

(1967) 01 AHC CK 0012

In the Allahabad High Court

Case No : Civil Misc. Writ No's. 4092, 4095, 4097, 4509 and 4510 of 1965 and 1564, 1565, 1567, 1568, 2241, 2244, 2290, 2584, 2602 and 2609 of 1966

U.P. Electric Supply Co. Ltd.

APPELLANT

Vs

H.V. Bowen and Another

RESPONDENT

Date of Decision : 31-01-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Electricity Act, 1910 — Section 7

Uttar Pradesh Industrial Disputes Act, 1947 — Section 18, 2, 25FF, 25FFF, 25J(2)

Citation : AIR 1968 All 95

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : Jagdish Sarup and T.N. Sapru, for the Appellant; R.S. Bisen and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This group of petitions arise out of proceedings pending before the Labour Court Allahabad, in respect of a claim of retrenchment compensation and bonus between the U.P. Electric Supply Co. Ltd. (hereinafter referred to as the petitioner company) and many of its workmen. They are directed against an order passed on 11th September, 1965, by the Labour Court deciding some preliminary legal objections raised by the Company and the order dated 8-2-1966 whereby some other issues were decided.

2. The petitioner company carried on at Allahabad the business of generation and distribution of electricity under a licence granted in 1914. In view of the provisions in the licence, the State Electricity Board, Uttar Pradesh took over the Company's undertaking and continued the work of generation and distribution of electricity with effect from 17th September, 1964. Since then the Company has ceased to have any business at Allahabad. Most of the petitioner company's officers and workmen joined the employment offered to them by the U. P.

Electricity Board at Allahabad. They filed petitions before the Labour Court at Allahabad u/s 6-H (2) of the U. P. Industrial Disputes Act claiming retrenchment compensation. Some of the officers claimed bonus for past years as also leave benefits. The petitioner company contested the claim. It raised preliminary objections to the maintainability of the petitions and to the competence of the Labour Court to entertain them. It also contested the claim on the merits. The following objections were treated as preliminary objections:--

(1) Whether the workmen's application was maintainable u/s 6-H (2) or should it have been filed before the State Government u/s 6-H (1) ?

(2) That retrenchment compensation was claimable under the Uttar Pradesh Act and not under the Central Industrial Disputes Act.

(3) That the transaction of taking over by the State Electricity Board was not a transfer but a closure, and Section 25FF of the Central Industrial Disputes Act was not applicable.

3. The Tribunal decided the questions by its order dated September 11, 1965. It held that the petition was maintainable u/s 6-H (2). It answered the second question also in favour of the workmen, and held that in the view of Section 25-J(2) of the Central Act, Section 6-R of the U. P. Industrial Disputes Act will not apply and the provisions of Chapter V-A of the Central Act will govern these cases. In respect of the third question, the Labour Court held that this was a case of transfer and not closure of business and as such the workmen were entitled to the benefit or retrenchment compensation u/s 25FF of the Central Act. All these three findings are questioned in the present petitions.

4. The officers and the workmen of the Company are claiming retrenchment compensation. The Officers are also claiming bonus (the claim for leave benefits was given up). The petitioner company is disputing the right of the officers and the workmen to receive both these kinds of claims. Its case is that the officers and the workmen voluntarily abandoned their services with the Company and joined the services offered by the State Electricity Board; and as such the Company had not terminated their services and was not liable to pay retrenchment compensation. In respect of bonus, the company's defence was that the officers had entered into service agreements with the Company renouncing any claim to bonus and on that ground they were not entitled to receive any bonus. It had also pleaded that the officers do not answer the definition of workmen as given in the Industrial Disputes Act and so they were not entitled to any relief. There was no dispute as to the rate of pay or the length of service. It is clear that the dispute between the parties does not relate to mere arithmetical verification of the retrenchment compensation or bonus, but to the entitlement or the right to receive itself. On these facts the decision of a Division Bench of this Court in Civil Misc. Writ No. 2726 of 1961 dated 22-11-1966 (All) is applicable. The Division Bench had held that such a claim was maintainable under Sub-section (2) of Section 6-H.

5. For the petitioner company it was urged that the Division Bench did not notice the latest case of the Supreme Court, in *The Sawatram Ramprasad Mills Co. Ltd. Vs. Baliram Ukandaji and Another*, It is true that this case was not cited before the Division Bench and has not been considered by it, but, in my opinion, that case does not make any departure from the pre-existing legal position. That was a case under the Central Industrial Disputes Act. Section 33C of the Central Act is identical in terms in Section 6-H of the U. P. Industrial Disputes Act. In that case the proceedings were commenced by an application u/s 33C(1) of the Central Act for a claim for compensation for lay off. One of the objections was that the application u/s 33C was incompetent. This objection was over-ruled by the Supreme Court on the basis of its decision given in *Kays Construction Co. (P) Ltd. Vs. State of Uttar Pradesh and Others*, . It was held:

"It is not essential that the claim which can be brought before the Government or Us delegate u/s 33C(1) must always be for a predetermined sum. The Government or the Labour Court may satisfy itself about the exact amount and then take action under the section. In the present case the dates of lay off are known and each workman will show to the Second Labour Court that he is qualified to receive compensation for lay off. That will be shown from the muster roll which the employer is required to maintain and it will then be a simple arithmetical calculation which, in our judgment, Section 33C permits to be made."

6. This observation re-enforces the decision of the Division Bench that cases of simple arithmetical verification will alone properly fall under Sub-section (1). In this case it was not urged before the Supreme Court that the application was not maintainable under Sub-section (1) but that Sub-section (2) was really applicable. Their Lordships were not called upon and did not touch the question of the content and scope of Sub-section (2). This decision, therefore, cannot be treated as an authority interpreting Sub-section (2). For the petitioner company reliance was placed upon the following observations in this case;

"If there is any question whether there was lay off or not the Labour Court will decide it."

This observation at best shows that if the question whether there was a lay off or not arises incidentally, it can be dealt with in proceedings under Sub-section (1). This passing observation, in my opinion, does not establish that their Lordships held or intended to hold that such a claim will not lie under Sub-section (2). Alternatively, the matter can be looked into from another point of view. The Central Act 36 of 1964 has amended Section 33C of the Central Industrial Disputes Act. Previously Sub-section (2) referred to a claim for any benefit. The amending Act has added the words "any money" in it. After the amendment, a workman, can apply under Sub-section (2) if he is entitled to receive from the employer any money or any benefit capable of being computed in terms of money. Dealing with this amendment the Madras High Court in *R. Sreedharan Vs. M.V.A. Dias and Others*, repelled the argument that this amendment could only be indicative of a change in the scope and content of Sub-section (2) as it stood

prior to the amendment. It held that the amendment might well be to clarify rather than to alter the law. According to this decision, the Parliament did not change the law but clarified the position that the claims for money also will lie under Sub-section (2).

In my opinion the interpretation of Section 6-H of the U. P. Industrial Disputes Act by the Division Bench still holds the field and does not require reconsideration. As would be seen later, the present case would be governed by the provisions of Chapter V-A of the Central Act. The applications may be maintainable u/s 33C of the Central Act. That provision was amended on 19-12-1964 by the Amending Act 36 of 1964. The petitions by the workmen and the officers were filed before the Labour Court in or about January, 1965. They would hence all be governed by the amended Section 33C and would clearly be maintainable under Sub-section (2) as it stood after the amendment. It was stated by the learned counsel for the workmen, that under the Central Act the respondent Labour Court had been authorised to entertain claims under Sub-section (2) of Section 33C. So, the petitions made by the respondents though headed u/s 6-H (2) of the U. P. Act, were nonetheless maintainable and entertainable by the respondent Labour Court.

7. Another aspect of this question deserves mention. Under Sub-section (1) the State Government or its delegate has to decide the claim. Under Sub-section (2), the Labour Court does it. The nature of the disputes between the parties will be the same Irrespective of the Tribunal dealing with the matter. The nature of the enquiry is quasi Judicial in both cases The State Government or its delegate does not act in its subjective satisfaction, but decides objectively. The petitioner company would have had no advantage if the matter had been before the State Government or its delegate under Sub-section (1). The objection is merely technical and does not advance the cause of substantive justice. In my opinion it will not be a sound exercise of discretion vested in this Court by Article 226 of the Constitution, to interfere on such a purely technical plea, and by nullifying the entire proceedings and rendering a total waste of the time and money spent before the Labour Court by the parties, refer them to a fresh innings before the State Government or its delegate,

8. The second question relates to the applicability of Section 25-J(2) of the Central Act in preference to Section 6-R of the State Act. On this question Sri Jagdish Swarup, learned counsel for the Company, covered a large field, and made an elaborate submission relating to the interpretation and operation of Article 254 of the Constitution; but I am relieved of dealing with this submission because the Supreme Court has spoken on the subject in Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others,). The Supreme Court dealt with the applicability of Sections 6-R and 25-J(2). It observed that

"it is thus clear that the last part of Section 25-J(2) categorically provides that the rights and liabilities of the employers and workmen in relation to lay off shall be determined in accordance with the provisions of Chapter V-A of the Central

Act. This clearly means that in regard to the question of payment of compensation for lay off and retrenchment, the relevant provisions of the Central Act will apply and not those of the Uttar Pradesh Act."

Their Lordships came to the conclusion:

"The position therefore is that Section 25-J(2) makes Chapter V-A of the Central Act applicable to disputes in relation to compensation for lay off, notwithstanding Sections 6-K and 6-R of the Uttar Pradesh Act."

This declaration of law makes Section 6-R and the consequential provisions of Sections 6-J to 6-Q of the U. P. Act inapplicable. The claim for retrenchment compensation will be governed by Chapter V-A of the Central Act which includes Section 25FF. The finding of the Labour Court, is therefore, in accordance with the law.

9. The third point relates to the question whether it was a case of closure of business as contended for by the company before the Labour Court, or of transfer, as found by the Labour Court. The facts are not in dispute. The petitioner's licence stood expired and taking advantage of a provision in the licence, the U. P. State Electricity Board took over the electrical undertaking of the petitioner company on 17th September, 1964 on payment of its price. In a similar circumstance the Supreme Court held that it will be a case of transfer and not closure. In *Workmen of Uttar Pradesh State Electricity Board v. Upper Ganges Valley Electricity Supply Co.* 1966 LLJ 730 (SC) the licence of the Upper Ganges Valley Electricity Supply Company expired and the State Electricity Board purchased the electrical undertaking u/s 6 read with Section 71 of the Indian Electricity Act, 1910. Thereafter the electrical undertaking was run and managed by the State Electricity Board. The Supreme Court held that the undertaking never closed down. It continued in the hands of the Board. This dictum of the Supreme Court is applicable. The taking over of the company's undertaking did not entail any closure of the undertaking. It continued in the hands of the State Electricity Board. The case is, therefore, not of closure but of transfer, by exercise of option of purchase under paragraph 12 of the licence read with Section 7 of the Electricity Act.

10. The findings recorded by the Labour Court on all the three preliminary questions, therefore, do not suffer from any manifest error of law. Writ Petitions Nos. 4092, 4095, 4096, 4097, 4509 and 4510 of 1965 which are directed only against the order dated 11th September, 1965 are liable to be dismissed.

11. After disposing of these preliminary points, the Labour Court recorded the evidence of the parties and decided the question whether the officers were workmen and whether they were entitled to any retrenchment compensation or bonus. After an elaborate examination of the authorities on the point it concluded that:

"From an examination of the above authorities two things are clear viz. that even

if the workman possesses technical knowledge, he can hold technical supervisory or administrative post or assignment and if he does so, he would not be a workman if drawing over Rs. 500 subject to the restrictions mentioned in Clause (4) and secondly that what are the principal duties which one has to perform will determine his category."

This conclusion was not challenged at the hearing before me. The Labour Court then addressed itself to the question whether the application u/s 6-H (2) was maintainable only if the applicant was a workman on the date of the application. Relying upon the decisions of the Madras High Court, *Management of the Tiruchi-Srirangam Transport Co. Private Ltd. Vs. Labour Court, Madurai and Another*,) and *Manicka Mudaliar v. Labour Court, Madras*. 1961 LLJ 592 (Mad) it held that an application would be maintainable by a person for the period during which he was a workman (i.e. till he was drawing upto Rs. 500) even though he was not a workman (i.e. had crossed the limit of Rs. 500) on the date of the application or on the date of the transfer of the undertaking. This finding was challenged on behalf of the petitioner company. I am unable to endorse the submissions made on behalf of the petitioner company, because it is concluded by a decision of this Court in another writ petition filed by the petitioner company in *U. P. Electric Supply Co. Ltd. v. Assistant Labour Commissioner, Allahabad* 1966 II Lab LJ 714 (All). A learned Single Judge of this Court held that in order to maintain an application u/s 6-H (I) of the U. P. Industrial Disputes Act, it was not necessary that the applicant should have been a workman on the date of the application. I am in agreement with this view. This enunciation of the law is equally applicable to an application under Sub-section (2) of Section 6-H.

12. The labour Court repelled the petitioner Company's plea that the officers had entered into service agreements and in view of the terms of the service agreements, they were entitled to claim any bonus or retrenchment compensation. The benefit of retrenchment compensation is provided by the Industrial Disputes Act That provision is not subject to any contract. The terms of the contract will not override the statutory provisions. The petitioner company cannot get rid of the statutory liabilities on the basis of the contract with the workmen. Similarly, the benefit of bonus is claimed on the basis of certain awards of the Industrial Tribunals. If these awards are applicable to these officers, they will be entitled to bonus also. The petitioner company will not be entitled to disclaim its liability to pay the bonus according to the awards, merely because of the contracts. The contracts will be subservient to the awards.

13. For the petitioner company the finding of the Labour Court that the respondents did not abandon the employment or voluntarily joined the services offered by the State Electricity Board, is challenged. On a review of the evidence it held that the workmen did not voluntarily abandon their employment with the petitioner company. In view of the transfer of the undertaking they had to take the offer of fresh appointments with the Board It also held that the workmen had no occasion to make any choice because the company never offered to retain

their service even after the cessation of its business at Allahabad. The finding that the workmen had not voluntarily abandoned their service is based upon an appreciation of the evidence on the record. No error of law has been pointed out to me.

14. For the petitioner company it was stressed that the Labour Court did not record any finding that the petitioner company had terminated the services of its employees and hence it could not be said that they were retrenched. A claim to compensation u/s 25FF arises on transfer of the undertaking. Every workman who has been in company's service for not less than one year immediately before the transfer, is entitled to notice and compensation in accordance with the provisions of Section 25F "as if he had been retrenched". This provision of law assumes that on transfer, retrenchment takes place, unless the conditions mentioned in the proviso are satisfied. For this reason Section 25FF used the phrase "as if the workmen had been retrenched". In order to entertain a claim for compensation u/s 26-FF it is not necessary that the employer must terminate the services of the workmen. Moreover, the finding that the petitioner company did not retain their services or communicate to the workmen that they would be retained in service after the transfer and that they were not warned by the petitioner company that they would not be permitted to accept fresh appointments with the Board without being relieved by the company, go to indicate that the company had no intention and actually it did not retain their services.

15. The cases of the officers of the petitioner company are of five categories:

1. Shift Engineers.
2. Mains and Distts. Mains Engineers.
3. Meter and Assistant Meter Engineers.
4. Workshop and Maintenance Superintendent, and
5. Power Station Superintendent. These were all technical men being engineers. The Labour Court had dealt with the case of each category separately. On a review of the oral and documentary evidence and replies to the interrogatories, the Labour Court held that these persons were rendering supervisory duties. They did not have managerial functions and as such they were workmen as defined in the Act till they were drawing Rs. 500 as wages. It left the question as to which of the individual officer crossed the limit of Rs. 500 and when, to be examined by a Commissioner. It did not decide this question itself. The finding that the duties of these persons were supervisory in nature has been challenged not by the petitioner company, but by the workmen in writ petitions filed by them. Learned counsel has urged that the Labour Court was in error in discarding the testimony of certain witnesses examined by the workmen on the ground that they were interested workmen. In my opinion, the Labour Court did not commit any manifest error of law in observing that they were Interested witnesses. The

finding cannot be interfered with on this ground.

16. It was next contended that these officers were themselves doing the technical work involved in their posts and that the other duties performed by them were a part of the entire complement of the shift of which they were incharge. It was urged that the supervision conducted by these officers was part and parcel of the work of the organisation and each shift and hence the nature of their duties could not be held to be supervisory. Learned counsel placed reliance upon the case of *Lloyds Bank Ltd., New Delhi Vs. Panna Lal Gupta and Others*,). There it was held that mere checking of work of others is not enough because checking is a part of accounting and not of supervision. In the instant case the finding is not that these persons were merely doing checking of the work of others. They were to make Daily Technical Report of the work performed in the whole shift, they arranged for relieving the staff in place of absentees, they take attendance of the shift staff etc. These are duties of the nature of distribution of work and imply assigning of duties. The nature of the duties found, will bring the case within the connotation of the word "supervision", as held by the Supreme Court in the aforesaid case. The word "supervision" is not a word of precise import; See, *All India Reserve Bank Employees' Association Vs. Reserve Bank of India*,). The finding that the duties of these officers were of a supervisory nature does not appear to suffer from any manifest error of law.

17. Learned counsel for the petitioner company urged that even though these officers may be entitled to claim benefits for a period prior to the date when they crossed the limit of Rs. 500 because their duties were supervisory, yet they will not be entitled to claim any benefits for the period prior to 1957; because prior to 1957 all workmen doing supervisory duties were excluded from the definition of "workmen". It was by the U. P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act of 1957 that the workmen having supervisory duties but drawing only upto Rs. 500 as wages, were included in the definition of "workmen". The learned counsel for the workmen did not seriously dispute the correctness of this proposition. The persons doing supervisory duties became workmen only with effect from 16-4-1957 when the amendments came into force. From that date onwards, such persons would be workmen and entitled to claim bonus as such. Since the Labour Court has not recorded any finding on this aspect, the impugned orders need not be interfered with. The Labour Court has directed the appointment of a Commissioner to determine the amounts claimed by the workmen. The Commissioner and the Labour Court will proceed on the basis that the officers will not be entitled to claim bonus for any period prior to 16-4-1957. Subject to this direction, all the petitions are liable to fail. They are accordingly dismissed with costs.