

(1966) 07 PAT CK 0010

In the Patna High Court

Case No : Misc. Judl. Case No. 632 of 1964

The Employers in relation to Hind Strip Mining Corporation
Ltd.

APPELLANT

Vs

Raj Kishore Prasad and Others

RESPONDENT

Date of Decision : 05-07-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 1, 115
Industrial Disputes Act, 1947 — Section 11, 25F

Citation : AIR 1967 Patna 12 : (1968) 16 FLR 444 : (1967) 1 LLJ 108

Hon'ble Judges : R.L. Narasimham, C.J.; K.K. Dutta, J

Bench : Division Bench

Advocate : Lal Narain Sinha, S.K. Majumdar and T.K. Das, for the Appellant;
Ranen Roy, & counselsr> Rama Raman, J. Krishna and Rameshwar Prasad
(II), for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an application under Articles 226 and 227 of the Constitution by the employers for quashing the award given by the Presiding Officer, Central Government Industrial Tribunal, Dhanbad, holding that the retrenchment of 200 workmen with effect from the 15th September, 1962, was not justified.

2. The employers are a firm engaged as contractors for the purpose of removal of overburdens from certain collieries. They had taken two contracts, one from the Damodar Valley Corporation (D. V. C.) for removal of overburden from Bermo Colliery and the other from the National Coal Development Corporation (N. C. D. C.) for the removal of overburden from Bokaro and Kargali Collieries. It is not denied that the work in the N. C. D. C. collieries was completed sometime in 1961, and some of the employees of the petitioners working in those collieries were transferred to the D. V. C. colliery at Bermo soon after. On the 14th September, 1962, the employers put up a notice (Annexure C) to the effect that

due to restrictions of import licences, spare parts and engines were not available in the market and the existing plant and machinery of the employers which had deteriorated in condition could not be replaced and that consequently the production of overburden went down considerably. The management was, therefore, not in a position to maintain such a large number of workers meant for higher output, and hence decided to retrench a large number of workers with effect from the 15th September, 1962, after giving them the usual benefits. The same reason was repeated in the notice (Annexure C/I) to individual workmen who were retrenched.

As soon as this notice was issued by the employers, the Colliery Mazdoor Sangh on behalf of the workmen raised an industrial dispute and sent a frantic telegram stating that the retrenchment was unjustified and illegal and that a conciliation proceeding should be held at once. The Conciliation Officer of the Government of India initiated conciliation proceedings and reported to the Regional Labour Commissioner that the conciliation failed mainly because of the following reason (See Annexure C/2):

"Since the representative of the management categorically stated that even if the spare parts and import licence are made available the 200 workmen would become surplus and they have to be retrenched in order to avoid continued financial loss. The conciliation, therefore, failed because the management did not want to retain the 200 workmen in employment any longer."

Thereupon the Government of India referred the industrial dispute u/s 10(1) of the Industrial Disputes Act to the arbitration of the Presiding Officer, Central Government Industrial Tribunal, Dhanbad, who gave his award on the 31st December, 1963.

3. A careful scrutiny of the award shown that the points in controversy raised before the Presiding Officer by the employers and the workmen were narrowed down to the following three points only:

(1) Was the Central Government competent to make the reference ?

(2) Was there sufficient justification for retrenchment of the workmen concerned, and, in any case, could the workmen who had accepted retrenchment compensation and also Provident Fund money challenge the legality of the retrenchment ?

(3) Whether in effecting retrenchment, the principle "last come first go" was complied with, or else, whether junior workmen transferred from the N. C. D. C. were retained and old senior workmen of the D. V. C. were retrenched ?

(4) The first point was decided against the employers by the Tribunal, and Mr. Lal Narain Sinha for the petitioners rightly conceded that he could not successfully challenge this portion of the decision of the Tribunal. As regards the second point, the learned Tribunal held that the ostensible reason given for retrenchment, namely, non-availability of spare parts and engines due to

restrictions on import licence and the inability to replace the old worn-out plant and machinery, thereby resulting in fall of production of overburden, was not acceptable in view of the statement made by the employers' own witnesses before the Conciliation Officer. He further came to the conclusion that the retrenchment was made mainly by way of victimising those workmen of the D. V. C. who were members of the Union and who were the most vocal in their agitation against the employers for implementing the coal award and other awards. As regards point No. (3), he did not give any finding, because, as stated in paragraph 10 of the award, Mr. Mukherjee, Counsel for the employers, did not press this point.

5. The finding of the Tribunal that the ostensible reason given by the employers for retrenchment of the workmen (Annexures C and C/1) was not acceptable is a pure finding of fact based on evidence adduced before the Tribunal. It cannot, therefore, be challenged in this writ petition.

6. Mr. Lal Narain Sinha, however, challenged the further finding of the Tribunal that the workmen concerned were retrenched by way of mere victimisation because they were the most vocal section of the Union on the ground that there was no evidence in support of this finding. He invited our attention to the fact that neither before the Conciliation Officer nor in their written statement filed before the Tribunal (Annexure F) did the workmen take the specific plea that the retrenchment was made by way of victimisation of those workmen who took prominent part against the employers by their Trade Union activities. The award of the learned Tribunal shows that the only piece of evidence to support this finding of victimisation was exhibit W-6, which was a joint written statement signed by the Vice-President and Secretary of the Union and filed before the Conciliation Officer on the 24th September 1962 (Annexure H). In that document, after referring to various other objections to the retrenchment, the Union further stated that the main motive of retrenchment was victimisation for the aforesaid reasons

This document was proved before the Tribunal, and though the plea of victimisation was not specifically taken in the written statement of the employees, nevertheless when this document was proved in the presence of the employers Counsel without objection the employers should have led rebutting evidence. This was however, not done, and the Tribunal, therefore, observed that this plea of the Union "was not controverted by the management and hence may be accepted as correct." Strict rules of evidence do not apply in industrial adjudication and so long as the rules of natural justice are observed and documents on which the workmen relied were put in evidence in the presence of the employer, it was the duty of the latter to rebut any Inference that might reasonably arise on a perusal of the contents of the documents. If, however, he would not adduce any such rebutting evidence and the Tribunal bases his findings on the contents of such documents, it will not be proper for this Court to interfere with that finding.

7. Mr. Lal Narain Sinha then urged that a careful scrutiny of Annexure H would show that the plea of victimisation was raised by the Union only "incidentally" and not as the main contention, and that as it was not specifically taken in the written statement it will not be fair to require the employers to rebut every observation that may be made incidentally in any of the documents filed on behalf of the workmen even without objection. I am, however, not impressed with this argument. A careful scrutiny of Annexure H shows that, apart from alleging that the reasons given by the employers for retrenchment were wholly untrue, the Union took up a specific plea that those workmen who were members of the Union and who "were the very vocal section of the employees in invoking the implementation of the Coal Awardwere singled out for retrenchment" and further said "thus their retrenchment is an act of victimisation by the management of the H. S. M. Corporation."

It is true that unfortunately these statements in Annexure H were prefaced with the words "incidentally it may be noted". But too much importance cannot be given to the word "incidentally", especially in the written statement filed by the office-bearers of the Colliery Union who cannot always be expected to use accurate English in expressing their ideas. Annexure H, when read as a whole, shows that the plea of victimisation was given as much importance as the challenge made of the correctness of the ostensible reasons given by the employers justifying the retrenchment. The employers were represented by a counsel before the arbitrator, and if the Counsel had carefully scrutinised Annexure H he would have known that the allegations of victimisation were definitely put forward and it was the duty of the employers to rebut the same.

8. I, therefore, see no reason for interfering with the finding of the Tribunal that the retrenchment was by way of victimising the most vocal section of the members of the Trade Union which was agitating against the employers.

9. It was then contended with considerable ingenuity that the employees had unambiguously stated in their written statement (Annexure F--See paragraphs 9, 11, 13 and 15) that the need for retrenchment arose mainly because the employers transferred some of their workmen who were working in the N. C. D. C. colliery after the termination of the work there on or about the 29th October, 1961. Hence it was urged that once the workmen themselves conceded the need for retrenchment due to surplus staff, any untrue statement that might have been made by the employers to Justify the need for retrenchment was immaterial and that the Tribunal should have only considered whether the retrenchment was effected in accordance with the well known principle "last come first go". It was further added that the Tribunal did not consider this question which was a vital issue in this case and he has gone off at a tangent and based his decision solely on the finding that the employers' reasons were not believable.

10. I have already summed up the three points raised before the Tribunal and further pointed out that point No. 3 which dealt with the question whether the

principle of "last come first go" was observed was not pressed by Mr. Mukherjee, Counsel for the employers. Thus no alternative case that even if the need for retrenchment be taken for granted the principle "last come first go" was observed was raised by the employers. They staked their entire case on two important grounds, namely, (1) the reasons given by the employers regarding the need for retrenchment should be accepted, and (2) in any case, the workmen who have obtained retrenchment benefits and Provident Fund money were estopped from challenging the legality of the order of retrenchment. It will not be proper, therefore, for this Court, in exercise of its writ jurisdiction, to hold that on the plea of the workmen the need for retrenchment must be taken to have been admitted.

Mr. Lal Narain Sinha, however, observed that on a perusal of the award it was clear that the learned Tribunal himself came to such a finding. I am, however, unable to accept this argument. It is true that in paragraph 17 the learned Tribunal observed, after refecting the employers' reasons, that "the case of the workmen is correct and the reasons given by the management are entirely untrue". If this paragraph is construed in the light of the preceding paragraph 16, it will be clear that by using the words "the case of the workmen" the Tribunal was merely referring to the allegation of victimisation, because in paragraph 16 the learned Tribunal observes "the case of the Union was that the management was determined to retrench the workmen concerned because they were all members of the Union and were very vocal section of the employees in invoking the implementation of the Coal Award." By using the words "the case of the workmen" in paragraph 17, the Tribunal was merely referring to the case as put forward in paragraph 16.

It will be too far-fetched to say that by using the words "the case of the workmen" the Tribunal meant not only the plea of victimisation but also the statement in paragraph 9 of the written statement of the workmen (Annexure F) to the effect that an artificial surplus of workmen was created by transferring a large number of workmen from the N. C. D. C. This will also be clear from the following observation in the middle of paragraph 18 of the award:--

"From the above it is clear that the reason given for retrenchment in exhibit M-5 was only an eye-wash and not the real reason and that H. S. M. C. was determined anyhow to retrench the 200 workmen concerned."

In my opinion it will not be a fair construction of the award to say that the learned Tribunal came to a clear finding that the workmen admitted chat the need for retrenchment in fact arose, chough the parties differed as to how the need was created. The contention on behalf of the labourers always was that there was no need for retrenchment at all, and hence the further question is to whether the principle "last come first go" was observed became unnecessary. This was perhaps the reason why Counsel for the workmen, Mr. Mukherjee, did not press point No. 3 which specifically dealt with this aspect.

11. I would, therefore, reject this contention of Mr. Lal Narain Sinha and hold that there was no failure on the part of the Tribunal to decide a vital issue in the case, namely, whether in effecting retrenchment the well known principle "last come first go" was observed or not. This question rightly did not arise in view of the submissions of the parties before the Tribunal and also in view of the fact that Counsel for the employers did not press this point.

12. Once it is held by a competent court that the reason given by the employers for retrenchment is untenable, the order of reinstatement cannot be assailed in a writ proceeding See *Sundareswaran v. Industrial Tribunal, Trivandrum* 1959 (1) LLJ 510 (Ker).

13. The next important question for consideration is whether the principle of estoppel would apply against those workmen who obtained retrenchment benefits and also Provident Fund money from the employers. The learned Tribunal, on a review of the entire evidence, held that this plea of estoppel must be rejected because "the workmen accepted the retrenchment compensation and Provident Fund money under protest because they were reduced to starvation level". In coming to this conclusion he has relied on the evidence of W. W. 1 and W. W. 2 and also on exhibit W. 4. Though this finding has been attacked, nothing has been shown to us to justify our interference with the finding. It is true that the Tribunal does not expressly say that while accepting retrenchment benefit and Provident Fund money under protest the workmen concerned intimated their protest to the employers. But this seems to follow as a necessary inference from the facts as narrated in the ward. The Tribunal specially referred to the letter of the Union dated the 21st November, 1962 (Ext W-4) in which the Union protested to the employers against their action in forcing the retrenched workers to write "full and final payment" at the time of the receipt of the money.

14. Apart from these considerations, as pointed out by their Lordships of the Supreme Court in *Workmen of Subong Tea Estate v. Subong Tea Estate*, (1964) 1 LLJ 333 (SC), technical plea of estoppel is out of place in an industrial dispute of this type. If as affirmed by the Tribunal, the workmen were in a starving condition and were thus forced to accept retrenchment benefit, that should not be held as a bar for preventing them in an industrial dispute from challenging the legality of the retrenchment.

15. Mr. Roy for the labourers further invited our attention to the fact that the dispute had arisen and had been placed before the Conciliation Officer prior to the workmen accepting retrenchment benefit. Thus when the industrial dispute had already arisen and the Union had taken up the cause of the workmen, any subsequent action of the individual workmen in accepting retrenchment benefit will not operate as estoppel.

16. For these reasons I see no ground for interference with that portion of the award which holds that the retrenchment was not justified and directs reinstatement of the workmen with all other consequential benefits.

17. Mr. Lal Narain, Sinha then urged that the Tribunal ought to have directed deduction of the retrenchment benefit obtained by the workmen out of the compensation that may be payable to them on reinstatement. This comment seems to be justified. Those workmen who had obtained retrenchment benefit must either pay back the sums so received to the employers, or else those sums should be adjusted while calculating the back wages, allowances and bonuses payable to them on their reinstatement as directed by the Industrial Tribunal. Subject to this slight modification as regards the consequential order, the award is maintained and this application is dismissed with costs. Hearing fee Rs. 200/-.

Dutta, J.

18. I agree.