

(1999) 12 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No. 11397 of 1990

Spencer and Co. Ltd.

APPELLANT

Vs

P.O., I Additional Labour Court and Others

RESPONDENT

Date of Decision : 13-12-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 25E

Citation : (2000) 2 LLJ 1005

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : Sanjay Mohan, for Ramasubramanian Associates, for the Appellant;
Devi Shankar, for T. Fenn Walter, for the Respondent

Judgement

V. Kanagaraj, J.—From out of all the above writ petitions, the first one in W.P. No. 11397/1990 has been filed by the management,

Spencer and Co. Ltd. against the Labour Court as the first respondent and the individual workers as respondents 2 to 15 praying to issue a writ of

prohibition restraining the first respondent Presiding Officer, First Additional Labour Court, Madras from proceeding with C.P. No. 525/1990 on

its file.

2. The second writ petition in W.P. No. 10267/1995 has also been filed by the Management, Spencer and Company Limited, Madras as against

the Presiding Officer, Industrial Tribunal as the first respondent and the workmen of the Spencer Thozhilalar Munnertra Sangam as the second

respondent praying to issue a writ of certiorari or any other appropriate writ or direction to call for the records connected with I.D. No. 65/89 and

quash the award dated March 31, 1994.

3. So far as the third writ petition in W.P. No. 13640/1995 is concerned, it has

been filed by the workmen of the Spencer Thozhilalar Munnetra

Sangam as against the Management, Spencer and Company Limited as the first respondent and the Presiding Officer, Industrial Tribunal as the

second respondent thereby praying to issue a writ of certiorarified mandamus calling for the records in I.D. No. 65/89 and quash the award dated

March 31, 1994 passed by the second respondent and direct the first respondent to reinstate the petitioners in service with back wages, continuity

of service and all attendant benefits.

4. Heard the learned Counsel for both and perused the materials placed on record especially the facts and circumstances as put forth in the

respective affidavits filed in support of all the writ petitions and other documents including the impugned orders. Since all the above three writ

petitions are inter- connected, inter-related and inter-woven together with facts and circumstances and the points raised in all of them by the

contesting parties, the Management of Spencer and Company Limited on one side as the petitioner in the first and second writ petitions above and

15 of its workmen so far as the first petition is concerned and the workmen represented by the Spencer Thozhilalar Munnetra Sangam as the

respondents respectively in the first and second writ petitions and the third writ petition having come to be filed by the workmen represented by

Spencer Thozhilalar Munnetra Sangam against the Management, Spencer and Company Limited, Madras and the subject matter of all the above

three writ petitions being the retrenchment of 84 workmen of the Spencer and Company Limited and the aftermath, it is decided to hear all of the

above writ petitions together and to pass a common order for better appreciation of the facts and circumstances and the position of law encircling

the whole episode. For the sake of convenience, W.P. Nos. 11397/1990, 10267/1995 and 13645/1995 are hereinafter referred to as the first,

second and third writ petitions respectively.

5. So far as the facts of the first writ petition above is concerned, it is filed by the Management against the Labour Court and 14 individual workers

named therein as respondents 2 to 15 pleading thereby that this writ petition is connected with W.P. Nos. 6887 and 6888/1987 between the same

parties which were related to a claim for wages for the period between September 1, 1984 and February 28, 1987 relating to the claim petition

filed u/s 33-C(2) of the Industrial Disputes Act (hereinafter referred to as "the Act").

6. On facts, the petitioner/Management had a "House Furnishing Unit" providing employment for 88 workmen and the same was closed from

September 1, 1984. The question of closure was raised as a dispute and it ended with the Government refusing to refer the issue, but pursuant to

the judgment dated March 2, 1987 made in W.P. No. 14441 of 1986, an order of reference was made by the Government of Tamil Nadu by its

G.O. Ms. No. 1279 dated July 5, 1989.

7. The further averments of these writ petitions are that even prior to the above reference was made, some of the workmen filed petitions u/s 33-

C(2) of the Act claiming to be in service even after closure and on that basis, claiming full salary. But in a writ of prohibition filed by the

Management against the said proceedings of the Labour Court, the High Court was pleased to grant stay of further proceedings and the said order

was also made absolute on September 17, 1987. The further case, of the petitioner/management in the first writ petition is that in the meantime, a

reference was made whether closure was on justifiable reasons or not in I.D. No. 65/89 and it was dismissed for default on April 23, 1990 and no

step was taken to restore the said dispute, that thereafter the respondents 2 to 15 to the first writ petition again filed a petition u/s 33-C(2) of the

Act, but this time claiming salary for the subsequent period from March 1, 1987 to June 1, 1990 on the same allegations in C.P. No. 525/1990

questioning the award passed by the Industrial Tribunal rejecting the case of the workmen testifying the closure.

8. Therefore, contending that it is the very same petition which had already, been stayed by this Court in a similar petition on claim for a subsequent

period as if the petition on claim for a subsequent period as if there was no closure at all and pleading that unless the closure is set aside, the

question of paying wages would not arise at all on such pleas praying for a prohibition restraining the Labour Court from proceeding with C.P. No.

525/1990, this writ petition has come to be filed by the management.

9. So far as the second writ petition is concerned, it is also filed by the management. The Spencer and Company Limited praying to quash the

award dated March 31, 1994 made in I.D. No. 65/89 contending that the

categories of the 88 workmen employed in the "House Furnishing Factory" were fitters, painters, carpenters etc. and due to economic constraints, the petitioner had to close down the unit with effect from September 1, 1984, that the petitioner had informed the workmen by notice dated August 18, 1984 stating the reasons for the closure to be made from September 1, 1984, thus services of the workmen stood terminated from the said date, that they were paid one month's wages in lieu of the notice with closure compensation in accordance with law, that after receipt of the closure compensation, the workmen raised a dispute before the Joint Commissioner, Labour, Madras alleging illegal termination from service, further furnishing the reasons to the closure and conciliation of sending a failure report to the Government, the Government declined to refer the dispute for adjudication and thereby justifying the act of management in closing their "House Furnishing Factory" that aggrieved, the workmen filed W.P. No. 14441/1986 and the same was allowed wherein the Government was directed to reconsider the matter on various contentions. However, ultimately, the Government as per its G.O. Ms. No. 1278 dated July 5, 1989 made the following reference for adjudication to the Industrial Tribunal:

"Whether the action of the management of Spencer and Company Limited to close down the House Furnishing Unit is justified, if not to give appropriate direction."

10. It would further be contended that the union filed another writ petition in W.P. No. 6664/1990 seeking amendment of the reference and the same was allowed and the parties were permitted to raise all the pleas taken in the writ petition before the Industrial Tribunal in T.D. No. 65/89, that the union examined one V. Balakrishnan as W.W. 1 and the sole witness on their side and the Management examined two witnesses on its behalf and in consideration of the evidence, the learned Judge passed the impugned award dated March 31, 1994, that aggrieved by the award, the petitioner management has come forward to file this writ petition on grounds as putforth in the writ petition.

11. So far as the third writ petition is concerned, it is by the union thereby contending that the first respondent/ management resorted to terminate the services of 84 workmen who have already worked in various sections like

Aerated Water Factory, Electrical Department, Drugs Factory, Soda Factory, Air Conditioning Department, Show Room Department, Spencer Pharmaceuticals and Spencer Consumer Stores, that their job was inter changeable and since they have already worked in other departments too at the time of closing down the "House Furnishing Unit", common seniority should have been taken into consideration before retrenchment or closure of the unit, that the learned Judge has given a finding that the House Furnishing Unit is one of the units of the Spencer and Company Limited and not a separate entity by itself, that the further findings of the learned Judge are that the first respondent/management is not manufacturing the furniture, that the retrenchment of these workmen are not justified and that under misconception that since the "House Furnishing Unit" has been closed, there is no possibility of reinstatement of these workers, the learned Judge has given a finding that the workers will not be entitled to reinstatement, but entitled to the benefits in accordance with Section 25-F of the Act, that the learned Judge is not very clear as to from what date, they are entitled to retrenchment compensation, but the clear finding that their retrenchment is illegal and unjustified will entitle them to certain legal benefits, that the impugned order is vague and illegal and hence, the writ petition.

12. During arguments, the learned Counsel appearing for the second respondent/workmen union in the first two writ petitions and for the petitioner/workmen union in the third writ petition would contend that the retrenchment of 84 workers is illegal, that the reason attributed for closure was that the "House Furnishing Unit" was running in loss and hence, the workmen cannot be reinstated, that from September 1, 1994 onwards they were not provided with work, that the issues raised in the Industrial Dispute No. 65/89 are six in number. They are:

- (1) Whether the "House Furnishing Unit" of the respondent/Spencer and Company Limited is only one of the units of the Spencer and Company or is a separate legal entity by itself.
- (2) Whether the Industrial Dispute cannot be maintained since there were less than 100 workmen in the House Furnishing Unit?
- (3) Whether the entirety of the workmen in the Spencer and Company should be taken into consideration to find out whether there are more than

100 workmen?

(4) Whether the non-employment of the workmen concerned is a consequence of the closure or retrenchment?

(5) Whether the alleged closure is illegal and void for not obtaining the prior permission of the Government?

(6) Whether the workmen are entitled to reinstatement and other attendant benefits?

That the main issue is Issue No. 1. For this issue, the Labour Court, would decide that the employees who worked in the "House Furnishing Unit"

and other units of the Spencer Department were treated as employees of Spencer and Company and the House Furnishing Unit is one of the units

of the Spencer and Company and not a separate entity by itself, that for Issue No. 3 it would be answered by the learned Judge that even in the

event of closure of the House Furnishing Unit, the Spencer and Company should have followed or complied with the mandatory provisions of

Section 25-G of the Act i.e. it should have adopted the policy of "last come first go", that means the employees of the Union of Spencer and

Company as on September 1, 1984 should have been taken as a whole and those who had been appointed last should have been retrenched in

accordance with Section 25-G of the Act, when that had not been done, the retrenchment of the employees of the "House Furnishing Unit" has to

be held illegal, that the learned Judge would also reject the plea that since there were less than 100 employees in the "House Furnishing Factory",

the industrial dispute is not maintainable holding thereby that it is the entire Spencer and Company which should be taken into account for

calculating the total number of employees and not the "House Furnishing Unit" alone which is one of the segments of the Spencer and Company.

13. The learned Counsel would further contend that there is a clear violation of Section 25-G, 25-N and 25-O of the Act. At this juncture, the

learned Counsel would cite a judgment in this regard Karnataka Electricity Board Vs. Venkatkrishna, wherein it is held as follows:

It is an implied condition of every agreement, including a settlement, that the parties thereto will act in conformity with the law. Such a provision is

not required to be expressly stated in any contract. If the services of a workman are terminated in violation of any of the provisions of the Industrial

Disputes Act, such termination is unlawful and ineffective and the workman would ordinarily be entitled to reinstatement and payment of full back

wages. As already held, the closing down of the Churchgate Division was illegal as it was in contravention of the provisions of Section 25-O of the

Industrial Disputes Act. Under Sub-section (6) of Section 25 where no application for permission under Subsection (1) of Section 25-O is made,

the closure of the undertaking is to be deemed to be illegal from the date of the closure and the workmen are to be entitled to all the benefits under

any law for the time being in force, as if the undertaking had not been closed down. The eighty-four workmen were, therefore, in law entitled to

receive from September 18, 1984, onwards their salary and all other benefits payable to them under the Settlement dated February 1, 1979.

These not having been paid to them, there was a failure on the part of the Company to implement the said Settlement and consequently the

Company was guilty of the unfair labour practice specified in item 9 of Schedule IV to the Maharashtra Act, and the Union was justified in filing the

complaint u/s 28 of the Maharashtra Act complaining of such unfair labour practice.

14. The second judgment cited is one reported in Gammon India Limited Vs. Niranjana Dass, :

4. In the course of hearing of this appeal, it was stated that the respondent has reached the age of superannuation therefore physical reinstatement

in service is not possible. Appellant will have to establish that fact but in the event, the appellant shows that under a valid rule, respondent has

reached the stage of superannuation and therefore physical reinstatement is not possible, it is hereby declared that the respondent shall continue to

be in service uninterruptedly from the date of the attempted termination of service till the date of superannuation. Respondent would be entitled to

all back wages including the benefit of revised wages or salary if during the period there is revision of pay-scales with yearly increment, revised

dearness allowance or variable dearness allowance and all terminal benefits if he has reached the age of superannuation such as Provident Fund,

Gratuity etc. Back wages should be calculated as if the respondent continued in service uninterrupted. He is also entitled to leave encashment and

bonus if other workmen in the same category were paid the same. It appears that the respondent has been unlawfully kept out of service, therefore

it is but just that the appellant-company shall pay all the arrears as calculated according to the directions herein given with 12% interest from the date of the amount became due and payable till realisation. Appellant shall also pay costs to the respondent quantified at Rs. 5,000/- The appellant is directed to pay the amount as herein directed to be paid within 3 months from today.

15. The third judgment cited is one reported in Patiala Central Co-operative Bank Ltd. Vs. Mehar Chand and Another, wherein the Division

Bench of the Punjab and Haryana High Court has held as follows:

3. Admittedly, the Labour Court recorded a finding on the basis of the material on record that the order of termination of services of the workman

was not justified and was not in order. That is a finding of fact based on evidence. The learned single Judge did not find any evidence to come to a

different conclusion. In fact, the appellant-bank did not file any reply in the writ petition. There was no challenge to the said finding recorded by the

Labour Court. When the Labour Court gave a specific finding that the termination of the workman was not justified and that finding was confirmed

by the learned single Judge, we do not see any reason to disturb the said finding. While exercising the extraordinary writ jurisdiction conferred on

this Court under Article 226 of the Constitution of India, this Court will not go into the question of fact. When once the termination was held to be

unjustified the necessary corollary is that the workman is entitled to be reinstated with full back wages. That is what has been done by the learned

single Judge. As held by this Court in Prem Singh v. Presiding Officer, Industrial Tribunal when once reinstatement has been ordered by the

Labour Court and the termination of service is set aside the relief of grant of back wages to the workman shall follow automatically.

16. The fourth judgment cited as one reported in P.R. Ramachandran and Others Vs. Tamil Nadu Water Supply and Drainage Board and

Another, wherein it is held as follows at p. 828:

4. The provisions of Section 25-F(a) & (b) of the Act have not been complied with by the respondents. Section 25-F(a) of the Act provides that

no workman employed in an industrial establishment shall be retrenched by the employer until the workman has been given one month notice in

writing in view of the retrenchment. Section 25-F(b) of the Act also provides that

no workman employed in any industry shall be retrenched by the employer, unless a compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service is given.

Non-compliance with the mandatory conditions and its precedents prescribed u/s 25-F of the Act in my view would make the order of

termination void ab initio. Such workmen are entitled to reinstatement with continuity of service and back wages".

The above judgment has been cited for non-compliance of Section 25-F of the Act.

17. The other judgment cited by the learned Counsel for the workmen is for the non-compliance of Section 25-N of the Act that is reported in

Parry & Co. Ltd. v. Presiding Officer, II additional Labour Court Madras (1998) 1 LLJ 406(Mad) wherein it is stated as under at p. 414:

18. In this case from the above discussion it can be seen that more than 300 workmen were working in the manufacturing process including, viz.,

unpacking, packing in the departments of the management. Moreover it is the specific case of the management before the Labour Court that, "for

the purpose of retrenchment, Parry & Co. Ltd. should be deemed to have worked in one single Industrial Establishment". In view of the above, the

Labour Court is correct in holding that the petitioners/managements are industrial establishments coming within the purview of Section 25-N of the

said Act. In this case, admittedly, the management has not obtained prior permission as contemplated u/s 25-N of the said Act".

18. Citing the provision u/s 25-O(6) of the Act, the learned Counsel for the petitioner would exhort that this clearly states that where no application

for permission under Sub-section (1) is made within the period specified therein or whether the permission for the closure has been refused, the

closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law

for the time being in force as if the undertaking had not been closed down that the employer in this case had failed to take notice to the

Government and hence, the workmen are entitled to reinstatement with back wages.

19. In reply, the learned Counsel appearing for "the management that it is a matter wherein the Government of Tamil Nadu by its order dated

March 19, 1986 refused to refer for adjudication, that in W.P. No. 1361/1986 having come to be allowed directing the Government to refer the dispute for adjudication, reference was made by an order of the Government dated September 5, 1989 for adjudication on such terms of reference; that by another order made by this Court in a writ petition filed by the Union in W.P. No. 6664/1990 dated July 31, 1991, this Court directed that it would be open to the party to take up the plea whether the non-employment is justified or not; that there were four units of the Spencer and Company functioning, out of which the "House Furnishing Unit" was closed; that the learned Judge found that they complied with Section 25-F of the Act; that there was no violation of Section 25-O(6) of the Act since the said section was not in force on the date of closure of the unit; that it is false to say that Section 25-F was not complied with and would cite the relevant portion of the judgment of the learned Judge wherein he contended that there was no notice of closure given and the closure compensation was also not paid cannot at all be accepted. Even regarding the allegation of non-compliance of Section 25-O, the learned Judge accepted the contention of the learned Counsel for the management that the management has to comply, whereas no form had been prescribed and no rules have also been framed in this regard and so, inspite of the fact that the Section provides that the permission had to be applied for, the management could not apply for permission for want of such rules and the same had been agreed by the learned Judge.

20. At this juncture, the learned Counsel would cite a judgment of the Apex Court reported in *Papnasam Labour Union Vs. Madura Coats Ltd.*

and Another, and say that long after the amendments overruling the judgment of the Madras High Court, these sections came to be amended as

per the order passed in W.P. No. 9597/1984 dated November, 1994. The learned Counsel would say that there was no format and the Section

itself was not available when he closed his "House Furnishing Unit" and hence, there is no question of lack of non-compliance under Sections 25-F

and 25-N of the Act; that so far as Section 25-O is concerned, unless the management had 100 workmen, he need not comply with that Section

also; that Chapter VB applies only to units having 100 workmen; that regarding the principle of "last come first go", the learned Counsel would

argue that the learned Judge himself would say that Section 25-F was complied with and Section 25-N could "not be complied with, because it

was not in the statute and hence, the learned Counsel would ultimately pray for allowing the first two writ petitions and dismissing the third one.

21. In assessing the facts and circumstances as pleaded and argued on the part of the employer and the workmen and upon hearing the learned

Counsel for both and in consideration of the legal position, there is no denial of the fact that the petitioners in the third writ petition were permanent

employees of the management. The Spencer and Company, Madras which consists of various units or departments, out of which one was the

"House Furnishing Unit" wherein 89 employees are reported to have been working in the said unit of the Spencer and Company, that at the time of

closure of the said unit on September 1, 1984, the number of workers attached to that unit alone is said to have been 84 who were said to be the

members of the third writ petitioner union and it further comes to be known that at the time of passing the award by the Industrial Tribunal, 74

workmen were the members of the petitioner union; that after long struggle, battle and protracted proceedings taken out against one and another in

different fora, ultimately the dispute was referred for adjudication to decide the issue whether the action of the management of the Spencer and

Company, Madras to close down the "House Furnishing Unit" is justified, if not to give appropriate direction and the same having come to be

testified in W.P. No. 6664/1990, on the directions issued by this Court giving liberty to the petitioner to raise all relevant questions before the

Tribunal and hence, ultimately, the Industrial Tribunal, Madras, framing six issues as mentioned supra has answered on all the issues altogether after

having a fair discussion on the subject.

22. At the outset, it is to be mentioned that the very two writ petitions have been filed by the management itself since only in the name of the

Company i.e. "The Spencer and Company" and not by the "House Furnishing Unit" and hence, from this itself it could be understood that the

management is only "The Spencer and Company Limited" and to the "House Furnishing Unit" which is one of the departments or units or segments

in the management and that in this unit alone 84 workers are said to have been working and on account of closure all these workers have been

rendered jobless from September 1, 1984 on being terminated lock stock and barrel. The learned Labour Judge was also dealing with this issue

appropriately taking into consideration of the facts and circumstances such as the existence of the different departments in the Spencer and

Company like House Furnishing Department, Machinery Electrical Maintenance, etc. and further considering inter-departmental transfers effected

from time to time with specific instances of the individuals and in further consideration of Ex. W. 1 wherein it is captioned ""inter- departmental

correspondence"" which has been issued by the Secretary of the Spencer and Company and on such vital evidence and considerations, the

Industrial Tribunal would validly arrive at the conclusion that the "House Furnishing Unit" is not a separate entity, but only a department of the

management "Spencer and Company Limited".

23. I am in entire agreement with the conclusions arrived at by the Industrial Tribunal so far as issue No. 1 is concerned. Once this question is

solved, the other question as to the strength of the workmen whether it is 100 or less could hardly be arrived at; that it is an admitted fact that the

closed single unit itself consisted of 89 workmen. All other units put together, the management should have more than 100 workmen easily; that the

management has not spelt out the real strength of the Spencer and Company but would knowingly advance a false plea that since the unit consisted

of less than 100 workmen, an industrial dispute cannot be maintained as though the House Furnishing Unit is the management. Hence, only an

adverse inference could be drawn against the management so far as it clings to this untenable pleading to fish out something in troubled waters.

Moreover, there is no denial on the part of the management that all the units put together it is more than 100 and hence, issue numbers 2 and 3

could be settled concluding that since it is "The Spencer and Company", Madras which is the management of the contesting workmen, it is

confirmed that it had more than 100 workmen which is not at all either in dispute or denied by the management. What it wants to putforth is that

the House Furnishing Unit is consisting of 89 workers and hence for raising an industrial dispute, at least 100 workmen must be there as though it is

The House Furnishing Unit" which is the management in this case and not "The Spencer and Company Limited" whereas as stated earlier from the

very act of the above two writ petitions filed by the Spencer and Company Limited against the workmen, it is clear that it is not the House

Furnishing Unit but the Spencer and Company Limited which is the management. From this and such other untenable stand taken by the

management, the management has not only miserably failed to substantiate the said stand, but also has left way for forming adverse inference

regarding the bona fides of its statement relating to the alleged closure without obtaining prior permission of the Government.

24. From the oral evidence adduced on the part of the management, it is an admitted fact that no proper notice had been issued as contemplated

by law. However, it is the case of the management that notice was issued at a later stage which is also admitted on the part of the workmen and in

such circumstances, the receipt of the amount as contemplated in the reply notice by the workmen under protest is not the point for consideration

whether the management issued proper notice in compliance of the requirements of the Section in its entirety. On the part of the management, it

would be contended that no rules were framed nor the format prescribed and in result, the management was not able to comply with Section 25-F

procedures and such explanation offered on the part of the learned Counsel for the management has been admitted by the Industrial Tribunal.

However, I am not in agreement with the conclusions arrived at by the Industrial Tribunal having accepted the explanation offered on the part of

the management. Still, the section insists that the workmen have to be given one month's prior notice in writing indicating the reasons for

retrenchment as contemplated u/s 25-F(a) and the workmen have to be paid at the time of retrenchment, compensation which shall be equivalent

to 15 days' average pay as contemplated u/s 25-F(b) and the notice in the prescribed manner should have been served on the appropriate

Government and the authorities specified by the Government as contemplated u/s 25-F(c) and so long as these are the conditions precedent that

are contemplated by law that have to be followed prior to closure which are mandatory, the non-compliance of the same would only render the

closure illegal and accordingly, the closure is hereby declared illegal and void.

25. In short, it is the Spencer and Company Limited which is the party in all the above three proceedings is undoubtedly the management for the

workmen of the third writ petitioner union and not one of its units, the "House Furnishing Unit" which had been closed on September 1, 1984, that

in the Spencer and Company there has been more than 100 workers and as such, an industrial dispute could be maintained by any of its

employees or some of its employees as it is the petitioners in the case in hand; that on account of non-compliance of the relevant provisions of law

and without substantiating properly the loss occasioned to the management and without proper compliance of the notice contemplated by law

having closed their "House Furnishing Unit", the act of the management in announcing such closure would only amount to unfair trade practice and

hence, the closure of the unit thereby rendering the workmen jobless is nothing but illegal and void.

26. The management Spencer and Company Limited for the closure of one of its wings or segments or departments viz. the "House Furnishing

Unit" attributes the reason of loss, that occurred but absolutely no evidence is putforth to substantiate its claim that the said unit was running in loss.

However, the members of the third writ petitioner union i.e. the retrenched workmen being the employees of the Management/"Spencer and

Company Limited" and not the "House Furnishing Unit" even in the event of exigencies to close down the unit should have considered to

appropriate and engage these workmen in the other segments or departments. Simply, attributing the reason that one of the departments was

running at loss, declaring closure of that department thereby retrenching all the workers working in the particular department at that time is quite

unreasonable and unconscionable. In turn, the management should have given a serious thought to the plight of the workmen when they were

rendered jobless and should have made such alternate arrangement to assign them work in the other units befitting their status and qualification.

Besides having not furnished proof or assigning valid and tangible reasons for the loss occasioned to the management on account of running the

"House Furnishing Unit", the management also has not thought of making any alternate arrangement for the employees of that particular unit which

is said to be running in loss. In case of such closure, the management simply has announced the retrenchment of the workers at that time engaged in

that particular unit or department is nothing but unfair trade practice as termed in the industrial and legal parlance. Hence, the Industrial Tribunal so

far as it concluded justifying retrenchment at the time of closure of the unit is wrong. Such conclusion arrived at by the Industrial Tribunal is nothing but perverse and unacceptable in any ratio or the legal norms. Even in the event of closure of the "House Furnishing Unit" of the Spencer and Company Limited, the management should have taken into consideration the overall seniority of all the workers employed in the entire management Spencer and Company Limited along with the workers of the House Furnishing Unit and adopting the rule "last come first go" should have retained the senior workmen since their job is one transferable from one unit to the other thus atleast protecting the senior workmen. But on the contrary, having sacked all the workers of the single unit at the time of closure lock stock and barrel, the management has proved its unethical standards adopted towards the labour force. Furthermore, once having held that the "House Furnishing Unit" is not a separate entity nor the management of the workmen and it is only the Spencer and Company Limited, Madras, which is the management and having further decided that there are other units like Aerated Water Factory, Electrical Department, Drugs Factory, Soda Factory, Air Conditioning Department, Showroom Department, Spencer Pharmaceutical and Spencer Consumer Stores etc. and that their jobs were interchangeable and that the petitioners have already worked in other departments too at the time of closing down the "House Furnishing Unit", the Labour Court has absolutely no reason to jump to the other conclusion when the point of reinstatement was decided simply stating that since the "House Furnishing Unit" has been closed, the reinstatement of the workers is impossible forgetting the fact that there had been common seniority list maintained and the said common seniority should have been taken into consideration before closure of the "House Furnishing Unit" or ordering the retrenchment of the workers attached to the "House Furnishing Unit" alone. While it is open for the management to absorb the workmen into other departments, it had absolutely no reason to have retrenched all the workers of the House Furnishing Unit even in the event of taking the decision to close the House Furnishing Unit. In these circumstances, the Labour Court has no reason to comment that ""since the House Furnishing Unit has been closed, there is no possibility of reinstatement of these workers"" and based on such comment to give a finding that the workers would not be entitled to reinstatement but entitled

only to the benefits u/s 25-E of the Act. From these remarks and conclusion arrived at, the Labour Court has not only deviated from its own stand

that the House Furnishing Unit is one of the segments or departments of the Spencer and Company Limited and that the closure of the House

Furnishing Unit and retrenchment of the employees is illegal and unjustified but only reinstatement of these workers is not possible thus arriving at

an illogical conclusion even from the very stand taken on the part of the Labour Court for the main points. On the contrary it should have only

concluded that the workmen in this case are entitled to reinstatement in service and at this point, as it is well claimed on the part of the workmen, it

is held that the impugned order is vague and illegal.

27. For all the above discussions held, the only conclusion that could be arrived at is that the closure of the unit viz. "House Furnishing Unit" of the

management Spencer and Company Limited thereby rendering the third writ petition union members jobless is without sufficient cause or reason

and in consequence, the workmen become entitled to reinstatement with all back wages and attendant benefits.

28. In the above circumstances, it has become incumbent on the part of this Court to interfere with the decision of the Industrial Tribunal in the

manner as above decided.

29. In result, the third Writ Petition No. 13640/1995 is allowed in full. The closure of the "House Furnishing Unit" thereby retrenching the

workmen of the petitioner union is declared illegal and void. Consequently, the members of the petitioner union are ordered to be reinstated by the

second respondent/Management with full back wages and all attendant benefits.

30. The second Writ Petition No. 10267/1995 filed by the management is dismissed.

31. In view of the judgments rendered, the first writ petition filed in W.P. No. 11397/1990 becomes infructuous and hence it is dismissed as

infructuous.

32. Consequently, W.M.P. Nos. 16924/1990 and 16282/1995 are dismissed.

33. However, in the circumstances of the cases, there shall be no order as to costs.