

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1240 OF 2018

Armed Forces Ex-Officers
Multi-Services Co-operative
Society Ltd.

.. Petitioner

Vs.

Rashtriya Mazdoor Sangh(INTUC)

.. Respondent

WITH

WRIT PETITION NO. 5075 OF 2018

Rashtriya Mazdoor Sangh(INTUC)

.. Petitioner

Vs.

Armed Forces Ex-Officers
Multi-Services Co-operative
Society Ltd.

.. Respondent

Mr. R. S. Pai a/w. Mr. Anand Pai and Ms. Parthvi Gotecha i/b. M/s. Haresh Mehta & Co. for the Petitioner in WP/1240/2018 and for Respondent in WP/5075/2018.

Mr. Nitin Arvind Kulkarni a/w. Mr. Avinash Belge for the Petitioner in WP/5075/2018 and for Respondent in WP/1240/2018.

CORAM : A.K. MENON, J.

DATED : 17th JANUARY, 2019.

P.C. .

1. These two petitions call into question an Award dated 7th September, 2017 by which the Industrial Court, Pune set aside an order of retrenchment dated 22nd March, 2007 issued to members of the respondent and directed

the petitioner to reinstate workers with continuity of serviceS and all the consequential benefits. The Award also directs the petitioner to pay 75% back wages to all workers till the date of reinstatement or till they attain age of superannuation, except eight employees after adjustment of retrenchment compensation. In respect of the said eight employees it was directed that back wages only to the extent of retrenchment compensation already received would be payable.

For ease of reference I refer to the facts in Writ petition No. 1240 of 2018.

2. The petitioner is a Co-operative Society of Ex-Servicemen engaged in providing support services like Housekeeping, Transport and Security to various companies and Government establishments. The respondent is said to represent majority of drivers engaged by the petitioner. On 7th August, 2005 a Charter of demand was submitted to the petitioner. Negotiations however failed resulting in a meeting being fixed before the Deputy Commissioner of Labour at which the petitioner refused demands of the union and threatened that the establishment would be closed down unless a settlement was arrived at. The petitioner then filed complaint ULP No.17 of 2007 before the Industrial Court pursuant to which the Industrial Court restrained the workers from entering within a radius of 500 meters since respondent members had resorted to strike with effect from 23rd January, 2007. Demonstrations was also prohibited within 200 meters.

3. The impugned order records that the Industrial Court had orally directed the petitioner to allow employees to resume the duties without prejudice to their rights. However, the petitioner retrenched employees with effect from 23rd March, 2007. Being aggrieved by the retrenchment the respondent raised a demand on 7th May, 2007. Negotiations however failed. A failure report came to be filed on 17th October, 2007 and reference order was issued to the Appropriate Government. The union contended that the retrenchment was illegal since it was effectively terminating the services of the workmen under the guise of retrenchment. That the grounds were false and that the petitioner had not closed down the business, but had given their buses on rent to various companies and appointed new workers. It was contended that mandatory provisions of 25-F of the Industrial Disputes Act were not followed and workers were victimized. They sought reinstatement with continuity of service and back wages. In the written statement the respondent denied all the allegations.

4. The petitioner had meanwhile contended that due to the strike it lost out on the contracts with 18 companies for transporting employees of these companies in 60 buses. By virtue of this it was not possible to provide work to the 55 drivers and the petitioner had no alternative but to retrench workers by paying retrenchment compensation. Later the petitioner could restart its transportation business and offered to re-employ the drivers by

issuing individual letters and public notices. Eight of these drivers are said to have objected to re-employment. Although this offer was repeated on 11th October, 2008, the drivers refused to accept the offer and it was contended that the reference should be dismissed. The Industrial Court framed a solitary issue as to whether union proved its demand for reinstatement. It was partly answered in favour of the union but excluding eight of its members.

5. Mr. Pai submitted that the impugned order is bad in law since it fails to appreciate the difference between closure of an undertaking as contemplated in section 2(oo) of the Industrial Disputes Act and discontinuation of its transport business. He invited my attention to paragraph 18 of the impugned Award and submitted that the Industrial Court had misinterpreted the closing down of the business assuming it to be closure as contemplated under the Act. However, what had in fact happened is that only the transport business had been discontinued for want of contracts. The Industrial Court had concluded that if the petitioner wanted to effect closure the mandatory procedure for closure of undertaking was to be followed and burden of closure lay upon the employer. First of all he submitted that this was not an industrial undertaking as defined under section 2(ka). Section 2(ka) clearly defines the Industrial establishment or undertaking to mean an establishment or undertaking in which any industry is carried on.

6. Secondly, if the predominant activity of such undertaking or unit is an industry and the other activity is not severable, the entire establishment shall be deemed to be an industrial undertaking. "Industry" is defined in clause 2(j) to mean any systematic activity carried on by co-operation between an employer and his workmen for undertaking manufacture, supply or distribution of goods or services including calling services of employers. He therefore submitted that the petitioner were not an industrial undertaking and this concept of closure and the procedure therefore under section 25-O of the Industrial Disputes Act could not be applied. On this basis petitioner assailed the impugned order.

7. Mr. Kulkarni on the other hand refuted the petitioner's contention and submitted that union had also filed its own writ petition challenging the order to the extent it excluded eight of the employees from the benefits of reinstatement, but only granted back wages to the extent of retrenchment compensation which they had already received. He submitted that the said persons could not have been left out and the order was bereft of any justifiable reasons for these persons.

8. In support of the contention Mr. Kulkarni. relied upon judgment in *Biddle Sawyer Ltd. vs. Chemical Employees Union and Ors.*¹ and submitted that under section 2(cc) of the Industrial Disputes Act closure is closing down permanently of the source of employment i.e. place where the

¹ 2007(3) BomCR 586

employment is actively generated and closing down a “place” of business would not amount to closure. Mere closing of a place of manufacturing and restarting at another place is not closure because the business is alive. In the instant case Mr. Kulkarni submitted that the business of the petitioner was not closed it was only that the transportation business was temporarily discontinued. He submitted that in *Biddle Sawyer (supra)* the Division Bench of this Court had taken the above view after considering various judgments

9. Mr. Kulkarni also relied upon observation in paragraph 35 of the decision in *Mackinnon Mackenzie and Company Ltd. vs. Mackinnon Employees Union*² wherein the Court observed that Statutory provisions contained in section 25-FFA of the Industrial Disputes Act mandate that the company should have issued a closure notice to the Appropriate Government and should have served at least 60 days notice before the date on which it intended to close down the department. That the object at serving such notice on the State Government is to see whether it can ascertain whether or not it is feasible for the company to close down the department and whether concerned workmen ought to be retrenched from their services rendering them unemployed and to mitigate the hardship of the workmen and their family members i.e. statutory protection given to the workmen preventing employers from retrenching workmen arbitrarily and unreasonably.

² 2015 II CLR 109

10. Mr.Pai relied upon the observation in *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh vs. Presiding Officer Labour Court, Chandigarh and Ors.*³ which in paragraph 14 has considered the meaning of the term 'retrenchment' under Section 2(oo) which contemplated termination of services of workmen by the employer for any reason except those expressly excluded. In paragraph 14 the Supreme Court observed that the question to be decided is whether on a proper construction of the expression 'retrenchment' it would mean termination by employer of service of a workman as surplus labour for any reason whatsoever or whether it meant termination of service for any reason other than as punishment by way of disciplinary action and those which were expressly excluded by the definition. That the question is whether the word 'retrenchment' must be understood in narrow sense or in wider fashion. Perusal of the definition reveals that the expression retrenchment does not include voluntary retirement or retirement on reaching superannuation under the contract by termination on the ground by continued ill health.

11. In the instant case we are not concerned with voluntary retirement or attainment of superannuation or continued ill health. Thus the exclusions were not in contemplation. The expression 'retrenchment' would therefore in its application to the present facts would be restricted to mean termination of employment for any reason otherwise than by way of punishment. The

3 (1990) 3 SCC 682

decision in *Biddle Sawyer (supra)* was also considered by the Industrial Court and it came to the conclusion that the petitioner had granted retrenchment compensation due to closure of the transport activity, but the petitioner had not actually effected the closure of the undertaking as contemplated in section 25-O read with section 2(cc) and by paying closure compensation. This would have entailed an application to be made to the Appropriate Government, which procedure had obviously not been followed. The Court came to the conclusion that closure of transport activity was all that is contemplated.

12. After appreciating the evidence, the Court relied upon certain admissions which showed that the petitioner had terminated the contracts. However, it observed that it was highly improbable that all the 18 contracts were canceled at the same time. The record indicated that 60 buses were available for transport business and some contracts were canceled and the witness of the petitioner had admitted that transport activity was never closed and the business was still being carried on.

13. The impugned order further records that if there was no total closure, there was no reason to retrench the workers. It deals with the evidence and makes reference to admissions in cross examination by the petitioner's witness. That the petitioner had decided to restart their services but the witness could not specify how many companies had approached the

petitioner at that time. Furthermore in paragraph 25, the order records that the transport activity of the petitioner undertaking was never closed and that the petitioner's witness admitted that there were about 300 members of the society. Witness did not know whether the society had passed a resolution for the closure of the transport business. He also did not know whether Registrar of Societies was informed of the closure of the business, despite which the closure route was adopted for retrenchment.

14. The impugned order has also considered the relevant evidence and eventually came to the conclusion that all workers except a few had admitted that they have been unemployed. Many workers admitted to have been engaged in temporary work, but the crucial aspect is that the petitioner has not led any evidence to show that the workers were employed elsewhere. Reliance was also placed on the decision of the Supreme Court on *Deepali Gundu Surwase vs. Adhyapak Mahavidyala*⁴ which held that the workers would have to be reinstated with continuity of service and back wages. What is also important to note is that the petitioner had offered re-employment on two occasions. If the business had been discontinued there was no occasion for the petitioner to offer to re-employ the drivers.

15. Nothing in the impugned award has been shown to me to be perverse or illegal. The award marshalls the facts, has analysed the evidence,

⁴ 2014 II CLR 813

considered the admissions and has come to the conclusion that all workmen except eight named therein were entitled to relief. As far as the eight workmen are concerned the retrenchment compensation paid to them is limited to back wages that they were found entitled to.

16. In Writ Petition no. 5075 of 2018 filed by the Union the petitioner in Writ Petition 1240 of 2018 is respondent. The challenge in this petition is the union challenges the very same award to the extent that it denies back wages to eight of its workers.. For the reasons set out above I am of the view that the decision to restrict the back wages to the extent of retrenchment compensation received by these persons is well founded and after analysis of evidence and considering all submissions nothing has been shown to me that calls for interference in this petition as well.

17. I find no reason to interfere in the writ jurisdiction of this Court. I pass the following order :

(i) Writ Petitions are dismissed.

(ii) No costs.

At this stage Mr. Pai seeks continuation of the ad-interim protection granted. Mr. Kulkarni stated that for a period of four weeks from today no coercive measures will be taken. Statement is accepted.

(A.K. MENON,J.)