PETITIONER:
MANAGEMENT OF KARNATAKA STATE ROAD TRANSPORT CORPORATION,BAN

Vs.

RESPONDENT:
M. BORAIAH & ORS.

DATE OF JUDGMENT01/11/1983

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
SEN, AMARENDRA NATH (J)

CITATION:
1983 AIR 1320 1984 SCR (1) 783
1984 SCC (1) 244 1983 SCALE (2)652
CITATOR INFO :
RF 1986 SC1680 (4)

ACT:
Industrial Disputes Act 1947, Ss. 2 (oo) & 25F "Retrenchment"--What is--Termination of services of employee during probation-Whether "retrenchment".

HEADNOTE:
The appellant-Corporation terminated the employment of some of its employee-respondents who were probationers on the ground of unsatisfactory service, some during the period of their probation and others during the extended period of probation.

The Labour Court, to which the dispute was referred, held that s. 25F of the Industrial Disputes Act had no application, and that for this reason the discharge was invalid.

Dismissing the employer's writ petition a Single Judge held that the orders of discharge amounted to retrenchment as defined in S.2 (oo) of the Act and were bad for non-compliance of s.25F. A Division Bench of the High Court upheld this decision.

In the appeal to this court it was contended on behalf of the appellant that the services of the respondents had been terminated on the ground of their unsuitability and it was not a case of disbanding surplus labour force and, therefore, such termination did not amount to retrenchment.

Dismissing the appeal,

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HELD: 1. Once the conclusion is reached that retrenchment as defined in s. 2 (oo) of the Industrial Disputes Act covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. [794 E]

In the instant case the requirements of s. 25F had not been complied with.[794 F]

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2. The stage has come when the views indicated in State Bank of India v. N. Sundara Money [1976] 3 SCR 160 has been "absorbed into the consensus" and there is no scope for putting the clock back or for an anti-clockwise operation.

[794 D]

Hariprasad Shivshanker Shukla v. A.D. Divikar, 1957 S.C.R. 121; Hindustan Steel Ltd. v. The Presiding Officer, Labour Court; Orissa & Ors. [1977] 1 S.C.R. 586; Santosh Gupta v. State Bank of Patiala, [1980] 3 S.C.R. 884; Indian Hume Pipe co. Ltd. v. The Workmen, [1960] 2 S.C.R. 32; Mohan Lal v. Management of M/s. Bharat Electronics Ltd. [1981] 3 S.C.R. 518; Surendra Kumar Verma etc. v. The Central Government Industrial Tribunal--cum--Labour Court, New Delhi and Anr.[1981] 1 S.C.R. 789; L. Robert D' Souza v. The Executive Engineer, Southern Railway & Anr. [1982] 3 S.C.R. 251 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3085 of 1981 and 3628-3649 of 1982.

From the judgment and Order dated the 6th July, 1981 and 5th August, 1982 of the High Court of Karnataka at Bangalore in Writ Appeal Nos. 724/81 and 1324/80, 1470, 1788, 1894/81, 55, 94, 368/82, 475/81, 1133/82, 21310/80, 22158, 21822/80, 10531, 10612/82, 1086, 1778/80, 12332, 12890/78, 19550/79, 11089/82, 11228 & 19410/82.

N. K. Sharma, Ms. Depika Saxena and Vineet Kumar for the appellants.

R. K. Garg, D. K. Garg, P. R. Ramasesh and Ms. R. Bagai for the respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. The employer-Karnataka State Road Transport Corporation--created under a State Act entitled the Transport Corporation Act of 1950 ('Corporation Act' for short) is in appeal by special leave and the common decision of a Division Bench of the High Court which held that termination of employees while on probation on ground of unsuitability amounted to retrenchment and for non-compliance with the provisions of s. 25F of the Industrial Disputes Act, 1947 ('Disputes Act' for short), the termination is bad, is challenged.

As per Rule 7 made under s. 45 of the Corporation Act, direct recruits are to be on probation for two years and such probation can be extended. The employer terminated the employment

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of some of the employees during the initial period of probation and of some others during the extended period on the ground of unsatisfactory service. Thereupon an industrial dispute was raised questioning the legality of their termination and the State Government referred the dispute to the Labour Court for adjudication under s. 10 of the Disputes Act. The Labour Court held, overruling the stand of the employer that s. 25F of the Disputes Act had no application, to the effect that the discharge was invalid. The employer Corporation came before the High Court challenging the Award. A learned single Judge dismissed the writ petition holding that the order of discharge amounted to retrenchment as defined in s. 2(oo) of the Disputes Act and those orders were bad for noncompliance of s. 25F. The employer Corporation challenged the decision of the single Judge before a Division Bench and the Division Bench by the impugned judgment upheld the decision of the learned single Judge.

Admittedly the employees were probationers at the time of discharge from service. There is no dispute that as a condition precedent to discharge the requirements of s. 25F

of the Disputes Act had not been complied with. If the discharge of the employees would amount to retrenchment, appellant's counsel does not dispute that the order of discharge would be bad for non-compliance of s. 25F of the Disputes Act. The only question for consideration in these appeals, therefore, is whether the discharge of the employees from service amounted to retrenchment.

It is the stand of the employer Corporation that the employees were probationers and the order of discharge in every case was on account of unsatisfactory service. Since the order of discharge has been grounded upon unsatisfactory service during the period of probation, it has been argued that such termination of service is not retrenchment.

Section 2(oo) of the Disputes Act defines retrenchment to mean: "'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

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if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or (c) termination of the service of a workman on the ground of continued ill-health."

A Constitution Bench of this Court in Hariprasad Shivshanker Shukla v. A.D. Divikar, examined the true meaning of the expression 'retrenchment' and posed the following question:

> "The question however, before us is-does this definition merely give effect to the ordinary, accepted notion of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or does it go so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona fide closure or discontinuance of his business by the employer."

It went on to say:

> "There is no doubt that when the Act itself provides a dictionary for the words used we must look into that dictionary first for an interpretation for the words used in the statue. We are not concerned with any presumed intention of the legislature; our task is to get at the intention as expressed in the statute. Therefore, we propose first to examine the language of the definition and see if the ordinary, accepted notion of retrenchment fits in, squarely and fairly, with the language used. What is the ordinary, accepted notion of retrenchment in an industry.
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> Let us now see how far that meaning fits in with the language used. We have referred earlier to the four essential requirements of the definition, and the question is, does the ordinary meaning of retrenchment fulfil those requirements ! In our opinion it does. When a portion of the staff or labour force is discharged as surplusage in a continuing business, there are (a) termination of the service of a workman; (b) by the employer; (c) for

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> any reason whatsoever; and (d) otherwise than as a punishment inflicted by way of disciplinary action."

The Constitution Bench further said:

> "The legislature is using the expression 'for any

reason whatsoever' says in effect : It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment." In the absence of any compelling words to indicate that the intention was even to include a bona fide closure of the whole business, it would, we think, be divorcing the expression altogether from its context to give it such a wide meaning as is contended for by learned counsel for the respondents. What is being defined is retrenchment, and that is the context of the definition; It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined."

After referring to certain decisions the Constitution Bench concluded by saying:

"For the reasons given above, we hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in s. 2(oo) and as used in s. 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,"

The ratio of this decision has been pressed into service by the appellant Corporation for its stand that in the instant case the services have been terminated on the ground of unsuitability and it was not a case of disbanding surplus labour force and, therefore, did

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not amount to retrenchment. On the other hand, counsel for the employees have contended that the consensus of judicial opinion in later decisions of this Court is against the appellant's stand. The first decision is the case of State Bank of India v. N. Sundara Money. A Bench of three learned Judges of this Court referred to the definition in section 2(oo) of the Disputes Act and observed :

"To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced."

Then came the decision in Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa & Ors, when a three Judge Bench of this Court again examined the true meaning of the definition of the expression 'retrenchment'. On this occasion reference was made to the Constitution Bench decision and as would appear from page 589 of the Report, counsel had submitted that the three Judge decision of this Court in Sundara Money's case (supra) was in apparent conflict with the Constitution Bench decision and required reconsideration. This submission of counsel was considered and facts of the Constitution Bench case were analysed and Gupta, J, who spoke for the Court, stated:

"On the facts of the case before us, giving full effect to the words 'for any reason whatsoever, would be consistent with the scope and purpose of section 25F of the Industrial Disputes Act, and not contrary to the

scheme of the Act. We do not find anything in Hariprasad's case which is inconsistent with what has been held in State Bank of India v. N. Sundara Money (supra)."

The same question came up for consideration before a two Judge Bench of this Court in Santosh Gupta v. State Bank of Patiala. The facts of the case were more or less the same as in the present dispute. Employment there had been terminated upon failure of the workman to pass the test which would have enabled her to be confirmed in service and it was contended on behalf of the

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management that termination of service was not due to discharge of surplus labour force and, therefore, it did not amount to retrenchment. The Division Bench referred to the Constitution Bench decision and observed:

"If the definition of 'retrenchment' is looked at unaided and unhampered by precedent, one is at once struck by the remarkably wide language employed and particularly by the use of the words "termination for any reason whatsoever". The definition expressly excludes termination of service as a 'punishment inflicted by way of disciplinary action'. The definition does not include, so it expressly says, voluntary retrenchment of the workman or retrenchment of the workman on reaching the age of superannuation or termination of the service of the workman on the ground of continuous ill-health. Voluntary retrenchment of a workman or retrenchment of the workman on reaching the age of superannuation can hardly be described as termination by the employer of the service of a workman. Yet, the Legislature took special care to mention that they were not included within the meaning of 'termination by the employer of the service of a workman for any reason whatsoever'. This, in our opinion, emphasizes the broad interpretation to be given to the expression 'retrenchment'. In our view if due weight is given to the words 'the termination by the employer of the service of a workman 'for any reason whatsoever' are understood to mean what they plainly say, it is difficult to escape the conclusion that the expression 'retrenchment' must include every termination of the service of a workman by an act of the employer. The underlying assumption, of course, is that the undertaking is running as an undertaking and the employer continues as an employer but where either on account of transfer of the undertaking or on account of the closure of the undertaking the basic assumption disappears, there can be no question of 'retrenchment, within the meaning of the definition contained in s. 2(oo). This came to be realised as a result of the decision of this Court in Hariprasad Shivshanker Shukla v. A. D. Divikar (supra). The Parliament then stepped in and introduced 25F and 25FFF by providing that compensation shall be payable to workmen in case of transfer of

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undertaking or closure of undertaking as if the workmen had been retrenched. We may rightly say that the termination of the service of a workman on the transfer or closure of an undertaking was treated by Parliament as 'deemed retrenchment'. The effect was that every case of termination of service by act of employer even if such termination involved was a consequence of transfer or closure of the undertaking was to be

treated as 'retrenchment' for the purposes of notice, compensation etc. Whatever doubts might have existed before Parliament enacted 25FF and 25FFF about the width of 25F there cannot now be any doubt that the expression 'termination' of service for any reason whatsoever now covers every kind of termination of service except those not expressly included in s. 25F or not expressly provided for by other provisions of the Act such as ss. 25FF and 25FFF."

The learned Judges drew support from what had been observed in Indian Hume Pipe Co. Ltd. v. The Workmen, "The object of retrenchment compensation is to give protection to the retrenched employee and his family to enable them to tide over the hard period of unemployment," and observed:

"Once the object of 25F, 25FF and 25FFF is understood and the true nature of the compensation which those provisions provide is realised, it is difficult to make any distinction between termination of service for one reason and termination of service for another."

Chinnappa Reddy, J. thereafter referred to the Constitution Bench decision and said:

"It is true that there are some observations which, if not properly understood with reference to the question at issue, seemingly support the submission of Dr. Anand Prakash that "termination of service for any reason whatsoever" means no more and no less than discharge of a labour force which is a surplusage. The misunderstanding of the observations and the resulting confusion stem from not appreciating (1) the lead question which

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was posed and answered by the learned judges and (2) that the reference to 'discharge on account of surplusage' was illustrative and not exhaustive and by way of contrast with discharge on account of transfer or closure of business.'

It was further observed:

"The ratio of Shukla's case in fact has already been explained, in Hindustan Steel Ltd. v. The Presiding Officer, Labour Court Orissa & Ors. The decisions in Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa & Ors. and State Bank of India v. N. Sundara Money have, in our view, properly explained Shukla's case and have laid down the correct law."

The same question arose for consideration before another two Judge Bench in Mohan Lal v. Management of M/s. Bharat Electronics Ltd. Desai, J. spoke for the Court thus:

"Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the section itself. The excepted or excluded cases are where termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, 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, and termination of the service of a workman on the ground of continued ill-health. It is not the case of the respondent that termination in the instant case was a punishment inflicted by way of disciplinary action. If such a position were adopted, the termination would be ab initio void for violation of

principle of natural justice or for not following the procedure prescribed for imposing punishment. It is not even suggested that this was a case of voluntary retirement or retirement on reaching the age of superannuation or absence on account of continued ill-health. The case does not fall under any of the excepted categories.

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There is thus termination of service for a reason other than the excepted category. It would' indisputably be retrenchment within the meaning of the word as defined in the Act. It is not necessary to dilate on the point nor to refer to the earlier decisions of this Court in view of the later two pronouncements of this Court to both of which one of us was a party. A passing reference to the earliest judgment which was the sheet anchor till the later pronouncements may not be out of place. In Hariprasad Shivshanker Shukla v. A. D. Divikar, after referring to Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union, a Constitution Bench of this Court quoted with approval the following passage from the aforementioned case:

'But 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 and the termination of services of all the workmen as a result of the closure of the business cannot therefore be properly described as retrenchment.'

"This observation was made in the context of the closure of an undertaking and being conscious of this position, the question of the correct interpretation of the definition of the expression 'retrenchment' in s. 2(oo) of the Act was left open. Reverting to that question, the view was re-affirmed but let it be remembered that the two appeals which were heard together in Shukla's case were cases of closure,....."

In the majority judgment in Surendra Kumar Verma etc. v. The Central Government Industrial Tribunal-cum-Labour Court, New Delhi & Anr., the ratio of the latter case has been followed. A Bench of two learned Judges in the case of L. Robert D'Souza v. The Executive Engineer, Southern Railway & Anr., re-examined the entire position. Desai, J. who again spoke for the Court indicated:

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"At the outset it must at once be pointed out that the construction put by the Full Bench of the Kerala High Court on the expression 'retrenchment' in s. 2(oo) of the Act that it means only the discharge of surplus labour or staff by the employer for any reason whatsoever is no more good law and in fact the decision of the full Bench of Kerala High Court in L. Robert D'Souza v. Executive Engineer, Southern Railway & Anr., [(1970) 1 LLJ 2111] has been specifically overruled by this Court in Santosh Gupta v. State Bank of Patiala. This Court has consistently held in State Bank of India v. N. Sundara Money, Hindustan Steel Ltd. v. Presiding Officer, Labour Court, and Delhi Cloth & General Mills Ltd. v. Shambhu Nath Mukherjee, [(1971) 1 SCR 591] that the expression 'termination of service for any reason whatsoever' now covers every kind of termination of service except those not expressly included in s. 25F or not expressly provided for by other provisions of the Act such as ss. 25FF and 25FFF. It was attempted to

urge that in view of the decision of this Court in Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union, the ratio of which was re-affirmed by a Constitution Bench of this Court in Hariprasad Shivshanker Shukla v. A. D. Divikar, all the later decisions run counter to the Constitution Bench and must be treated per in curium. This contention need not detain us because first in Hindustan Steel Ltd. case' than in Santosh Gupta's case, (supra) and lastly in Mohan Lal v. Bharat Electronics Ltd., it was in terms held that the decision in Sundara Money's case was not at all inconsistent with the decision of the Constitution Bench in Hariprasad Shukla's case and not only required no reconsideration but the decision in Sundara Money's case was approved in the aforementioned three cases. 'This position is further buttressed by the decision in Delhi Cloth & General Mills Ltd. case wherein striking off the name of a workman from the roll was held to be retrenchment."

In the series of cases that have come later the Constitution Bench decision has been examined and the ratio indicated therein has been confined to its own facts. The view indicated by this Court in that case obviously did not meet with the approval of Parliament and,

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therefore, the law has been subsequently amended as already indicated. Lord Devlin once observed:

"I am not one of those who believe that the only function of law is to preserve the status quo. Rather, I should say that law is the gate-keeper of the status quo. There is always a host of new ideas galloping around the outskirts of society's thought. All of them seek admission but each must first win its spurs; the law at first resists, but will submit to a conqueror and become his servant. In a changing society the law acts a valve. New policies must gather strength before they can force an entry; when they are admitted and absorbed into the consensus, the legal system should expand to hold them, as also it should contract to squeeze out old policies which have lost the consensus they once obtained."

We are inclined to hold that the stage has come when the view indicated in Money's case (supra) has been "absorbed into the consensus" and there is no scope for putting the clock back or for an anti-clockwise operation.

Once the conclusion is reached that retrenchment as defined in s.2(oo) of the Disputes Act covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. Admittedly the requirements of s. 25F of the Disputes Act had not been complied with in these cases. Counsel for the appellant did not very appropriately dispute before us that the necessary consequence of non-compliance of s. 25F of the Disputes Act in a case where it applied made the order of termination void. The High Court, in our opinion, has, therefore, rightly come to the conclusion that in these cases the order of retrenchment was bad and consequently it upheld the Award of the Labour Court which set aside those orders and gave appropriate relief. These appeals are dismissed. There would be one set of costs. Consolidated hearing fee is assessed at Rs. 5,000.

N.V.K. Appeal dismissed.

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