

**(1959) 07 KL CK 0014**  
**In the High Court Of Kerala**

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|-------------------------------------------|------------|
| Ravikrishna Weaving Mills (Private), Ltd. | APPELLANT  |
| Vs                                        |            |
| State of Kerala and Others                | RESPONDENT |

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**Date of Decision :** 28-07-1959

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 2, 23, 25C, 25F, 25FF

**Citation :** (1959) 2 LLJ 760

**Hon'ble Judges :** C.A. Vaidialingam, J

**Bench :** Single Bench

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## Judgement

C.A. Vaidialingam, J.—This is an application under Article 226 of the Constitution for quashing the award dated 19 November 1958 passed by the Industrial Tribunal, Kozhikode, in I.D. Nos. 16 and 17 of 1958 and published in the Kerala Gazette, dated 23 December 1958.

2. The petitioner, Ravikrishna Weaving Mills (Private), Ltd., Azhikode, was carrying on business in the manufacture and supply of cotton powerloom goods. It was employing about 189 labourers. In the latter half of 1957, the mill appears to have experienced some difficulty and, in consequence, the management decided in or about February 1958 to discontinue one shift in the company. In view of this decision, the management decided to lay off 74 of the juniormost workers on payment of the necessary compensation admissible in law and the lay-off was scheduled to come into effect from 1 March. 1958.

3. On 1 March 1958, the 74 persons, who had been notified to be laid off, reported in the office and after signing in the lay-off register, received the compensation for lay-off, The other workmen as usual reported for duty and worked on that day. The 2 March 1958 was a Sunday and as such a holiday. On the next day, namely, 3 March 1958, the entire 189 workers of the mill struck work without any notice. According to the management, these strikers indulged in staging demonstrations and shouting slogans and also carrying on picketing at the gate of the mill. The management further alleges that this strike was

absolutely illegal and it continued upto 13 April 1958 on which date it was called off on the intervention of the Labour Minister and Labour Commissioner.

4. On 13 April 1958, the management entered into an agreement with the respondent 2, namely, the Ravikrishna Weaving Mills Labour Union, Azhikode, represented by its secretary, and this agreement was in consequence of the mediation effected by the Labour Minister and the Labour Commissioner. The management agreed to give to all its workers relief by way of lay-off compensation from 16 April 1958 for 45 days and accordingly the said compensation was paid. It is alleged by the management that in view of the illegal strike in which the workmen indulged in, which is opposed to the provisions of the standing orders, and by their continuous absence, the workmen had lost their continuity of service. The management was faced with the crisis which faced the entire textile industry as a whole, as there was acute depression in the market. Therefore, the management had no other go but to continue to close down the factory and accordingly issued a notice to this effect on 6 May 1958, in and by which the management informed all the workers of their decision to continue the closure and terminated the services of all workmen as and from 8 June 1958,

5. The respondent 2 union took up the matter with the Labour Department and ultimately, the State of Kerala, the respondent 1, made a reference dated 19 May 1958 to the Industrial Tribunal, Kozhikode, as to

Whether or not the proposed retrenchment of the entire workers of the Ravikrishna Weaving Mills (Private), Ltd., Azhikode, with effect from 3 June 1958 is justifiable; in either case, to what relief are the workers entitled.

6. The Industrial Tribunal, Kozhikode, the respondent 3, passed an award on 19 November 1958 which was published in the Gazette on 23 December 1958. The respondent 3 has held that there was no break in the service of the workmen and that the management is bound to pay retrenchment compensation to the workers at the rate of fifteen days' wages for every year of service together with one month's notice pay.

7. According to the petitioner, this award is one passed without jurisdiction and also illegal and ultra vires. The circumstances of this case clearly show that it is not a case of retrenchment of workmen, but a complete closure of business and as such no compensation is payable to the workmen. Further, the State Government had no power to make a reference, because the industry was already a dead one.

8. A point also has been raised that the scope of agreement entered into between the management and the labourers on 13 April 1958 has not been properly understood and appreciated. In any event, the petitioner further contends that the tribunal was not in order in recognizing the right of the 21 workmen mentioned in Para. 12 of its award, who had admittedly received the compensation due to them after furnishing proper vouchers. The petitioner also

contends that the tribunal has erred in not allowing the petitioner, even if it is otherwise liable, to set off the amounts paid already as compensation for lay-off for 45 days.

9. The secretary of the respondent 2 union has filed a counter-affidavit controverting the material allegations in the affidavit of the petitioner. According to the allegations contained in the said counter-affidavit, the award passed by the tribunal is perfectly legal and within its jurisdiction. The petitioner, with a view to defeat the terms of the agreement entered into by him with the workmen on 13 April 1958 and to victimize the workers, issued a notice of retrenchment on 6 May 1958. On the date of the Government making the reference to the tribunal, namely, 19 May 1958 the relationship of an employer and employee existed, because even according to the notice dated 6 May 1958, the termination of employment will take effect only on 8 June 1958.

10. It is also stated in the counter-affidavit that there has been no break in law in the continuity of service of the workmen and, in any event, in view of the agreement dated 13 April 1958, the petitioner himself has recognized the rights of the workmen as before. Even in the objections filed before the tribunal, the management has accepted the position that the workers are entitled to retrenchment compensation and the management is not entitled to go behind the same. The counter-affidavit further says that the compensation paid on 16 April 1958 as per the settlement was lay-off compensation, and it is not retrenchment compensation as contemplated u/s 25F of the Industrial Disputes Act, 1947-Central Act XIV of 1947 -and therefore, the petitioner is not entitled to claim even a set-off.

11. The union further contends that, in any event, as the workers had not got any wages as such from 3 March 1958, the right of set-off should not be allowed. There is ample material to justify the findings recorded against the management by the tribunal. At this stage, it is better to advert to the agreement entered into between the management and workers on 13 April 1958. That is Ex. M. 12.

It styles itself as a memorandum of settlement and has been signed by Sri A.K. Nair, managing director on behalf of the mills and by the president, vice-president and secretary of the Ravikrishna Weaving Mills Labour Union. It is mentioned therein that a dispute having arisen in the mill in question between the workers and the management, a conciliation conference was held by the Labour Commissioner in the presence of the Minister for Labour on 13 April 1958 and the following terms of settlement were arrived at between the parties:

- (1) It is agreed that all workers in the mills will be laid off and be paid "lay off" compensation with effect from 16 April 1958,
- (2) The managing director agrees to pay one week's "lay-off" compensation as advance on 16 April 1958.
- (3) For working the calendering, sizing and dyeing sections, the required workers

will be entertained when necessary by the management from the "laid-off" workers and given work on rotation, wherever suitable.

(4) The union agrees to withdraw all direct actions forthwith.

12. It is also material to refer to the actual notice dated 6 May 1958 issued by the management terminating the service of the workers, as per the list enclosed along with the said notice, with effect from 8 June 1958. The notice is Ex. M. 36. It is in form P under Rule 76 and the heading is that it is a notice of retrenchment to be given by an employer under Clause (c) of Section 25F of the Industrial Disputes Act, 1947-Central Act XIV of 1947. It is addressed to the Secretary to the Government of Kerala, Labour Department. Exhibit M. 36 specifically states that under Clause (c) of Section 25F of the Act, the management informs the Government that they have decided to retrench the 189 workers with effect from 8 June 1958. It also states that the workers have been given one month's notice under Clause (a) of Section 25F of the Act. The different category of workers employed, and to be retrenched, is given as 189 in number.

13. There is an annexure to this notice giving the reasons for the retrenchment. It mentions that there is heavy accumulation of stock, as the cloths produced in the mills of the management have not been moving out and, as such, the management had also to resort to lay-off. The position has not at all changed for the better; on the other hand, it has deteriorated and as such, the management is compelled to retrench the workmen in accordance with Sections 25C and 25F of the Industrial Disputes Act, 1947, and six reasons are given therein. It is further stated that, in view of the large accumulation of stocks, all the workmen were kept under lay-off from 16 April 1958 and even on 6 May 1958, the position of the mills has not at all improved and that there is also no chance of improvement in the near future.

14. The annexure winds up by saying that after considering all aspects due to bona fide trade reasons, the management has decided to terminate the services of the workmen mentioned in the list as and from 8 June 1958. It is also clearly stated that the said notice may be treated as one month's notice to the workers. There is a list attached to the annexure giving the names of 189 people to be retrenched.

15. In the counter-statement filed by the management before the tribunal, it denies all the allegations and averments contained in the statement of the union and not specifically admitted. After adverting to the only issue referred for adjudication, the management in Para. 3 of its counter-statement has stated:

The workers were retrenched with effect from 8 June 1958 after giving them a month's notice for bona fide trade reasons. The workers are entitled to retrenchment compensation after setting off the lay-off compensation received by them. . . The workers are not entitled to any further or additional relief.

16. In Paras. 4 and 5, the management refers to the difficulties in the matter of disposal of stocks and also to the lay-off of 74 workers and to the strike which started on 3 March 1958 and continued till the agreement dated 13 April 1958. The management then refers to the lack of market for power-loom shirtings and to the increased excise duty which resulted in the accumulation of stock. It is then stated in Para. 5:

For all the above and other trade reasons the management bona fide decided to close down the factory and retrench all the workers and a notice was put up intimating the workers of this decision and that their services would stand terminated as on 8 June 1958. Pursuant to this notice, the workers were retrenched.

17. In Para. 7 of its counter-statement before the tribunal, it is again stated by the management :

It is respectfully submitted that the retrenchment effected was fully justified and the workers are not entitled to any relief except the retrenchment compensation, after setting off the lay-off compensation paid.

18. The management filed subsequently an additional counter-statement before the tribunal. It is stated therein that the point mentioned in the additional counter-statement was not raised in its earlier statement because of inadvertence. In Para. 1 of this statement, it is mentioned that the notice of 6 May 1958 results in all the workers being retrenched by the management with effect from 8 June 1958, and that the work has not been resumed by the management and therefore the order of reference by the Government is not valid and in consequence, there is no industrial dispute. On this basis it was further stated that the tribunal has no jurisdiction to hold an enquiry and no compensation was payable at all to the workmen.

19. The union filed a rejoinder statement " to this additional counter-statement; filed by the management. In particular, it is stated in this rejoinder that the retrenchment notice did not mention anything about the closure of the factory and the same is attempted to be started for the first time in the additional counter-statement. There are also certain other matters mentioned in the rejoinder statement.

20. The tribunal was of the view that the claim for retrenchment compensation arose on 6 May 1958 when there existed the employer-employee relationship and that relationship continued to exist till 8 June 1958. The termination, even according to the notice, would take effect only as and from 8 June 1958. The order of the Government referring the dispute has been made even on 19 May 1958, when admittedly, the relationship of employer and employee existed. In this view, the tribunal held that the subject-matter of the dispute has arisen during the existence of employer-employee relationship and therefore the reference made by the State Government was legal and is not opposed to any provisions of law.

21. Regarding the contentions of the management that the present was a case of closure and that the State Government has no right to make a reference regarding a dead industry, the tribunal was of the view that the said contention does not really arise on the case set up by the management. The tribunal refers to the material statements in the objections filed by the management to the effect that the workers are entitled to the retrenchment compensation. After referring to the provisions of the amending Act 18 of 1957, the tribunal was of the view that even in the case of a bona fide closure or transfer of business, retrenchment compensation has to be paid by the present management. On this reasoning the tribunal came to the conclusion that even in cases where all the workmen are retrenched, it is mandatory on the part of the management to pay retrenchment compensation. So viewed either as a retrenchment or as a closure of business, the tribunal was of the view that compensation is payable as provided in Section 25F of the Act.

22. Regarding the contention that the workers have forfeited their right to the beneficial provisions of the Act, in view of the illegal strike started and continued by them from 3 March 1958 till the date of the agreement, Ex. M. 12, the tribunal was of the view that the said contention has to be rejected on two grounds. One is, that the management itself did not take up any such stand in the counter-statements filed by it. The second ground is that by virtue of the agreement between the parties, Ex. M. 12, the consequences of an illegal strike, whatever it may be, were given the go-by by the management itself and even in the notice, Ex. M. 36, the management has specifically stated that the workmen were given one month's notice as required under 01. (a) of Section 25P of the Act, In view of these circumstances, the tribunal rejected the contention of the management on the question of continuity of service also.

23. Finally, the tribunal held that the workmen whose names are given in the annexure to the award will be paid fifteen days' wages for every year of service and also one month's notice pay. The tribunal further stated that 21 workers whose numbers are given in Paras. 12 and 14 of the award, are not entitled to get anything as they have already been paid off.

24. It is this award that is being challenged before me. The same contentions that were raised before the tribunal are raised before me also on behalf of the management by Mr. N. Subramonia Ayyar, its learned Counsel. I have already mentioned the stand taken by the management in respect of the agreement, Ex. M. 12, and also in its notice, Ex. M. 36. I have also dealt with the specific stand taken by the management in its original counter-statement and also in its additional counter-statement.

25. According to Mr. T.N. Subramania Ayyar, learned Counsel for the petitioner, the State Government had no jurisdiction to make the reference on 19 May 1958, because the industry was dead already. There cannot be a reference of a dispute in respect of a dead industry. The learned Counsel's contention is that the industry was already closed as early as 3 March 1958, when the workers

went on a strike, and admittedly, the mills were not reopened at any time after that date. Therefore, the industry, according to the learned Counsel, was dead even on 3 March 1958.

26. Alternatively, the learned Counsel contended that, in any event, the notice, evidenced by Ex. M. 36 is a notice of closure of the entire business and not of retrenchment of a part of the workers. On this basis also the learned Counsel contended that the State Government has no power to refer a dispute arising out of a closure of business. The learned Counsel pursued this argument by further contending that the award of compensation u/s 25P of the Act is illegal and without jurisdiction, because the said provision does not apply to cases of closure. According to the learned Counsel, this aspect of the matter has not been properly appreciated or kept in view by the tribunal.

27. The learned Counsel also contended that, in any event, the 21 workmen whose numbers are given in Paras. 12 and 14 of the award, and who had admittedly received the compensation from the management, are not entitled to the benefit of the award. The learned Counsel also contended that the layoff compensation paid by the management should be allowed to be set off in respect of any payments to be made to the workmen, if the award is sustained.

28. The learned Counsel also invited my attention to one or two decisions of the Supreme Court where the scope of the expression "retrenchment" has been considered and he also laid special emphasis on the differentiation made in those decisions between cases of retrenchment on the one hand, and cases of closure of business on the other.

29. Mr. V. Viswanatha Menon, learned Counsel appearing for the union, was prepared to admit that the 21 persons who have received compensation, need not be paid over again. But the learned Counsel was not prepared to accept the position that the management is entitled to get off the amounts paid as layoff compensation towards the amount payable under the award. According to the learned Counsel, the workmen have been without any wages as such from 3 March 1958 and the management should not be allowed to set off, by paying only one month's notice salary and other minor payments,

30. The learned Government Pleader, in my opinion, has taken a more reasonable stand. He admitted that 21 persons, who have received their compensation, cannot get the benefit of the award. He also accepted the position that the management will be entitled to claim a set-off for amounts paid by them as lay-off compensation. According to him, the tribunal ought to have allowed the set-off claimed by the petitioner.

31. But on the more Important aspect of the matter, the learned Government Pleader has supported the award passed by the tribunal. He has drawn my attention to the fact that the reference was properly made by the State Government at a time when the claim for retrenchment compensation arose and during the existence of the employer-employee relationship. He also Invited my

attention to the admission made by the management in its counter-statement filed before the tribunal and referred to by me earlier, namely that the workers are entitled to retrenchment compensation after setting off the layoff compensation received by them. He has also invited my attention to the notice, Ex. M.36, which is strictly and wholly in accordance with the provisions of Section 25F of the Act. It gives all the particulars that are necessary to be complied with u/s 25P. In fact, Ex. M. 36 is a notice given to the State Government as provided under Clause (c) of Section 25F. The management itself has been taking the position that they are retrenching the workers and taking action u/s 25P of the Act by giving the necessary one month's notice. This notice, read along with the admission of the management in its counter-statement, is clear that the management took action for retrenchment of the workers u/s 25P of the Act.

32. The learned Government Pleader also referred me to the changes effected by the Industrial Disputes (Amendment) Act 18 of 1957. Even if the matter is to be viewed as a closure of business as contended by the management, Section 25FFF puts the matter beyond all controversy and even in cases of closure, the management is bound to pay compensation on the basis provided for calculating retrenchment compensation u/s 25F of the Act.

33. The learned Government Pleader, therefore, contended that in view of the amendment introduced by the Act 18 of 1957, the principles laid down in the decisions of the Supreme Court and referred to by Mr. T.N. Subramonia Ayyar, have no application. Those decisions were given prior to the introduction of Section 25FFF,

34. The Government Pleader also supported the reasoning of the tribunal regarding the continuity of service of the workmen.

35. After hearing learned Counsel on all sides, I am of the view that the award requires only a slight modification regarding the 21 workers who have already been paid and also regarding the claim of set-off made by the management. In all other respects, the award has to be confirmed.

36. In view of the fact that the terms of the agreement, Ex. M.12, and the terms of the notice, Ex. M.36, and also the points raised in the counter-statement of the management before the tribunal, have already been fully dealt with by me, it is unnecessary for me to repeat the same over again.

37. It is clear that the management took its stand only on the basis that it is taking action u/s 25F of the Act and retrenching its workers. The terms of the notice, Ex. M. 36, referred to already, are exactly in accordance with the provisions of Section 25F of the Act. It is not possible for me to accept the contention of Mr. T.N. Subramonia Ayyar that the Industry was dead even on 3 May 1958 and that the reference by State Government on 19 May 1958 was without jurisdiction. Whatever may have been the position due to the strike, admittedly, the management entered into an agreement with the workers as is clear from the terms of Ex. M.12. That the relationship of employer-employee is



continued is also clear from the terms of the settlement itself. The management agrees that all workers In the mill will be laid off; the management also agrees in Cl.3 that for working the calendering, sizing and dyeing sections, the required workers will be entertained when necessary from the laid-off workers and given work on rotation.

38. That the said relationship is continued, is again clear by a reference to Ex. M. 36, given by the management as late as 6 May 1958. It is , specifically stated that the management has decided to retrench the 189 workmen and that the workmen are given one month's notice. The said notice also gives the number of workmen employed in the establishment and the number of workmen who will be affected by the retrenchment. In the annexure to Ex. M. 36, it is also stated that the services of the workmen mentioned therein will stand terminated as on 8 June 1958. All these circumstances make it very clear that even according to the management, the Industry has not become a dead one on 3 May 1958 as now alleged, but the relationship of employer and employee continued clearly till 8 June 1958. As such, It follows that the State Government had jurisdiction to make a reference of the dispute in this case on 19 May 1958. In this case, the following observations of their lordships of the Supreme Court In *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, can be usefully referred to:

The power of the State to make a reference under the section must be determined with reference not to the date on which It Is made, but the date on which the right which is the subject-matter of the dispute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business.

In the case before me, the subject-matter of the dispute arose when the notice under Ex. M. 36 was issued. The reference by the Government also has been made in this case even before the termination of the services of the workmen actually took effect under the notice, Ex. M. 36.

39. In view of the amendments effected by the Industrial Disputes (Amendment) Act, 1957-Act 18 of 1957-by which Section 25FFF has been Incorporated, it is not really necessary for me to refer to the two decisions of the Supreme Court relied upon by Mr. T.N. Subramonia Ayyar, namely, (1) *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, and (2) *Hariprasad v. A. Divelkar* 1957 I L.L.J. 243. No doubt, their lordships have laid down In the first decision referred to above that retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff or the labour force is discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business cannot, therefore, be properly described as "retrenchment." In fact, in this decision, their lordships have specifically stated that they do not consider it necessary to decide about the scope of the definition of "retrenchment" as contained In Section 2(oo) of the Act, brought in by a later amendment. This decision was given by their lordships on 23 October 1956:

40. In the second decision referred to above, their lordships had to consider the scope of the term " retrenchment" as defined In Section 2(oo) of the Act, Their lordships discussed the difference between closure of business and retrenchment of workmen, and observed at p. 252 as follows :-

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 or 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 . . . .

This judgment was given by their lordships on 27 November 1956. In my opinion, the principles laid down by their lordships do not apply to the present case. Their lordships of the Supreme Court had no occasion, in the two cases, referred to above, to consider the right of the workmen to get compensation in cases of closing down of undertakings. The Supreme Court has, in the second decision, after advertng to the definition of retrenchment In Section 2(oo) of the Act, come to the conclusion that closure of business is not taken in by that definition or by the use of that expression in Section 25F of the Act. This judgment, as mentioned earlier, was given on 27 November 1956.

41. It is significant that the Industrial Disputes (Amendment) Act, 1957-Act 18 of 1957-was published In the Gazette on 16 July 1957. Section 3 of this amending Act substituted new sections for the original Section 25FF In the principal Act and another Section 25FFF was also added. The provision relevant to the present instance is the new Section 25FFF added by the amending Act. Section 25FFF omitting Clause (2) which is not relevant for the present case, is as follows :-

Section 25FFF. Compensation to workmen in case of closing down of undertakings.- (1) Where an undertaking is closed down for any reason whatsoever, every workman 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 25F as if the workmen had been retrenched :

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workmen under 01. (&) of Section 25F shall not exceed his average pay for three months.

Explanation.-An undertaking which Is closed down by reason merely of financial difficulties .(including financial losses) or accumulation of undisposed of stocks shall not be deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the

proviso to this sub-section.

(2) \* \* \*

It will be seen that this section gives a right to the labour to get compensation, in accordance with the provisions of Section 25F, even in cases of closing down of an undertaking for any reason whatsoever. The proviso limits the amount of compensation in cases where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer. But there is an explanation to Sub-section (1) of Section 25FFF, to the effect that closing down for merely financial difficulties or accumulation of undisposed of stocks shall not be deemed to be closing down on account of unavoidable circumstances beyond the control of the employer, within the meaning of the proviso.

42. In this case, the very notice, Ex. M. 36, is to the effect that there is heavy accumulation of stock in the mills and the said position continues and therefore the management is compelled to retrench the workmen in accordance with Sections 25O and 25F of the Act. It is also mentioned that accumulation of stock, lack of capital, consequent financial strain caused on the company and certain other matters have prompted the management to take the step they have taken in pursuance of the notice, Ex. M. 36.

43. The management definitely took the stand in its counter-statement before the tribunal that the workmen are entitled to retrenchment compensation. The notice, Ex. M. 36, is also on the basis that there is a "retrenchment" u/s 25F of the Act. It is not open to the management to go behind the stand taken by it in the notice, Ex. M. 36, and also in its counter-statement before the tribunal. In this view, the order of the tribunal awarding retrenchment compensation is one passed within its jurisdiction.

44. Even on the basis that Ex. M. 39 is a notice of closure of the mills and in consequence, amounting to the discharge of all its workmen, Section 25FFF referred to above applies to the case and the employees are entitled to claim compensation, as if they had been retrenched, as per the provisions of Section 25F of the Act.

45. It is significant that Section 1 of the amending Act 18 of 1957 specifically provides that Section 3 under which Section 25FFF is also incorporated, is to be deemed to have come into force on 28 day of November 1956. In my opinion, this provision is not without significance, because the date of the decision of the second Supreme Court decision referred to earlier, is 27 November 1956 where their lordships held 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, namely, discharge of surplus labour or staff, and that 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. The amending Act, by incorporating Section 25FFF, in the main Act, in my opinion, gives statutory right to the workmen to get compensation even for closure of an undertaking for any

reason whatsoever except in respect of closure coming within the proviso to Sub-section (1) of Section 25FFF. No relief can be claimed or granted to the management in this case, because the reasons given for its closure, on the basis that the notice amounts to a closure of business, are hit by the explanation to the proviso in Section 25FFF. Therefore, the award, passed either on the basis of a retrenchment compensation, or compensation for closure of business, is perfectly legal and valid.

46. The next contention of Mr. T.N. Subramonia Ayyar is that the workmen have not been in "continuous service" 90 as to justify the award of compensation. According to the learned Counsel, strike without notice is prohibited in the contract of employment and in this case, the workmen went on an illegal strike from 3 May 1958. Section 23 of the Act also prohibits the labour from going on strike in breach of contract. The workmen have forfeited their right to the beneficial provisions of the Act by going on an illegal strike and there has been a break of service from 3 March 1958. The learned Counsel drew my attention to the definition of the expression "continuous service" in Section 2(eee) of the Act. Whatever merit there may be in such an argument in other appropriate cases where the labour has gone on an illegal strike, in this case that question does not at all arise, because as per the agreement, Ex. M. 12, the tribunal was justified in coming to the conclusion that the management has given the go-by to everything that happened up to that time. In fact, under Ex. M. 12 it agrees to pay lay-off compensation to all the workers and also to employ the required workers for the work mentioned in C1.3 of the agreement. Further, in Ex. M. 36, the management has clearly proceeded on basis that the workmen are entitled to one month's notice as per Clause (a) of Section 25F of the Act. The management itself has proceeded on the basis that the workmen are in continuous service so as to be entitled to one month's notice under the section. After all these, it is not open to the management to now contend that by the strike, which is illegal, continuity of service has come to an end as on 3 March 1958. Nor is it possible to accept the contention of the management that the agreement, Ex. M. 12, will have the effect of only re-employing the workmen. Exhibit M. 36 is definitely against the present contention that Ex. M. 12 will amount to only reemployment. In my view, the decision of the tribunal on this point also is correct.

47. There are only two minor contentions of the learned Counsel for the petitioner which have been noted even earlier and they are, the right to set off the amount of lay-off compensation already paid and also that the 21 workmen referred to in the award are not entitled to get anything more.

48. Even in the award itself it is stated in Para. 14 that the 21 workmen whose numbers are given therein, are not entitled to get anything, as they have already been paid off. But their names also have been included in the annexure to the award and the tribunal has stated that the workmen, whose names are given in the annexure, will be paid the amounts mentioned in the award. As both Mr. Viswanatha Menon appearing for the union and the learned Government Pleader

have conceded that these 21 workers need not be paid again, I make it very clear that the 21 workers, whose numbers are given in Para. 14 of the award, will not get anything more under and in pursuance of the award.

49. So far as the right of set-off is concerned, though Mr. Viswanatha Menon appearing for the union has opposed this claim, I am of the view that the management must be given the right of set-off. Evidently, the tribunal has not made such a provision for a set-off, due to inadvertence. The proviso to Sub-section (2) of Section 25C of the Act clearly gives a right to the employer to set off any compensation paid to a workman for having been laid off during the preceding twelve months as against the compensation payable for retrenchment. In respect of the amounts now found payable by the award to the workmen who are entitled to the same, the management is entitled to set off, as against those claims, the compensation for lay-off already paid by the management and received by those workmen. Subject to this slight modification indicated above, the award is confirmed in all other respects and this application dismissed. Parties will bear their own costs.