
(1961) 09 MAD CK 0028
In the Madras High Court

Workers of N. Desai Gounder and Co.	APPELLANT
Vs	
Labour Court and Another	RESPONDENT

Date of Decision : 15-09-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 2, 25F, 25FFF, 33C

Citation : (1962) 2 LLJ 133 : (1961) 74 LW 833

Hon'ble Judges : Ganapatia Pillai, J

Bench : Single Bench

Judgement

Ganapatia Pillai, J.—This is an application under Article 226 of the Constitution by twelve employees of a firm of merchants in Coimbatore town called Desai Gounder & Co., against the receiver in charge of the business of Desai Gounder & Co., for a writ of certiorari to quash the order of the labour court, Coimbatore, dismissing Industrial Dispute No. 67 of 1958. The facts of the case are the following: Desai Gounder & Co., was a partnership, one partner of which filed a suit in the Court of the Subordinate Judge of Coimbatore, for dissolution of the firm. A preliminary decree for dissolution was passed on 3 April 1957, which directed dissolution of the firm as and from the date of the preliminary decree. In and by the preliminary decree, a receiver was appointed to carry out the directions in the decree which were mostly in the nature of winding up the business consequent upon the dissolution. The receiver, who took charge of the business, issued notices to the twelve employees concerned in this case terminating their services. Thereupon, one among the petitioners preferred an application u/s 33C(2) of the Industrial Disputes Act before the labour court claiming retrenchment compensation u/s 25F of the Act. That application was dismissed by the labour court. Thereupon, the twelve employees approached the Government with a request for reference of the dispute to the labour court and the Government passed G.O. Me. No. 3155, Department of industries, Labour and Co-operation, dated 13 August 1958, whereunder they referred the dispute to the labour court for adjudication. The dispute was described in the

Government order in the following terms;

Whether the following twelve retrenched workers are entitled to any relief...to compute the relief, if any, awarded where it can be so computed.

2. The labour court took the view that the reference was incompetent u/s 10 of the Industrial Disputes Act as the dispute in question was not an industrial dispute since the closure of the business was the result of the decree of the court and, therefore, unavoidable. Against that order the present writ petition has been filed.

3. Mr. Ramachandran, counsel for the petitioners, contend that the closure of the business by reason of direction of the preliminary decree would not be closure for unavoidable reasons within the meaning of Section 25FFF and, consequently, the retrenchment in this case would not be a retrenchment, as on closure of business. Section 2(oo) no doubt defines "retrenchment" in very wide terms but the Supreme Court had to consider the scope of this definition in two oases in *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, and in *Hariprasad v. A.D. Divelkar* 1957 I L.L.J. 243. In the latter case the undertaking of a railway company was taken over by the Government and consequently the railway company wound up its business and ceased to exist. The concerned workers of the railway company naturally lost employment. The question arose whether these workers lost employment as the result of retrenchment or whether the cause for their ceasing to be employed was outside the definition of retrenchment in Section 2(oo) of the Act. The Bombay High Court expressed the view that the cause of cessation of employment fell within the definition of retrenchment in the section mentioned above in the industrial Disputes Act. Differing from this view the Supreme Court ruled thus at p. 252:

For the reasons given above, we hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in Section 2(oo) and as used in Section 25F has no wider meaning than the ordinary, accepted connotation of the word; it means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business, as in the case of *Sri Dinesh Mills, Ltd.*, or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the railway company.

4. This view of the Supreme Court follows an earlier decision of the Supreme Court in *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, . The head note to that decision correctly represents the rule laid down by the Supreme Court. It runs as follows *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, :

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. The termination of services of all the workmen as a result of the closure of the business cannot, therefore, be properly described as retrenchment. Though there is discharge of workmen both when there is retrenchment and closure of business, the compensation is to be awarded under the law, not for discharge as such but for discharge on retrenchment, and, as retrenchment means in ordinary parlance, discharge of the surplus, it cannot include discharge on closure of business.

5. This view of the Supreme Court necessitated the introduction of Section 25FFF in the Industrial Disputes Act for providing a modified form of compensation to workmen who were thrown out of employment consequent upon closure of business. The introduction of this section must necessarily govern the definition of retrenchment in Section 2(oo) and to that extent the definition in Section 2(oo) must be understood in a modified sense, as defined by the Supreme Court in the two decisions noticed above. It becomes then clear that the sole question for consideration in this proceeding is whether the closure of Desai Gounder & Co. falls u/s 25FFF or whether the discharge of the workmen should be construed as retrenchment under the other head, namely, discharge of workmen as surplusage during continuance of the business.

6. Mr. Ramachandran made a weak attempt to contend that a decree of a court directing the winding up of a partnership should not be construed as closure of the business for unavoidable reasons. He attempted to say that, if as a result of the suit filed by one partner, a decree in that action resulted in the closure of the business, it should be equated to voluntary closure. Closure of business in the case of a partnership may take place even as a result of dissatisfaction of one partner because the essence of partnership is absolute confidence and trust among all the partners. Once the basis of partnership, namely, absolute trust and confidence among all the partners, is destroyed, the partnership business can come to an end as the result of a decree and it may be described as coming to an end due to unavoidable reasons. Proviso to Section 25FFF reads thus:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workmen under Clause (b) of Section 25F shall not exceed his average pay for three months.

7. The explanation to the section makes an exception to the closure of the business owing to financial difficulties. Reading the whole section in an integrated way, it is clear that the closure of the business for any reason would be normally treated for the purpose of the Industrial Disputes Act as resulting in retrenchment unless the closure came under the proviso to Section 25FFF. Financial difficulties having been obviated, a decree of court directing the closure of the business cannot be relegated to the category of closure for any reason whatsoever, it must necessarily come under unavoidable circumstances. The employer in this case was the partnership itself. The right of action by one

partner to wind up the partnership business is an individual right of that partner. In exercising that right, he was not exercising any right of the partnership as such. Therefore, though in this case the suit was instituted by one partner, the decree, which resulted in the winding up of the business, was not a circumstance within the control of the employer. The word "employer" in the proviso to Section 25FFF can only be understood in the Context of this case as the partnership. Consequently, I am of opinion that the presiding officer of the labour court correctly understood the implications of the discharge in this case and he was right in holding that this was not a case of discharge which would amount to retrenchment while the business continued and, therefore, any dispute of these workmen for payment of compensation u/s 25FFF would not be an Industrial dispute u/s 10.

8. The writ petition, therefore, fails and is dismissed. Mr. Ramachandran requests me to indicate a way out for the claim for compensation u/s 25FFF being considered by the labour court again. The labour court dismissed the claim of one workman on an application made to it under the appropriate section before this dispute was referred to the labour court for adjudication by the Government. It is true no steps were taken to have that order of dismissal set aside. But I do not find any impediment to the workmen concerned applying again to the labour court u/s 330(2) for compensation of the benefit which they would be entitled to u/s 25FFF. In the circumstances, I do not award any costs.