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In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 319 of 1979

Sunil Kumar Azmi and others APPELLANT

Vs

M.P. Road Transport Corporation and other RESPONDENT

Date of Decision : 19-09-1979

Acts Referred:
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(oo), 25F, 25G

Citation : (1980) JLJ 561

Hon'ble Judges : G.P. Singh, C.J;C.P. Sen, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; V.S. Dabir, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.—The petitioner No. 1 Sunil Kumar Azmi was employed as Lower Division Clerk and petitioners 2 and 3, namely, Hazarilal and Manbahadur, as Security Guards, by the M.P. Road Transport Corporation. Their services were terminated by orders passed on 21st November 1974 under Regulation 69 of the Service Regulations, 1964, read with the Standard Standing Order 11. The petitioners challenged the orders terminating their service by separate applications to the Labour Court. AH these applications were consolidated and decided by the Labour Court by an order dated 14th December 1977. The Labour Court held that the termination was based on misconduct and as there was no regular domestic enquiry held before the orders of termination were passed, the orders were invalid. The Labour Court directed reinstatement of all the petitioners but did not allow back wages. The Corporation went up in revision to the Industrial Court. The Industrial Court, by its order dated 6th July 1978, held that the termination was based on unsatisfactory work and loss of confidence although no such reasons were recorded at the time of passing of the orders of termination and their communication to the petitioners. The Industrial Court did not agree with the Labour Court that the orders of termination were founded on misconduct. However, the learned Member-Judge of the Industrial Court who passed the order on 6th July 1978, had some doubts on the question whether the omission to give reasons as required by Standard Standing Order 11 (b) could be cured by disclosing the reasons in the written statement before the Labour Court. The learned Member, therefore, formulated a question on this point and referred it for decision to a larger Bench. The question so referred was heard by the President and the Member-Judge who, by their order dated 2nd February 1978, decided that the omission to give reasons as required by Standard Standing Order 11 (b) can be cured by disclosing the reasons in the written statement and that the Labour Court can examine whether the reasons so given justify the order of termination. Thereafter the revisions filed by the Corporation were allowed by the Member-Judge on 15th February 1979 holding the orders of termination as valid. It may here be mentioned that the petitioners had also filed revisions against the disallowance of back wages by the Labour Court. These revisions were dismissed by the same order. The petitioners then filed this petition under Article 226 of the Constitution challenging the order dated 15th February 1979 passed by the Industrial Court.

2. The first contention raised by the learned counsel for the petitioners is that the Member-Judge who decided the revisions did not give any further hearing to the petitioners after the President and the Member-Judge decided the question referred by the Member-Judge by their order dated 2nd February 1979. It is true that no further bearing as contended above was given to the petitioners or the Corporation by the Member-Judge, but this omission in our opinion does not invalidate the final order of the Industrial Court passed by the Member-Judge. In the order dated 6th July 1978 by which the Member-Judge had referred a question to a larger Bench he had decided all other questions arising in the revisions and argued before it. The learned counsel for the petitioners could not point out any question which had remained undecided by the order dated 6th July 1978 excepting the question which was referred to be decided by the Bench. The learned counsel for the petitioners, however, submitted that had the Member-Judge given a further hearing before passing the final order, the petitioners could have raised a new point that the orders of termination were invalid because of non-payment of retrenchment compensation as required by section 25F of the Industrial Disputes Act, 1947. Now, this point admittedly was not raised in the revisions filed by the Corporation or the revisions filed by the petitioners. It was also not argued by the petitioners before the Member-Judge when he passed the order dated 6th July 1978 it was, therefore, not possible for the Member-Judge to anticipate that the petitioners bad something new to say in support of the order of the Labour Court and, therefore, they should be given a further hearing. In our opinion, the order of the Industrial Court dated 15th February 1979 cannot be held invalid simply on the ground that the Member-Judge should have heard the petitioners again before passing that order.

3. The second contention raised by the learned counsel for the petitioners is that the orders of termination upheld by the Industrial Court under Standard Standing

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Order 11 (b) amount to retrenchment and they were invalid because of violation of section 25F of the Industrial Disputes Act. This point was not raised by the petitioners in their applications filed before the Labour Court for challenging the orders of termination As earlier stated, it was also not raised at any stage before the Industrial Court. The petitioners are, therefore, not entitled to raise this point for the first time in this Court under Article 226 of the Constitution. The learned counsel for the petitioners submitted that this ground of challenge became available to the petitioners because of the recent judgments of the Supreme Court and therefore the point could not be taken before the Labour Court and the Industrial Court. The learned counsel for the petitioners in this connection drew our attention to the decisions of the Supreme Court in The State Bank of India Vs. Shri N. Sundara Money, 1 and M/s. Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and others AIR 1977 SC 31. Both these decisions of the Supreme Court had been reported before the Labour Court decided the petitioners'' applications on 14th December 1977. If the petitioners wanted to raise the point that the orders of termination were bad because they amounted to retrenchment, the point could have been taken by them before the Labour Court by amending their application and also before the Industrial Court at the time when the revisions were heard in that Court. The petitioners are, therefore, not entitled to raise this ground of objection to the orders of termination for the first time in this Court. Moreover, in our opinion, the discharge for unsatisfactory work or loss of confidence under Standard Standing Order 11(b) is not retrenchment attracting the application of section 25F of the Industrial Disputes Act. In Hariprasad Shivshankar Shukla and another v. A.D. Divelkar and others AIR 1957 SC 121, it was held by a Bench of five Judges of the Supreme Court that the word retrenchment, as defined in section 2(oo), should be understood in its ordinary acceptation to mean discharge of surplus labour or staff by the employer for reasons of economy, rationalisation in industry, installation of a new labour saving machinery etc., and that it did not include the termination of the services of workmen as a result of a real and bona fide closure of business. It was expressly ruled in Divelkar''s case that a termination to fall within the definition of retrenchment must be discharged of surplus labour or staff by the employer. This ratio decidendi is contained in the following observation:

(ii) There is no doubt that when the Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the Legislature; our task is to get at the intention as expressed in the statute. Therefore, we propose first to examine the language of the definition and see if the ordinary accepted notion of retrenchment first in, squarely and fairly, with the language used. What is the ordinary, accepted notion of retrenchment in an industry 7 We have had occasion to consider this question in Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union, where we observed:

But 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.

It is true that these observations were made in connection with a case where the retrenchment took place in 1951, and we specially left open the question of the correct interpretation of the definition of ''retrenchment'' in section 2(oo) of the Act. But the observations do explain the meaning of retrenchment in its ordinary acceptation. Let us now see how far that meaning fits in with the language used. We have referred earlier to the four essential requirements of the definition, and the question is, does the ordinary meaning of retrenchment fulfil those requirements? In our opinion it does. When a portion of the staff or labour force is discharged as surplusage in a continuing business, there are (a) termination of the service of a workman; (b) by the employer; (c) for any reason whatsoever; and (d) otherwise thin as a punishment inflicted by wav of disciplinary action. It has been argued that by excluding bona fide closure of business as one of the reasons for termination of the service of workmen by the employer, we are cutting down the amplitude of the expression ''for any reasons whatsoever'' and reading into the definition words which do not occur there. We agree that the adoption of the ordinary meaning gives to the expression ''for any reason whatsoever'' a somewhat narrower scope; one may say that it gets a colour from the context in which the expression occurs; but we do not agree that it amounts to importing new words in the definition. What after all is the meaning of the expression ''for any reason whatsoever''? When a portion of the staff of labour force is discharged as surplusage in a running or continuing business, the termination of service which follows may be due to a variety of reasons; e. g., for economy, rationalisation in Industry installation of a new labour-saving machinery, etc. The Legislature in using the expression ''for any reason whatsoever'' says in effect; ''It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment''. In the absence of any compelling words to indicate that the intention was even to include a bona fide closure of the whole business, it would, we think, be divorcing the expression altogether from its context to give it such a wide meaning as is contended for by learned counsel for the respondents. What is being defined is retrenchment, and that is the context of the definition. It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the frame work of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined.

4. In The State Hank of India v. Shri N. Sundara Money (supra), which is a case decided by a Bench of three Judges, Divelkar''s case was not referred to. In this case an employee who was intermittently employed, ceased to be in service after

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the expiry of the term mentioned in his last order of appointment. It was held that a termination of service resulting from expiry of the period for which an employee is employed is also termination for any reason whatsoever and comes within the definition of retrenchment given in section 2(oo) and attracts the application of section 25-F. The question whether the retrenchment must be a termination of employment of surplus staff for coming within the definition of section 2(oo) as held in Divelkar''s case was not gone into in this case. In M/s. Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and others (supra), the case of The State Bank of India v. Shri N. Sundara Money was followed, and it was held that the decision in that case did not go contrary to what was held in Divelkar''s case. In the case of M/s Hindustan Steel Ltd v. The Presiding Officer, Labour Court, Orissa and others the contract of the employees which was (or a fixed term was not renewed pursuant to a policy to "streamline the organisation and to effect economy wherever possible" The termination of the services of the employees by not renewing the contracts was thus clearly termination of surplus staff with a view to streamline the organisation and to effect economy. In this case also the question whether retrenchment would also cover cases where the termination is not of surplus staff did not arise for consideration. This case was also decided by a Bench of three Judges. In our opinion, none of these cases can be so read as to set at naught the legal proposition decided in Divelkar''s case that retrenchment as defined in section 2(oo) means the discharge of surplus labour or staff. Another case of the Supreme Court which was brought to our notice is Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others, This is also a case decided by a Bench of three Judges. In this case it was held that striking off the name of workman from the rolls by the management will amount to termination of service falling within the definition of retrenchment u/s 2(oo) attracting section 25F. Here also Divelkar''s case was not considered and the question whether workmen were terminated as surplus staff or otherwise was neither argued nor decided. This case also, therefore, cannot be held as laying down anything contrary to the dictum in Divelkar''s case. These cases can only be held to decide that for a termination to fall within the definition of retrenchment, it is not necessary that there should be any specific order of termination and that a termination following expiry of the period for which an employee is employed or a termination following striking out the name of a workman from the rolls by the management can also amount to termination within the definition of retrenchment contained in section. 2(oo). But, as earlier stated, these cases cannot be construed to decide that it is not necessary to fall within the definition of retrenchment u/s 2(oo) that termination should be of surplus labour or staff by the employer as held in Divelkar?s case.

5. We would also like to observe that the word "termination as used in section 2(oo) implies some act on the part of the employer which determines the employment and the aforesaid cases of the Supreme Court cannot be construed to decide that an automatic termination also falls within the definition. Loss of

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employment on the expiry of the period of employment was held to be termination in M/s Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and others (supra) and in The State Bank of India v. Shri N. Sundara Money (supra) on the reasoning that an employer terminates an employment not merely by passing an order as the service runs and that he can do so by writing a composite order, one giving employment and the other ending or limiting it. So when the employer employs a person for a particular term, the order granting employment is also effective as an order of termination on the expiry of the term of employment. In Delhi Cloth and General Mills Co. Ltd. v. Shambhu Nath Mukerji and others (supra) the termination was supported under a Standing Order which enabled the employer to terminate the employment if the employee absented for more than eight consecutive days. Striking off the name of the employee in such circumstances was an act of the employer terminating the employment. None of these cases is, therefore, an authority for the proposition that an automatic cessation of employment is also termination within the meaning of the definition of "retrenchment" u/s 2(oo). This view is in line with the decisions in Narsi Reddy v. The General Manager, A.P.S. R.T.C, Musheerabad 1978 I Lab. IC 1510 (Andhra) and in Dabur (Dr. S.K Burman) Pvt. Ltd. v. State of West Bengal and others 1978 II Lab. IC 1581 Cal . In Narsi Reddy''s case, the Andhra Pradesh High Court held that if under a regulation an employee is deemed to have resigned from service, the cessation of employment resulting from such deemed resignation does not amount to retrenchment u/s 2(oo). Similarly, in Dabur''s case, a Bench of the Calcutta High Court held that the cessation of employment resulting from over staying leave under a Standing Order did not amount to retrenchment. These cases support our conclusion that there should be some act on the part of the employer to bring about termination of employment to make it fall within the definition of retrenchment u/s 2(oo).

6. In the instant case, the petitioner''s services were not terminated on the ground that they were surplus. The orders of termination were held to be valid by the Industrial Court on the ground that they amounted to discharge simpliciter for unsatisfactory work resulting in loss of confidence. Such an order, in our opinion, is not retrenchment. A look at section 25G of the Act will show that the rule of last come first go applies to retrenchment. Such a rule cannot be applied when an employee is discharged for unsatisfactory work and loss of confidence. There is thus a clear indication in the Act itself that retrenchment is restricted to termination of surplus staff for reasons of economy or other similar reasons. The view taken by us is supported by a decision of a Division Bench of the Delhi High Court in The Management of Shri Ram Institute for Industrial Research Vs. N.L. Kakkar, The view taken by the Delhi High Court was also adopted by another Division Bench of this Court in J.D. Meghalan v. Corporation M.P. No. 10/79, decided on 27-2-1979, (Indore Bench), we respectfully agree with the view expressed by the Delhi High Court and the Division Bench in Meghulan''s case. We were also referred to a decision of the Kerala High Court in L. Krishnan v. The Divisional Personal Officer, Southern Railway (1972) 2 LLJ

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568, in which there are certain obiter observations that it is not necessary for a termination to fall within section 2(oo) that it should be of surplus staff. With great respect we are unable to agree with these observations.

6A. It was then contended by the learned counsel for the petitioners that the Industrial Court went wrong in holding that it was a case of discharge simpliciter based on unsatisfactory work and loss of confidence and that the Labour Court was right in holding that this was a case of termination for misconduct without holding any regular enquiry. The question whether an order of termination is grounded on misconduct or is based on unsatisfactory work and consequent loss of confidence has to be answered in the light of the facts and circumstances of each case. It is undisputed that the management can terminate the services of an employee under the Standing Order 11 (b) for unsatisfactory work and loss of confidence. It cannot also be disputed that the management can take a punitive action against an employee for misconduct and dismiss him from service under Standing Order 12. The facts found are that on 29th October 1974 the petitioners 2 and 3 were posted as Security Guards During the hours of duty, petitioner No. 1 and two others came to the office and all of them indulged in excessive drinking. In the morning the lock of the almirah in which pilferage cases were kept was found to be damaged of which a report was lodged. A preliminary enquiry was held by the management in which petitioners 2 and 3 were examined They admitted the above facts in their statement. Petitioner No. 1 could not be examined as he was absent. The management did not give any charge-sheet to the petitioners. The orders of termination did not refer to any misconduct and no stigma was cast on the petitioners. In these circumstances, we are of the opinion that the orders of termination were not founded on misconduct but amounted to discharge simpliciter of the petitioners under Standing Order 11 (b) for unsatisfactory work and loss of confidence. In Nathuram v. State industrial Court and others M.P. No. 274/79, decided on 7th August 1979 since reported in 1980 MPLJ 24, it was held that Standing Orders 11 and 12 confer independent powers on the employer and neither should be so construed as to emasculate the other or render it ineffective and therefore bona fide order of termination which is not founded on misconduct and is based on unsatisfactory service of the employee cannot be held to be punitive in nature and beyond the scope of Standing Order 11. In our opinion, the Industrial Court came to the right conclusion in upholding the orders of termination under Standing Order 11 (b).

7. It was lastly contended that the Industrial Court in upholding the orders of termination alternatively on the ground that misconduct was proved by the management before the Labour Court exceeded its powers of revision in interfering with the finding of fact of the Labour Court that the charge of misconduct had not been established before it. It is not necessary to go into this question because we are upholding the order of the Industrial Court under Standing Order 11 (b). The facts necessary for upholding the terminations under Standing Order 11 (b) were concurrently found by the Labour Court and the

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Industrial Court. It is true that the Labour Court held that the terminations were founded on misconduct and were invalid as no enquiry was held on the charges. This conclusion, however, was not a conclusion of fact but an inference resulting from application of wrong principles and the Industrial Court could differ from the Labour Court if it found that the legal principles were not correctly applied.

8. The petition fails and is dismissed. There shall, however, be no order as to costs.

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