CASE NO.:
Appeal (civil) 1239-1244 of 2001
Appeal (civil) 1245-1248 of 2001

PETITIONER:
S.M. Nilajkar & Ors.

RESPONDENT:
Telecom. District Manager, Karnataka

DATE OF JUDGMENT: 31/03/2003

BENCH:
R.C. LAHOTI & BRIJESH KUMAR

JUDGMENT:

J U D G M E N T

R.C. Lahoti, J.

A number of workers were engaged as casual labourers for the purpose of expansion of telecom facilities in the district of Belgaum, Karnataka, during the years 1985-86 and 1986-87. The services of these workers were utilized for digging, laying cables, erecting poles, drawing lines and other connected works. It appears that the services of these workmen were terminated sometime during the year 1987 and they were not engaged on work thereafter. In Daily Rated Casual Labour employed under P&T Deptt. through Bhartiya Dak Tar Mazdoor Manch Vs. Union of India & Ors., 1988 (1) SCC 122, the Supreme Court by its judgment dated 27.10.1987 directed the Department to formulate a scheme under which all casual labourers who had rendered more than one year's continuous service could be absorbed. Pursuant to the said directions, the Department of Telecommunications formulated a scheme called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989" which came into force w.e.f. 01.10.1989. A list of casual labourers was drawn up for inclusion under the said scheme. On 16.01.1990, a number of workers whose names were not included for regularization under the said scheme, raised disputes before the Assistant Labour Commissioner, Mangalore. Conciliation proceedings were initiated but they failed. Several disputes were referred for adjudication by the Labour Court in the years 1994 to 1997. The disputes which were referred were almost identically framed. In substance, the dispute was 'whether the termination of the services of (name of worker) w.e.f. (a date in 1986 or 1987), Casual Mazdoor by the Management of Telecom District Manager, Belgaum is justified or not? If not, to what relief the workman is entitled?'

A consolidated enquiry was held into all the disputes and they were disposed of by a common award dated 21.06.1999 by the Central Government Industrial Tribunal cum Labour Court, Bangalore. The Tribunal directed the employer to reinstate all the workmen into service, with the benefit of continuity of service and with 50% of back wages. The employer filed ten writ petitions in the High Court of Karnataka which were disposed of on 16.09.1999 by a common judgment delivered by a learned Single Judge. The learned Single Judge held that the workers were not project employees as contended by the employer. The appointment was not for any particular project and hence would not be governed by sub-clause (bb) of clause (oo) of Section 2 of the Industrial Disputes Act. 1947 (hereinafter 'the Act' for short). Of the workmen each had rendered a continuous service within the meaning of Section 25B of the Act for a period over 240

days and, therefore, their termination amounted to retrenchment which was invalid for non-compliance with Section 25F of the Act. The workmen were, therefore, entitled to reinstatement. However, there was a delay of nearly 7 to 9 years in raising the disputes. The workmen had not placed any material on record to hold that there was no delay and the disputes were promptly raised. It was because of this delay that the employer was not in a position to produce the record relating to the days for which the workmen had worked inasmuch as according to the standing instructions of the Department, the registers of muster rolls were preserved for a period of 5 years only, whereafter they were eliminated. The Tribunal did not err in believing the oral evidence adduced by the workmen as to the period of their employment (i.e. for over 240 days). On account of delay in raising the dispute, the High Court held that the workmen were not entitled to any back wages. The learned Single Judge directed the award to be modified to that extent and upheld the Tribunal's award to the extent to which it directed reinstatement with the benefit of continuity of service and consequential benefits but without back wages.

The employer filed intra-court writ appeals under Section 4 of the Karnataka High Court Act, which were heard and disposed of by a Division Bench of the High Court vide the impugned order dated 9.02.2000. Before the Division Bench, it was an admitted case of the parties that the workmen were employed by the Telecom Department as casual labourers in connection with a project for extension of telecom facilities in the district of Belgaum. Their services were utilized for digging, laying of coaxial cables and other sundry work. The project was completed sometime in the year 1986-87. The disputes were raised after a lapse of 7 to 9 years.

Before the Division Bench, the employer placed reliance on Circular No. 270/6/84-STM dated 30.03.1985 issued by the Director General (Posts & Telegraphs), New Delhi to all heads of telecom circles etc. The Circular reads as under :-

"Copy of Letter No.270/6/84-STN, dated 30.3.1985 from the DG P&T, New Delhi to All Heads of Telecom Circles., Etc.

Sub. Casual Labour engagement

Sir,

15.6.80 A number of instructions have been issued from time to time stressing the need to limit the number of casual labour employed by the Telecom Units to a minimum. It is, however, regretted to note that inspite of these instructions, the number of such casual labours in Telecom. Circles/Districts is increasing.

2. The position has been reviewed and it has been decided that fresh recruitment and employment of casual labour for any type of work should be stopped forthwith in Telecom Circles/Districts. The casual labour already in employment should be utilized only (1) for work of casual nature, (2) all installation works of temporary nature, (3) cable laying work and (4) lines construction/dismantling work. Regular posts of Mazdoors/Group 'D' posts are sanctioned for maintenance/Admn. Work as per standards already laid down by this office from time to time. As such, no casual mazdoor are required for utilized for

maintenance/office work, they should be reallotted/transferred and used in the works enumerated above. Every effort should be made to reduce the number of casual mazdoors employed and in no case fresh recruitment/employment made.

3. These orders would, however, not apply to the coaxial cable laying work in the projects organization and in line dismantling/constructions work in the Electrification Projects Circle. The casual labour for such works in these units could be engaged only for specific jobs and retrenched as soon as the work is over.

4. The Heads of Telecom Circles/districts may take immediate action to bring these instructions to the notice of all subordinate units for strict adherence. The receipt of this letter may please be acknowledged.

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They should ensure that no fresh recruitment and employment of casual mazdoors for any type of work is made in future. All subordinate units may be instructed suitably. They should acknowledge the receipt of this communication by next post.

Sd/-
For General Manager, Telecom.
Karnataka Circle, Bangalore-9"

Another Circular No. 269-29/87-STM dated 10th November 1988 issued by the Government of India, Ministry of Communications, Department of Telecommunications, New Delhi, was relied on, dealing with the subject of regularization of casual labourers. Guidelines for eligibility for regularization of casual labourers as against 14,117 posts of regular mazdoors (group 'D') for various circles were laid down. Out of several eligibility conditions, one was that the casual labourer/ part-time casual labourer should have served the Department for a minimum period of 7 years as on 31.03.1986. Admittedly, the respondent workmen did not satisfy this eligibility condition.

The Division Bench held that the workmen (respondents before it) were employed under a project of the Telecom Department and were, therefore, covered by sub-clause (bb) of clause (oo) of Section 2 of the Act. It was a clear case of termination of services of the workmen as a result of non-renewal of contract of employment on the expiry of the contract. The question of compliance of Section 25F of the Act did not arise. The respondent-workmen could not be said to have been retrenched. The engagement of the workmen was on daily wages and only for the purpose of completion of the project undertaken by the Telecom Department for laying coaxial cables in the Belgaum District. That the project had been completed in 1986-87 itself, is not in dispute. Because of completion of the project their services stood terminated ipso facto. The Department's Circular dated 30.03.1985 was relied upon. The Division Bench placed reliance on decisions of this Court in Ghaziabad Development Authority & Ors. v. Vikram Chaudhary & Ors., (1995) 5 SCC 210 and Executive Engineer, State of Karnataka v. K. Somasetty & Ors., (1997) 5 SCC 434 for forming the opinion that the workmen could not be said

to have been illegally retrenched. The Division Bench also formed the opinion that unexplained and undue delay of 7 to 9 years in raising the disputes before the Tribunal vitiated the reference because of laches. For taking this view, reliance was placed on Shalimar Works Ltd. v. Their Workmen, 1960 (1) SCR 150, Ratan Chandra Sammanta v. Union of India, 1993 Supp.(4) SCC 67 and Nedungadi Bank Ltd. v. K.P. Madhavankutty & Ors., (2000) 2 SCC 455. The Division Bench allowed the appeals preferred by the employer and directed the award of the Tribunal as also the judgment of the learned Single Judge to be set aside.

Feeling aggrieved by the judgment of the Division Bench, these ten appeals have been filed by the workers by special leave.

The learned counsel for the workmen-appellants have submitted that the workmen were employed for general maintenance work of the Telecom Department and not in any project work. There are two types of organizations in Telecom Department, namely, (i) Telecom Circles and, (ii) Telecom Project Circles. The workmen were employed in Karnataka Telecom Circle, Belgaum Division. The Circular dated 30.03.1985 has no application to these workmen. The disputes were promptly raised and pursued. The reference sought for by the workmen cannot be said to be delayed or suffering from lapse, particularly when the law does not prescribe any period of limitation for raising a limitation under Section 10 of the Act. It was, therefore, submitted that the award as given by the Tribunal was not liable to be interfered with. On behalf of the employer-respondent, the same pleas have been reiterated as were taken before the Tribunal and the High Court. It is submitted that the workmen are project employees whose services are liable to be dispensed with ipso facto on termination of the project and that the Division Bench of the High Court has rightly held the disputes raised by the workmen to be vitiated by delay and laches.

Let it be stated that on the material available we are not inclined to upset the finding of fact arrived at in the impugned judgment that the appellant workmen are project employees and not employed in any department. The principal issue argued by the learned counsel for the parties centers around the status of project or scheme employees whether the workmen recruited for discharging temporary job under a project can insist on compliance of Section 25F of the Act if their services are dispensed with on the project coming to an end?

Section 2(oo) and 25F and of the Act, relevant for our purpose, provide as under:

2. Definitions : In this Act, unless there is anything repugnant in the subject or context, __

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[(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(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; or

[(bb) termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;]"

"25F. Conditions precedent to retrenchment of workmen. __ No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

It is common knowledge that the Government as a welfare State floats several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need of the moment. The benefit of such schemes and projects is that for the duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects. If the workmen employed for fulfilling the need of such passing-phase-projects or schemes were to become a liability on the employer-State by too liberally interpreting the labour laws in favour of the workmen, then the same may well act as a disincentive to the State for floating such schemes and the State may opt to keep away from initiating such schemes and projects even in times of dire need, because it may feel that by opening the gates of welfare it would be letting-in onerous obligations entailed upon it by extended application of the labour laws. Sub-clause (bb) in the definition of retrenchment was introduced to take care of such like-situations by Industrial Disputes (Amendment) Act, 1984 with effect from 18.8.1984.

'Retrenchment' in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well-settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision.

It is also well-settled that the Parliament has employed the expression "the termination by the employer of the service of a workman for any reason whatsoever" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term 'retrenchment' a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term 'retrenchment', and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of 'retrenchment' de hors the reason for termination. To be excepted from within the meaning of 'retrenchment' the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of 'retrenchment'.

The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied :-
(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

(iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.

The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto to the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of sub-clause (bb) abovesaid. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment.

The appropriate provision which should govern the cases of the appellants is Section 25FFF, the relevant part whereof is extracted and reproduced hereunder:-

"25 FFF. Compensation to workmen in case of closing down of undertakings.__(1)Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in

that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

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 workman under clause (b) of section 25F shall not exceed his average pay for three months.

[Explanation : An undertaking which is closed down by reason merely of

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on,

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.]

1A. [Not reproduced]

1B. [Not reproduced]

(2) Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every [completed year of continuous service] or any part thereof in excess of six months."

It is pertinent to note that in Hariprasad Shivshanker Shukla and Anr. Vs. A.D. Divikar and Ors. (1957) SCR 121 the Supreme Court held 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, that is, discharge of surplus labour or staff by the employer for any reason whatsoever otherwise than by way of punishment inflicted in disciplinary action. Retrenchment was held to have no application where the services of all workmen were terminated by the employer on a real and bona fide closure of business or on the business or undertaking being taken over by another employer. The abovesaid view of the law taken by the

Supreme Court resulted in promulgation of the Industrial Disputes (Amendment) Ordinance, 1957 with effect from 27.4.1957, later on replaced by an Act of Parliament (Act 18 of 1957) with effect from 6.6.1957 whereby Section 25FF and Section 25FFF were introduced in the body of the Industrial Disputes Act, 1957. Section 25FF deals with the case of transfer of undertakings with which we are not concerned. Section 25FFF deals with closing down of undertakings. The term 'undertaking' is not defined in the Act. The relevant provisions use the term 'industry'. Undertaking is a concept narrower than industry. An undertaking may be a part of the whole, that is, the industry. It carries a restricted meaning. (see Bangalore Water Supply & Sewerage Board etc. Vs. A. Rajappa and Ors. etc. (1978) 2 SCC 213 and the Management of Hindustan Steel Ltd. Vs. The Workmen & Ors. (1973) 3 SCC 564 ). With this amendment it is clear that closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of Section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of Section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned. Compliance of Section 25F shall be subject to such relaxations as are provided by Section 25FFF. The undertaking having been closed on account of unavoidable circumstances beyond the control of the employer, i.e. by its own force as it was designed and destined to have a limited life only, the compensation payable to the workman under clause (b) of Section 25F shall not exceed his average pay for three months. This is so because of failure on the part of respondent employer to allege and prove that the termination of employment fell within sub-Clause(bb) of Clause (oo) of Section 2 of the Act.

It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in M/s Shalimar Works Limited Vs. Their Workmen (supra) that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of the most of the old workmen was held to be fatal in M/s Shalimar Works Limited Vs. Their Workmen (supra). In Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Ors. (supra), a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors.(supra), it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Employees Under P & T Department Vs. Union of India (supra) the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16.1.1990 they were refused to be accommodated in the scheme. On 28.12.1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then

the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay.

The fact remains that there was delay, though not a fatal one, in initiating proceedings calculating the time between the date of termination and initiation of proceedings before the Industrial Tribunal-cum-Labour Court. The employee cannot be blamed for the delay. The learned Single Judge has denied the relief of back-wages while directing the appellants to be reinstated. That appears to be a just and reasonable order. Moreover, the judgment of the learned Single Judge was not put in issue by the appellants by filing an appeal.

For all the foregoing reasons we are of the opinion that the decision of the Division Bench deserves to be set aside and that of the learned Single Judge restored, except for the finding that the appellants were not project employees.

During the course of hearing it was stated at the Bar that there are a number of matters pending in different fora, Industrial-cum-Labour Court or High Court, raising similar issues awaiting decision in this case. We clarify that all such pending cases shall be heard and decided in accordance with the law as stated hereinabove. The project in which the workmen were engaged has come to an end. The respondent Government may consider the appellants being accommodated in some other project or scheme or regular employment, if available, by issuing suitable instructions or guidelines. If it be not possible, the respondent shall be at liberty to terminate the employment of the appellants after reinstating them as directed by the High Court and then complying with Section 25F of the Industrial Disputes Act.

The appeals are allowed. The impugned decision of the Division Bench is set aside and that of the learned single Judge is restored as above. The appellants shall be entitled to their costs throughout.