Before R. N. Mittal and M. M. Punchhi, JJ.

KAPURTHALA CENTRAL COOPERATIVE BANK LTD.,

KAPURTHALA,—*Petitioner*

versus

THE PRESIDING OFFICER, LABOUR COURT, JULLUNDUR AND OTHERS,—*Respondents*

Civil Writ Petition No. 3766 *of* 1983.

January 23, 1984.

Industrial Disputes Act (XIV *of* 1947)—*Sections* 25-*B*, 25-*F and* 25-*H*—*Workman close to his attaining one year's continuous service*—*Services of such a workman terminated with a view to deprive him of his rights under the Act*—*Work of the workman otherwise satisfactory*—*Such termination*—*Whether amounts to an unfair labour practice*—*Workman*—*Whether entitled to re-instatement*—*Re-instatement and re-employment*——*Distinction.*

Held, that the inbuilt policy in the Industrial Disputes Act, 1947 for drawing the dividing line at 240 days of service seems that if a workman had satisfactorily continued for a period of 240 days, as envisaged in sections 25-B and 25-F of the Act, he is as good as having been accepted permanently (though this term does not figure in the Act) in employment. Now the employer thwarting that process, on no fault of the employee would be an unfair labour practice and obviously on that ground, the termination of the services of the workman can be tested by a Labour Court to find its justification. Industrial peace is what the country requires and the provisions of the Act are nothing but a measure to further that object. Prevention undoubtedly is better than cure. An innocent workman at the verge of completing 240 days of service, if asked to quit for no fault of his, would go with rancour, ill-feeling, frustration and utter disgust, especially when the management has nothing against him with regard to his work and conduct. So for preservation and promotion of industrial peace, acts which cause or tend to cause disturbance, even if not prohibited under the law can still come under the purview of unfair labour practices. Thus, the practice of retrenching a workman close to his attaining a year's continuous service in order to frustrate his attaining rights under Chapter V-A of the Industrial Disputes Act, is an unfair labour practice, unless there are reasons with the employer with regard to the conduct and service of the workman being unsatisfactory. How close should be such period towards attaining a year's continuous service and to come within the purview of 'unfair labour practice' is a question dependent on the facts and cirmcumstances of each case. (Paras 7 and 8)

Held, that reinstatement and re-employment are different terms. A reinstatement pre-supposes that the order of retrenchment (interchangeably order of termination of services) was not justifiable and the Court intervened to effect reinstatement. Re-employment, on the other hand, in the enforcement of rights under section 25-H of the Act pre-supposes a valid order of retrenchment/termination of services.

(Para 4)

Petition under Articles 226 and 227 of the Constitution of India, praying that the petition be accepted, records of the case sent for, and

(i) *a writ in the nature of certiorari issued quashing the impugned award, Annexure P-6;*

(ii) *any other suitable writ, order or direction issued which this Hon'ble Court deems fit and proper in the circumstances of the case;*

(iii) *service of notice of motion dispensed with since the impugned award will become enforceable on August 7, 1983;*

(iv) *filing of original/certified copies of Annexures P-1 to P-8 dispensed with;*

(v) *Operation of the impugned award, Annexure P-6, stayed till the writ petition is finally disposed of by this Hon'ble Court, and*

(vi) *Costs awarded to the petitioner.*

N. K. Sodhi, Advocate, *for the Petitioner.*

Bhagirath Dass Sr. Advocate with Ramesh Kumar Advocate and S. S. Grewal, Advocate, *for the Respondent.*

JUDGMENT

M. M. Punchhi, J.

(1) To the ever expanding list of unfair labour practices, well known to Industrial Law, does the practice of retrenching a workman, close to his attaining a year's continuous service, in order to forestall his attaining rights under Chapter V-A of the Industrial Disputes Act, 1947, deserve addition by judicial recognition, is the tricky question which stands surfaced in this petition under Article 226 of the Constitution. Therein a challenge has been made to an

award of the Labour Court dated 4th April, 1983 published in the Punjab Government Gazette on 8th July, 1983, Annexure P. 6 to the petition.

(2) We shall take note of the facts as observed by the Labour Court. It had before it seven references in which industrial disputes raised by respondents Nos. 2 to 8 herein were individually referred by the Punjab Government for adjudication. By means of the impugned award, they were disposed of together. The services of the respondents-workmen were terminated on 28th May, 1979 at a time when they had put in 230 days of service with the petitioner who is a Cooperative Bank, registered as a Society under the Punjab Cooperative Societies Act 1961. The terminal action was similar to all workmen. There were no departmental inquiries or charge-sheets to determine the fault or misconduct, if any, of the workmen. They were not given any retrenchment compensation. The plea of the petitioner-Bank was that the services of the workmen were for a specified period, uptill 28th May, 1979, and their services were purely temporary. The terminations were sought to be justified by the petitioner before the Labour Court as being strictly in accordance with the instructions and orders of the Registrar, Cooperative Societies; as the need to employ them was temporary in nature, as spelled out by the Registrar, and the termination of services too were under his direction, to forestall any workman completing more than 230 days of service. It was otherwise pleaded before the Labour Court that there were notional breaks in the service of the workmen, and they having completed just 230 days of service cumulatively, the action of the management was above board. Thus, on the pleadings of the parties, the following two issues were framed by the Labour Court:—

(1) Whether the termination of services of Joginder Singh... ..... is justified and in order ?

(2) If not, to what relief ?

The parties led their evidence. The Labour Court then observed as follows:—

"Mr. M. R. Mittal, the authorised representative, failed to justify the termination of the workmen concerned and

rightly so because the workmen were appointed for specific period from 5th October, 1978 to 31st December, 1978 and after one day's break they were reappointed from 2nd January, 1979 for 89 days. This is an unfair labour practice and they did not want continuity of service beyond 31st December, 1978. The cross-examination of the witness of the management namely Shri Ranjit Singh goes to show that the work of all the workmen was satisfactory and after their termination they were not re-employed and since they had already worked, they had prior right of re-employment on the same job, when others were recruited in their place. Therefore, there is nothing on the record to show that their services were terminated in accordance with law. So I find that the termination of services of these workmen was neither justified nor in order and decide this issue in favour of the workmen and against the respondent/management.

Issue No. 2:

Since the termination of services of the workmen concerned was held illegal, I find that the workmen concerned are entitled to reinstatement with full back wages as no evidence has been produced by the respondent that they were gainfully employed and I direct the respondent to take these workmen on duty when this award becomes enforceable."

(3) When this petition came up for hearing before the Motion Bench, at the instance of the management, *Gujarat Steel Tubes Ltd.* v. *Gujarat Steel Tubes Mazdoor Sabha and others*, (1) was pressed into service by its counsel to contend that since the workmen concededly had not completed 240 days of service, they had no rights under the Industrial Law. Seemingly, on the other hand, the workmen-respondents pressed into service a Division Bench judgment of this Court in *Rajbir Singh and others* v. *State of Haryana and others*, (2), suggesting that the workmen were entitled to the benefit of section 25-H of the Industrial Disputes Act, 1947 towards re-employment even though they had not completed 240 days of service. Apparently, in view of these cross assertions, the matter was admitted

(1) AIR 1980 S.C. 1896.
(2) 1983(1) S.L.R. 38.

to a Division Bench. It on account of that was placed before us and, as suggested by the learned counsel for the parties, to examine the correctness of *Rajbir Singh's case* (supra) on the anvil and touchstone of *Gujarat Steel Tubes case* of the Supreme Court.

(4) After hearing the learned counsel for the parties at great length, we have come to the conclusion that it is not necessary to examine the correctness of the rule propounded in *Rajbir Singh's case* (supra), for this case can be decided on the question posed at the very outset, taking in aid some cues from the *Gujarat Steel Tubes case* of the Supreme Court. In order to focus our attention in that direction, it need be affirmed that as required under the law, the Labour Court was required not to widen the scope of the inquiry beyond the terms of reference; as also the parties before it could not be allowed to change the very basis of the issue set forth in the order of reference. Matters incidental thereto were of secondary importance; the primary one being whether the termination of the workmen was justifiable, and if not, to what relief/exact amount of compensation were they entitled. It requires no elaboration that reinstatement and re-employment are different terms. A reinstatement pre-supposses that the order of retrenchment, (interchangeably order of termination of services) was not justifiable and the Court intervened to effect reinstatement. Re-employment, on the other hand, in the enforcement of rights under section 25-H of the Industrial Disputes Act pre-supposes a valid order of retrenchment/termination of services. The distinction being so clear cut does not require attention any more. The claim of the workman before the Labour Court was that of reinstatement which was allowed. No question of re-employment arose before it, and none in that direction could arise, in view of the terms of reference, and the tight words used for the purpose. If the orders of termination of services of the workmen were justified and in order, there was no relief/exact amount of compensation which required to be determined. Thus, we are of the considered view that the decision in *Rajbir Singh's case* (supra), a case in which the right of a workman for preferential treatment in terms of section 25-H of the Industrial Disputes Act in the matter of re-employment was under consideration, has no applicability to the case in hand. The Bench observed :—

> "While validly retrenched workmen in the nature of things cannot, as a matter of right, seek reinstatement with back wages, section 25-H of the Act nevertheless does

accord a preferential treatment for re-employment if after the retrenchment, a comparable post occurs in the given industrial establishment."

In *Gujarat Steel Tubes case* (supra), a labour strike had been declared and held to be illegal and the services of the participating workmen were terminated. The Court held that the removal of the workmen from service was on punitive grounds but, in order to alter the punishment meted out to them, in accord with the spirit and language of section 11-A of the Act, it divided the workmen in four categories, as is clear from paragraphs 154 to 157 of the Report. Two categories fell within the ambit of permanent workmen and the remaining two as temporary or casual. Permanent workmen of one category were refused reinstatement but were deemed to have been retrenched by a particular date with terminal benefits as also 75 per cent of back wages, retrenchment benefits under section 25 of the Act and one month's notice pay. Permanent workmen of the other category were ordered to be reinstated with 50 per cent of back wages. The non-permanent workmen were categorised as long term casuals and short term casuals by observing as follows:—

"The next category relates to casual employees, 131 in number of whom 57 have less than nine months' service. The policy of the Act draws a distinction between those with service of 240 days and more and others with less. The casuals with less than nine months service are 57 in number and we do not think that this fugitive service should qualify for reinstatement especially when we find a number of intermediate recruits, with longer though untenable service, have to be baled out.

We decline reinstatement of these 57 hands. The other 74 must be reinstated although notionally but wrongly, they are shown as casual. In the 'life' sense, all mortals are casuals but in the legal sense, those with a record of 240 days on the rolls, are a class who have rights under industrial law. We direct the 74 long-term casuals aforesaid to be reinstated but not the 57 short-term ones. To this extent, we vary the High Court's order."

(5) We have not been able to discern from the Report whether the long-term casuals ordered to be reinstated had put in more than

240 days of service. To our mind had they done so, they were no casuals at all. It is true that they have been attributed over 9 months service (which could possibly be more than 270 days of service) but that is to be viewed in the context of section 25-B of the Act wherein continuous service has been defined. Continuous service within the meaning of that section for a period of one year means 240 days work in a period of 12 calendar months preceding the date with reference to which calculation is to be made. One who has actually worked under an employer for not less than 240 days in 12 calendar months has worked for a year. Thus, in 12 calendar months if a workman has worked above the ground for 240 days even though not continuously and uninterruptedly, subject to certain exceptions noted in the provision, he becomes a workman of the post 240 days type entitled to retrenchment compensation and notice under section 25-F of the Act, as also to the other beneficial provisions, for being accorded a preferential treatment in the matter of retrenchment, re-employment etc. Thus, patently, the policy of the Act bears a distinction between pre-240 days and post-240 days of service; the latter undoubtedly having rights ripened under the Industrial Law. And whether the former do or not, need not be discussed here, one of the primary reasons being that we have not touched *Rajbir Singh's case* (supra).

(6) Now having cleared the decks from the precedential angle, we engage our attention to the question posed. As is plain from Annexures P.1 to P.3, the model appointment orders, the workmen were appointed from 5th October, 1978 till 31st December, 1978, from 2nd January, 1979 till 31st March, 1979 and from 2nd April, 1979 to 28th May, 1979, whereafter their services were terminated. As is plain, the workmen served in calendar months starting from October, 1978 till May, 1979 and that period is within 12 calendar months. Section 25-B (2) specifically provides that where a workman is not in continuous service within the meaning of clause (1) for a period of one year, he shall be deemed to have been in continuous service under an employer for that period if the workman during a period of 12 calendar months preceding the date with reference to which calculation is to be made has actually served under the employer for not less than 240 days. It, as said before nowhere requires that these 240 days have to be continuous. If a workman has served for 240 days within a period of 12 calendar months, even though not continuously, he is deemed to be in continuous service under an employer. Alive to that situation, the

Registrar, Cooperative Societies, had concededly directed the petitioner to remove all employees who were crossing the 230 days limit. And under the pain of those directions, lest disobedience thereof entail penal consequences, the petitioner concededly passed orders of termination of services of the workmen. It was frankly conceded that it is under the instructions of the Registrar, which are binding on every cooperative society, that the step was accomplished. It is thus crystal clear that none of the workmen was accused of any fault. The only taint which was spreading around them was that protection of "continuous service" within the meaning of section 25-B of the Act was ripening in a matter of days, and to employ the term of the Supreme Court from *Gujarat Steel Tubes case* (supra), the workmen were already "long-term casuals". It is thus far patent that in anticipation, and circumventing the accrual of rights to the workmen, orders of termination of services were passed, not for any fault or defect in the workmen. Rather the Manager of the petitioner was categoric that the work of the workmen was satisfactory and furthermore after their termination, they were not re-employed when others had been employed in their place. It was thus evident that the work was available. It was denied to the present workmen by adopting action of termination, which was passed over to others who were recruited in place of them. So here was a case where innocent workmen were denied the privilege of their livelihood merely because in 10 days' time, the Industrial Law beneficently was putting them in a privileged position as contained in Chapter V-A of the Act.

(7) The learned counsel for the petitioner justifying its action relied on a Single Bench judgment of Madras High Court in *The Management of Crompton Engineering Company (Madras) Private Ltd.* v. *The Presiding Officer, Additional Labour Court, Madras and others* (3) to contend that when employees are appointed for a specific period or for a particular work, their employment automatically came to an end as soon as the period was over or the work was over. In that case, the award of the Industrial Tribunal which had ordered reinstatement of the workers was set aside. It was suggested that the respondents-workmen being casual workers, their services stood terminated automatically on 28th May, 1979, as was plain from third appointment order, Annexure P. 3. At the same time, it has not been denied that on 28th May, 1979 need persisted to employ

(3) 1974(1) Labour Law Journal 459.

people and the petitioner had terminated the services of the respondents just to obey the dictates of the Registrar, Cooperative Societies. In the situation, it could thus hardly be said that by merely specifying a period, the employment of the workman was not extendable, specially when the work was not over. On the strength of *Ghatge and Patil Concerns' Empolyees' Union* v. *Ghatge and Patil (Transports) (Private), Ltd., and another,* (4), it was contended that a person must be considered free to so arrange his business that he avoids a regulatory law and its penal consequences which he has, without the arrangement, no proper means of obeying. It was also contended that such persons were entitled to do as long as they did not break any law. That view was taken by the Supreme Court in the context of Motor Transport Workers Act where instead of employing drivers, the transporter entered into special contracts with them for using his vehicles to carry on the goods transport trade. In that context, the Motor Transport Workers Act was taken as a regulatory law and for disobedience of which there were penal consequences. And when the transporter had arranged his business in such a way that he could avoid the regulatory law and its penal consequences without evading it, he could not be held to be indulging in an unfair labour practice or doing any exploitation of labour. Thus, this decision too does not further the case of the petitioner. How could it ever be held that when a workman has worked for 240 days, penal consequences visit the employer ? How could it ever be held that such beneficial provisions were merely regulatory in nature. The inbuilt policy in the Act for drawing the dividing line at 240 days of service seems to us to be that if a workman had satisfactorily continued for a period of 240 days, as envisaged in those provisions, he is as good as having been accepted permanently (though this term does not figure in the Act) in employment. Now the employer thwarting that process, on no fault of the employee, would, to our mind, be an unfair labour practice and, obviously on that ground, the termination of the services of the workman, can be tested by a Labour Court, to find its justification. Industrial peace is what the country requires and the provisions of the Industrial Disputes Act are nothing but a measure to further that object. Prevention undoubtedly is better than cure. An innocent workman at the verge of completing 240 days of service, if asked to quit for no fault of his, would go with rancour, ill-feeling, frustration and utter disgust, especially when the Management has nothing against him with

(4) 1968(1), Labour Law Journal 566 (S.C.)

regard to his work or conduct. Human material is not so cheap and easy to be foresaken or abandoned. Every life has dignity, value. So for preservation and promotion of industrial peace, acts which cause or tend to cause disturbance, even if not prohibited under the law, can still come under the purview of unfair labour practices. Thus, we are of the considered view that the Labour Court was right in treating the termination of the services of the workmen, on their rendering 230 days service with notional breaks, when the work of the workmen was satisfactory, and others had been recruited in their place, to be an instance of unfair labour practice. Thus, we do not find any error apparent on the face of record which would require interference. Once the workmen were held entitled to reinstatement, then the logical consequence was that they should have got their full back wages as were rightly given to them by the Labour Court.

(8) To conclude, we hold that the practice of retrenching a workman close to his attaining a year's continuous service in order to frustrate his attaining rights under Chapter V-A of the Industrial Disputes Act, is an unfair labour practice, unless there are reasons with the employer with regard to the conduct and service of the workman being unsatisfactory. How close should be such period towards attaining a year's continuous service and to come within the purview of "unfair labour practice" is a question dependent on the facts and circumstances of each case. We do not propose to lay down any guidelines on that aspect.

(9) For the view taken above, this petition cannot succeed and the same is dismissed but without any order as to costs.

Rajendra Nath Mittal, J.—I agree.

N.K.S.