LETTERS PATENT APPEAL

Before Bhandari, C.J. and Falshaw, J.

THE MAHARAJ WEAVING MILLS, AMRITSAR,—
Appellant.

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 41 of 1958.

1959

Aug., 28th

Industrial Disputes Act (XIV of 1947) as amended by Amendment Act (XVIII of 1957)—Sections 25 FFF and 33 C—Effect of—Dispute arising on account of closure of business—Whether can be referred to Labour Court or Tribunal.

Held, that the effect of the Industrial Disputes (Amendment) Act, 1957 is that when an employer closes down his business after the 28th of November, 1956; the workmen discharged in consequence of the closure become entitled to the same compensation as if they had been retrenched, subject to the limitations contained in the new section 25 FFF, and if the payment of such compensation is demanded by he workmen and refused by the employer, a dispute arises which can be referred to the appropriate Labour Court or Tribunal. The power of the State to make a reference under Section 3 of the Industrial Disputes Act, 1947 must be determined with reference not to the date on which it is made but to the date on which the right which is the subject-matter of the dispute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business for the right accrues on the closure of the business and instantaneously with it.

Held, that Section 33C(1) of the Industrial Disputes Act provides only one method by which a workman can claim money which is said to be due to him from an employer and it certainly does not preclude the reference of a dispute regarding the compensation to the appropriate Tribunal.

Letters Patent Appeal under Clause 10 of the Letters Patent of the Punjab High Court, against the order of

Hon'ble Mr. Justice Bishan Narain, dated the 30th December, 1957, in Civil Writ Petition No. 806 of 1957, dismissing the petition of the appellant.

BHAGIRATH DASS, for Appellant.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL and ANAND SARUP, for Respondents.

JUDGMENT

Falshaw, J

FALSHAW, J.—This is a Letters Patent appeal against the order of Bishan Narain, J., dismissing a petition filed under article 226 of the Constitution by the appellant, the Maharaj Weaving Mills, Amritsar.

The relevant facts are that on the 10th of December, 1956, the management of the Mill gave notice to its workmen individually that it had decided to close the Mill as from the 10th of January, 1957, in view of heavy financial losses. The Mill was in fact closed on the 10th of January, 1957, but a few days after that several workmen made a counter-demand to the management to recall the notice of closure as being *mala fide* and made with the object of harassing the workmen and also making certain other demands. The workmen were informed by letter, dated the 30th of January, 1957, that the Mill had been closed on the 10th of January, and that the workmen had been paid their dues in full and final settlement, a copy of this letter being sent to the Labour Inspector.

The Punjab Government came to the conclusion that an industrial dispute existed between the Mill and its workmen and by its order, dated the 23rd of July, 1957, referred the following dispute to the Iabour Court under section 10(1)(c) of the Industrial Disputes Act (Act No. 14 of 1947):—

> "Whether the workmen of the Maharaj Weaving Mills (list to be supplied by

the Union), who were retrenched by the management on the closure of the Mills, are entitled to retrenchment compensation. If so, what should be the quantum of such compensation and the terms and conditions of its payment to the workmen concerned?"

In August, 1957, the management filed the petition in this Court under article 226 challenging the reference as *ultra vires* on the ground that since the matter had arisen after the Mill had closed down completely there could be no dispute between the management and the workmen.

In this connection reliance is placed on the decisions of the Supreme Court in *Pipraich Sugar Mills, Limited* v. *Pipraich Sugar Mills Mazdoor Union* (1), and *Hariprasad Shivshanker Shukla and another* v. *A. D. Divelkar and others* (2), In the first of these cases it was held that where the business has been closed and it is either admitted or found that the closure is real and *bona fide,* any dispute arising with reference thereto will fall outside the purview of the Industrial Disputes Act and that will *a fortiori* be so, if a dispute arises—if one such can be conceived—after the closure of the business between the *quandum* employer and employees.

In the second case it was held that retrenchment as defined in section 2(oo) and as used in section 25F has no wider meaning than the ordinary accepted connotation of the word and it means the 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 it has no application where the

(1) A.I.R. 1957 S.C. 95
(2) A.I.R. 1957 S.C. 121

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services of all workmen have been terminated by the employer on a real and *bona fide* closure of business.

As has, however, been pointed out by the learned Single Judge, this decision of the Supreme Court was delivered on the 27th of November, 1956, and it has been followed by certain amendments to the Industrial Disputes Act, which in the circumstances can only be regarded as deliberately introduced by the legislature for the purpose of counteracting the effect of the decision of the Supreme Court. Section 25F reads—

> "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—
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice :
>
> Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of the service ;
>
> (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 service or any part

thereof in excess of six months ; and

(c) notice in the prescribed manner is served on the appropriate Government."

On the 27th of April, 1957, the Industrial Disputes (Amendment) Ordinance (Ordinance No. 4 of 1957) was promulgated. In it, it was specified that the Ordinance should be deemed to have come into force on the 1st of December, 1956. By this Ordinance setcion 25F was recast and a new section 25FFF was added which is headed "*Compensation to workmen in case of closing down of undertakings*". Sub-section (1) of this section reads—

"25FFF (1) Where an undertaking is closed down for any reason whatsovere, every workman who has been in continuous service for not less than one year in that unedrtaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched :

Provided that where the undertaking is closed down on account of unaviodable circumstances beyond the control of the employer, the total compensation to be paid to the workman shall not exceed his average pay for three months."

This Ordinance was repealed and superseded in due course after the reassembly of Parliament by the Industrial Disputes (Amendment) Act (Act No. 18 of 1957) which re-enacted the provisions of the Ordinance with the only difference that they

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were made retrospectively enforceable with effect from the 28th of November, 1956, instead of the 1st of December, 1956. In other words the provisions of the Act were made retrospective as from the day after the decision of the Supreme Court was delivered in *Hariprasad's case* (1).

The effect of this clearly was that when an employer closed down his business after the 28th of November, 1956, the workmen discharged in consequence of the closure became entitled to the same compensation as if they had been retrenched, subject to the limitations contained in the new section 25FFF, and if the payment of such compensation was demanded by the workmen and refused by the employer, it seems to be impossible to say that a dispute did not arise which could be referred to the appropriate Labour Court or Tribunal.

It has nevertheless been maintained by the learned counsel for the appellant that the view expressed by the Supreme Court in the *Pipraich Sugar Mills case* (2), still holds good and that there can be no dispute if it arises after the closure of an undertaking. However, even in that case it was observed that the power of the State to make a reference under section 3 must be determined with reference not to the date on which it is made but to the date on which the right which is the subject-matter of the dispute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business, and I agree with the view expressed by the learned Single Judge in this case that the right in the present case accrued on the closure of the business and instantaneously with it. The learned counsel for the appellant has not been able to cite any decision

(1) A.I.R. 1957 S.C. 121
(2) A.I.R. 1957 S.C. 95

of the Supreme Court in which the propositions of law laid down by the Supreme Court in the *Pipraich Sugar Mills case* (1), and *Hariprasad's case* (2), have been reviewed in the light of the terms of the newly introduced section 25FFF. To my mind there can be no doubt that the effect is that where an undertaking is closed and the workmen are discharged and the payment of the compensation provided in section 25FF is refused by the employer, a dispute arises which can in the ordinary way be referred to the appropriate Labour Court or Tribunal.

Reliance was also placed by the learned counsel for the appellant on the provisions of section 33C (1) which reads—

> "33C (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA, the workman may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery, of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue."

It is pointed out that Chapter VA deals with 'Lay-off and Retrenchment' and now includes section 25FFF. The very words of section 33C (1), however, clearly indicate that it is only one method by which a workman can claim money which is said to be due to him from an employer and it certainly does not in my opinion preclude the reference

(1) A.I.R. 1957 S.C. 95
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of a dispute regarding the compensation to the appropriate Tribunal. In the circumstances I see no force in the appeal and would accordingly dismiss it with costs.

BHANDARI, C.J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

PANCHAM CHAND AND OTHERS,—*Appellants.*

versus

KIRPA AND OTHERS,—*Respondents.*

Regular Second Appeal No. 827 of 1954.

1959

Aug., 21st

Evidence Act (I of 1872)—Section 115—Doctrine of election—Meaning of—Transfer of Property Act (IV of 1882)—Section 58(c)—Oral transaction of sale with a condition of repurchase embodied in mutation—Whether valid and requires registration—Buyer—Whether can refuse to reconvey.

Held, that the "doctrine of election" means that where a deed professes to bestow a benefit to a person named in it, such person cannot accept a benefit under the instrument without at the same time conforming to all its provisions, and renouncing every right inconsistant with them. It would obviously be inequitable and unfair if a person is allowed to claim both under the deed and adversely to it. Where such a principle applies and the person who has the choice of two courses adopts the one, he cannot afterwards assert the other.

Held, that a sale with a condition to repurchase is not unknown in law. Where such a transaction is oral and the conditions are reproduced in the mutation deed, no registration is required.

Held, that the defendants cannot refuse to reconvey the property once it is established that the transaction was