

(2007) 04 BOM CK 0017

In the Bombay High Court

Case No : Write Petition No. 3146 of 2004

Oriental Rubber Industries Ltd.

APPELLANT

Vs

Somayya S. Bhandari and Others

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 2, 25B, 25F, 25F(2)

Citation : (2008) 3 BomCR 838

Hon'ble Judges : Kanade V.M., J

Bench : Single Bench

Advocate : P.K. Rele and Rajesh P. Rele, Vinod Tayade, instructed by Piyush Shah, for the Appellant; S.N. Deshpande, for the Respondent

Judgement

Kanade V.M., J.—By this petition, the petitioner is seeking appropriate writ, order or direction for quashing/setting aside order dated 1st October, 2004 passed by the Industrial Court in Complaint (ULP) No. 651 of 1998, whereby the Industrial Court pleased to direct the petitioner herein to pay the legal dues to the complainants/respondents after declaring that the petitioner herein had committed unfair labour practice under Items 5 and 9 of Schedule 4 of MRTU and PULP Act, 1971 with further direction to provide employment to the complainants and to pay 50% back wages from the date of filing complaint till passing of the order.

2. Brief facts which are relevant for the purpose of deciding this petition are as under:

The petitioner company is registered under the Companies Act and prior to January 1981 was having a Factory at Bhandup and had undertaken manufacturing activity in respect of rubber products and at that time had employed six hundred workmen. On 27/10/1980, the petitioner Company declared lockout on account of its bad financial position and in the week of November, 1980 company took a decision to close factory with effect from 5th January, 1981 and closure notice dated 3rd November 1980 was issued u/s 25-

FFA of the Central Act. Union representing workmen at Bhandup factory filed complaint being Complaint (ULP) No. 257/1980 dated 2nd December, 1980 before the Industrial Court, Thane. In the said complaint the petitioner company gave undertaking that they would not close the factory till disposal of interim application seeking interim relief. Thereafter, on 08/03/1982, the Industrial Court, Thane after hearing parties, finally dismissed the complaint by its order dated 8th March, 1982 and held that closure notice dated 03/11/1980 was valid and legal. Accordingly, factory was closed and all the workmen accepted legal dues including compensation in 1982/1983. Majority of the workmen accepted dues and unclaimed balance was deposited with the Maharashtra Labour Welfare Board on 07/08/1989 as per the provisions of Maharashtra Labour Welfare Act.

3. Union again filed complaint being Complaint (ULP) No. 1006/1987 before the Industrial Court, Mumbai in which it was alleged that the notice ought to have been given after taking prior permission from the State Government and since this was not done, there was violation of provisions of Section 25-O of Industrial Dispute Act. This second complaint was dismissed on 20th June, 1988 on the ground that since validity of the closure notice was already decided in the earlier complaint second complaint on the same ground was not maintainable. It was also dismissed on the ground of limitation.

4. Against the said order, Union preferred writ petition in this Court being writ petition No. 2632/1988. This petition was dismissed by the Court by order dated 22/06/1993. Against the said order, Union preferred an appeal before the Division Bench and also took out notice of motion seeking interim relief. The Division Bench of this Court declined to grant interim relief. Thereafter by order dated 09/03/1995, the Division Bench dismissed the appeal. Union challenged the said order by filing SLP in the Apex Court being SLP No. 21513/1995. This SLP was also dismissed on 21st July, 1997.

5. Thereafter the respondents filed third complaint on 29/04/1998 before the Industrial Court being complaint (ULP) No. 651/1998, alleging unfair labour practice under Items 5, 9 and 10 of Schedule 4 of the Act. It was alleged that respondents workmen came to know in the month of December, 1997 that the petitioner had started its manufacturing activity near Pune in November, 1992 by reemploying some of the previous employees and prayed that respondents workmen should be re-appointed and also claimed back wages.

6. The petitioner filed written statement and claimed that the company had started new unit at Pune and that order of closure had become effective legally and validly in view of various orders passed by the Industrial Court and which was confirmed by the High Court and the Supreme Court. On 08/03/1999, the Industrial Court dismissed the application which was filed by the respondent for interim relief. Thereafter, evidence was led by both the parties and the Industrial Court, after hearing parties, passed impugned order allowing complaint filed by the respondents.

7. I have heard the learned Counsel Mr. P.K. Rele appearing on behalf of the petitioner and the learned Counsel Mr. S.N. Deshpande appearing on behalf of respondents. Learned Counsel for the petitioner submitted that Industrial Court erred in entertaining complaint under the provisions of MRTU and PULP Act. He submitted that the factory has been closed in 1982 and order of closure had been confirmed by the High Court and the Supreme Court also. Petitioner had started its manufacturing activities at Pune after lapse of 10 years from the closure of the unit at Bombay and that retrenchment compensation had already been paid to the workmen and unclaimed wages were deposited with the Maharashtra Labour Welfare Board and therefore, there was not relationship of employer and employees as envisaged u/s 3(5) of the said Act. He submitted that the petitioner could not be termed as employer within the meaning of Section 3(6) of the said Act.

8. Therefore, he submitted that the Industrial Court could not have directed payment of closure compensation to the respondents particularly when unclaimed closure compensation had already been deposited with the Maharashtra Labour Welfare Board as per provisions of Maharashtra Labour Welfare Board Act. He submitted that Industrial Court clearly erred in directing the petitioner to give employment to the workmen when industrial establishment in Bombay had been closed in the year 1982. He further submitted that in view of the facts and circumstances of the present case, provisions of Section 25-H of Industrial Disputes Act would not be applicable to the case of closure of Unit which was closed and which had been held valid and legal by all the courts. He submitted that the Industrial Court erred in holding that there was violation of Items 5 and 9 of schedule 4 of MRTU and PULP Act in the facts and circumstance of the present case.

9. He further submitted that even assuming that provisions of Section 25-H of Industrial Disputes Act could be invoked, the Industrial Court erred in directing the petitioner to give employment to the retrenched workmen particularly when Section 25-H contemplates that employer is only under an obligation to offer re-employment to their retrenched workmen on preferential basis. He submitted that apart from without prejudice to the earlier submissions the new unit had been started at Pune in 1992 and unit at Bhandup and at Pune were two separate undertakings having no functional integrity. He submitted that unit at Khoregaon Bhima Pune had started functioning under a new factory licence, excise registration and DGTD Registration.

10. He supported his submission and relied on the judgment of Apex Court in the case of CEAT Ltd. Vs. Anand Abasaheb Hawaldar and Others, . He also relied on the judgment of this Court in the case of (Vasanta Kundlik Kumbhare and Ors. v. Industrial Court ((Maharashtra) Nagpur Bench, Nagpur and Ors.) reported in 1999 (Supp.) Bom.C.R 733 : 1999 (1) C.L.R. 880 : 1999 (1) Mh.L.J. 559. He further relied on the judgment of Apex Court in the case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer,

Labour Court, Chandigarh and Others, . He then relied on the judgment in the case of Apex Court in the case of Jaipur Development Authority Vs. Ram Sahai and Another, . He then relied on the case of State of Rajasthan Vs. Sarjeet Singh and Another, . He also relied on the judgment in the case of Maruti Udyog Ltd. Vs. Ram Lal and Others, . He relied on this judgment in support of his submission that provisions of Section 25-F would not apply in case of valid closure u/s 25-H. He relied on para 21 and 25 of the said judgment and para 38 of the said judgment. He then relied on the judgment of Supreme Court in the case of Cipla Ltd. Vs. Maharashtra General Kamgar Union and Others, .

11. Learned Counsel Shri. S.N. Deshpande appearing on behalf of respondents on the other hand, submitted that provisions of Section 25-H would be squarely applicable to the facts of the present case since the petitioner company had re-started manufacturing activity in the year 1992. He submitted that provisions of Section 25-H clearly envisages that after closure of undertakings if employer intends to re-start manufacturing activities, then it would be under an obligation to issue notice and offer retrenched employee a chance of being re-employed and in the present case, since this obligation had not been fulfilled, the Industrial Court was justified in coming to the conclusion that the petitioner had clearly committed unfair labour practice under Item Nos. 5 and 9 of Schedule 4 of the Act and therefore, the complainant again succeeded in establishing said unfair labour practice. Under the provision of Section 11-A, Industrial Court has jurisdiction in granting necessary consequential relief.

12. In support of his submissions, he relied on the judgment of the Division Bench of this Court in the case of Nagpur District Central Co-operative Bank Vs. State of Maharashtra and Others, . He further relied on the judgment of Division Bench of this Court in case of Ceat Limited (Electronics Division), Mumbai Vs. Anand Abasaheb Hawaldar and Others, . He relied on para 39 of said judgment. He then relied on the judgment of this Court in the case of (Pratibha Sambaji Kubal v. Ravindra Hindustan Platinum Pvt. Ltd. and Ors.) reported in 1987 (1) C.L.R. 23. He further relied on the Division Bench Judgment of the Hon"ble Supreme Court in the case of S.G. Chemicals and Dyes Trading Employees" Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, . He then relied on the judgment in the case of (Kishorilal Maikulal Jain v. Santoshi Tel Utpadan Kendra) reported in 1988 (Supp.) Bom.C.R. 548 : 1987 (11) C.L.R. 1 : 1987 Mh.L.J. 36. He also relied on the judgment of the Hon"ble Supreme Court in the case of Mary Commen Vs. Manager, M.G.M. High School, Kuruppampaddy, Kerala and Others, . He then relied on the judgment of this Court in the case of (Industrial Perfumes Ltd. v. Industrial Perfumes Workers Union) reported in 1998 (11) C.L.R. 273 and lastly he relied on the judgment of the Hon Tale Supreme Court in case of (Express Newspapers (Private) Ltd., Madras v. Their Work men) reported in Factories Journal Reports Volume XXIII 1962-1963. He also tried to distinguish judgments on which reliance has been placed by the Counsel appearing on behalf of the petitioner.

13. I have given my anxious consideration to the submissions which are made by the learned Counsel for the petitioner and the learned Counsel for the respondents. Admitted facts are that there was valid closure of the petitioner company in the year 1982 which was confirmed by the Industrial Court, single Judge of this Court and the Division Bench of this Court and the Honable Supreme Court. Two successive complaints which were filed by the workmen were dismissed and therefore, 3rd complaint had been filed under MRTU and PULP Act, 1998 after SLP which was filed by this workmen, was dismissed. It is further an admission position that the petitioner had re-started its manufacturing activities in Pune in November, 1992 and after lapse of almost 17 years third complaint had been filed by the workmen alleging unfair labour practice under Items 5 and 9 of Schedule 4 of the said Act. In my view following questions fall for my consideration.

1. Whether the provisions of Section 25-H are applicable in the case of re-starting unit of a company which has validly closed its earlier unit?

2. Whether Section 25-H would apply to the case where the company has started its unit in a different City without making offer of re-employment to the retrenched workmen?

3. Whether Section 25-H would apply to the case where there has been valid closure of the Industrial Establishment u/s 25-O of the Industrial Disputes Act, 1947?

4. Whether the relationship "employer/employees" would continue to operate after closure of unit and after it has started functioning again at the different places?

5. Whether the Industrial Court could pass order of automatic employment while exercising its jurisdiction u/s 11-A of said Act?

14. In order to consider rival submissions made by the learned Counsel for the petitioner and the learned Counsel for the respondents, it would be relevant to take into consideration certain provisions under the Industrial Disputes Act and MRTU and PULP Act, 1947.

15. Section 2-OO of the Industrial Disputes Act, 1947 defines term "retrenchment". The said definition 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 workman; or

(b) retirement of the workman 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

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry for of such contract being terminated under a stipulation in that behalf contained therein; or

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

16. Section 25-O Chapter V B of the Industrial Disputes Act lays down specific provisions relating to lay off retrenchment and closure in certain establishment. Section 25-O lays down the procedure for closing down an undertaking.

17. In the present case, it is an admitted position that the closure notice which was given by the petitioner, has been held to be valid by the various Courts and finally the Apex Court confirmed the order of closure. It is not disputed, therefore, that relevant procedure has been followed by the petitioner in respect of closure of its undertakings in the year 1982 and said question has gained finality after SLP, which was filed by the workmen, was dismissed. Workmen have relied on provisions of 25-H which is couched in wide language and reference to the re-employment of retrenched workmen. Said provision does not specifically referred to reemployment after closure of unit, particularly, re-appointment of retrenched workmen. It is necessary to consider the language which is used in the said provision. Section 25-H reads as under:

25-H Re-employment of retrenched workmen. Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall in such manner as may be prescribed, give an opportunity 1[to the retrenched workmen who are citizens of India to offer themselves for reemployment and such retrenched workmen]. who offer themselves for re-employment shall have preference over other persons.

18. Section essentially casts an obligation on employer to give an opportunity to the retrenched workmen to offer themselves in re-employment and therefore, lays down that such workmen shall have preference over other persons. From the language of the aforesaid provisions, it is clear that re-employment in terms of Section 25-H pre-supposes valid termination or retrenchment.

19. It is also essential to consider provisions of Section 25-F which lays down conditions which have to be complied with before retrenchment of workmen. Similarly, it would be relevant to take into consideration provisions of Section 25-FF which lays down compensation which is required to be paid to the workmen in case of closure of undertakings. Section 25-F and 25-FF read as under:

25-F. Conditions precedent to retrenchment of workmen. No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; 1[***]

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen day's average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3[for such authority as may be specified by the appropriate Government by notification in the Official Gazette].

1(25-FF) Compensation to workmen in case of transfer of undertakings.

When the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to or that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if-

(a) the service of the workman has not been interrupted by such transfer;

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

(c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

20. Taking into consideration the aforesaid legal position, it will, therefore, have to be considered whether the provisions of Section 25-H would be applicable to cases where there has been closure and thereafter, the company has re-started manufacturing unit in different city. In this context, it would be relevant to consider law laid down by the Supreme Court and this Court in respect of this aspect. Learned Counsel appearing on behalf of petitioner relied on the judgment in case of *The Punjab Land Development & Reclamation Corporation Ltd., Chandigarh and Ors. v. The Presiding Officer, Labour Court, Chandigarh and Ors.* (supra). He relied on para 21 of the said judgment in respect of his submissions that the word retrenchment in ordinary parlance, was used in respect of discharge of the surplus workmen and therefore, it did not include discharge on closure units. He also relied on paras 28, 29 and 33 of said judgment where the Apex Court has taken into consideration its earlier judgment in case of *Anakapalle Co-operative Agricultural and Industrial Society Limited Vs. Workmen*, . He finally relied on the observations made by the Apex Court in para 76 of the said judgment. Shri Deshpande the learned Counsel for the respondents relied on this judgment and has submitted that ratio laid down in this case clearly is applicable to the facts of the present case.

21. In my view, question which fall for consideration before the Apex Court in the said case was whether termination of workman as a surplus labour or for any other reason whatsoever, otherwise than as a punishment, would amount to retrenchment within the meaning of Section 2-OO and therefore, whether word "retrenchment" was to be understood in its narrow or its wider literal meaning. In order to consider ratio of the case, it is essential first to consider circumstances under which the Apex Court was pleased to make the observation on the said issue. Eight appeals were filed by the Land Development and Reclamation Corporation, Chandigarh. Aforesaid judgment and order of the Punjab and Haryana High Court which had dismissed its writ petition challenging award which was passed by the Labour Court, Chandigarh, had held that the respondents were entitled to reinstatement with back wages. Respondents in the said case were workmen and their services were terminated on the ground that the Chairman had no power to appoint them. Labour Court held that services were terminated illegally without payment of retrenchment compensation. Similarly, other appeals were filed where similar question was involved and in some cases services of the workmen were terminated during the period of probation. In some cases, the workmen had abandoned the job and therefore, services were terminated. In the light of facts of the said case, the learned Counsel for the employer had contended that the word "retrenchment" as defined in Section 2-OO of the Act meant that termination of service of a workman only by way of surplus labour for any other reasons whatsoever. Whereas the learned Counsel representing workman contended that "retrenchment" meant termination of service of the workman for any other reasons whatsoever, other than those which was expressly excluded by the definition in Section 2-OO of the Act.

22. The Hon''ble Supreme Court, therefore, was called upon to decide questions whether appropriate consideration of definition of "retrenchment" u/s 2-OO of the Act which means termination by the employer from the service of a workman as surplus labour or for any other reason whatsoever or it means termination by the employer from the services of workmen for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action which is expressly excluded by the definition. Thus, the Hon''ble Supreme Court was called upon to consider whether term "retrenchment" had to be understood in the narrow or natural and contextual meaning or in its wider literal meaning. While considering this issue, the Apex Court has considered various aspects including the question whether termination from services on closure of an undertaking would be covered by the word "retrenchment". After considering this aspect, the Hon''ble Supreme Court has answered this question in para 76 of the said judgment. In the said para, the Hon''ble Apex Court has observed that the definition contained in Section 2 has to be considered subject to the context and the subject matter in each case. While considering various provisions relating to the retrenchment, the Hon Tile Apex Court in the said para has also taken into consideration provisions of Section 25-FFF. The Hon''ble Apex Court has observed

as under:

Very briefly stated Section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workmen who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of Sub-section 2, be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched (Emphasis supplied). Section 25-H provides for re-employment to retrenched workmen. In brief, it provides that where any workmen are retrenched, and the employer proposes to take into his employment any person, he shall give an opportunity to the retrenched workmen to offer them-selves for re-employment as provided in the section subject to the conditions as set out in the Section. In our view, principle of harmonious construction implies that in a case where there is genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions of a right given to workman "deemed to be retrenched" a right to claim re-employment as provided in Section 25-H. In such cases, as specifically provided in the relevant sections the workmen concerned would only be entitled to notice and compensation in accordance with Section 25-F (emphasis supplied). It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with aforesaid provisions, the benefit specifically given to the workmen is "as if workmen had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of Section 25-F.

23. Aforesaid observations obviously have been made in context of considering interpretation of term "retrenchment" which is provided in Section 2-OO. In my view, therefore, the provisions of Section 25-H operates as valid retrenchment and provides for notice and compensation in accordance with Section 25-F under the circumstances stated therein. Therefore only in cases where there is complete and absolute, genuine closure, provisions of Section 25-H would not apply. In the facts of the present case during the pendency of the SLP in the Supreme Court the company restarted its manufacturing activity at a different place and therefore there was no absolute closure of the company.

24. The learned Counsel for the petitioner also relied on the judgment of the Honable Supreme Court in case of Maruti Udyog Ltd. v. Ram Lal and Ors. (supra). Learned Counsel for the petitioner submitted that the Honable Supreme Court in the aforesaid case had interpreted word "as if" which are found in the Section 25-F and 25-FF of the Industrial Disputes Act, 1947 and the Honable Supreme Court had applied rule of purposive consideration which is a rule which is applied in the case where words are to be interpreted in construing legal fiction. In this context, he relied on para 38 of the said judgment. It reads as under-

38. The statutory scheme does not envisage that even in the case of closure of an undertaking, a workman who although had not been retrenched would be re-

employed in case of revival thereof by another company. If the submission of Mr. Das is accepted, the same would not only run contrary to the statutory scheme but would make the definition of retrenchment contained in Section 2(OO) of the 1947 Act otiose.

25. In the said case, Maruti Udyog was Government company within the meaning of Companies Act, 1956. Respondents there were workmen working in the said company and their services were terminated in 1977 as a result of closure of factory. Company was wound up in terms of order of Punjab and Haryana High Court. Company ceased to have any business activities. Retrenched employees were granted one month's salary in lieu of notice.

26. Thereafter Parliament enacted said Act for closure and transfer of undertaking of the company with effect from 13/10/1980. Erstwhile workmen issued notice of demand of re-employment. Thereafter writ petition was filed which was dismissed in limine and therefore, the industrial dispute was raised demanding re-employment in terms of Section 25-H of the said Act. A reference was made by the State before Labour Court. The Labour Court held that the company was liable to re-employ respondents with back wages. Company filed petition in the High Court and the High Court held that workmen claimed re-employment after retrenchment only from the employer who retrenched him. In the light of these facts the Hon'ble Supreme Court held that liability to pay compensation in the case of closure would be on the employer which would be in this case on erstwhile company and further observed that earlier company had been closed and as such workmen could not claim re-employment under the provisions of 25-H and in the light of these facts, the Hon'ble supreme Court has observed in paras 34 and 35 as under:

34. The submission of Mr. Das to the effect that Parliament having used the words "every workman" in Section 25-FFF, which would include, dismissed workmen in view of its definition contained in Section 2(s) of the 1947 Act, should be widely interpreted so as to hold that even those workmen who had received compensation would be entitled to the benefit of Section 25-H of the 1947, cannot be accepted. Such a construction is not possible keeping in view the statutory scheme of the 1947 Act. Section 25-F vis-a-vis Section 25-B read with Section 2(oo) of the 1947 Act contemplates a situation where a workman is retrenched from services who had worked for a period of not less than one year on the one hand and those workmen who are covered by Section 25-FF and Section 25-FFF on the other keeping in view the fact that whereas in the case of the former, a retrenchment takes place, in the latter it does not. Parliament amended the provisions of the 1947 Act by inserting Section 25-FF and Section 25-FFF therein by reason of the Industrial Disputes (Amendment) Act, 1957 with effect from 28/11/1956, as it was found that having regard to the helpless condition into which a workman would be thrown if his services are terminated without payment of compensation and presumably on the ground that if a reasonable compensation is awarded, he may be able to find out an alternative

employment within a reasonable time. In the case of closure of an industrial undertaking the Act contemplates payment of compensation alone.

35. In construing a legal fiction the purpose for which it is created should be kept in mind and should not be extended beyond the scope thereof or beyond the language by which it is created. Furthermore, it is well known that a deeming provision cannot be pushed too far so as to result in an anomalous or absurd position. The Court must remind itself that the expressions like "as if are adopted in law for a limited purpose and there cannot be any justification, to extend the same beyond the purpose for which the legislature adopted it.

27. In my view, therefore, ratio of this judgment will not apply to the facts of the present case, particularly when it is an admitted position that the petitioner company, though, had closed its industrial unit in Bombay, same company admittedly had started its manufacturing activities at different place at Pune and legal entity which existed then at the time of closure continues to be in existence when the manufacturing activity was re-started in 1992. In my view, therefore, ratio of this judgment will not apply to the facts of the present case.

28. Learned Counsel for the petitioner thereafter relied on the judgment in the case of Vasanta Kundlik Kumbhare and Ors. v. Industrial Court (Maharashtra) Nagpur Bench, Nagpur and Ors. (supra) given by Single Judge of this Court. The learned Single Judge had held that provisions of Section 25-H were not attracted in the case of a genuine closure. He invited my attention to the observations made by the learned Single Judge in para 15 of the said judgment, wherein the learned Single Judge has observed that after taking into consideration judgment of the Hon'ble Apex Court in Punjab Land Development and Reclamation Corporation Ltd, Chandigarh in the case of genuine closure of an undertaking, provisions of Section 25-H were not attracted and that in the light of facts of the said case, held that closure was not genuine.

29. Therefore provisions of Section 25-H were not attracted. Therefore, the learned Counsel for the petitioner submitted that in the present case, it would not be open for the workmen to raise this issue relating to genuineness of the closure since that issue had been concluded on account of decision of the Hon'ble Supreme Court where the closure has been upheld. He submitted therefore ratio of this judgment would squarely apply to the present case.

30. In my view, if facts and circumstances of the present case are taken into consideration, it clearly discloses that the petitioner Company though, had genuinely closed its undertaking in 1982, same company had restarted its manufacturing activity in 1992 at different place and therefore, though the closure was genuine and though that issue had been finally concluded by the Supreme Court, question still remains to be seen on the light-of facts of this case whether the manufacturing activity which was re-started at different place would attract provisions of Section 25-H. In my view, this particular preposition had not been considered by the learned Single Judge in the case of Vasanta Kundlik

Kumbhare and Ors. v. Industrial Court (Maharashtra) Nagpur Bench, Nagpur and Ors. (supra). Taking into consideration judgment of the Honable Supreme Court and this Court, I am of the view that if employer restarts manufacturing activity after closure had taken place, he would still be under an obligation to make an offer to the employees for re-employment as contemplated u/s 25-H. In view of this, the employer would be under obligation to offer employment if he re-starts his manufacturing activity at a different place. Therefore, in the facts of the said case, employer/the petitioner was under obligation to offer employees an opportunity of re-employment in the establishment where it had started manufacturing activity afresh.

31. Another aspect which has to be borne in mind is that though earlier complaint which was filed by workmen, had been dismissed by the Lower Court and by the High Court, during the pendency of this Court proceedings which finally concluded by dismissal of SLP in 1997, the petitioner had re-started his manufacturing activity in the year 1992. This additional facts and circumstances which in my view, further creates an obligation on the part of the petitioner to offer employment to these workmen.

32. Next question which is to be decided is whether the relationship of "employer and employee" between the petitioner and the respondents had come to an end or not. In my view, this issue no longer res integra as this is covered by catena of judgments of this Court and the Honable Supreme Court. Division Bench of this Court in the case of CEAT Ltd. Vs. Anand Abasaheb Hawaldar and Others, has after taking into consideration relevant provisions and various judgments of this Court and the Honable Supreme Court, has held that grievance of the complainants-workmen was referable to and had nexus with the act complained of and therefore, the Industrial Court had jurisdiction as they could be said to be workmen for that limited purpose.

33. Next question which is required to be decided is whether complaint under MRTU and PULP Act was maintainable on the ground that employer had committed unfair labour practice under Items 5 and 9 of Schedule 4 of the said Act. This question has also been answered by this Court and the Honable Supreme Court in catena of cases. In the case Pratibha Sambhaji Kubal v. Ravindra Hindustan Paltinum Pvt. Ltd. And Ors. (supra), the learned Single Judge of this Court has held that in the event of breach of provisions of Sections 25-F or 25-G or 25-H of established then it would be unfair labour practice as contemplated by Item 9 of Schedule 4 of MRTU and PULP Act. The Learned Single Judge relied on the case of S.G. Chemical & Dyes Trading Employees Union v. S.G. Chemicals & Trading Ltd. and Anr. (supra) as also judgment of Honable Supreme Court in case of Mohan Lal Vs. Management of Bharat Electronics Ltd., . The submissions of the petitioner, therefore, in the complaint in breach of Section 25-G or 25-H is not maintainable under Item 9 of Schedule 4 of the Act can not be accepted.

34. Only question now remains to be determined is that whether employer re-

starting his manufacturing activity after closure of his establishment would therefore, lead to an automatic employment to the employees and whether the Industrial Court was justified in coming to the conclusion that on account of breach of Section 25-H workmen would be entitled to get an automatic employment from the date on which he has filed his application. In support of his submission Shri. Rele, learned senior Counsel for the petition has relied on the judgment of the Hon'ble Supreme Court which has been referred to earlier. In my view, ratio in the said judgment clearly indicates that the Section 28-H does not contemplate an automatic employment on the part of workmen who have preferred complaint for breach of Section 25-H. Supreme Court in the case of Jaipur Development Authority v. Ram Sahai and Anr. (supra) has observed that even if violation of Sections 25-G and 25-H is assumed, that itself would not mean Labour Court ought to have passed Award for reinstatement and the jurisdiction u/s 11-A has to be exercised judicially.

35. The Hon'ble Apex Court in the said case after examining facts of the said case came to the conclusion that it is not proper to direct reinstatement with back wages and awarded Rs. 75,000/- compensation to the respondents. Similarly the Hon'ble Supreme Court recently in the case of The State of Rajasthan v. Sarjeet Singh and Anr. reported in 2007 (I) C.L.R. 126 (supra) has observed that even if it is assumed that there is violation of Section 25-G or 25-H, then there could not be an automatic reinstatement in service with back wages.

36. In my view, the Industrial Court has not taken into consideration this particular aspect in this case and erred in directing reinstatement of the workmen with back wages from the date on which they preferred the application. In the present case, admitted position is that manufacturing activity had re-started in another place in the year 1992. Present complaint has been filed in the year 1998. Material on record indicates that workmen had received retrenchment compensation and unclaimed amount of compensation had already been deposited with Maharashtra Labour Welfare Board.

37. In view of these facts, the direction given by the Industrial Court to pay 50% back wages from the date of filing of the complaint, in my view, will have to be set aside. Other direction however, to pay the legal dues to the complainants concerned including the legal representatives of the deceased workmen by taking necessary steps if collecting the amount from the Maharashtra Labour Welfare Board is confirmed. Write petition, is accordingly, partly allowed. The order passed by the Industrial Court is, accordingly, modified in the above terms.

Writ petition is disposed of accordingly.