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CONSTITUENT OF SYMBIOSIS INTERNATIONAL UNIVERSITY - 411014

CASE COMMENTARY

BARSI LIGHT RAILWAY COMPANY LTD.…APPELLANT

V.

K.N. JOGLEKAR ……...…RESPONDENT

(1957) 1 LLJ 243 SC

CORAM:

SUDHI RANJAN DAS, C.J., N.H. BHAGWATI, T.L. VENKATARAMA AIYYAR, S.K. DAS AND P.GOVINDA MENON, JJ.

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FACTS OF THE CASE

Civil Appeal No. 105 of 1956

1. The Appellant, Barsi Light Railway Company Ltd. (hereinafter referred to as 'the railway company') was situated at Kurduwadi, Maharashtra, the then State of Bombay. The Principal Respondent was the President of the Barsi Light Railwaymen's Union while the General Manager of the Central Railway, Bombay and the Secretary of the Railway Board, New Delhi were the other Respondents.
2. The railway company constructed, maintained and worked a light railway between Barsi Town and Barsi Road Station on the railway system known as the Great Indian Peninsular Railway, vide an agreement dated 1 August 1895 between the Secretary of State for India in Council and the railway company.
3. One of the important clauses of the agreement mandated that the Secretary of State could purchase and take over the undertaking only after the railway company was given a notice before twelve calendar months in writing of the intention to do so.
4. Notice on 19 December 1952:

   A notice was given in writing to the railway company on behalf of the President of India by the Director of the Railway Board notifying that the undertaking of the railway company would be purchased and taken over from 1 January 1954.
5. Notice on 11 November 1953:

   The railway company served a notice on its workmen stating that as a result of the Government of India's decision to terminate the contract of the railway company and take over the railway from 1 January 1954, the services of all the workmen of the railway company would be terminated with effect from the afternoon of 31 December 1953.

   It was also stated that the Government of India intended to employ the staff of the railway company that would be willing to serve on the railway on the terms and conditions which would be notified subsequently.
6. Notice on 15 December 1953:

   The notice intimated the terms and conditions on which the staff of the railway company, willing to serve on the railways, would be taken over and employed by the government.

   The letter of the terms and conditions had three forms, one for clerical categories, another for staff that needed training or a refresher course and another for workshop staff.

   The new employment would be treated as a continuation of the previous one for limited purposes such as contribution to provident fund, leave, passes and privileges, educational and

medical facilities, etc. However, previous service under the railway company would not be counted to for the purpose of seniority.

7. When the undertaking was taken over, about 77% of the staff of the railway company were re-employed on a lower scale of pay, while 24% of the former employees of the railway company declined services under the Government.
8. Following the takeover, the Respondent filed almost sixty one applications were made to the Civil Judge (Junior Division), Madha, on behalf of the erstwhile workmen of the railway company under Sec. 15 of the Payment of Wages Act, 1936 and Sec. 25F(b) of the Industrial Disputes Act, 1947 for payment of retrenchment compensation.

Civil Appeal No. 103 of 1956

1. The main Appellant in this set of Appeal was Sri Dinesh Mills, Ltd., Baroda while the principal Respondent was the district labour officer and inspector under the Payment of Wages Act, 1936 at Baroda.
2. The Appellant company was running a woollen mill at Baroda for several years and had employed close to 450 workmen and 20 clerks who worked in shifts, day and night.
3. Notices:

   The Appellant put up a notice declaring the intention to close down the entire mill from 1 December 1953. However, this notice was withdrawn and another notice was put up declaring the intention of the Appellant to close down the second shift with effect from 20 December 1953. A third notice was put up saying that the first shift would be closed from 8 January 1954 in addition to the second shift as notified earlier. Similarly, another notice was put up on the same day terminating the services of the clerks with effect from 19 January 1954.
4. The company claimed that the actions were taken due to heavy losses incurred by the company as a result of which all 450 workmen and 20 clerks were terminated.
5. The Respondent made an application to the relevant authority under the Payment of Wages Act, 1936 claiming retrenchment compensation for the workmen under Sec. 25F(b) of the Industrial Disputes Act, 1947

   The above factual matrix of both the questions gave rise to similar issues. Both the aforementioned cases were dealt with by the High Court of Bombay, however, the present case was before the Hon'ble Supreme Court.

ISSUES INVOLVED

The common questions of law that emerged from the diverse factual matrix that were clubbed in the present case are as follows:

1. Whether the claim of the erstwhile workmen, both of the railway company and Sri Dinesh Mills Ltd. to compensation under clause (b) of Sec. 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') is a valid claim in law?
2. Whether the Payment of Wages Authority has the jurisdiction to adjudicate on the present matter?

RULES AND LAWS APPLICABLE

1. Sec. 15 of the Payment of Wages Act, 1936
2. Clause (b) of Sec. 25F of the Industrial Disputes Act, 1947
3. Art. 226, Constitution of India, 1950
4. Art. 227, Constitution of India, 1950

JUDGEMENT

The Civil Court, which was the authority under the Payment of Wages Act, 1936, ruled in favour of the workmen declaring their entitlement to compensation under Section 25-F. A Division Bench of the Bombay High Court affirmed that the workmen were entitled to claim compensation under Section 25-F and that the Company was liable to pay such compensation. The issue thus came to be considered by the Supreme Court. The Supreme Court held that the expression 'for any reason whatsoever' in Section 2(oo) could not be interpreted to include the case of discharge of all workmen on account of bona fide closure of the business.[3]

ANALYSIS

The definition of the retrenchment as contained in Section 2(oo) shows that retrenchment means termination of service of a workman for any reason but termination of service must not be as a punishment inflicted by way of disciplinary actions against the workman. If a workman is retrenched or his services are terminated on account of reasons not within the purview of disciplinary actions, the concept of compensatory justice must be invoked. The

[3] I. L. Naidu v. Union of India, 2003(2) ALD221; 2003(2)ALT470; (2003)IILLJ857AP.

concept requires that such a retrenched workman should be given compensation in lieu of termination and re-employment costs involved.

However, to appreciate the controversy relating to the definition of retrenchment under the Act, it is necessary to reproduce the definition as under:

> *Sec. 2(oo) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise that as a punishment inflicted by way of disciplinary action, but does not include*[4]*-*
>
> *(a) voluntary retirement of the workman; or*[5]
>
> *(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;*[6] *or*
>
> *(c) termination of the service of a workman on the ground of continued ill-health*[7].

Despite the literal interpretation giving way to a wide ambit of circumstances falling within the category of retrenchment, the courts have chosen to cut down the amplitude of the definition in order to harmonize it with the broader scheme of the Act.[8]

The definition had come up for interpretation before the SC in various cases. In **Piprich Sugar Mills Ltd. v. Piprich Sugar Mills' Mazdoor Union,**[9]the SC observed that *"retrenchment connotes in its ordinary acceptation that the business itself is being continued but a portion of the staff or the labour force is discharged as surplus and the termination of services of all the workmen as a result of closure of the business could not therefore be properly described as retrenchment."*

The aforementioned case was concerned only with the question of whether termination of service of the staff on account of closure of an undertaking would amount to retrenchment. This is same question dealt with in the present case of **Barsi Light Railway Company Ltd.**

[4] Mahakamgar.maharashtra.gov.in. (2020). [online] Available at: https://mahakamgar.maharashtra.gov.in/images/pdf/industrial-disputes-act-1947.pdf [Accessed 8 Jan. 2020].
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Anakapalla Co-Operative Agricultural and Industrial Society v. It's Workmen & Others,1963 AIR 1489; 1963 SCR Supl. (1) 730.
[9] Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills' Mazdoor Union, (1957) ILLJ 2326.

However, the same question arose in **Benaras Ice Factory v. Their Workmen**,[10] where a narrow view was taken. In all of these cases, it was held that the termination of the services of workmen on account of closure of an undertaking would not necessarily amount to retrenchment under Sec. 2(oo) of the Act if the reasons were bona fide. However, this view was arrived at by ensuring that the literal rule of interpretation was not applied in order to cut down the magnitude and give a narrower meaning to the term.

In **State Bank of India v. Sundaramoney,**[11]the bank employed the respondent employee as temporary employee because the permanent cashier was away. When the permanent cashier joined, the respondent's services were done away with. The Madras HC held that the case was nothing but a discharge of the respondent as a surplus labour. The employer thus took the matter to the Supreme Court. V. R. Krishna Iyer, J., while noting the judgment of the SC in the *Hospital Mazdoor Sabha v. State of Bombay,*[12] proceeded to delve into the definition of 'retrenchment'. The learned judge gave a literal meaning to the words 'for any reason whatsoever' and stated that a breakdown of Sec. 2(oo) unmistakably expands the semantics of retrenchment thus, implying that whatsoever the reason every termination spells a retrenchment.

The matter of definition arose yet again in **Hindustan Steel Ltd. v. State of Orissa,**[13]where the workmen concerned were kept in employment as head time keepers/ time keepers for a number of years on fixed term appointment where their period of service would be extended from time to time. Pursuant to an alleged policy 'to streamline the organisation and to affect economies wherever possible', the employer chose not to renew the contracts of their service. According to the employer, the termination was automatic on the expiry of the contractual period of service despite there being no order of termination of their services. The Solicitor-General appearing for the company wanted the court to reconsider the decision rendered in the *State Bank of India v. Sundaramoney*[14] as it was in apparent conflict with the earlier decision of the court in *Hariprasad Shivshankar Shukla v. A. D. Divelkar*[15] and the *Barsi Light Railway* case. However, the SC held that there was no such conflict.

[10] Benaras Ice Factory v. Their Workmen, (1957) ILLJ 253.
[11] State Bank of India v. Sundaramoney, (1976) ILLJ 478.
[12] Hospital Mazdoor Sabha v. State of Bombay, (1960) 14 at 257.
[13] Hindustan Steel Ltd. v. State of Orissa, (1977) ILLJ 1.
[14] State Bank of India v. Sundaramoney, 1976 AIR 1111
[15]Hariprasad Shivshankar Shukla v. A. D. Divelkar, (1957) SCR 12.

The drawback of the two decisions mentioned above was that the court did not appreciate the broader aspects of the questions raised before the Supreme Court in the judgments given in earlier decisions. For instance, in the *Barsi Light Railway* case the court had considered comprehensively the language of the definition and concluded that the real implication of the terms 'for any reason whatsoever' is that 'it does not matter why you are discharging the surplus'. It necessarily implied that if the other requirements of the definition are fulfilled, then it would necessarily amount to retrenchment. This was in harmony with the broader scheme of the Act than what the later judgments envisaged.

Because of the view held by the courts in the earlier decisions, the High Courts had consistently taken the view that retrenchment must be understood as termination of service of staff on account of being surplus. This led to a payment of retrenchment compensation when an employee was being discharged on account of being surplus and for no reason otherwise. However, that position now stands changed and thus, has led to situations where the employer has to pay retrenchment compensation for reasons covered under the wider interpretation.

This would necessarily lead to a plethora of cases arising owing to there being no limitation for raising an industrial dispute or making a claim under Sec. 33C92) of the Act.

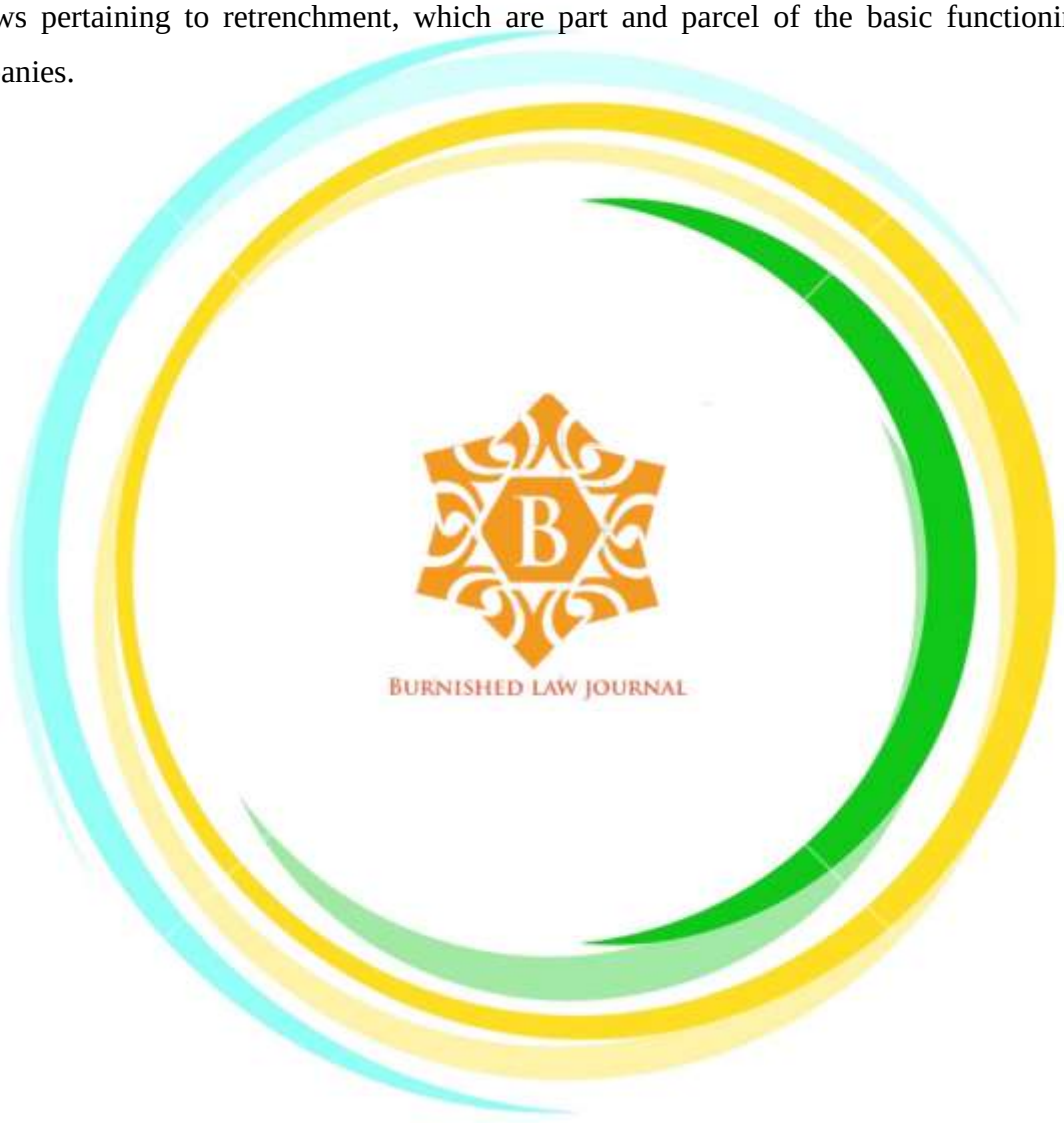
CONCLUSION

Retrenchment might occur due to unexplained and unforeseeable situations for instance rationalization or commissioning of new labour-saving machinery. If re-organization results in surplus employees, no employer is expected to carry their burden as an employer has a right to determine the mode in which he chooses to continue his business. There is consensus of judicial opinion in deciding retrenchment which vary with the facts and circumstances of each case.[16] Courts have already declared that any termination of services due to loss of confidence in an employee, inefficiency or misconduct[17] does not amount to retrenchment. Termination against uncalled and unauthorized absence from duty, discontinuance of service

[16]Researchrevolution.in. (2019). [online] Available at: http://researchrevolution.in/download-journal/December%202017.pdf [Accessed 8 Jan, 2020].
[17] Marinda Cooperative Sugar Mills v Ramkishen AIR 1996 SC 332.

of casual, daily employees, invalid initial appointment, compulsory retirement, and closure or transfer of business have been held to be retrenchment.[18]

Indian employers have reacted to narrow and restrictive retrenchment laws in a more organised ways ranging from use of contract, temporary and/or casual labour, use of golden handshakes, to setting up production in states where labour is not restricted as per the law. Hence, it has become crucial for the lawmakers to take immediate actions against any defect in laws pertaining to retrenchment, which are part and parcel of the basic functioning of companies.



[18]Coursehero.com. (2019). any of the following reasons a Voluntary retirement of the workmen or b . [online] Available at: https://www.coursehero.com/file/p3nq439/any-of-the-following-reasons-a-Voluntary-retirement-of-the-workmen-or-b/ [Accessed 8 Jan, 2020].