

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: February 02 2015*
Judgment Delivered on: February 23, 2015

+ **LPA No.6/2015**

HINDUSTAN TIMES LIMITED

..... Appellant

Represented by: Dr.Abhishek Manu Singhvi, Senior
Advocate and Mr.Sandeep Sethi, Senior
Advocate instructed by Mr.Darpan
Wadhwa, Ms.Meghna Mishra, Mr.Nakul
Sachdeva, Ms.Ritika Ahuja and
Ms.Roshni Namboodiry, Advocates.

Versus

AITA RAM

.....Respondent

Represented by: Mr.Colin Gonsalves, Senior Advocate
instructed by Mr.Sarvajeet Kumar
Thakur, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. Alleging that the services were illegally terminated on October 03, 2004, the workman of the appellant raised an industrial dispute which resulted in an award dated January 23, 2012 being passed directing reinstatement of the

workman with further direction that such workman who had received the compensation under Section 25(FF) of the ID Act, 1947 would refund the same to the management. Since much turns on the final direction issued by the Industrial Tribunal, we note the exact language used by the Tribunal. In para 89 and 90 it was directed as under:-

“89. In view of above factual and legal position of law, workmen/claimants (except 43 workmen/claimants, who have settled their disputes u/s 18(1) of I.D. Act) are entitled to the relief of treating them in continuity of service under terms and conditions of service as before their alleged termination w.e.f. 3.10.04. They will not be entitled to any notice pay or compensation u/s 25FF of Industrial Disputes Act. The said notice pay or compensation, if any, received by them, will have to be refunded by them.

90. Hence, by way of relief, it is directed that management of M/s.Hindustan Times Ltd. will reinstate 272 workmen treating them in continuity of service under terms and conditions of service as before their alleged termination i.e. 03.10.04. Award is passed accordingly.”

2. It needs to be highlighted that there is no specific direction in the award that the workman would be paid wages from the date their services were illegally terminated on October 03, 2004 till reinstatement.
3. Neither party challenged the award dated January 23, 2012, which attained finality.
4. After the award was made, but before it was published, the workman moved an application seeking clarification of the award, and being relevant to be noted, it reads as under:-

*“I.D. NO.207/10/05
IN THE MATTER OF :
Aita Ram & Others
.....Claimants*

*Versus
Hindustan Times Limited & Another
....Respondents*

**APPLICATION SEEKING CLARIFICATION OF AWARD/ORDER
DATED 23.01.2012**

IT IS HUMBLY SUBMITTED:

1. That on 23.01.2012 this Hon'ble Tribunal in the presence of AR for workmen along-with workmen and AR for Management No.2 pronounced the award, directing the Management No.1 to reinstate 272 workmen with full back wages treating them in continuity of service under terms and conditions of service as before the alleged termination i.e. on 03.10.2014. The obtaining the certified copy of the award, even though this Hon'ble Tribunal directed the workers to be reinstated on the same terms and conditions, & treated full back wages as a necessary consequences of reinstatement it was found that the word “full back wages” though implicit in the said direction to treat the workmen as being in continuity of service from 03.10.2014, till date, appears to be missing in writing.

2. That the workmen/appellant seeks to raise such other or further ground as may be available to them at the time of hearing of the said application.

PRAYER

It is therefore most respectfully prayed before this Hon'ble Tribunal that it may be pleaded to clarify the award & order dated 23.01.2012, to the limited extent, that the word “full back wages” though not specified in writing, is implicit in the said direction to the Management No.1 to reinstate 272 workmen &

treat the workmen as being in continuity of service from 03.10.2004, till date, under the terms and conditions of service as before the alleged termination.

*Sd/-
WORKMEN”*

5. For reasons unknown, the workman did not press their application and it was disposed of by an order dated February 14, 2012, after notice was issued in the application to the management on the same day because the representative of the workman desired that the application be withdrawn. The two orders penned on February 14, 2012 read as under:-

“I.D.No.207/10

14.02.12

Case file is taken up today on application for seeking clarification of award/order dated 23.01.2012 moved on behalf of workmen.

Present : Sh.Ashwin Vaish & Shr.Vinod Pandey, Ld. Counsels/ARs for workmen.

Notice of the application be issued to the management for 06.03.2012.

*Sd/-
POIT, KKD, Delhi/14.02.12*

At this stage,

Present : Sh.Ashwin Vaish & Shr.Vinod Pandey, Ld. Counsels/ARs for workmen.

At the request for applicants/workmen, the application is disposed of as withdrawn. Date of 06.03.2012 is cancelled.

File be consigned to Record Room.

*Sd/-
POIT, KKD, Delhi/14.02.12”*

6. The workman filed an execution petition registered as EP No.3/2012 praying that the direction in the award concerning payment of back wages having not been complied with by the management, the award needed to be executed. The said application was dismissed vide order dated October 12, 2012 which reads as under:-

“

The perusal of the Award shows that the Ld. Industrial Tribunal has not passed any specific order regarding the payment of back wages. The case of the Decree Holders is that they have been ordered to be reinstated as per the terms and conditions of employment which were existing prior to their termination, which implies that back wages are to be paid. Reliance was placed upon (1979) 2 Supreme Court Cases 80 wherein it was held that where the termination of the service is held bad, payment of full wages is proper.

On the other hand, the case of the J.D/Management is that the Award is silent regarding the back wages and therefore it is clear that the Ld. Industrial Tribunal has denied the back wages.

The Ld. Counsel for the J.D. has placed reliance upon (2006) 1 Supreme Court Cases 479 wherein it was held that full back wages cannot be allowed automatically and mechanically only because an order of termination is found to be unsustainable.

Reliance was also placed upon (2001) Supreme Court Cases 73 wherein it was held that where in a reference of the question of validity of termination of service and consequential reliefs the Industrial Tribunal found the workman concerned to be entitled to reinstatement from the

date of termination, but gave no finding in regard to payment of back wages, application filed under S.33-C(2) for computation of back wages on the basis of such award, is held to be not maintainable. The proper forum to determine the question was the forum to which the reference had been made. It was also held that the Labour Court's Award directing reinstatement from the date of termination, but remaining silent on the issue of Back Wages, it cannot be presumed to have impliedly granted back wages.

Reliance was also placed upon (2005) 7 Supreme Court Cases 406 wherein it was held that, Decree declaring termination of service of respondent as void ab initio and non est and respondent employee in continuity of service. Decree specifically not mentioning any consequential payment of monetary benefits, it was held that there was no decree for grant of any monetary benefits. Hence, workman not entitled to back wages.

In the present case also the Award passed by the Ld. Industrial Tribunal is silent regarding the back wages. Therefore in view of the above discussed judgments of the Hon'ble Supreme Court, in my considered opinion it cannot be presumed that the Ld. Industrial Tribunal has also granted the back wages to the Decree Holders. Therefore, the Decree cannot be executed regarding the back wages as prayed for."

7. Being aggrieved by the order dated October 12, 2012, the workman filed a writ petition in this Court registered as W.P.(C) No.1000/2013, which has been allowed by the learned Single Judge vide impugned order dated November 17, 2014.

8. In holding that as per the award the workman were entitled to back wages, the learned Single Judge has held that in the decision reported as (1979) 2 SCC 80 Hindustan Tin Works Pvt. Ltd. Vs. Employees of M/s. Hindustan Tin Works Pvt. Ltd. the Supreme Court had held that where termination of services

of workmen is held to be illegal, payment of full back wages is warranted. The learned Single Judge has noted the decisions reported as (2006) 1 SCC 479 U.P.State Brassware Corporation Ltd. Vs. Udai Narain Pandey, (2005) 5 SCC 591 G.M.Haryana Roadways Vs. Rudan Singh and (2013) 10 SCC 324 Deepali Gundu Surwesh Vs. Kranti Junior Adhyapak Mahavidyala, which decision extracted the meaning of the word ‘reinstatement’ to mean to restore to its proper or original state, and has hence concluded that a direction to pay back wages has to be read into the award. An additional reason has been given by the learned Single Judge, being that the direction in the award that such workman who received the compensation under Section 25(FF) should refund the same to the management before they joined back was an indicator that back wages had to be paid. The learned Single Judge has relied upon the words used by the Tribunal in paragraph 89 of the award and has emphasized that the entitlement to the relief of continuity of service under terms and conditions of service with further expression used ‘as before’ by the Tribunal meant that a direction to pay back wages were inherent in the award. We quote paragraphs 48 to 52 from the impugned decision, which read as under:-

“48. The relief of back wages, may be couched in any other language as was done by the learned Tribunal in its award. The moment, the Tribunal went a step forward and stated that the workmen are entitled to the relief of reinstatement with continuity in service under same terms and conditions as existed before their alleged termination, the intent of the learned Tribunal to grant full back wages becomes clear.

49. It is pertinent to mention here that the learned Tribunal had also specifically directed the workmen to refund the

retrenchment compensation/notice pay. This itself shows the intention of the learned Tribunal was that as the workmen will get the full back wages, therefore, if any amount was received by them on account of retrenchment compensation/notice pay, that has to be paid by the workmen in favour of the respondent establishment.

50. *In view of the above discussion and the settled law, I am of the considered opinion that the learned Tribunal has granted reinstatement with full back wages vide its award dated 23.01.2012.*

51. *Consequently, the order dated 12.10.2012 passed by the Executing Court is hereby set aside.*

52. *Accordingly, the present petition is allowed with no order as to costs."*

9. Dr.Abhishek Manu Singhvi, learned Senior Advocate appearing on behalf of the appellant had vehemently urged that back wages could not have been granted by learned Single Judge when the award was silent in respect of claim of the workmen for back wages. The decisions referred to by learned Single Judge justifying award of back wages to the respondents, have no applicability to the facts of the present case for the reason that award, if silent on grant of back wages, had the effect of declining the same. Dr.Abhishek Manu Singhvi, learned Senior Advocate for the appellant had drawn the attention of this Court to the prayer made in the claim statement wherein relief claimed was for reinstatement with full back wages. The learned Industrial Tribunal though ordered for reinstatement of the workmen, did not pass any order directing for reinstatement with full or partial back wages. He urged that

the Executing Court had rightly dismissed the execution petition to the extent the claim was made for grant of back wages which was never awarded by the Tribunal. Thus, the learned Single Judge could not have given a different meaning to the award by treating it to be reinstatement with back wages implied therein merely because the language used therein was that the management of M/s.Hindustan Times Ltd. will reinstate 272 workmen treating them in continuity of service under terms and conditions of service as before their alleged termination i.e. October 03, 2004.

10. Learned Senior Advocate for the appellant had relied upon the decisions reported as (2001) 1 SCC 73 State Bank of India v. Ram Chandra Dubey, (2006) 2 SCC 282 APSRTC v. B.S.David Paul, (2005) 8 SCC 58 State of Uttar Pradesh v. Brijpal Singh, (2005) 7 SCC 406 Rajasthan State Transport Corporation v. Shyam Bihari Lal Gupta, 2003 (4) ALD 18 G.Srinivasan v. APSRTC & Anr., (2006) 1 SCC 479 U.P.State Brassware Corporation & Anr. v. Uday Narain Pandey, W.P.(C) No.916/2012 Dalip Kumar v. Union of India (decided on May 06, 2013), and (2005) 5 SCC 591 General Manager, Haryana Roadways v. Rudhan Singh in support of his contentions.

11. Learned Senior Advocate for the appellant had further submitted that the learned Single Judge wrongly placed reliance on the decisions reported as (1979) 2 SCC 80 Hindustan Tin Works Private Limited vs. Employees of M/s.Hindustan Tin Works Private Limited, (2005) 7 SCC 406 Rajasthan State Transport Corporation & Ors. vs. Shyam Bihari Lal Gupta and (2013) 10 SCC 324 Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) & Ors. which have no applicability to the facts of the present case for

the reason that while passing the award the learned Industrial Tribunal did not pass any order awarding the back wages to the workmen.

12. Mr. Colin Gonsalves, learned Senior Advocate appearing for the respondents had submitted that the impugned order does not call for any interference as the award does not call for any interpretation or clarification. Learned Senior Advocate has emphasized that the reinstatement order has been passed directing the management of M/s. Hindustan Times Ltd. to reinstate 272 workmen treating them in continuity of service under terms and conditions of service as before their alleged termination i.e. October 03, 2004. Thus, it included all consequential benefits including back wages. Since the Executing Court erred in dismissing the execution for back wages on the assumption that back wages have not been specifically awarded, the writ Court had rightly considered the spirit of the award and interpreted the intention behind passing the order of reinstatement which include back wages too. Pithily put, 5 reasons emerge from the impugned decision in favour of the workman. They would be as under:-

- (i) The very idea of reinstatement of an employee to a position which he held before dismissal/removal/termination implies that the employee would be placed in the same position in which he would have been if the illegal action had not taken place.
- (ii) Denial of back wages would have the effect of punishing the employee and rewarding the employer.
- (iii) Full back wages would be the normal rule and the party objecting to it has to establish the circumstances necessitating departure.

(iv) The effect of reinstatement of a workmen has the effect as if termination order has never been passed and so it must ordinarily lead to back wages too unless exceptional circumstances make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages.

(v) If the back wages have not specifically been granted while passing the award, in that case, the same cannot be implied to have been granted but in the case in hand reinstatement has been directed entitling the relief of continuing them in service under the terms and conditions of service as existed before the alleged termination.

13. Before addressing the issue involving back wages, it is necessary to note the relief prayed for in the statement of claim, the issues framed, findings thereon and relief granted to the employees. The term of reference reads as under:-

“Whether the action of management of M/s Hindustan Times Ltd. in transferring the ownership of its printing undertaking to M/s. H.T.Media Ltd. w.e.f. 02.10.04 and terminating the services of workmen whose names are given in Annexure-A by invoking the provisions of Section 25FF of Industrial Disputes Act, 1947 is illegal and/or unjustified and if so, to what relief are the workmen entitled and what directions are necessary in this respect?”

14. The prayer made by the workman in the statement of claim reads as under:-

*“Pass an award in favour of all the claimants/workmen herein and against both the respondents thereby **directing the respondents to reinstate the workmen on the same post along with full back wages and continuity of services and all other service benefits.**”*

15. On the pleadings of the parties initially 8 issues were settled and thereafter 2 additional issues were settled. The issues and the additional issues being as under:-

‘Issues :-

1. *Whether HTML is the subsidiary company of HTL and managed by same management i.e. persons belonging to the same family, if so, its effect? OPW*
2. *Whether the transfer letters were issued to the workmen?*
3. *Whether decision of management no.1 in transferring of the ownership of Printing Undertaking to management no.2 is bonafide to protect the interest of workmen? If not, to what effect? OPM*
4. *Whether there was any refusal on the part of individual workmen to the said transfer of ownership from HTL to HTML? OPM*
5. *Whether management no.1 duly communicated the workmen about the transfer of printing undertaking to management no.2, if not, its consequences? OPM*
6. *Whether termination/retirement of the workmen is in terms of relevant provisions of the ID Act i.e. Chapter 5B of the Act?*
7. *Whether the workman are bound by the unauthorised statement of the office bearer of the Union that workmen will not comply the order of transfer? OPM*
8. *Whether references are legally incompetent (OPM). Whether 315 workmen named in Annexure A have taken their full and final settlement. Whether the claim statement has been sent by competent person having locus standi? OPW*

Additional Issues

1. *Whether any employer-employee relationship has ever existed between the claimants and the Applicant/Management*

no.2? OPW

2. Whether the claimants can claim any relief from the management no.2.OPW

3. Whether the Hindustan Times Employees Union represents the interest of the employee of the Management No.2 and is entitled to raise an industrial dispute against them? OPW.”

16. The relevant findings of the Tribunal having impact on the issue of back wages, would be in paragraphs 86 to 91 of the award dated January 23, 2012.

They read as under:-

“86. As per terms of reference. Terms of reference are whether the action of management of M/s.Hindustan Times Ltd. in transferring the ownership of its Printing undertaking to M/s.H.T.Media Ltd. w.e.f. 02.10.04 and terminating the services of workmen whose names are given in Annexure A by invoking the provisions of Section 25FF of Industrial Disputes Act, 1947 is illegal and/or unjustified and if so, to what relief are the workmen entitled and what directions are necessary in this respect?

87. In view of my findings on issue No.1, it is held that action of management of M/s Hindustan Times Ltd. in transferring the ownership of its Printing undertaking to M/s. H.T.Media Ltd. w.e.f. 02.10.04 and terminating the services of workmen whose names are given in Annexure A by invoking the provisions of Section 25FF of Industrial Disputes Act 1947 is illegal and unjustified.

88. The Tribunal can take judicial notice of the following observations of Hon'ble Delhi High Court (Coram : Lordship Hon'ble Mr.Justice Sh.S.Ravindra Bhat) made in its orders dated 9.5.06 in case of Bhupat Singh and Others vs. Hindustan Times Ltd. (supra), involving reference of the present case:-

The constitution bench of the Supreme Court in Anakapalla Co-operative (supra) held that if a transfer of a business Unit is fictitious or benami, then Section 25FF of the Industrial Disputes Act will have no application of all and in such cases, there cannot be any change of ownership or management and despite an apparent transfer, the transferor employer continued to be the real employer and there has to be continuity of service under the terms and conditions of service as before and there can be no question of compensation. The proposition of law was followed by a Division Bench of Madras High Court in Spencer Group Aerated Water Factor Employees' Union and Anothers vs. The Presiding Officer, Industrial Tribunals and Others (1997) 1 LLJ 362.

(Equivalent citation : Anakapalla Co-operative Agricultural and Industrial Society Ltd. vs. Workmen AIR 1963 SC 1489).

89. *In view of above factual and legal position of law, workmen/claimants (except 43 workmen/claimants, who have settled their disputes u/s 18(1) of I.D. Act) are entitled to the relief of treating them in continuity of service under terms and conditions of service as before their alleged termination w.e.f. 3.10.04. They will not be entitled to any notice pay or compensation u/s 25FF of Industrial Disputes Act. The said notice pay or compensation, if any, received by them, will have to be refunded by them.*

90. *Hence, by way of relief, it is directed that management of M/s.Hindustan Times Ltd. will reinstate 272 workmen treating them in continuity of service under terms and conditions of service as before their alleged termination i.e. 03.10.04. Award is passed accordingly.*

91. *Copy of the award be sent to GNCT of Delhi for publication. File be consigned to Record Room.*

Sd/-
Presiding Officer, Industrial Tribunal
Karkardooma Courts, Delhi
23.01.2012”

17. From a perusal of the application filed by the workman seeking clarification of the award, it is apparent that the workmen were aware that back wages had not been directed to be paid and hence desired, by way of clarification, an order to be passed by the Tribunal that back wages had to be paid. The workmen withdrew the application.

18. During arguments in the appeal we had put it to learned senior counsel for the workman as to what would be the effect of the pleadings of the workman admitting that there was an omission in the award qua back wages and withdrawal of the application, to which learned senior counsel replied that the application was withdrawn since the Industrial Tribunal was functus officio.

19. Suffice here to note that the learned Industrial Tribunal had not become functus officio as on February 14, 2012 when said application seeking clarification was moved and in case of any ambiguity on the issue of back wages, the learned Industrial Tribunal could have clarified the situation. In the application the averments have been made that award was pronounced in the presence of authorized representatives of the workmen and management. We may note here that unlike the orders and judgments pronounced by the Courts, the awards passed by the Labour Courts/Industrial Tribunals are to be sent to the Govt. of NCT of Delhi for publication. Further the fact that on the same day the authorized representative for workmen withdrew the application without

even notice of the same being served on the management, makes it ample clear that the award did not require any clarification on the issue of back wages and perhaps to keep the issue alive to be raked up at appropriate stage, authorized representative for workmen preferred to withdraw the application instead of getting it disposed of from the learned Industrial Tribunal.

20. The issue before the learned Single Judge was not whether the workman were entitled to back wages or not. Thus, it would be useless to discuss various decisions of the Supreme Court where emphasis was placed by the Court that ordinarily back wages should be granted and non-grant thereof was the exception to the rule and such decisions which held that with the change in thinking today due to globalization, back wages could be denied or some lump sum amount could be paid. This issue could have been debated if there is a challenge to an award which grant or denies back wages. The jurisdiction of the learned Single Judge was restricted to the language of the award and then to determine whether a direction to pay back wages was implicit in the award. Thus, reliance by the learned Single Judge on such decisions of the Supreme Court which emphasized that if termination is held to be illegal, as a matter of course back wages should be directed to be paid while ordering reinstatement would be out of place, but meaningfully read, the learned Single Judge has referred to the said decisions as the backdrop of his reasoning, with emphasis placed on paragraph 89 of the award where the Tribunal held that the workman *'are entitled to the relief of treating them in continuity of service under terms and conditions of service as before their alleged termination'*. The learned Single Judge has, though not expressly so stated, held that the direction qua

continuity of service and being brought back to the status as before the termination required it to be held that back wages have to be paid, because how else could somebody be brought back ‘*as before*’ sans the financial aspect.

21. The words ‘*as before*’ in the phrase *under terms and conditions of service as before*, is ex-facie referable to the terms and conditions of service, and no more. Thus, the said expression in the award simply means that when the workman are reinstated in service their terms and conditions of service would be as it was when their service was terminated and the words ‘*as before*’ would therefore mean ‘*as it was*’.

22. In the decisions reported as AIR 2000 SC 3734 State Bank of India Vs. Ram Chander Dubey & Ors., AIR 2005 SC 3476 Rajasthan State Road Transport Corporation & Ors. VS. Shyam Bihari Lal Gupta, (2003) 1 LLJ 816 SC A.P.S.R.T.C. & Anr. VS. Narsagoud, 2003 4) ALD 18 G.Srinivas Vs. APSRTC & Anr., AIR 2006 SC 961 A.P.S.R.T.C. & Anr. Vs. B.S.David Paul and 2005 (8) SCC 58 State of U.P. & Anr. Vs. Brijjal Singh & Anr., it was held that unless there is a specific direction for payment of back wages in an award, an implicit direction for payment of back wages cannot be presumed simply because of reinstatement being ordered with a direction of there being continuity in service.

23. Pertaining to a dispute concerning termination of services of workmen by the employer resulting in a decision by a Tribunal that the termination was illegal, while ordering reinstatement, the Tribunal would have six options available concerning attendant benefits such as continuity of service, back wages and other benefits such as bonus etc. The same would be:-

- A. Reinstatement with continuity of service and with back wages.
- B. Reinstatement with continuity of service, but without back wages.
- C. Reinstatement without continuity of service and without back wages.
- D. Reinstatement with continuity of service and with attendant benefits, but without back wages.
- E. Reinstatement with continuity of service, but without back wages and also without any attendant benefits.
- F. Reinstatement without continuity of service, without back wages and without any attendant benefits.

24. Thus, it has to be held that the workmen were not held entitled to the payment of any back wages, and as regards the reasoning of the learned Single Judge that since the workmen were directed to refund the money they had received from the management, one could infer that in the mind of the Tribunal there was an intention that back wages should be paid, overlooks the fact that the workmen who had received the compensation was in terms of Section 25(FF) of the ID Act, 1947, and one has a serious doubt whether in law the Tribunal could have given any benefit to such workmen who took the compensation envisaged by Section 25(FF) of the ID Act, but since the award has attained finality, we need not delve on this issue, except to hold that obviously the workmen who had taken the compensation could not have retained the same and additionally claimed a right of reinstatement. The return of the compensation to the management was thus linked to the relief of reinstatement and had nothing to do with the idea of back wages.

25. Though not relevant, but we need to speak a little more on the language used by the Tribunal in para 89 of the award when final directions were being issued : *are entitled to the relief of treating them in continuity of service under terms and conditions of service as before their alleged termination.* The Tribunal has, in paragraph 88 of its award referred to a decision of a learned Single Judge of this Court, S.Ravindra Bhat, J. in a writ petition filed by one Bhupat Singh and others. The said case also concerned the action of the management of the appellant with which the Labour Court in the instant case was concerned, giving birth to the term of reference we have already noted hereinabove in paragraph 13 above. The workmen had a problem with the language of the reference made, and while discussing the issue concerning the term of the reference, the learned Single Judge held: -

“44. The management's contention is that the dispute referred, as legality and justification as to the management's stand of October 2004, invoking the provisions of Section 25FF of the Act 1947 and what relief, cover the points of difference between the parties, and the reference to lockout would be incompatible, and inconsistent with the points of dispute. In Anakapalla Co-operative Agricultural and Industrial Society v. Its Workmen MANU/SC/0281/1962 : 1963 SCR 730, the Supreme Court had occasion to consider the provisions relating to Section 25-FF; it held that:

The scheme of the proviso to Section 25FF emphasizes the same policy. If the three conditions specified in the proviso are satisfied, there is not termination of service either in fact or in law, and so, there is no scope for the payment of any compensation. That is the effect of the proviso. Therefore, reading Section 25FF as whole, it does appear that unless the transfer falls under the proviso, the employees of the transferred concern are entitled to claim

compensation against the transferor and they cannot make any claim for re-employment against the transferee of the undertaking. Thus, the effect of the enactment of Section 25FF is to restore the position which the legislature had apparently in mind when Section 25FF was originally enacted on 4 September, 1956. By amending Section 25FF the legislature had made it clear that if industrial undertakings are transferred, the employees of such transferred undertakings should be entitled to compensation unless; of course, the continuity in their service of employment is not disturbed and that can happen if the transfer satisfies the three requirements of the proviso.

In this connection, it is necessary to point out that even before Section 25FF was introduced in the Act for the first time, when such questions were considered by industrial adjudication on general grounds of fair play and social justice, it does not appear that employees of the transferred concern were held entitled to both compensation for termination of service and immediate re-employment at the hands of the transferee. The present position which results from the enactment of Section 25FF, as amended, is, Therefore, substantially the same as it was at the earlier stage. It is common ground that if a transfer is fictitious to benami, Section 25FF has no application at all. In such a case, there has been no change of ownership of management and despite and apparent transfer, the transferor employer continues to be the real employer and there has to be continuity of service under the same terms and conditions of service as before and there can be no question of compensation.

The need to exercise the power, bona fide, was again underscored in Gurmail Singh and Ors Etc. v. State of Punjab MANU/SC/0640/1990 : (1991)IILLJ76SC , where the court held as follows:

The Supreme Court itself has visualised such a case and made it clear that if a transfer is fictitious or benami, Section 25FF has no application at all. Of course, in such a case, there has been no

change of ownership or management and despite an apparent transfer, the transferor employer continues to be the real employer and there has to be continuity of service under the same terms and conditions of service as before and there can be no question of compensation.

*A second type of case which comes to mind is one in which there is in form and perhaps also in law, a succession but the management continues to be in the hands of the same set of persons organized differently such as in *Bombay Garage Ltd. v. Industrial Tribunal* 1953 1 LLJ 14 and *Artisan Press v. L. A. T.* 1954 1 LLJ 424. In such cases, the transferee and transferor are virtually the same and the over-riding principle should be that no one should be able to frustrate the intent and purpose of the law by drawing a corporate veil across the eyes of the Court. (See, *Palmer, Company Law*, 23rd Edn., pages 200-201, paras 8 and 10 and the decision in *Kapur v. Shields* 1976 1 W.L.R. 131, cited therein). These exceptions to the above rules, we think, would still be operative.*

*45. The above decisions establish that employers can transfer undertakings, in exigencies of business. The question whether an employer can adopt questionable methods to show the apparent transfer of business which acts as a device to divest the employee of his due rights under the Industrial Disputes Act too was visualized. If there is absolute right in the employer to transfer his unit, even benami, regardless of legal consequences, then the workmen have got no case. In *Parry and Company Limited v. P.C. Pat* MANU/SC/0305/1968 : (1970) 1 ILLJ 429 SC, the Supreme Court held that reorganization of business is within the managerial discretion of the employer but such reorganization should be bonafide and if such bonafide reorganization results in retrenchment of labour, propriety of such reorganisation of business and consequent discharge of surplus labour cannot be interfered with as profitability economy or convenience of the business reorganisation are within the realm of the employer and not the Tribunal or Courts. The Constitution Bench of the Supreme Court in *Anakapalla Co-operative* (supra) held*

that if a transfer of a business Unit is fictitious or benami, then Section 25-FF of the Industrial Disputes Act will have no application at all and in such cases, there cannot be any change of ownership or management and despite an apparent transfer, the transferor employer continues to be the real employer and there has to be continuity of service under the terms and conditions of service as before and there can be no question of compensation. The proposition of law was followed by a Division Bench of the Madras High Court in Spencer Group Aerated Water Factory Employees' Union and Anr. v. The Presiding Officer, Industrial Tribunals and Ors. MANU/TN/0500/1996 : (1997)ILLJ362Mad."

26. The expression '*continuity of service under the terms and conditions of service as before*' which was used by the learned Single Judge has been verbatim picked up and used by the Tribunal, probably for the reason the expression got embedded in the mind of the Tribunal.

27. The appeal is allowed. Impugned order dated November 17, 2014 is set aside and W.P.(C) No.1000/2013 filed by the workmen is dismissed.

28. Parties shall bear their own costs all throughout.

(PRATIBHA RANI)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

FEBRUARY 23, 2015

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