

(1975) 03 MAD CK 0020
In the Madras High Court

State Bank of India

APPELLANT

Vs

N. Sundaramony

RESPONDENT

Date of Decision : 24-03-1975

Acts Referred:

Constitution of India, 1950 — Article 133
Industrial Disputes Act, 1947 — Section 2, 25F, 33C

Citation : (1975) ILR (Mad) 150 : (1975) 1 LLJ 453 : (1975) 88 LW 499

Hon'ble Judges : K. Veeraswami, C.J.; S. Natarajan, J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—This appeal raises a point with reference to which to the arguments are somewhat nicely balanced. The respondent,

a B. Sc., graduate of the Madras University was employed between July 4, 1970, and November 18, 1972, as a cashier in the Kuzhithurai branch

of the appellant-bank. There were intermittent breaks in the service. The last order of appointment dated November 10, 1972, recited that the

respondent was appointed with effect from that date for a period of nine days on a salary of Rs. 200 per mensem and dearness and other

allowances as applicable under the Desai Award. This followed certain terms and conditions, of which the first two are:

(1) The appointment is purely a temporary one for a period of 9 days but may be terminated earlier, without assigning any reason therefore at the

bank's discretion ;

(2) The employment, unless terminated earlier, will automatically cease at the expiry of the period, i.e., 18-11-1972.

There was the third condition, which prescribed that if the respondent wished to leave the service before he should give 14 days notice in writing

failing which he would be held liable for a week's pay. Curiously, the last term was that the temporary appointment would not confer on the respondent any right to claim for absorption in the bank's permanent establishment in any category. The respondent applied to have this order of appointment quashed and a direction to the appellant to repost him as cashier. The ground of the respondent was that he had actually worked for 240 days, that as such he had a continuous service which qualified, him for his statutory retrenchment compensation u/s 25F of the Industrial Disputes Act, 1947, and that since this provision was not complied with, the order limiting the period of service amounting to termination was invalid. K.N. Mudaliyar, J., who considered the petition, allowed it on the view that although there was no separate order terminating the respondent's services, the provision in the appointment order aforesaid bringing about an automatic termination amounted to a termination and a retrenchment" within the meaning of the term as defined by Section 2(oo) of the Industrial Disputes Act. He quashed the appointment order, but said that he would forbear from giving any further direction. The bank appeals.

2. Mr. M.R. Narayanaswami for the appellant-bank submits that,

(1) there is no termination in this case of the respondent's services so as to satisfy the definition of "retrenchment" ; and

(2) in any case retrenchment could only be of surplus labour, which was not the case here.

The definition of "retrenchment" says that it means the termination by the employer of the service of a workman for any reason whatsoever,

otherwise than as a punishment inflicted by way of disciplinary action. Three categories of termination or cessation of service are excluded from the

purview of the definition such as voluntary retirement of the workman, retirement on superannuation in case the contract of employment provides

for cessation of service at that stage and termination of the service of workman on the ground of continued ill-health. Section 25F makes it a

condition precedent to retrenchment of a workman that he be given a month's notice in writing indicating the reason for retrenchment or in the

alternative he be paid wages for the period of notice in lieu of it. There is a proviso to the effect that no such notice is necessary if the retrenchment

is under an agreement which specifies a date for the termination of service. One

other qualifying requisite for retrenchment is that the workman should have been in continuous service for not less than one year under an employer. "Continuous service" has been defined too. But there is no dispute in this case that the respondent had put in such continuous service. The appellant's stand with reference to retrenchment as defined, is that it is not any termination that will fall within its purview, but only that made by the employer, be it by a separate order or under an agreement, which specifies order or under an agreement which specifies a date for the termination of service. But where as in this case as appointment is for a specified period indicating the dates on which it takes effect and it comes to an end, there is no room for any termination. That is what the appellant contends. "Termination" in its normal significance is bringing to an end, cessation, or coming to a close. But emphasis is laid by Mr. M.R. Narayanaswami on the phrase "by the employer" immediately following the word "termination" and he wants to read the phraseology put together and contend that it must be a termination by the employer, which according to him means, by an order issued by the employer and not a case of automatic coming to a close of the employment by reason of the fact that its commencement and cessation is indicated by the appointment order itself. In support of this contention, learned Counsel for the appellant has relied on R.V. Secretary of State [1973] 2 All E.R. 104. The Court of Appeal, in that case, was concerned with an appointment of a medical assistant in geriatrics in a group of hospitals in the United Kingdom, for a two year period, renewable subject to confirmation indefinite period. At the end of the period, he was not renewed, and he claimed to be entitled to make representations against his dismissal as he considered it. The Court of Appeal held that the words "being unfairly terminated" in the terms of contract providing for representations against dismissal, postulated some positive action by the hospital Board bringing the appointment to any end, e.g., by notice. The relative words which came up for interpretation were "....surgeon considers that his appointment is being unfairly terminated" and the English Court was concerned with the question whether, in the circumstances mentioned, the surgeon was unfairly terminated. Lord Denning, M.R., while dealing with the question, said: I think that the word "terminanate" or "termination" is by itself ambiguous. It

can refer to either of two things either to termination by notice or to termination by effluxion of time. It is often used in that dual sense in landlord and tenant and in master and servant cases. But there are several indications in this paragraph to show that it refers here only to termination by notice.

Then, the learned Master of the Rolls went on to point out those special features which persuaded him to take the view he did.

3. Buckely, L.J., put the matter thus:

In my judgment the words are not capable of bearing that meaning. As counsel for the Secretary of States has pointed out the verb "terminate" can

be used either transitively or intransitively. A contract may be said to terminate when it comes to an end by effluxion of time, or it may be said to be

terminated when it is determined by notice or otherwise by some act of one of the parties. Here in my judgment the word "terminated" is used in

this passage in para 190 in the transitive sense, and it postulates some act by somebody which is to bring the appointment to an end, and is not

applicable to a case in which the appointment comes to an end merely by effluxion of time.

On that view, he agreed with the view of Lord Denning, M.R. We respectfully agree with the observations of the Court of Appeal in respect of the

word "terminate" or "termination." But the question is, in what sense that word has been used in Section 2(oo) of the Industrial Disputes Act. Is

there any indication in the definition or in the context of the rest of the provisions of the Act to conclude that "termination" in Section 2(oo) means

not only that by notice but also that by effluxion of time ? True it is that the word "termination" in the definition is followed by the words "by the

employer". But, to our minds, it is not indicative of the fact that termination should always and necessarily be by a separate order or an expression

independently of the appointment order or the period of termination of employment. In either case, whether by notice or by effluxion of time,

termination will be by the employer The words "by the employer" are used only to indicate the contrast of cessation of employment by an act of the

workman, himself and that is what is indicated in Clause (a) of Section 2(oo), namely, voluntary retirement of the workman. That will also be a

case of termination or cessation of employment. Again, Clause (b) relating to

retirement by superannuation also is a kind of termination. But it takes effect with reference to the fact of superannuation, and that is expressly excluded from the purview of retrenchment. Termination of service of a workman on the ground of continued ill-health also is not retrenchment. These three illustrations, which are given in the definition section itself, as they seem to us, point to the fact that termination need not necessarily be by a separate order of the employer. If there is any indication in some form or other in the same document making the appointment or in any other way, and the time at which employment is to come to an end is indicated, that will be a termination, in our opinion, by the employer within the meaning of the definition of "retrenchment". Reference may also be made to the other provisions in Chapter VA relating to lay-off and retrenchment. The object of this chapter is to provide certain benefits to workmen. Section 25F safeguards continuity of service of an employee who had put in a continuous period of service within the meaning of that section by providing the benefits contemplated by it, subject to conditions. The proviso is rather significant, because, that contemplates a case where no notice is necessary for qualifying for retrenchment where an agreement specifies a date for termination of service. It may be noted that though no separate order by an employer is issued, still, because termination of service is provided for and agreed to that it should take place on a specified date, the workman is given the retrenchment benefit. That is another indication, in our opinion, against the contention of the appellant restricting the scope of retrenchment for purposes of the Industrial Disputes Act.

4. A number of decided cases have been brought to our notice on either side. But, in our opinion, none of them has a direct bearing on the question we are called upon to decide. In *Murugesan Naicker Co. v. Labour Court* 1963 I L.L.J. 495, one of us dealt with the definition in the light of earlier decided cases particularly, *Hariprasad v. A.D. Divelkar* 1957 I L.L.J. 243, and held that the word "retrenchment" should be understood in the ordinary sense and that it is not every termination that can be retrenchment, but termination, in order to be retrenchment, should be of surplus labour or staff and in an industry which is continuing and not closed or transferred. That view was accepted in writ Appeal No. 5 of 1972. Mr. Ramachandran, defending, as he was, the appeal, drew our attention

to The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., , which really related to the scope of Section 33C(2) of the Industrial Disputes Act, and L. Krishnan and Others Vs. The Divisional Personnel Officer, Southern Railway and Another, , which lay emphasis on the fact that in order a termination to be retrenchment, it must be of surplus labour. Agents and Manufacturers v. E.S.I., Corporation 1972 11 L.L.J. 446, took the view that even a temporary workman was entitled to the benefit of retrenchment provided he satisfied the conditions of Section 25F. Management of Willcox Buckwell India Ltd. Vs. Jagannath and Others, , was a case an employee who worked for wages from day to day, but, for a continuous period, and the question in his case was whether he was entitled to retrenchment benefits. The letters of appointment contained a provision that a certain period of notice should be given before termination of service and the decision proceeded on that basis. It is thus clear that none of these decisions is in point in this case.

5. The only other question which Mr. Narayanswami for the appellant pressed before us is that even assuming that this is a case of termination within the meaning of the definition of the word "retrenchment" in Section 2(oo), this was not a case of termination of surplus labour. But in the counter affidavit, it is disclosed that the respondent ceased to be employed because the permanent incumbent as cashier came in. Mr. Narayanaswami explains that in order to meet the exceptional and extraordinary contingencies in vacancies, from time to time temporary employees are drafted on terms as in the case of the respondent and that, therefore, looked at from that point of view, it cannot be regarded that this was a case of surplus labour. We recognise that there is some force in this case. But it cannot be denied at the same time that because the permanent incumbent comes in the temporary employee goes out, which really means that he becomes a surplus.

6. We are, therefore, of opinion that the respondent's stand is correct, namely, that he was entitled to retrenchment compensation and that inasmuch as it was not paid, but nevertheless he was terminated, the termination would be invalid. This, of course, leads to a strange result. But sometimes the working of the law is surprising which the Court cannot help it. The appeal is, therefore, dismissed, but with no costs.

7. Mr. Narayanaswami applies for leave under Article 133(1) of the Constitution of India. The question involved in this case is benefit of authority as it has been, and as we said, the arguments are very nicely balanced. Since it is a substantial question of law of public importance, we grant leave to appeal under Article 133 of the Constitution.