

Sunder Singh, etc. v. Beas Construction Board, etc. (P. C. Jain, J.)

Ex-servicemen Co-operative Tenants Farming Society does not proceed on a correct assumption and has, therefore, to be overruled. We agree with the reasoning of Gurnam Singh J. in paragraph 18 of the report in *Prem Ex-servicemen Co-operative Tenants' Farming Society Ltd.'s* case and affirm the same.

(15) Consequently, we are satisfied that the notice does not in any way violate the observations in the judgment of the Supreme Court. It was issued plainly to enable the petitioner to take part in the proceedings which the Collector was required to take in order to decide the questions formulated by their Lordships. The notice is in keeping with the judgment of the Supreme Court and is not questionable for any other reasons advanced by the learned counsel.

(16) No other point was urged by the learned counsel for the parties.

(17) In the result we find no substance in the writ petition as well in the appeal. Both are, therefore, dismissed but without any order as to costs.

S. S. Sandhawalia, C.J.—I agree.

K.T.S.

FULL BENCH

Before Prem Chand Jain, Surinder Singh and S. P. Goyal, JJ.

SUNDER SINGH and another—Petitioners.

versus

BEAS CONSTRUCTION BOARD and others—Respondents.

Civil Writ Petition No. 3326 of 1977

January 10, 1978.

Industrial Disputes Act (XIV of 1947)—Sections 25 F and 25 FFF—Services of workmen dispensed with on part completion of work—Section 25 FFF—Whether applicable—Cases falling under Section 25 FFF—Payment of retrenchment compensation along with the discharge notice—Whether a condition precedent.

Held, that the provisions of Section 25 FFF of the Industrial Disputes Act, 1947 would apply to a case where the services of the workmen are dispensed with on part completion of the work.

(Para 6)

Held, that in cases falling under section 25 FFF of the Act, payment of retrenchment compensation is not a condition precedent and that retrenchment compensation has not to be paid along with the discharge notice.

(Para 18).

Raghubir Singh and another v. The Beas Construction Board and others, Civil Writ Petition No. 3230 of 1977 decided on December 6, 1977
OVERRULED.

Case referred by the Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice Surinder Singh on 12th December, 1977 to a larger Bench for deciding the following question of law. The larger Bench consisting of Hon'ble Mr. Justice Prem Chand Jain, Hon'ble Mr. Justice Surinder Singh and Hon'ble Mr. Justice S. P. Goyal finally decided the case on 10th January, 1978.

"Whether retrenchment compensation has to be paid along with the notice even in the cases falling under section 25-FFF of the Act ?"

Petition under Article 226 of the Constitution of India praying that a writ of Certiorari, Mandamus or any other suitable writ direction or order be issued directing the respondents:—

- (i) to produce the complete records of the case;
- (ii) the impugned orders dated 22nd September, 1977 (Annexures P-5 and P-6, respectively) be quashed;
- (iii) this Hon'ble Court may please pass any other order which it may deem fit and just in the circumstances of the case;
- (iv) that service of prior notices on the respondents as required under the amended High Court Rules and orders may kindly be dispensed with and filing of certified copies of the annexures may also be dispensed with ;
- (v) that costs may please be awarded to the petitioners.

It is further respectfully prayed that pending disposal of the writ petition, the implementation of the impugned orders dated 22nd September, 1977 (Annexures P-5 and P-6, respectively) be stayed and the petitioners be not dispossessed of the house accommodation in the meanwhile.

Anand Swarun, Senior Advocate (Gopal Mahajan Advocate with him), for the petitioners.

Kuldip Singh, Bar-at-law, for the respondents.

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JUDGMENT

REFERING ORDER.

Prem Chand Jain, and Surinder Singh, JJ.

(1) The only contention raised before us by the learned counsel for the petitioners is that the petitioners are entitled to the payment of retrenchment compensation along with the impugned notices that were issued to them, that the cases of the petitioners are covered by the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that the notices having not been issued in accordance with law, inasmuch as no compensation amount in respect of retrenchment was paid at the time of the issuance of the notices, the notices are illegal and bad and on the basis of those notices the services of the petitioners cannot be terminated. On the other hand, Mr. Kuldip Singh, learned counsel for the respondents, contends that the cases of the petitioners squarely fall within the provisions of section 25-FFF of the Act, that the notices have been issued in accordance with law and that the petitioners cannot claim the amount payable to them by way of retrenchment compensation to be paid to them along with the notices.

(2) At the outset it may be observed that initially when the case came up for hearing, notice of motion was issued as in other writ petitions in which similar point was involved, a notice of motion was issued by VI D.B. This petition was adjourned off and on to await the decision of that Bench, which was given on 6th December, 1977. This petition came up for hearing on 8th December, 1977 and the learned counsel for the petitioners prayed that this petition be allowed in the same terms and conditions as in (1) *Raghubir Singh and others v. Bhakra Construction Board and others*, decided by M. R. Sharma and A. S. Bains, JJ. The sole point that was urged on December 8, 1977, by Mr. Mahajan was that even under section 25-FFF of the Act the petitioners were entitled to the payment of retrenchment compensation along with notices. Reliance in support of his contention was placed on the Bench decision referred to above. On the other hand, Mr. Kuldip Singh, learned counsel for the respondents, submitted that on this aspect of the matter the view of the Bench was not correct and that it needs re-consideration. Reliance was placed

(1) C.W. 3230 of 77 decided on 6th December, 1977.

by the learned counsel on the decision of the Supreme Court in *Radio and Electricals Ltd., Madras and Industrial Tribunal, Madras and others*, (2) and in *M/s Hathising Manufacturing Co. Ltd., Ahmedabad and another v. Union of India and another*, (3), to which reference has also been made in the aforesaid judgment of the Bench.

(3) In order to study the case further, Mr. Mahajan requested for the adjournment of the case and the case was adjourned for 12th December, 1977.

(4) Today, Mr. Mahajan does not stick to his argument advanced on December 8, 1977 and his short submission is that this is a case of retrenchment of surplus labour and that the case of the petitioners is covered by the provisions of section 25-F of the Act. The learned counsel further submits that if the case of the petitioners is not covered by the provisions of section 25-F of the Act, then he does not claim any benefit on behalf of the petitioners, under the provisions of section 25-FFF of the Act on the basis of the Bench judgment.

(5) We have heard the learned counsel for the parties at great length. As is apparent from the contentions of Mr. Mahajan, he submits that it is a case of surplus labour and in support of his contention he has placed reliance on the averments made in Para 10 of the written statement filed on behalf of respondents Nos. 1 to 3. He has further supported his argument by placing reliance on the judgment of their Lordships of the Supreme Court in *Management of M/s Willcox Buckwell India Ltd., v. Jagannath and others*, (4). On the other hand, Mr. Kuldip Singh submits that it is not a case of surplus labour, but it is a case of retrenchment on the basis of partial closure of the undertaking. According to him, even in the case of a partial closure of an undertaking, the provisions of section 25-FFF shall be attracted. Reliance in support of his contention has been placed on two judgments of their Lordships of the Supreme Court in *Workmen of the Straw Board Manufacturing Company Limited v.*

(2) 1970 (II) Labour Law Journal 206.

(3) A.I.R. 1960 S.C. 923.

(4) A.I.R. 1974 S.C. 1166.

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M/s. Straw Board Manufacturing Company Limited, (5) and in *Management of Hindustan Steel Ltd., v. The Workmen and others*, (6).

(6) After examining the contentions of the learned counsel, in the light of the judgments referred to above, we find that there is considerable force in the contention of Mr. Kuldip Singh. As is apparent from the authorities and the averments made in the written statement, the services of the petitioners were dispensed with on the part completion of the work. The decisions in *the Workmen of the Straw Board Manufacturing Company Limited and the Management of Hindustan Steel Ltd.* (Supra) clearly apply to the facts of the case in hand and on the basis of those two decisions we have no difficulty in holding that the provisions of section 25-FFF would apply to the facts of the case in hand. The judgment on which reliance has been placed by Mr. Mahajan, has no applicability to the facts of the case in hand and is clearly distinguishable.

(7) Having come to the conclusion that the case falls under section 25-FFF of the Act, ordinarily we would have found no difficulty in dismissing this petition on the basis of the contentions advanced by Mr. Mahajan; but Mr. Kuldip Singh rightly urged that when once it is held that the provisions of section 25-FFF apply, then in view of the Bench judgment of this Court, the petitioners are straight away entitled to the benefit, as given by that judgment to the petitioners in those writ petitions. It is in this situation that the learned counsel submits that the decision given in that judgment on the question of the interpretation of the provisions of section 25-FFF needs reconsideration. Again, we find considerable force in the contention of Mr. Kuldip Singh. The two decisions of their Lordships of the Supreme Court in *Hathising Manufacturing Company Ltd., and Radio and Electricals Ltd., Madras* (2 & 3 supra) clearly go to show that in the cases falling under section 25-FFF, no compensation has to be paid at the time of retrenchment. Even the language of this section is quite clear and with utmost respect to the learned Judges in *Raghubir Singh's case*, we are unable to agree with them that in cases falling under section 25-FFF of the Act, the amount of compensation has to be paid in cash before they are asked to quit. In this situation, as we have not agreed with the Bench decision in *Raghubir Singh's case*, we have no other alternative but to refer this

(5) 1974(1) Labour Law Journal 499.

(6) 1973(1) Labour and Industrial Cases 461.

case to larger Bench. Accordingly, we direct that the papers of this case be laid before the Hon'ble the Chief Justice for appropriate orders.

(8) It is further ordered that orders be obtained from the Hon'ble the Chief Justice for fixing up this case for motion hearing before a larger Bench, on 19th December, 1977...Stay to continue.

(9) The question that requires decision by the larger Bench is formulated thus:—

“Whether retrenchment compensation has to be paid along with the notice even in the cases falling under section 25-FFF of the Act.”

JUDGMENT

Prem Chand Jain, J.

(10) Sunder Singh and another have filed this petition under Article 226 of the Constitution of India for the issuance of an appropriate writ, order or direction quashing the discharge notices dated 22nd September, 1977, copy Annexures 'P-5', and 'P-6' by which the services of the petitioners were terminated with effect from 28th October, 1977 (A.N.).

(11) This petition came up for hearing before me and my learned brother Surinder Singh, J. on December 12, 1977. Mr. Gopal Mahajan, Advocate, who appeared on that date for the petitioners, raised a contention that the petitioners were entitled to the payment of retrenchment compensation along with the impugned notices, as the cases of the petitioners were covered by the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that the notices have not been served in accordance with law, inasmuch no compensation amount in respect of retrenchment was paid at the time of the issuance of the notices. In support of his contentions, reliance was placed on an unreported decision of a Bench of this Court in (1 supra) (*Raghubir Singh and another v. Beas Construction Board and others*). On the other hand, the stand taken by Mr. Kuldip Singh, Bar-at-law, learned counsel for the respondents, was that the cases of the petitioners were covered by the provisions of section 25-FFF of the Act

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and that legally it was not necessary to pay the amount of retrenchment compensation along with the discharge notices.

(12) The aforesaid position had been taken by Mr. Gopal Mahajan, learned counsel, on 8th December, 1977, when the petition had come up for motion hearing. On the request of Mr. Mahajan, the petition had been adjourned to 12th December, 1977. On that date the stand taken was modified by Mr. Mahajan to this extent that he claimed relief only on the ground that the case of the petitioners was a case of retrenchment of surplus labour and was covered by the provisions of section 25-F of the Act. The learned counsel further submitted that in case it was held that the petitioners were not entitled to any relief on the basis of his submissions, then he did not claim any relief on the basis of the judgment of the Bench in *Raghubir Singh's case* on the ground that even in cases which fell under section 25-FFF of the Act, a workman was entitled to the payment of retrenchment compensation along with the discharge notice.

(13) After hearing the learned counsel for the parties, as is evident from our order dated 12th December, 1977, we did not agree with Mr. Mahajan, learned counsel, that the petitioner's case was covered by the provisions of section 25-F of the Act. Having arrived at that finding, the petition was liable to be dismissed. But Mr. Kuldip Singh, learned counsel for the respondents, vehemently contended that in the interest of justice it was necessary to deal with the question whether it was legally essential to pay retrenchment compensation along with the discharge notices in cases falling under section 25-FFF of the Act, as had been held by the learned Judges in *Raghubir Singh's case*. This contention had been advanced by the learned counsel on the basis that the view taken by the Bench in *Raghubir Singh's case* did not lay down the correct law and in case that view was allowed to stand then the Bhakra Construction Board was likely to suffer immensely. Mr. Kuldip Singh brought to our notice a couple of decisions of the Supreme Court to show that the view taken in *Raghubir Singh's case* deserved to be reconsidered. Finding some force in the contention of Mr. Kuldip Singh, we heard the learned counsel for the parties at length and ultimately *prima facie* found that the Bench decision in *Raghubir Singh's case* deserved to be reconsidered by a larger Bench. Accordingly, by our order dated 12th December, 1977, it was ordered that the papers of this

case be laid before the Hon'ble the Chief Justice for appropriate orders. It is in these circumstances that the present Bench has been constituted for deciding the following question:—

“Whether retrenchment compensation has to be paid along with the notice even in the cases falling under section 25-FFF of the Act ?”

When we resumed hearing, Mr. Anand Swaroop, Senior Advocate, learned counsel appearing for the petitioners sought permission to argue the entire matter as his effort was to show that the case of the petitioners was covered by the provisions of section 25-F of the Act and that the provisions of section 25-FFF did not apply. Mr. Anand Swaroop further contended that the view taken by the Bench on December 12, 1977, was not correct and that it deserved to be reviewed. On the contention that had been advanced by Mr. Mahajan on December 12, 1977, the Bench had repelled the plea of the petitioners that their cases fell under the provisions of section 25-F of the Act and in this situation we did not permit the learned counsel to re-agitate the matter and asked him to limit his arguments on the aforesaid question which had been referred to for the decision of the Full Bench.

(14) We heard the learned counsel for the parties at length. Mr. Kuldip Singh, learned counsel for the respondents, submitted that payment of retrenchment compensation along with the notice of discharge was not a condition precedent in the cases which fell within the provisions of section 25-FFF of the Act. In support of his contention the learned counsel placed reliance on the decisions of their Lordships of the Supreme Court in *M/s Hathising Manufacturing Co. Ltd. Ahmedabad and another v. Union of India and another* (3 supra); in *Payment of Wages Inspector, Ujjain v. Surajmal Mehta, Director, the Barnagar Electric Supply and Industrial Co. Ltd. and another* (7) of the Madras High Court in *M. Chinnappan v. Management of Kaleeswarar Mills Ltd., Coimbatore and another* (8) and in *Radio and Electricals Ltd., Madras v. Industrial Tribunal Madras and others* (9) and of the Delhi High Court in *Raj Hans Press v. K. S. Sidhu and others* (10). On the other hand, Mr. Anand

(7) A.I.R. 1969 S.C. 590.

(8) 1968 Lab. I. C. 714.

(9) 1970 (2) L.L.J. 207.

(10) 1977 Lab. I. C. 1633.

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Swaroop, Senior Advocate, relied only on the observations of the Division Bench in *Raghubir Singh's* case in support of his contention that even in the cases falling under section 25-FFF of the Act, retrenchment compensation was payable along with the discharge notice.

(15) In the ordinary course, I would have dealt with the matter at length in the light of the relevant provisions of the statute, but I do not propose to do so as to my mind, the controversy stands fully settled by the decision of their Lordships of the Supreme Court in *Suraj Mal Mehta's case*, where on a similar question after considering the provisions of the statute, Shelat J., speaking for the Court observed thus:—

“The Industrial Disputes Act, which as enacted in 1947 was a piece of legislation which mainly provided machinery for investigation and settlement of industrial disputes, has since then undergone frequent modifications. In 1953, by Act 43 of that year Chapter VA consisting of Section 25-A to 25-J was incorporated providing therein compensation for lay-off and retrenchment. It also provided a definition of retrenchment in Section 2 (oo). Chapter VA, as it then stood, did not expressly provide for compensation for termination of service on account of transfer of an undertaking by an agreement or as a result of operation of law or the closure of the undertaking. Consequently, in *Hariprasad v. A. Divelkar* (11) this Court held that retrenchment as defined in Section 2(oo) and the word ‘retrenched’ in Section 25F meant discharge of surplus labour or staff by the employer for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action and did not include termination of services of all workmen on a bonafide closure of an undertaking or on a change of ownership or management thereof. This decision was followed first by an ordinance and then by Act 18 of 1957 incorporating in the Act the present sections 25-FF and 25-FFF. It will be noticed that both these sections use the words “as if the workman had been retrenched”. The intention of the legislature was, therefore, clear that it did not wish to place transfer and closure on the same footing as retrenchment under Section

(11) 1957 S.C.R. 121=A.I.R. 1957 S.C. 121.

25-F. This is apparent also from the fact that it left the definition of retrenchment in Section 2(oo) untouched in spite of the decision in Hariprasad's case (11 supra). The three sections, Section 25-F, 25-FF and 25-FFF also show that while under Section 25-F no retrenchment can be made until conditions therein set out are carried out, the other two sections do not lay down any such conditions. All the three sections, however, involved termination of service whether it results in consequence of retrenchment or transfer or closure, and notice and compensation in both Sections 25-FF and 25-FFF have been provided for "in accordance with the provisions of section 25-F" (See *M/s Hatisingh Mfg. Co. Ltd. v. Union of India* (12) and *Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen* (13). That being the position of workman whose service is terminated in consequence of a transfer of an undertaking, whether by agreement or by operation of law, has a statutory right under Section 25-FF to compensation unless such right is defeated under the proviso to that section. The same is the position in the case of closure under Section 25-FFF. Such compensation would be wages as defined by Section 2(iv)(d) of the Act as it is a "sum which by reason of the termination of employment of the person employed, is payable under any law which provides for the payment of such sum whether with or without deductions, but does not provide for the time within which the payment is to be made" Since Section 25-FF and 25-FFF do not contain any conditions precedent, as in the case of retrenchment under section 25-F, and transfer and closure can validly take place without notice or payment of a month's wages in lieu thereof or payment of compensation, section 25-FFF can be said not to have provided any time within which such compensation is to be paid. It is well established that the words 'in accordance with the provisions of section 25-F' in sections 25-FF and 25-FFF are used only as a measure of compensation and are not used for laying down any time within which the employer must pay the compensation."

(12) (1960) 3 S.C.R. 528=A.I.R. 1960 S.C. 923.

(13) 1963 Supp. (1) S.C.R. 780=A.I.R. 1963 S.C. 1489.

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(16) In *M/s Hathising Manufacturing Co.*, (3 supra) also, while interpreting section 25-FFF, certain observations were made which are relevant and support the view propounded by Mr. Kuldip Singh. The said observations which appear in para 29 of the report, read as under:—

“For reasons already set out, payment of compensation and wages in lieu of notice under the impugned section are not made conditions precedent to effective termination of employment. The section only creates a right in the employees; it does not enjoin the employers to do anything before closure.”

(17) Mr. Anand Swaroop, Senior Advocate, learned counsel for the respondents, could not bring to our notice any decision of their Lordships of the Supreme Court taking a contrary view nor was he able to distinguish the two authorities referred to above. He only relied on the observations of the Hon'ble Judges in *Raghubir Singh's* case, which read as under:—

“Mr. Kuldip Singh, learned counsel for the respondents, urges that where an undertaking is closed down for no fault of the employer, provisions of section 25-FFF apply and in that event the employer would be under no obligation to offer advance retrenchment compensation to the workmen who are asked to go. In support of this contention, reliance has been placed on *Hathising Manufacturing Co. v. Union of India and another* (12 supra). We are not prepared to accept the contention raised by Mr. Kuldip Singh, the learned counsel for the respondents. Sub-section (2) of section 25-FFF lays down that where any undertaking set up for the construction of building bridges, canals, dams or other construction work is closed down on account of the completion of the work, the compensation payable to a workman has to be calculated in a particular manner, but the same would be deemed to be payable under section 25-F of the Industrial Disputes Act. In other words, sub-section (2) of section 25-FFF in the matter of payment of compensation adopts the procedure laid down in section 25-F of the Industrial Disputes Act. In that view of the matter, the retrenchment compensation to the workmen had to be paid in cash before they

were asked to quit. In these circumstances, it must be held that the petitioners have an undisputed right to be paid retrenchment compensation in cash and before they were asked to leave the service of the project and till it is done the petitioners would be deemed to be in the service of the project."

(18) In my view, the observations of their Lordships of the Supreme Court reproduced above, leave no room for any doubt and on the strength of the said observations, I find no escape from the conclusion that in cases falling under section 25-FFF of the Act, payment of retrenchment compensation is not a condition precedent and that retrenchment compensation has not to be paid along with the discharge notice. The observations in *Raghubir Singh's* case, on which reliance had been placed by the learned counsel for the petitioners, in my view, go contrary to the observations of their Lordships of the Supreme Court and in this situation, with respect I find that the view taken in *Raghubir Singh's* case does not lay down the correct law.

(19) For the reasons recorded above, the question referred to for our decision is answered in the negative.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain, S. C. Mittal, JJ.

GURCHARAN SINGH—*Petitioner.*

versus

STATE OF HARYANA and others—*Respondents.*

Civil Writ No. 2207 of 1977.

July 17, 1978

Punjab Co-operative Societies Act (XXV of 1961) (as applicable in Haryana)—Section 27(1) and (1A)—Suspension of a member or a committee during the course of proceedings for supersession—Notice to show cause against the suspension—Whether imperative.