
(1977) 03 DEL CK 0016

In the Delhi High Court

Raj Hans Press

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 28-03-1977

Acts Referred:

Citation : (1977) 2 LLJ 524

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Judgement

D.K. Kapur, J.—This is a writ petition to challenge an award made by Shri K.S. Sidhu, Presiding Officer of the Labour Court, Delhi. The dispute referred to the Court was concerned with whether the termination of services of certain workmen employed by Raj Hans Press was illegal or unjustified, and if so, what relief should be given. By means of the award under challenge, the Labour Court held that the termination of services of all the workmen was illegal and void and they were entitled to reinstatement with full back wages and continuity of service.

2. The only challenge to the award, as far as I can make out in this petition, is as to whether the Labour Court was right in holding the termination of services to be illegal because it contravened Section 23F of the Industrial Disputes Act, 1947. The question urged by the learned Counsel for the petitioner rests on the contents of the letter of termination which based the termination on the fact that the machine binding composing departments had been closed with effect from 3rd March, 1972, due to continuous loss and no sufficient orders for business. The finding in respect of the alleged closure of these departments was that no payment had been made to the workmen concerned before their services were terminated. Therefore, Section 25F of the Act had been infringed. On the other hand, the case of the management was that the letter press department had closed. The Labour Court came to the conclusion that there was no closure of business, because the press was going on and, secondly, there was interchangeability in the duties of the workmen and the workmen concerned were not employed only in respect of the alleged closed department. I may reproduce the

findings of the Tribunal:

I am not prepared to accept the stand taken by the management that all these workmen were retrenched by reason of the closure of the departments, in which they have been working. As already stated, the employees in the offset department and in the letterpress department were interchangeable. It will be recalled that Amar Chand Jain, one of the partners of the management himself, admitted that Chander Bhan, who was employed on the letter press used to be put on work on the offset press whenever necessary. Despite the alleged closure of the letter press, the management has been carrying on its work in the dye cutting department, which is supposed to be ancillary to the letter press. All this would show that the letter press employees and the offset employees of the management cannot be divided into water tight compartments for purposes of retrenchment. The entire press including the letter press and the offset press consisted of one integrated unit and the workmen concerned were, Therefore, entitled to be treated as belonging to the same category to which the workmen, who were not retrenched, belong.

The findings that there is one integrated department, the workmen are interchangeable, able and there has been no closure within the measure of Section 25FFF, are clear findings of fact which would not normally be open to attack under Article 226 of the Constitution. The scope of a writ under Article 226 of the Constitution is quite limited and would depend on whether a writ of certiorari should issue due to a jurisdictional defect. It would certainly not lie on the ground that the judgment on merits was wrong.

3. The learned Counsel for the petitioner submits the law to be applied in respect of a petition like the present is the one laid down by the Supreme Court and, Therefore, any infringement by the Tribunal or Labour Court contravening the principles settled by the Supreme Court is a mistake of law which can be corrected by reference to Article 226 of the Constitution. It is submitted that the press, which is the petitioner before this Court, consists of two departments-the offset press and the letter press. The letter press having closed down, means that the employees' services have been terminated on this account, to which Section 25FFF applies; and they have not been retrenched, to which Section 25F applies. In this respect, it is necessary to note that Section 25F and Section 25FFF are two sections of the Act which are very much similar in operation. The provisions of Section 25F require retrenchment compensation to be paid before retrenchment becomes effective. It is settled law that if a retrenchment takes place without paying the compensation, then the retrenchment is ineffective. Although, the provisions of Section 25FFF are similar in respect of closure of business, it has been repeatedly held by the Courts that the non-payment of the compensation before making the closure does not make the closure ineffective. Hence, the only difference between these two provisions is that in case a retrenchment is made without paying compensation, the retrenchment is ineffective. Whereas in a case in which closure is made without paying

compensation, the closure is still effective. The right to get compensation subsists to the workman concerned. In the present case, the question whether the termination is on account of "retrenchment" or "closure" becomes of great importance, because whichever it was, was made without prepaying compensation. If it is a case of closure then the termination is invalid. This is the settled legal position.

4. The learned Counsel for the petitioner has cited a number of authorities to show that even part closure of an undertaking has been treated as a closure and, Therefore, the closure of the letter press may be treated as a case of partial closure within the scope of the reported authorities. He has referred to *Hindustan Steel Ltd. v. Their Workmen* 1973 2 L.L.J. 250 : (1973) 43 F.J.R 192. *Workmen of Indian Leaf Tobacco Development Co. Ltd. Guntur v. Indian Leaf Tobacco Development Co. Ltd. Guntur* (1968) 37 F.J.R. 231 , *Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd., , Hotel Ambassador v. Its Workmen* 1961 2 L.L.J. 87 and *Radio and Electricals Ltd. Madras v. Industrial Tribunal, Madras* (1969) 37 F.J.R. 382 and some other cases. It is now necessary to analyze these cases just referred to.

5. In *Hindustan Steel Ltd v. Their Workmen*, (supra), Messrs. Hindustan Steel had closed its Ranchi housing project. The award had treated the consequential termination of the services of employees in this project as a case of retrenchment. It was urged before the Supreme Court that this was not a case of retrenchment, but the closure of an undertaking. It was held by the Court (at page 199).

The word undertaking as used in Section 25FFF seems to us to have been used in its ordinary sense, connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer as was suggested on behalf of the respondents. Even closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by this sub-section.

In *Workmen of Indian Leaf Tobacco Development Co. Ltd. Guntur v. Indian Leaf Tobacco Development Co. Ltd. Guntur*, (supra) 8 out of the 20 depots belonging to the Indian Leaf Tobacco Development Company Ltd. were closed down, and consequently, the termination of services of the workmen employed in these depots was treated not as a retrenchment, but a termination of services on the closure. In *Workmen of Straw Board Manufacturing Co. Ltd. v. Straw Board Manufacturing Co. Ltd.* (supra), there were two mills owned by the company in question and the closure of one mill, which was somehow connected with the other mill, was treated as a case of closure.

6. In *Radio and Electricals Ltd., Madras v. Industrial Tribunal, Madras* (1969) 37 F.J.R. 382, it was held by a Judge of the Madras High Court that the closure of a department of a company amounted to a closure bringing into operation Section 25FFF and not Section 25F of the Act. Reference has also been made to *Hotel*

Ambassador v. Its Workmen 1963 2 L.L.J. 87, in which the Supreme Court observed that part of an undertaking could be closed.

7. All these cases have been decided on their own particular facts. No doubt, the principle that a closure of part of the business of a larger undertaking can itself amount to closure has been accented in these cases. I do not think, the cases have gone so far as to hold that the closing of a particular type of machine also amounts to a closure. The principles set out in these judgments indicate that the question to be asked is: what is the result of the alleged closure? Is the undertaking going on or has it closed? when it is the closure of certain department, it may be held that, that department is a separate unit and hence its closing down also amounts to a closure. The facts of most of the cases referred to above show that a separate part amounting in itself to an undertaking which has closed down has been treated as a closure of an undertaking although, it is itself a part of an larger entity. All the decisions of the Supreme Court are of this type.

8. In the case of Hindustan Steel Ltd. [1973] 43 F.J.R. 192, the Ranchi housing project was closed down. The Court accepted the fact that the entire undertaking need not close. It was observed (at page 199):

...The question has indeed to be decided of the facts of each case. In the present case the Ranchi housing project was clearly a distinct venture undertaken by the appellant and it had a distinct beginning and an end. Separate office was apparently set up for this venture and on the completion of the project or enterprise that undertaking was closed down. The Tribunal has actually so found.

Thus, the conclusion that an undertaking had closed down was based on the separate-ness of the Ranchi housing project from the other business venture being run by Messrs. Hindustan Steel Ltd. In the case of Indian Leaf Tobacco Co. Ltd., (supra), the question whether the eight depots which had closed down amounted to a closure or not was not decided because in that case compensation at higher rate than permitted by even Section 25F was, in fact, paid, in fact, the question before the Court was the validity of the closure as closure simplicities which was alleged to be mala fide by the workmen and not regarding the rate at which compensation was to be paid u/s 25F or Section 25FFF.

9. In the case of Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd., , it was held by the Tribunal that the two mills owned by the company did not form part of one and the same establishment and it was a case of complete closure of an independent unit. On this footing, the only question to be decided was whether Section 25FFF applied, because there was no similar provision in the U.P. Industrial Disputes Act. For this purpose, the case was remanded back to the Tribunal. As there was a finding that the two mills were totally independent, this is a decision on par with the Hindustan Steel Ltd. case (supra), in the Ambassador Hotel case 1963 2 L.L.J. 87, the question dealt with did not turn on the applicability of Section 55F or Section 25FFF, but

on whether Section 25G was to apply. That section applies the principle of "last come first go". The court held that as it was a case of closure of part of the establishment, the principle Section 25G was not applicable. This judgment is not of much relevance to the present case.

10. None of the above judgments support the petitioner's case, but the decision of the Madras High Court, which related to a case in which a department of Messrs. Radio and Electricals Ltd., was closed down. According to the judgment, there were two sections-one dealing with radios and electricals and the other called the mechanical section. The Court concluded that it was a case of a permissible closure of part of the business and hence Section 25FFF applied. The judgment does not indicate whether the mechanical section and the radio and electrical section were independent and, Therefore, it is difficult to ascertain the circumstances of the case.

11. I think, the test adopted in the Hindustan Steel Ltd. case (supra) has to be applied to the facts of the present case. It has to be determined whether an independent portion of the business of the petitioner has closed down. As we are dealing with a printing press, can it be said that part of the business has closed down? The printing press is still working; at least that is the finding of the Tribunal. Printing at the press may be done by any means It may be by one type of machine or another type of machine. It seems that the petitioner was using a letter press as well as doing printing by what is described as "offset". I presume that this is a different type of machine. As the press is continuing to work I cannot say that closing down of a particular machine used by the petitioner can be described as a closure. It may be mentioned that the operative words in Section 25FFF are-"Where an undertaking is closed down for any reason whatsoever". Hence, in order that the case should fall within this provision, the closure even though it may be a partial closure must be of such part of the undertaking as is independent. As observed in the aforementioned judgment of the Supreme Court in the Hindustan Steel Ltd. case, (supra), the Ranchi housing project was found to be an independent venture. I am unable to hold that each particular printing press used by the petitioner in its business can be described as a separate undertaking. I am of the view that to describe the closing down of such a press as a closing down of the undertaking would be an exaggeration. I am unable to accept the contention that each printing press is a separate unit. If the press is still running, then it cannot be described as having been closed. The replacement of a particular type of machine by another machine cannot be described as a closure. Therefore, if the printing press continues functioning, it cannot be described as a case of closure. This is only one aspect of the case.

12. On the other aspect, the Tribunal has held that the workmen were interchangeable between the departments. Therefore, it cannot be said that the services of the workmen concerned have been terminated on account of the closure of the letter press. This is the finding of the Tribunal. This finding of fact cannot be interfered with; Therefore, I find that I am unable to interfere with the

award under Article 226 of the Constitution and have to decline the issue of a writ. I leave the parties to bear their own costs.