

(1961) 08 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No's. 169 to 1961

P.S. Desikachari and Others

APPELLANT

Vs

Associated Publishers, Madras (P) Ltd. and Another

RESPONDENT

Date of Decision : 21-08-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25(F), 33
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 3

Citation : AIR 1962 Mad 327 : (1962) 4 FLR 429

Hon'ble Judges : S. Ramachandra Iyer, O.C.J.; Ramakrishnan, J

Bench : Division Bench

Judgement

S. Ramachandra Iyer, Offg. C.J.

(1) These petitions are filed under Art. 226 of the Constitution for the issue of a writ of certiorari, calling for the records relating to W. P. Nos. 17, 18 and 19 of 1959 on the file of the Labour Court, Madras, and for quashing the orders passed thereon on 8th July 1960, rejecting the claim of the petitioners for certain monetary compensation.

(2) The respondent is a private limited company, which owns and publishes the "Mail" one of the premier English daily newspapers of Madras. P. S. Desikachari, C. Theobald and A. Krihnamurthi, the petitioners in the above petitioners, were employed by the respondent as the Chief Reporter, Sports Editor and Reporter respectively for the paper. Each one of them had put in more than 35 years of continuous service in the establishment; by the year 1956, they had attained respectively 62, 58 and 58 years of age. The relationship between the management and the petitioners during the entire period of service was happy; the management treated the employees with the kindness and consideration, and the latter, on their part, responded by doing substantial work to forward the interest of the paper. There were no special conditions of service

regulating the relationship between the petitioners and the respondent. Their service would however be terminated by the notice on the either side. To be more specific the contract of employment did not provide for retirement of on the employ on reaching any particular age; nor were thier and standing orders providing for superannuation of the employees. There is however, nothing unusual or strange in this as the employer could always discharge the employee by giving the necessary notice.

(3) The working conditions of the journalists formed one of the subjects which the press Commission had to enquire into and consider, The Commission made its report on 14-7-1954. Shortly thereafter, the Central Legislature passes the Act 45 of 1955, which came into force on the 20-12-1955, regulating the conditions of service of working journalists and other person employed in newspaper establishment. It also provided a machinery to fix the emoluments of the working journalists. It is not that the petitioners would come within the definition of the term "working journalists" under that enactment.

(4) At about that time, the management of the "Mail" appears to have considered the expediency of continuing in service to petitioners. The willingness of the latter to retire was not ascertained, presumably because their consent was not necessary for the termination of their service. The management decided to retire them from 1-6-1956 on payment of "the usual statutory compensation" Mr. Taylor, the editor communicated the decision to the three petitioners in due course; it is not disputed that the were one told that they would be paid all statutory benefits due to them. Indeed, the letters individually addressed to the three petitioners, by the management on 22-3-1956 specifically stated that the former would be paid "retrenchment compensation" Theobald was willing for the termination of his services on those terms. But the other two placed before the management their special difficulties inthe event of their immediate discharge, and pleaded for a reconsideration of the decision. The management was, however not agreeable to reconsider their decision to retire them, but was willing to mitiate the rigour of its order by making t effect for 1-10-1956. It will be usefull in this connection to set out verbatim two letters on behalf of the management to Krishnamurthi, which can be taking as disclosing the circumstances under which he and Desikachari were discharged. The first of them is dated 22-3-1956, and runs:

Mr. Taylor, Director, mentioned to you on Saturday 3rd March 1956, that in view of your long service viz, 40 years, the Board had decided to retire you from service effective from the 1st june 1956.

You submitted a petition dated 15-3-1956 to the Chairman making certain reprintsentations regarding the proposal to retire you. As a result thereof, we have been instructed to communicate to you the decision arrived at by the Chairman.

In view of the long service that you have put in, we are agreeable to

communicate in service for a further period of six months, i.e., upto the end of 30th september 1956, when you will retire from service. This period must be sufficient for you to reconcile yourself to the prospect of retirement.

Regarding your request for pension, the management regrets that they cannot consider this at all. They will be prepared to pay you the statutory retrenchment benefit on the eve of your retirement (*italics not in the original*). In view of the six months notice that has now been given to you, you will not be given the one month's salary in lieu of notice at the time of retirement. Kindly acknowledge receipt of this communication."

There was further correspondence, as a result of which the second of the letters referred to above came to be sent. That was dated 17-9-1956 and ran:

"with reference to the letter dated 5-9-1956 sent on your behalf as well as by Mr. Desikachari, I have to write to you as folloes:

As you had passed the age of supernnuation and as you had bee in service for a long number of years the Board decided to retire you from service with effect from 1st June 1956. The decision was communicated to you y Mr. Tylor on 3rd March 1956.

On your representation, the Board agreed to give you as a matte of grace an extention upto the end of september 1956. In the letter dated 22nd March 1956, in which this grantof extention was communicated to you, you were definitely told that you would be retired for service at the end of september 1956. It was also added that the period of six months from march to september must be sufficient for you to reconcile yourself for the prospect f retirement. The acceptance of that extension necessarily meant that you were willing to retire by the end of september 1956. It is not open to go back upon it or attempt to reopen the question now. The Board is not prepared to give you any further extension.

The age of supernnuation in the "Mail" is 55, as in the case of Government servants and other newspapers establishments. You know that the age of supernnuation in the "Hindu" is 55. The age of supernnuation of reporters in the state Legislatures in Parliament is 55. There is no analogy between post of a reporter and of the judges of the supreme court or of high court. There is no basis for the assumption in the letter that you have a right to be retained in service as long as you are physically fit to discharge the duties of your post.

As the Board decided to retire you on account of your having reached the age of supernnuation and as by availing yourself of the extension of service till the 30th September 1956 granted by the Board, you must be deemed to have agreed to retire at the end of September 1956.

We are well aware of the provisions of the working journalists Act and we are quite willing to give you all the benefits to which you are entitled under the Act on your retirement. The Act does not entitle you to pension, but only entitles you

to gratuity based on the numbers of years of service. We shall ascertain the length of service from the records in the office and pay you gratuity accordingly.

In the circumstances, the board cannot agree to give you any further extension and you will be relieved from service on the evening of the 30th September 1956. Whatever amounts are lawfully payable to you on your retirement will be paid to you on that day."

Further correspondence followed; but the concession given substantially remained the final words on the subject. The termination of the services of Desikachari and Krishnamurthi took effect from 1-10-1956. The property of it is now in dispute. The question of compensation to the petitioners then became prominent. The management offered to pay them the provident fund amount standing to their credit, the value of unavailed leave and gratuity for the entire period of service, the last of the three being evidently one of the benefits secured to the employees under the provisions of Act 45 of 1955. The petitioners did not accept the offer; they claimed that they were entitled to certain further sums of money by way of (1) retrenchment compensation, (2) pension benefits and (3) salary in lieu of notice. The management did not agree to their claim. The three employees there upon filed W. J. Nos. 19, 17 and 18 of 1959 respectively in the labour court at Madras for enforcing their claim under S. 33-C(2) of the Industrial Disputes Act. The management reiterated their willingness to pay the amounts already offered, but resisted the claim in regard to additional reliefs claimed, viz., retrenchment compensation pension and salary in lieu of notice. During the pendency of the claim petitions before the labour court the management paid the amounts already admitted by them as due to the employees and the same was received by the latter without prejudice to their claim.

(5) The substantial contention raised before the labour court and here relates to the question whether the petitioners were entitled to retrenchment compensation under S. 25(F) of the Industrial Disputes Act. The labour court negatived the claim of the employees to pension and the correctness of its own view has not been challenged before us. The question whether in the circumstances the petitioners would be entitled to claim salary in lieu of notice as prescribed by Sec 25(F) as modified by Act 45 of 1955 has not been considered by the Tribunal as in its view the petitioners could not be said to have retrenched.

(6) By Sec. 3 of the Working Journalist (Conditions of service) and Miscellaneous provisions Act, 1955, the provisions of the Industrial Disputes Act, 1947 (subject to a modifications as to the period of notice of discharge), are made applicable to the working journalists. Sec. 5 declares the right of working journalists to gratuity and it runs:

"Sec. 5(1) Where--(a) any working journalists has been in continuous service, whether before or after the commencement of this Act, for not less than three years in any newspaper establishment, and-

(i) his services are terminated by the employer in relation to that newspaper establishment for any reason what so ever, otherwise than as a punishment inflicted by way of disciplinary action, or

(ii) he retires from service on reaching the age of superannuation, or

(iii) he voluntarily resigns from service from that newspaper establishment, or

(b) any working journalists dies while he is in service in any newspaper establishment,

he working journalists or as the case may be his heirs shall, with prejudice to any benefits or rights accruing under the Industrial Disputes Act, 1947, be paid on such termination retirement, resignation or death, by the employer in relation to that establishment gratuity which shall be equivalent to 15 days' average pay for every completed year of service or any part thereof in excess of six months.

(2) Notwithstanding anything contained in sub-sec. (1), where a working journalist is employed in any newspaper establishment wherein not more than six working journalists were employed on the day of the 12 months immediately preceding the commencement of this Act, the gratuity payable to a working journalist employed in any such newspaper establishment for any period of service before such commencement shall be equivalent to-

(a) three days' average pay for every completed year of service or any part thereof in excess of six months, if the period of such past service does not exceed five years:

(b) five days' average pay for every completed year of service or any part thereof in excess of six months, if the period of such past service exceeds five years, but does not exceed ten years; and

(c) seven days' average pay for every completed year of service or any part thereof in excess of six months, if the period of such past service exceeds ten years."

(It may be incidentally pointed out that Sec. 5(1)(a)(iii) has been struck by the supreme court in *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, . The gratuity payable to the working journalists under S. 5 referred to above would be in addition to the benefits that they would be entitled to under the Industrial Disputes Act of 1957 (vide S. 3 of the working Journalists (Industrial Disputes Act I of 1955). Sec. 25-F of the Industrial Disputes Act imposes certain conditions on a management before retrenching their workmen. That states,

"No workman employed in 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 given one month 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 :

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

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

(c) notice in the prescribed manner is served on the appropriate Government."

The term "retrenchment" has been defined by Sec. 2(00) of the Industrial Disputes Act, 1947 thus :

"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 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; or

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

In order to entitle the petitioners to retrenchment compensation and the benefit of pay in lieu of notice they should show that they would have been retrenched by the management. Whether they have done so only in the matter now in controversy in these petitions, the management saying that the circumstances under which the employees were discharged do not prove a retrenchment within the meaning of Sec. 2(00) of the Industrial Disputes Act, 1947 and the employees contending to the contrary.

(7) The Labour court has held that the termination of service would not amount to retrenchment, principally on the ground that it amounted to a voluntary retirement on the part of the working journalists; it is also held that the case was one where the services were terminated by reason of the employees reaching the age of superannuation.

(8) Neither before the labour court nor before us was there any dispute about the facts, That originally the decision to terminate the services of the petitioners was entirely on the initiative of the management is conceded. What happened thereafter was that the management, as an act of grace, extended the time originally fixed for discharge. Even in so doing, it was not as if they acceded to all that was requested by Desikachari and Krishnamurthi. They took their own decision in the matter. This they were entitled to, as the services of the employees were terminable on notice. The question, therefore, is one of law, namely, whether where an employer terminates the service of the employee and

later at the request of the latter postpones the time of discharge in the exercise of his own power and as an act of grace, it could be said there is a voluntary retirement on the part of the employee. If it amounts to a voluntary retirement, there can be no doubt that it would not come within the definition of the term "retrenchment" under Industrial Disputes Act. Mr. Ramamurthi Aiyar, appearing for the management, contended that the termination of service of the employees in the circumstances of the case would amount to a retirement, and that, although the initiative came from the employer (which, he conceded, was the case) it should be regarded as a voluntary act of the employees as they put forward a case for extension of service which impliedly amounted to willingness to retire at the end of the extended period. It is first necessary to consider whether the termination of the service by the employer could at all be termed "retirement". The word "retire" has been defined in the Concise Oxford Dictionary as "cease from or give up office or profession or employment." The meaning of the word, therefore, postulates a voluntary act on the part of the employee. In its use in the reflexive, the word "to retire" would mean "to remove from service." That would be a case of removal and not retirement. Sec. 2(00) of the Industrial Disputes Act used the "voluntary retirement." It follows that, unless the termination of the service is the result of a voluntary move on the part of the employee, he cannot be said to have "voluntarily retired". A mere submission of the employee to the termination of service by the employer cannot be said to be a voluntary act of the former. This is particularly so in a case where the employer has the power under the terms of the employment to terminate the service, although such has to be exercised after notice or on giving pay in lieu of notice. A voluntary retirement is the act of the employee, just as dismissal or removal from service is the act of the employer. Neither apathy nor submission on their employees' part would alter the essential character of the termination of service of an employee. It is, however, argued--an argument which found favour with labour court--that, whatever might be said of the original decision of the management, their concession to extend the services of Desikachari and Krishnamurthi by three months would in law amount to a case of voluntary retirement on the part of the two employees, as they accepted the benefits thereunder. Mr. Ramamurthi Aiyar, went even so far as to contend that this by the management in lieu of the employee's statutory rights flowing from the original decision of the management which on acceptance converted what was removal into one of retirement. There is a fallacy in the argument. When the management announced their decision to retire the workers, Desikachari and Krishnamurthi requested them to reconsider their decision and pleaded for their retention in service for some more years. The management was not willing to grant their request in its entirety; they postponed the operation of their order by three months as an act of grace. Three things are obvious, namely, (1) the extension granted was of the old service and there was no question of a new contract between the employer and employee, the latter giving up their rights under the original contract of service and accepting the new; (2) it was not the result of an agreement, but merely an act of the employer; and (3) no conditions were

attached to the extension of service such as giving up by employee of the statutory benefits. Indeed, no choice or option was given to the employee to retire or not to retire. What the employee did was nothing more than accept the benefit that the employer willingly gave. No conditions were attached to the benefit and it cannot be said that the continuance of the former in service till 30-9-1956 is tantamount to his saying: "Now that you have altered your decision to send me out from July and extended my service by three months, I will on my part, retire at the end of that period." The conclusion arrived at by the labour court that the discharge of the petitioners amounted to a voluntary retirement on their part cannot therefore be supported.

(9) It is next contended, which contention, too found favour with the labor court, that the case should be viewed as a retirement of the employee on reaching the age of superannuation and that it would therefore not amount to retrenchment. The labour court has held that the petitioners could not be treated as "retrenchment" inasmuch as they were forced to retire under the rule relating to superannuation. Admittedly, there is no provision in the context of the employment compelling the retirement of the employee on reaching a particular age. Through the labour court refers to a rule in that behalf by the management, it is conceded that there are no standing orders. Indeed, the record does not disclose the existence of any such rule in the respondent's establishment. Presumably the management did not want to provide for any such rule as they could always terminate the service of the employee by notice. What induced the labour court to hold that the case is one of retirement is best stated in its own words:

"(14) The management say that these petitioners have passed the age, which, according to all normal standards, is considered and accepted as the age of retirement in commercial concerns and industrial establishments and in Government service. As rightly pointed out, it will be a misnomer to call the termination of services of these three petitioners entered service, there were no service rules fixing the age of retirement. At the time of retirement of these three petitioners, the management decided to enforce the rule as to superannuation. In 1956, the management treated these three petitioners as having reached the age of superannuation and enforced that rule and appear to have enforced it also in certain other cases mentioned in the counter statement. Even if there was no such rule previously fixing the age of superannuation and the management had wanted to fix the enforce it, it is nonetheless a rule brought into force by the management. If the employees feel aggrieved, it is for them to raise the question on a comprehensive scale by way of raising an industrial dispute and questioning the propriety of the management in introducing the rule.....On principle, it will not open to an individual employee to question the rule as to superannuation introduced by the management even if the rule is introduced in an arbitrary manner.....The individual claims of the petitioners can be disposed of only with reference to the rule being enforced by the management. The petitioners were forced to retire under that rule and were not retrenched."

(10) What the labour court meant by referring to "all normal standings" in regard to the age of retirement of journalists, we are unable to understand. No evidence was tendered before the tribunal as to the existence of any custom or practice in industrial establishment or of news paper establishments as to superannuation of their personnel. It may be that in the case of certain establishments there is a contract or a standing order regulating the tenure of service of the employee by fixing an age of retirement. That cannot warrant an inference that the same rule applies to the respondent's establishment as well. It is not the case for the management that they any time fixed the age of retirement of its employees. If the respondent wanted to discharge the petitioners for the reason that they were beyond a particular age, it can only be a termination of service and not the enforcement of any rule of superannuation which admittedly did not exist. The labour court assumes that the rule as to superannuation can be made by the management ignoring the fact that such a rule, a rule relating as it does to the contract of service, should be either agreed to by the employee as the term of the service or have a statutory sanction. There is none such here. There been no rule as to retirement, the further question whether the validity of the rule could be question in proceeding under Sec. 33-C(2) does not arise. The labour court has held that an individual employee had no right to dispute the propriety of the rule. The question in the present case is not so much as impugning any existing valid rule, but whether the petitioners entitled to benefits as retrenched workers. For deciding that question, it is only necessary to find whether they were retrenched.

(11) In *Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others*, , on orders had been made, defining the conditions of service of the employees. The standing orders fixed the age of retirement at 55. The Supreme Court held that, when the age of superannuation had been fixed, it would not be in the opinion of the employee to continue in service thereafter. Even in such a case it was held that it was open to the employees to raise an industrial dispute and ask the standing orders to be amended. We are unable to see how the decision in that case can have any reference to a case where there is no standing order fixing the age of retirement of the employees and when the question of the character of the termination of the service become relevant for the purpose of adjudication under Sec. 33-C(2) or the Industrial Disputes Act.

(12) Yet another ground, on which the Labour Court has rested its conclusion, is that, as the petitioners were not discharged as surplus staff, they could not be said to have been retrenched. Learned counsel for the management, in trying to support the view of the labour court, placed considerable reliance on the decision of the supreme court in *Hariprasad v. A. D. Divelkar*, (S) IR 1957 SC 121. In that case, the employees were discharged on account of the business itself being closed. It was held that Sec. 25-F would apply only to an existing continuing industry, and that retrenchment, as defined in S. 2(00) and as used in S. 25-F would have no wider meaning than the ordinary accepted connotation of the word, which meant the discharge for any reason whatsoever by the employer of

surplus labour or staff, otherwise than as a punishment by way of disciplinary action. The Advocate General contends that the observations of the Supreme Court in that case should be confined to the case of discharged of workers where the industry itself had ceased to exist and that, so far as continuing industries are concerned, the word should have a wider connotation and it include discharged of a worker for whatever reason. In *Municipal Corporation of Greater Bombay and Others Vs. Labour Appellate Tribunal of India and Another*, a Bench of the Bombay High Court held that the expression "retrenchment" in Sec. 2(00) and S. 25-F of the Industrial Disputes Act meant discharge of surplus labour or staff and would not include the termination of the contract of employment for other reasons. In that case, the industry was a continuing one. In our opinion, it is unnecessary to consider for the purpose of the present case, the correctness of the contention advanced by the learned Advocate General that retrenchment of personnel within the meaning of S. 2(00) of the Industrial Disputes Act would apply to termination of the service of an employee for any reason other than by way of punishment in a continuing industry as we are of opinion that on the admitted facts of the case there was a discharge of surplus labour. In their letter to Krishnamurthi dated 22-3-1956, the management expressly stated that, on the termination of service, he would be paid "statutory retrenchment benefits" (*italics (herein " ") ours*). Desikachari and Theobald were also informed likewise. The management must be presumed to have had before them, at the time when they wrote the letters, the Industrial Disputes Act and the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act. It would appear *prima facie* that the management themselves thought the case was one of retrenchment. Other wise, there was no meaning in their promising to pay retrenchment benefits. Mr. Ramamurthi Aiyar, However, contends that there must have been a confusion in the mind of the management when they wrote the letters, between the words "retrenchment compensation" and "gratuity" and they intended to pay only the gratuity in accordance with the Working Journalists (Conditions of service) and Miscellaneous Provisions Act. It cannot however, assumed that the management did not understand the import of the word "retrenchment" when they said so. No evidence has been tendered in the case to show that the management was labouring under any misapprehension. Nor is there any evidence to show to discharge of the petitioners was not made with a view to reduce the establishment or that somebody was appointed in their place. It is no doubt for the petitioners to show that they were retrenched in order to entitle them to relief under Sec. 25-F of the Industrial Disputes Act. That they have done by producing the letters written by the management, in which they distinctly admit (*vide letter dated 22-3-1956*) that the discharged employees would be paid retrenchment benefits. The management who certainly are in possession of material evidence could have shown that the statement was wrong and there was infact no retrenchment. But they did not do so. The labour court has stated that it is not possible to say in the instant case that the petitioners were discharged, because they were considered to be surplus or labour staff; in so holding, the labour court ignored the relevant evidence on the question,

namely that the management itself offered to compensate the workers on the footing that they were retrenched. Another possible line of argument which may also arise from the letters is this: irrespective of whether the petitioners were actually retrenched or not, the management had in effect agreed to pay them compensation as a solatium at the time of retirement and that therefore what was agreed to be paid can be enforced under Sec. 33-C(2). We prefer not to hold that the view that there could be no retrenchment as it had been proved that there was any discharge of surplus labour incorrect.

(13) The labour court has held that, as the procedure prescribed by S. 25-F of the Industrial Disputes Act had not been followed by the management, the discharge of the workers would not amount to a retrenchment. "Retrenchment" has been defined in Sec. 2(00) of the Act, and if the requirements of that definition are satisfied, the mere fact that the management omitted to follow the procedure prescribed by Sec 25-F cannot make it any the less a retrenchment. What is necessary to consider first is whether factually there has been a retrenchment. If the procedure prescribed by Sec 25-F is not followed it may be that the retrenchment may not affect the worker considered and he can call, into question the propriety of it and plead that, notwithstanding if he continues in employment. But the effectiveness or otherwise of the order is not relevant on the question whether there is an order. Once it is conceded there is an order, it cannot be held to be non est or at any rate, it would not be open to the employer who passed the order to say that, as he did not follow the prescribed procedure, it is not what it purports to be. But a person affected by the order can in appropriate proceedings challenge it; if he does not do so but accepts it one must proceed on the basis of the factual existence of the order. The authority cited for the respondent namely *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, was a case where the worker impugned the order in an industrial dispute; the clear requirement of Sec. 25-F for retrenchment of workmen has not been complied with in that case when the employer purported to retrench them. A dispute is raised by the workers who claimed that they would be entitled to be restored to service. It was held that the retrenchment was invalid. In the present case, the employees do not challenge the propriety of the retrenchment.

(14) Three grounds are advanced to show that the discharge was illegal, namely, (a) want of notice concerned employee, (b) non payment of compensation and (c) want of the notice to the Government and of the intention to retrench. Section 25-F itself states that notice in writing to the workmen indicating the reasons for retrenchment will not be necessary if the retrenchment is under an agreement. In the present case, the case of management is that the petitioners submitted to discharge; the latter also do not contest the propriety of the retrenchment. Therefore, the want of notice to them under the circumstances would not affect the validity of the retrenchment. The management has not paid the retrenchment compensation as they dispute the petitioners right to it. It is for very reason that the application filed under S. 33-C(2). We fail to see how the

failure of the employee would affect the right of the petitioners under the statute. The absence of a notice to the Government in the prescribed form cannot render the discharge of the workmen anything other than by way of retrenchment if otherwise it is so.

(15) It is then contended that the discharge in the instant case would be one of wrongful dismissal and not retrenchment. We do not see how the discharge could be said to be wrongful; the employer has the power to terminate the service after the notice and it is disputed that such notice was given. It is rather surprising that the management itself say that what they did was wrongful. But, whether it is wrongful or rightful, there has been a discharge of the employee and the only question is now whether such discharge amounts to retrenchment as defined in Sec. 2(00). We have already indicated that the answer to the question can only be in the affirmative. But the labour court has however come to a different conclusion, because it held that the termination of service was a consequence of a voluntary retirement by the employee, or, at any rate one on his attaining the age of superannuation. It held that, as the petitioners were not discharged because they were found to be surplus, there could be no case of retrenchment. Another reason was that, if the employer who retrenches does not follow the procedure prescribed for effectuating it, the termination of service would not amount to retrenchment. All these are errors, and errors in law.

(16) Learned counsel for the respondent contends that the conclusion of the tribunal should be viewed as one of the facts arrived at on an appreciation of three circumstances, viz. (1) that the retirement was a voluntary one; (2) that the discharge was not by reason of there being surplus personnel in the establishment; and (3) with reference to cases in similar commercial establishments. We have already indicated that there is a basic error in the conclusion arrived at by the labour court that the termination of the service of the petitioners was a result of a voluntary retirement. We have also shown that there was no material for the labour court to assume that the discharge was not because of there being surplus personnel in the establishment. Reliance on the rule as to age of retirement previously prevailing in other establishments cannot obviously be evidence in regard to the contract between the parties. Further existence of such a rule in other establishments is itself not a matter of evidence in a case, and, even there be such evidence, it would be wholly irrelevant for the purpose of ascertaining the contractual relation between the parties to these petitions. The consideration apart, every one of the errors pointed out earlier is an error in law.

(17) But it is not every error in law on the part of the inferior tribunal that would entitle this court to interfere under Art. 226. The issue of a writ of certiorari can be justified only if there is an error apparent on the face of the record. The errors we have mentioned undoubtedly satisfy that test.

(18) Learned counsel for the respondent tried to persuade us that errors in the finding arrived at by the lower court, though they could be said to be errors of law, could not be said to be errors apparent on the face of the record. Reliance is placed on the

two decisions of the Supreme Court reported in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, and *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, .In the former case, it is held that the purpose of a writ is only to determine on an examination of the record whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer, and that, where the error cannot be said to be errors of law apparent on the face of the record but merely errors in appreciation of documentary evidence or affidavits, there would be no case for the exercise of jurisdiction under Art. 226 of the Constitution. It was also held that the non-observance of executive instructions by a subordinate authority would not entitle the superior court to interfere under Art. 226. We are of opinion that the instant case satisfies all the tests laid down in this decision. The labour court has, by a wrong interpretation of Sec. 2(00) of the Industrial Disputes Act, failed to administer the statute which it was bound to do. In *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, , a statutory tribunal held that, in order to eject a mulgeni tenant, service of notice under S. 14 of the Bombay Tenancy and Agricultural Lands Act, 1948 was necessary, and rejected the application of the landlord for evicting the tenant. The High Court held that the insistence on notice constituted an error of law apparent on the face of the record and issued the writ to quash the order of the tribunal. The Supreme Court, after considering in extenso the question of error, observed that the tribunal's order might be merely an erroneous decision, but not a self evident error to justify the issue of a writ of certiorari, and set aside the order of a High Court granting the writ. The learned Judges observed that an error which had to be established by a long drawn process of reasoning on points where there might conceivably be two opinions could hardly be said to be an error apparent on the face of the record, and that, where the alleged error was far from self evident and to be established lengthy and complicated arguments, Art. 226 would not apply. It cannot be said in the present case that errors are anything but manifest errors; the principle of the decision in *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, cannot therefore apply.

(19) It is, however necessary to consider the extreme contention urged on behalf of the management that, wherever there is a controversial question of law, a wrong decision by the inferior tribunal can never be set right under Art. 226. We are unable to see any support for the proposition in the case just referred to. In *T.C. Basappa Vs. T. Nagappa and Another*, , It is held that the High Court can issue a writ in the nature of certiorari in all appropriate cases and in an appropriate manner, so long as the basic and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs under the English law are kept in mind. Goddard L. J. observed in *R. v. Northumberland Tribunal, Ex parte Shaw*, 1951 All ER 268 that, where a tribunal has stated on the face of the order the grounds on which they had made it and those grounds and their

view of the law and the construction they put on the regulation were wrong in law, certiorari could be issued. Danning L. J. explaining the scope of inference in such writs in *R. v. Medcal Appea Tribunal, Ex parte Gilmore*, 1957 1 QB 574, stated:

"It is now settled that when a tribunal comes to a conclusion which could not reasonably be entertained by them if they properly understood the relevant enactments, then, they fall into error in points of law; see *Edwards v. Bairstow* 1956 AC 14. When the primary facts appear on the record an error of this kind is sufficiently apparent for it is to be regarded as an error on the face of the record such as to warrant the intervention of this court by certiorari."

In the recent case in *Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another*, the Supreme Court had to consider the nature and extent of the jurisdiction under Art. 226. The rule that the error should be self evident and not one that could be found out on an elaborate consideration of the matter, is held to be nothing more than a mere working rule.

(20) The possibility of two interpretations can seldom arise where the question involved is one of law not depending on facts. Where construction of a statute arises as in the present case, there could only one view, the view that is ultimately accepted by the superior court. A mere difficulty in the construction of the section cannot absolve the superior court of its duty to interpret it. If as a result of such interpretation, it is found that the inferior tribunal has erred it will really be a case of the tribunal not administering the law which it is bound to administer. The observation of Gajendragadkar J. in *Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another*, Clarifies, if we may say so with great respect, the position. The learned Judge observes :

"It is only errors of law which are apparent on the face of the record that can be corrected.....Difficulty, however, arises when it is attempted to lay down tests for determining when an error of can be said to be an error apparent on the face of the record. Sometimes, it is stated that it is only errors which are self evident, that is say, which are evident without any elaborate examination of the merits that can be corrected, and not those that can be discovered only after an elaborate arguments. In a sense it would be correct to say that an error of law which can be corrected by a writ of certiorari must be self evident; that is what is meant by saying it is an error apparent on the face of the record, and from that point of view, the test that the should be self evident and should not need an elaborate examination of the record may be satisfactory as a working test in a large majority of cases; but, as observed by Venkatarama Aiyar J. in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, "there must be cases in which even this test might break down because judicial opinions also differ, and an error that may be considered by one Judge as self evident might not be so considered by another." Judicial experience, however, shows that, though it cannot be easy to lay down an unfailing test to decide whether the impugned error of law is apparent on the face of the record or not."

In that case there was an industrial dispute in which the tribunal misapplied the relevant clauses in an agreement applicable to certain employees. The Supreme Court held that they amounted to an error apparent on the face of the record. In our opinion, the misconstruction of Sec. 2(00) and the refusal to apply the provision of S. 25-F of the Industrial Disputes Act as a thereof amount to errors of law apparent on the face of the record and there would be jurisdiction in this court to quash the order of the labour court under Art. 226 of the Constitution. The rule nisi is therefore made absolute. It is needless to point out that the result of this order is that the petitions will have to be disposed of afresh as to the precise amount of relief to which the respective petitioners would be entitled.

(21) The respondent will pay the costs of the petitioners Counsel's fee Rs. 250. One set to be divided equally between the three cases.

(22) Order accordingly.