**HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**CWP No.8057 of 2018**

**Date of Decision: 06.02.2020**

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M/s Rockman Industries Ltd. ... Petitioner

VS.

PO, Industrial Tribunal, Ludhiana & Anr. ... Respondents

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**CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI**

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Present: Mr. PK Mutneja, Advocate for the petitioner

Mr. Nitin Sachdeva, Advocate for
Mr. Sharwan Sehgal, Advocate for the workmen

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**GIRISH AGNIHOTRI, J. (Oral)**

(1) This order shall dispose of CWP Nos.8057, 9790, 11456 to 11462, 7894, 9472 to 9476, 9510, 9532, 9569, 9653, 25046, 9578, 26495, 25211 to 25217, 26510, 26548, 26910, 26956 of 2018; CWP Nos.12441, 12466, 19553 of 2019. With the consent of counsel for the parties a common order is being passed in all the cases as all the writ petitions (filed either by the management or the workmen) are against the common award dated 27.11.2017 passed by the Industrial Tribunal (P14). At this stage, the facts are being taken from the lead case i.e. CWP No.8057 of 2018.

(2) The present writ petition has been filed, *inter alia,* praying for quashing of the award of the Industrial Tribunal dated 27.11.2017 (P14).

(3) With the able assistance of counsel for the petitioner, this Court has examined the award dated 27.11.2017. For the reasons mentioned hereinunder, this Court accepts the prayer made in the writ petition filed by the management:-

(4) The brief facts as pleaded and noticed in the award are that the workman was appointed as workman (machine operator). His average last drawn wages was ₹ 3200/- per month. He had joined the management in

March, 1999. He has alleged that the management terminated his services on 31.10.2005. The pleaded case of the management as noticed in the award was that the reference is not maintainable. It was stated that the respondent-management consisted of two divisions i.e. Cycle Division and Auto Division. The present case, as per learned counsel for the petitioner-management, pertains to Cycle division which had approximately 847 workers working. The specific case of the management was that on 25.05.2005, the management moved an application under Section 25(O) of the Industrial Disputes Act, 1947 (in short, the Act) before the State Government seeking permission for closing the Cycle Division w.e.f. 25.08.2005. One of the main reasons mentioned for closing the Cycle Division was that the unit was suffering continued losses. The State Government granted permission to the management to close down the Cycle division w.e.f. 31.10.2005.

(5) Learned counsel for the petitioner-management has further submitted with emphasis that this order/permission granted to close down the Cycle Division, under Section 25(O), w.e.f. 31.10.2005, has become final. In support of this, learned counsel submits that some of the workmen/union filed review application under Section 25(O)(5) of the Act. The said review application was dismissed. Against this, all the workmen/union through Lal Jhanda Rockman Cycle Union filed writ petition in this Court challenging the permission under Section 25(O) of the Act. The said writ petition i.e. CWP No.575 of 2006 was decided on 29.09.2006 (P4). The operative part of the judgment reads as under:-

> *}21. The workmen have not been able to spell out or give any mathematical calculations by which it could be inferred that the*

*opinion formed by the management, which is further testified by the Inquiry Officer and which has been further affirmed by the government, suffers from tactical irregularities, illegalities, infirmities and/or is against the principles of natural justice. They have also not been able to show that given the opportunity, the workmen collectively would be able to run a unit profitably and shall be able to achieve the net worth of the Cycle Division as positive. The petitioner, as a union as well has not been able to spell out other aforesaid retrievable situation.*

*22. In view of the above, on all counts, the petitioner has not been able to make out any case for earning the relief under the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India.*

*23. Resultantly, we find no infirmity in the permission granted by the government for closing down the Cycle Division/Unit as the same has been held "not viable".*

*Dismissed.*

*September, 29, 2006* *(J.S. Narang)*
*Judge*
*(Arvind Kumar)*
*Judge"*

(6) It is further the pleaded case of the management as noticed in the award that on 02.11.2005, the management informed all the workmen to collect their dues. At this stage, learned counsel for the petitioner-management submits that the dues herein were compensation to which each of the workmen was entitled to under Section 25(O). It is also the positive case of the management that in this division 827 workers had come and collected the compensation/legal dues. In view of the above, the submission of counsel for the petitioner therefore is that it is totally misconceived on the part of the remaining workmen who are respondents amongst whom one is

the respondent in the present writ petition, to allege that they were terminated on 31.10.2005. He submits that rather it was the case where the services were dispensed with after seeking permission from the State Government and all were offered compensation including the present respondent and other similarly placed 19 workmen. To support the contention that the due intimation/offer for the compensation was made, counsel for the petitioner relies upon the fact that due publication was made in the newspapers then. He further submits that not only in 2005, they were offered the said amount at every stage, and this position continued to be same till even 2013 when again offer was made as is evident from the letter dated 30.04.2013 and a cheque appended as Annexure P6 (colly).

(7) Learned counsel for the petitioner has then referred to the reference dated 18.03.2015 which reads as under:-

> *"Whether seeking permission under Section 25(O) dated 2.11.2005 of one division and after offering compensation to the workman dispensing with the services, whether the workman after about 9 years, serving the demand notice against for reinstatement is justified? If so, to what relief the workman is entitled for?"*

(8) The Industrial Tribunal while dealing with Issue No.1 has observed as under:-

> *"**Issue No.1:-***
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> *The onus of this issue was placed on the respondent. The respondent had alleged that due to continued losses the management had to close the cycle division and the State Government granted permission to close the cycle division w.e.f. 31.10.2005 and hence the workman has not approached this Tribunal with clean hands as the respondent was granted permission to close the said division and this order was upheld upto the Hon'ble High Court. In the replication the workman*

*stated that he has approached this Tribunal with clean hands and he has not concealed any material facts.*

*As the strength of the workmen in the respondent was more than 100 workers, ChapterV-B of I.D.Act was applicable and under the same Sectgion 25-N and 25-O of the I.D. Act were also applicable.*

*Even if the respondent was granted the permission to close the cycle division, the respondent had to comply with the mandatory provisions of section 25-O(8) of the I.D.Act, which is reproduced as under:-*

> *"Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive 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."*

*This provision is exactly similar to Section 25-F of the I.D Act.*

*Further the management has not complied with the provisions of Section 25-F of the I.D. Act. Section 25-F of the I.D. Act is reproduced as under:-*

> *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-*
>
> *(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;*

*Thus, it is clear that the respondent did not offer retrenchment compensation to the workman at the time of* *retrenchment. The said action of the respondent was void ab initio and the workman was entitled to reinstatement with full back wages. Hence, the reference is maintainable and the matter is to be decided on merits. The workman did not conceal any material facts and he has approached this Tribunal with clean hands and therefore, this issue is decided against the respondent and in favour of the workman."*

(9) The submission in this regard made by learned counsel for the petitioner is that the Industrial Tribunal has fallen into error in proceeding to hold that respondent did not offer retrenchment compensation to the workmen at the time of retrenchment. The positive case of the petitioner is that the once due permission as required under the law was taken by the management under section 25(O) of the Act and all the subsequent steps including offering of compensation were taken after 31.10.2005 in accordance with law, there was no occasion for the Labour Court to direct payment of the retrenchment compensation. In this regard, he relies upon the judgment of the Hon'ble Supreme Court in ***Maruti Udyog Ltd. vs. Ram Lal & Ors. (2005) 2 SCC 638***. Para 21 to 25 of the said judgment reads as under:-

*"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing therefrom.*

*Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee takes effect. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose.*

*22. A Constitution Bench of this Court in* ***Hariprasad Shivshankar Shukla vs. A.D. Divikar [(1957) SCR 121****]* *interpreted the word 'retrenchment' as contained in Section 2(oo) of the ID Act, holding :*

> *"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 punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business as in the case of Shri Dinesh Mills Ltd. or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the Railway Company / ."*

*23. The history of the legislation has been noticed by a Constitution Bench of this Court in Anakapalla Co-operative Agricultural and Industrial Society Ltd. (supra) and it, while holding that a company taking over the management of a closed undertaking may in a given situation become successor-in-interest but as regard the interpretation of the relevant provisions of the 1947 Act following Hariprasad Shivshankar Shukla (supra), opined :*

> *"The Legislature, however, wanted to provide that though such termination may not be retrenchment technically so-called, as decided by this Court, nevertheless the employees in question whose services are terminated by the transfer of the undertaking should be entitled to compensation, and so, s. 25FF provides that on such termination compensation would be paid to them as if the said termination was retrenchment. The words "as if" bring out the legal distinction between retrenchment defined by s. 2(oo) as it was interpreted by this Court and termination of services consequent upon transfer with which it deals. In other words, the section provides that though termination of services on transfer may not be retrenchment, the workmen concerned are entitled to compensation as if the said termination was retrenchment. This provision has been made for the purpose of calculating the amount of compensation payable to such workmen; rather than provide for the measure of compensation over again, s. 25FF makes a reference to s. 25F for that limited purpose, and, therefore, in all cases to which s.25FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against the transferee of the said concern."*

*24. The said decision, therefore, is an authority for the proposition that the expression 'as if' has limited application and has been employed only for the purpose of computation of quantum of compensation and takes within its purview a case where retrenchment as contained in Section 2(oo) of the 1947 Act has taken place within the meaning of Section 25F and not in a case falling under Sections 25FF or 25FFF thereof.*

*25. Once it is held that Section 25F will have no application in a case of transfer of an undertaking or closure thereof as*

> *contemplated in Section 25F and 25FFF of the 1947 Act, the logical corollary would be that in such an event Section 25H will have no application."*

(10) The next submission of learned counsel for the petitioner is that the Hon'ble Supreme Court in ***Gordon Woodroffe Agencies (P) Ltd. vs. Presiding Officer, Principal, Labour Court & Ors. (2004) 8 SCC 90*** held that the Labour Court had no authority in law to direct payment of any additional sum by way of *ex gratia* payments otherwise than what is provided under the Statute, when the Act of the management in closing down the establishment is found to be valid and all legally-payable amounts have been paid or offered in time. The operative part of the judgment reads as under:-

> *"In our opinion, the ratio laid down in the above case clearly applies to the facts of this case. In the instant case also, the Labour Court came to the conclusion that the closure of the establishment was legally justifiable and the management had as required under the law, offered apart from the compensation payable for the closure, all other statutory dues which some of the employees collected without demur and in the case of respondent- workmen even though the same were offered on time, they did not accept it, therefore, the question of paying any additional ex gratia compensation which is not contemplated under the statute, does not arise. This Court in the case of N.S. Giri (supra) held:*
>
> > *"An award under the Industrial Disputes Act cannot be inconsistent with the law laid down by the Legislature or by the Supreme Court and if it does so, it is illegal and cannot be enforced." Thus, it is clear from the pronouncements of this Court that the Labour Court or for that matter the High Court had no authority in law to*

*direct payment of any additional sum by way of ex gratia payment otherwise than what is provided under the statute when the act of the management in closing down the establishment is found to be valid and all legally payable amounts have been paid or offered in time. In such a situation, contrary to the statute, the principle of social justice cannot be invoked since the Legislature would have already taken note of the same while fixing the compensation payable.*

*For the reasons stated above, this appeal succeeds, the judgments of the courts below are set aside. The appeal is allowed.*

(11) Learned counsel for the petitioner submits that in the present case the objection of the management was also to the effect that the decision in pursuance to the permission to close down the unit was w.e.f. 31.10.2005 whereas the demand notice/reference order was raised after 9 years. On this point, he also relies upon the provisions of Section 2(A)(2)& (3) to submit that even where the workman has been given option to directly approach the Industrial Tribunal/Labour Court, the limitation provided is 3 years whereas in the present case these workmen have approached after 9 years. To support the above submission, learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in ***Karan Singh vs. Executive Engineer, Haryana State Marketing Board (2007) 14 SCC 291***. The relevant extract of the said judgment is as under:-

*"The respondent-Board took the stand that the services of the claimant were required as DPL as and when required and he had really not completed 240 days. A stand was taken that the claim was highly belated. It is to be noted that in the cross examination appellant had admitted that he had no proof of having worked from August 1993 to October 1994. The claim*

*petition was filed in the year 2000. The notice dated 6.6.2000 was the first one and on failure of conciliation, reference was made on 8.2.2001. The appellant should have explained inaction on his part. Labour Court took the view that the claim was highly belated. If the appellant felt that the order of termination was illegal without following due procedure, he should have come up with demand notice within a reasonable time. It was held that though no limitation is prescribed, but it would be unequitable to re-open the closed chapter after a long time. The appellant was therefore held not to be entitled to any relief."*

(12) The cross-writ petitions filed by the workmen and in one of the writ petitions of the workman, namely, CWP No.25211 of 2018, the prayer has been made *inter alia* to modify the award dated 27.11.2017. It has been further prayed to direct respondent No.2 to reinstate the petitioner-workman in service with continuity and with full backwages. The record shows that on 15.10.2018 notice of motion was issued and it was ordered that the said writ petition be heard along with the main writ petition as noticed above i.e. CWP No.8057 of 2018. The pleaded case of the petitioner-workmen, *inter alia,* is that they were entitled to reinstatement. It is alleged by the workmen that since in the case of few workmen there were instances of transferring and posting them for some time in the other division, therefore, the provisions of Section 25(G) of the Act were attracted. This Court finds that this plea is not sustainable in view of the fact that the workmen, in-person and on behalf of the Union, were duly represented before the authorities of the Government as noticed in the order dated 02.11.2005 (whereby permission to close down the unit has been granted under Section 25(O) of the Act). In the order, by referring to the case laws, the competent authority has observed that seeking permission to close down the loss making unit is

justified even if there is another unit in which there is profit. The operative portion of the order passed under Section 25(O) of the Act dated 02.11.2005 is reproduced hereinunder:-

> *"The application seeking registration of the union that has been stated to be pending with Commissioner, Punjab has nothing to do with the merits of this case. The application is being separately examined and shall be decided by the competent authority on merits.*
>
> *The Inquiry Officer, Shri Jagraj Singh, Labour-cum-Conciliation Officer-3, Ludhiana has given his recommendations in his report submitted to Principal Secretary, Labour and Employment. There is no denying the fact that the production in the factory has decreased and the undertaking is incurring heavy losses. While arguing in favour of their application, the management has relied on various judgments of the Hon'ble Supreme Court and Hon'ble High Courts. I have gone through these judgments. In Excel Wear v/s Union of India, reported at P/430 Factories Journal Reports (September 29, 1978) the Hon'ble Supreme Court held that "No jurisprudence of any country recognizes that the concept of injury is widened and the area of restraint is broadened to an extent that it may result in the annihilation of the person affected by the restraint. Not to permit an employer to close down his business is essentially an interference with his fundamental right to carry on the business".*
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> *Similar view was taken by Hon'ble Supreme Court of India earlier in the case of Kalinga Tubes Ltd. Their workman as reported in FJR Vol.34 Page 393 (May 3, 1968) that "the employer may decide to close down an undertaking because of financial or purely business reasons. The employer may decide to close down when he faces a situation in which it is considered either dangerous or hazardous from the point of view of the safety of the administrative staff or members of the management or even the employees themselves to carry on the*

*business. The essence of the matter is the factum of closure by whatever reason motivatd.”*

*Hon’ble Punjab and Haryana High Court in the case of Bhartia Electric Steel Co.Ltd. vs. State of Haryana and others as reported in CLR 1168 (July 21 1997) held that “seeking permission to close down loss making unit is justified, even if there is another unit in which there is profit. The principle of Section 25(O) is not that the Government can rob Paul to pay peter. It is bad logic is and bad economics to say that the petitioner company should continue to suffer losses till other units have to be closed down.”*

*A closer perusal of the relevant judicial pronouncements as indicated above makes it abundantly clear that the management has a justiciable right, to close down an undertaking, if it is making losses. I do not find merit in the contention of the workers that the management has intentionally slowed down the production of the cycle parts to make an excuse for closing down this division. It is understandable that no management would like to close down a profitable undertaking. It may also be observed that in the matter the economic security and livelihood of 847 workers and their families is likely to be jeopardized very adversely. Nevertheless, as already discussed in detail in the presiding paras, there is no denying the fact that the management of M/s Rockman Industries Ltd. has been incurring huge losses and the situation is verily irretrievable.*

*Therefore, I, J.R. Kundal, Financial Commissioner Rural Development and Panchayats, Punjab, in exercise of the powers under sub-section 2 of Section 25(O) of the Industrial Disputes Act, 1947, hereby grant permission to close down M/s Rockman Industries Cycle Division, Ludhiana w.e.f. 31/10/2005 subject to the condition that every workman likely to be affected by the closure of this undertaking will be paid compensation as per the provisions of sub-section (8) of Section 25(O) of the Industrial Disputes Act, 1947.*

*Given under my hand and seal of office on this 02nd day of November, 2005.*

*S/- Financial Commissioner,*
*Rural Development and Panchayats, Punjab."*

(13) For the reasons recorded above, the writ petitions filed by the management are allowed and the writ petitions filed by the workmen are dismissed in above terms.

(14) At this stage, learned counsel for the workmen submits that let a direction be given to the petitioner-management to hand over the compensation amount under Section 25(O) of the Act which admittedly is due towards the workmen within a time-bound manner. It is, therefore, deemed appropriate to direct the management to pay compensation under Section 25(O) to each of the workmen within *two months* from the date any of the workman would come and approach the management at the address given the writ petition i.e. A-7 Focal Point, Ludhiana through the HR-Head. The offer shall be, however, available for *4 months* from the date of receipt of certified copy of this order whereafter the workman may have to avail other remedies as available under the law.

(15) Ordered accordingly.

06.02.2020
*Vvishal*

**(Girish Agnihotri)**
**Judge**

*1. Whether speaking/reasoned?* ***Yes/No***
*2. Whether reportable?* *Yes/No*