sheristadar as the case may be, merely because on the basis of such an order the head clerk or the sheristadar disburses their pay to the members of the establishment, they would not become either District Munsifs or Subordinate Judges. In ascertaining the true status of an employee we must have regard not to any temporary arrangement that might be made as a measure of convenience but to what may be called his substantive position and when that is done it will be seen that the position of the respondent 2 continued in substance to what it was before. As I said earlier it was not controverted before me that before the date of this order, his position was that of a workman as defined in the Act. It follows that the order complained of is correct. This writ petition is, therefore, dismissed. No costs.