

(1980) 04 OHC CK 0004

In the Orissa High Court

Purna Chandra Giri

APPELLANT

Vs

Orissa Khadi and Village Industries Board

RESPONDENT

Date of Decision : 29-04-1980

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1980) 50 CLT 91

Hon'ble Judges : R.N. Misra, J;J.K. Mohanty, J

Bench : Division Bench

Judgement

R.N. Misra, J.—Petitioner was employed as a Ghani Mistry under the Orissa Khadi and Village Industries Board and his date of birth is 2-7-1927. On 2-4-1977, notice was given of compulsory retirement in terms of the service regulation on the expiry of three months" period. Though several contentions were raised in the writ petition, at the hearing Mr. Nanda for the petitioner challenged the order of compulsory retirement on the ground that such retirement amounted to retrenchment and in the absence of compliance of the statutory requirement of Section 25F of the Industrial Disputes Act, the order of retrenchment became invalid and petitioner"s service could not have been terminated. He should, therefore, be deemed to have continued in employment.

2. There is no dispute before us that the Khadi Board is an industry and to its employees the Industrial Disputes Act. would be applicable. Counsel for the Board, however, has taken the stand that compulsory retirement in terms of the Board"s Regulation did not amount to retrenchment as defined in Section 2(oo) of the Industrial Disputes Act and as such Section 25F of the Act has no application.

3. Section 2(oo) of the Act defines "retrenchment" to mean:

...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...

Mr. Nanda places reliance on the decision of the Supreme Court in the case of *The State Bank of India Vs. Shri N. Sundara Money*, , in paragraph 10, whereof the Court pointed out:

A break-down of Section 2(oo) unmistakably expands the semantics of retrenchment." Termination...for any reason whatsoever ; are the key words. Whatever the reason every, termination spells retrenchment. So the sole question is has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(oo). Without speculating on possibilities, we may agree that "retrenchment" is no longer terra incognita but area covered by an expansive definition. It "means" to end, conclude, cease." In the present case the employment ceased concluded ended on the expiration of nine days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(a) Section 25FE(a) ?....

The wide language used in the judgment apparently supports the submission of Mr. Nanda. Counsel for the opposite party, however, places reliance on the decision of the constitution Bench in the case of *Hariprasad Shivshankar Shukhi and Anr. v. A.D. Divikar and Ors.* 1957 I L.L.J. 243 in paragraph 19 of the judgment, the Court had pointed out,

For the reasons given above, we hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in Section 2(oo) and as used in Section 25F has no wider meaning than the ordinary, accepted connotation of the word : it means the discharge of surplus labour of staff by the employer for any reasons whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business as in the case of *Shri Dinesh Mills Ltd.* or where the services of all workmen have been terminated by the employer in the business or undertaking being taken over by another employer in circumstances like those of the Railway Company.

Employer's counsel also placed reliance on a Full Bench decision of the Bombay High Court in the case of *National Garage, Nagpur (By Managing Director) Vs. Gonsalves J.*, There, the question for consideration of the Full Bench was whether termination of service simpliciter by giving one months notice under the provisions of a Standing Order amounted to retrenchment attracting the provisions of Section 25F of the Industrial Disputes Act. The Full Bench relied on

the ratio in Shivshanker's case, (supra), and after reviewing several authorities concluded thus:

We are bound by the above decision of the Supreme Court. We accordingly hold that retrenchment, within the meaning of the Industrial Disputes Act means discharge of surplus labour of staff in a continuing or running industry. The reply to the question referred to us, therefore, will be that the question whether the termination of services amounts to retrenchment must be determined in each case on the facts and circumstances of that case. If the termination of services is found to be due to the reason that the workman discharged was surplus, i.e., in excess of the requirement of the business or the industry concerned, it will amount to retrenchment within the meaning of the Act. If the termination of service is due to any other reason, it will not constitute retrenchment.

It may be pointed out that the decision of the Supreme Court in *The State Bank of India v. Shri N. Sundara Money* (supra), did not refer to the larger Bench decision in *Hariprasad Shivshankar Shukla and Anr. v. A.D. Divikar and Ors.* (supra). Another three Judge decision in the case of *Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others*, referred to two earlier authorities being the case of *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, and the five Judge judgment already noted. In paragraph 4 of the judgment, reference was made to the two earlier decisions of the Court reported in 1957, Reference was also made to the latter case. *The State Bank of India v. Shri N. Sundaru Money*, (supra). After referring to these cases, the Court concluded:

...On the facts of the case before us, giving full effect to the words, for any reason whatsoever would be consistent with the scope and purpose of Section 25F of the Industrial Disputes Act, and not contrary to the scheme of the Act, we do not find anything in Hari-prasad's case which is inconsistent with what has been held in *State Bank of India v. N. Stindara Money* (supra).

It is indicated in the Full Bench decision of the Bombay High Court, which is in accord with the earlier Bench decision of the Supreme Court as also the latest of the decisions referred to above in 1977, that the Court is to examine on the given facts of a case whether the order amounts to retrenchment and the decision in *The State Bank of India v. Sundara Money* (supra), must be confined to its own facts. It was obviously on that footing that the learned Judges pointed out in paragraph 4 of the judgment in *Hindustan Steel's* case, that there does not seem to be anything inconsistent in the two decisions, namely, of the five Judge Bench *Hariprasad Shivshankar Shukla and mother v. A.D. Divikar and Ors.* (supra), and of the later three-Judge Bench *The State Bank of India v. Shri N. Sundera Money* (supra). We are inclined to agree with Mr. Patnaik for the employer that the termination in this ease was in terms of the Regulation and it did not amount to case of retrenchment in the sense indicated in the decision *Hariprasad Shivshankar Shukla and Anr. v. A.D. Divikar and Ors.* (supra). There was, therefore, no necessity for complying with the provisions of Section 25F of

the Act and there is no force in the submission that for such non-compliance, the order of compulsory retirement would be hit.

4. The writ application fails and is dismissed. There would be no order for costs.

J.K. Mohanty, J.

5. I agree.