

**(1970) 03 KL CK 0016**

**In the High Court Of Kerala**

**Case No :** Company Applications No's. 327, 328, 332, 333, 334 and , 335 of 1969 in Company Petition No. 3 of 1965

Sathiarthy

APPELLANT

Vs

New Era Manufacturing Company Limited, Palghat

RESPONDENT

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**Date of Decision :** 24-03-1970

**Acts Referred:**

Companies Act, 1956 — Section 445(3)  
Industrial Disputes Act, 1947 — Section 25 FFF(1), 25F, 25F, 25FF, 25FFF  
Payment of Wages Act, 1936 — Section 15(2), 2(vi)(d)

**Citation :** (1970) KLJ 885

**Hon'ble Judges :** M.U. Isaac, J

**Bench :** Single Bench

**Advocate :** T.L. Viswanath Iyer, for the Appellant; T.V. Ramakrishnan, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

M.U. Isaac, J.—The applicants in these cases were employees of the New Era Manufacturing Co. Ltd., (in liquidation), whose services were terminated, pending proceedings for the winding up of the said company through Court. The petition for the winding up of the said company was presented in this Court on 10-3-1965. Thereupon the management issued notices dated 29-3-1965 to the applicants in C.A. Nos. 327, 328, 333 and 334, terminating their services with effect from 30-4-1965. This Court appointed a provisional liquidator for the company on 24-6-1965. He took charge of the company on 3-7-1965, and closed down its business on the said date. On 20-7-1965, the Provisional Liquidator issued notices to the applicants in C.A. Nos. 332 and 335 terminating their services with retrospective effect from 3-7-1965. The company was finally ordered to be wound up on 22-12-1966. The applicants then claimed before the Official Liquidator retrenchment compensation u/s 25F of the Industrial Disputes Act, 1947. According to them, the notices issued for terminating their services were invalid; and they cease to be employees of the company only on

22-12-1966, consequent on the order of winding up passed on that date. On that basis, they claimed the following amounts: (1) Arrears of salary upto 22.12.1966;

(2) One month's salary in lieu of notice; and

(3) Compensation equivalent to 15 days' average pay per every completed year of service or any part thereof in excess of six months.

The claims under items (2) and (3) fall under clauses (a) and (b) respectively of Section 25F. The Official Liquidator held that the undertaking of the company was closed down on 3-7-1965 on account of unavoidable circumstances beyond the control of the employer, that Section 25 F had no application, and the matter was governed by Section 25FFF. Accordingly he admitted the claim only under item (2), limited it in respect of item (1) to arrear of salary till 3-7-1965 and item (3) to three months' average pay. These applications have, therefore, been filed for orders against the Official Liquidator to admit the applicant's claim in full.

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

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

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.

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 workman 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 workman under clause (b) of section 25F shall not exceed his pay for three months.

Explanation; An undertaking which is closed down by reason merely of financial difficulties (including financial losses) or accumulation of undisposed off 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.

Sub-Section (2) is omitted being not relevant to the controversy.

There is no dispute that, if Section 25FFF of the Industrial Disputes Act, 1947 applies to the case, the orders passed by the Official Liquidator are right and that the applicants would not be entitled to get anything more than what he allowed. The learned Counsel for the applicants drew my attention to Section 445(3) of the Companies Act, 1956 which provides that the order of winding up shall be deemed to be notice of discharge to the officers of and employees of the company. On the basis of the above provision he submitted that the applicants should be deemed to have had notices of discharge of services only on 22-12-1966, and that they are entitled to have their pay till that date. On the other hand, the learned Counsel for the Official Liquidator submitted that Section 445(3) of the Companies Act has no application where the employee had been discharged by the employer before the order of winding up and that the said provision has no application to the instant case, as the services of some of the applicants were terminated by notices issued by the management of the company immediately after the filing of the winding up petition and the services of the remaining applicants were terminated by notices issued by the Provisional Liquidator after he took over charge of the company and closed down its business. He further submitted that this is a case where the undertaking has been closed down on 3-7-1965 on account of unavoidable circumstances beyond the control of the employer, and the case falls u/s 25FFF of the Industrial Disputes Act. In my view, the contention of the learned Counsel for the Official Liquidator is well-founded. There is no dispute that the Provisional Liquidator is well-founded. There is no dispute that the Provisional Liquidator took charge of the company and closed down its business on 3-7-1965. These things were done under orders of the Court and there is no case that these orders are obtained by fraud or collusion. The conclusion is, therefore, inevitable that the business of the company was closed down under circumstances beyond its control.

2. In support of his contention that Section 25F of the Industrial Disputes Act applies to the case and that the applicants are entitled to the amounts claimed by them, their learned Counsel relied on the decision of the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , and contended that the termination of the applicant's services was invalid, and that they are entitled to get arrears of salary until their services were properly terminated. That was a case of retrenchment of employees without a valid notice u/s 25F of the Act: and the Supreme Court held that a valid notice was a condition precedent, and that the retrenchment was invalid, as there was no such notice. The question of compensation does not seem to have arisen in that case. When an employee is unlawfully retrenched, he is ordinarily entitled to an order for reinstatement or adequate compensation in lieu of that. The quantum

of compensation that such an employee may be entitled to get in respect of the period from the date of his wrongful discharge till the date of reinstatement would depend on the facts and circumstances of each case, and it cannot be said to be equivalent to the salary which he would have earned during that period, irrespective of other relevant considerations. These matters have no relevancy; and the above decision has no application to the instant case, as it falls u/s 25FFF of the Act.

3. The decision of the Supreme Court in *Payment of wages Inspector v. B.E.S. & I Co.* AIR 1959 S.C. 590 seems to support the orders of the Official Liquidator. In that case, the undertaking of the respondent company was closed down, consequent on the State Electricity Board taking over the same, Thereupon some of the employees applied u/s 15(2) of the Payment of Wages Act, 1936 to recover from the respondent the amounts which they claimed u/s 25FF of the Industrial Disputes Act. One of the questions which arose for determination in that case was whether compensation payable u/s 25FF of the Act would be "wages" as defined in Section 2 (vi) (d) of the payment of Wages Act. In that context, the Court has dealt with the relative scope of Sections 25F, 25FF and 25FFF of the Industrial Disputes Act. The Court said -- The three sections, Section 25F, 25FF and 25FFF also show that while under section, 25F no retrenchment can be made until conditions therein set out are carried out, the other two sections do not lay down any such conditions. All the three sections, however, involve termination of service whether it results in consequence of retrenchment or transfer or closure, and notice and compensation in both Sections 25FF and 25FFF have been provided for "in accordance with the provisions of Section 25F".

Then, after referring to certain decisions in support of the above statement, the Court proceeded to say--

That being the position a workman whose service is terminated in consequence of a transfer of an undertaking whether by agreement or by operation, of law, has a statutory right u/s 25FFF to compensation unless such right is defeated under the proviso to that section. The same is the position in the case of closure under Sec. 25FFF.....Since Section 25FF and 25FFF do not contain any conditions precedent, as in the case of retrenchment under S. 25F and transfer and closure can validly take place without notice or payment of a month's wages in lieu thereof or payment of compensation, Sec. 25FFF can be said not to have provided any time within which such compensation is to be paid. It is well established that the words "in accordance with the provisions of Section 25F" in Section 25FF and 25FFF are used only as a measure of compensation and are not used for laying down anytime within which the employer must pay the compensation.

The applicants' contention that a valid notice or payment of compensation in lieu of notice is a condition precedent for a valid termination of their services cannot be sustained, as the case falls u/s 25 FFF (1) of the Act. The orders of the Official

Liquidator on the claims made by him are, therefore, proper. In the result, I dismiss these applications. There will be no order as to costs.