33. Hence we allow the appeal. Since the dispute has been pending since 1989, by exercising our power under article 142 of the constitution, we direct the central government to refer the dispute with regard to the deduction of wages for adjudication to the appropriate authority under the act within eight weeks from today. The appeal is allowed accordingly with no order as to costs.

34. In these two matters, arising out of a common judgment of the high court, the question involved was materially different, viz., whether when the employees struck work only for some hours of the day, their salary for the whole day could be deducted. As in the case of ***t.s. Kelawala***, in this case also the question whether the strike was justified or not was not raised. No argument has also been advanced on behalf of the employees before us on the said issue. In the circumstances, the law laid down by this court in ***t.s. Kelawala***, with which we concur, will be applicable. The wages of the employees for the whole day in question, i.e., 29-12-1977 are liable to be deducted. The appeals are, therefore, allowed and the impugned decision of the high court is set aside. There will, however, be no order as to costs.

Essorpe mills ltd. Verses. Presiding officer, labour court

(strike notice not conforming to time periods laid down in sections 22(1)(a) and (b) is no notice in the eye of law.)

Facts

The respondent workmen who were employed in a public utility service, went on illegal strike on 18.11.1990, for which they were placed under suspension. Subsequently, a union, representing the respondent workmen served a notice dated 14.3.1991 on the appellant employer that "strike would commence on or after 24.3.1991" (10 days time). A copy of the strike notice was also endorsed to the conciliation officer. The respondent workmen were thereafter dismissed from service for misconduct after holding a disciplinary enquiry. They challenged their dismissal *inter alia* on the ground that they were dismissed during pendency of the conciliation proceedings. Their contention was that dismissal was bad in law, *inter alia, for* the reason that the appellant management did not seek approval of the conciliation officer under proviso to section 33(2)(b) of the industrial disputes act 1947. The high court accepted the respondent workmen's plea.

Issues before the supreme court

1. Whether the notice dated 14.3.1991 could be considered as a valid notice in terms of section 22 of the act?

2. Whether valid conciliation proceedings could be considered to be pending under section 20 of the act?

Decision of the supreme court

Different stages enumerated in section 22(1) of the industrial disputes act, 1947 are: (1) six weeks' advance notice of strike, (2) fourteen days given to the employer to consider the notice, and (i) workmen giving notice

cannot go on strike before the indicated date of strike. The notice has to be given to the employer. According to rule 71 of the industrial tribunal (central) rules, 1957, notice has to be given in form *'j'.*

Section 22 presupposes a notice to employer before the workmen resort to notice. The employer is in turn required to give intimation to the government or the prescribe authority under section 22(6). There is nothing in section 22 which requires giving of intimation or copy of the notice under section 22 to the conciliation officer.

Section 22 was not complied-with when notice dated 14.3.1991 was given indicating the date of strike as "on or after 24.3.1991", for the reason that the period between the date of notice and the dote of strike was less than the mandatory period of six weeks. The notice dated 14.3. P991 could not therefore be treated as notice under section 22. In the absence of a valid notice, the employer is deemed to be not aware of the proceedings. The conciliation proceedings must be one meeting the requirements of law.

The expression "giving such notice" appearing in section 22(1)(b) refers to the notice under section 22(l)(a).(the workmen cannot therefore go on strike within the period of six weeks' notice as required under section 22(l)(a) and fourteen days thereafter in terms of section 22 (1)(b). The expression "such notice" occurring in section 22(1)(b), refers to six weeks' advance notice. Earlier illegal strike is not remedied by a subsequent strike as provided in section 22.

State of rajasthan verses ramesh war lal gahlot

(termination effected under the stipulation contained in terms of appointment is not deemed to be retrenchment under s. 2(oo) and hence s. 25-f is not attracted,)

Facts

The respondent was appointed for a period of three months or till the regularly selected candidates assumes office. He was appointed on january 28, 1988 and his appointment came to be terminated on november 19, 1988.

Issue

Whether the tennination was in violation of section 25-f of the industrial disputes act, 1947?

Decision of the supreme court

It was held that the tennination on expiry of the specified period for which the appointment was made is valid, unless found to be malafide or in colourable exercise of power. Hence, section 25-f is not attracted. Therefore, neither the relief of fresh appointment nor that of reinstatement could be granted.

The court said:

"when the appointment is for a fixed period, unless there is finding that power under clause (bb) of section 2(oo) was misused or vitiated by its *mala fide* exercise, it cannot be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that the power was misused by the management or the appointment for a fixed period was a colourable exercise of power. Unfortunately, neither the learned single judge nor the division bench recorded any finding in this behalf. Therefore, where the termination is not in terms of letter of appointment saved by clause (bb), reinstatement nor fresh appointment could be made. Since the appellant has not filed any appeal against the order of the learned single judge and respondent came to be appointed afresh on june 27, 1992, he would continue in service, till the regular incumbent assumes office as originally ordered."

Punjab land development and reclamation corporation ltd. **Verses** ***presiding officer, labour court***
K.n. Saikia, j. –
13. Two rival contentions are raised by the parties. The learned counsel for the employers contend that the word 'retrenchment' as defined in section 2(oo) of the act means termination of service of a workman only by way of surplus labour for any reason whatsoever. The learned counsel representing the workmen contend that 'retrenchment' means termination of the service of a workman for any reason whatsoever, other than those expressly excluded by the definition in section 2(oo) of the act.
14. The precise question to be decided, therefore, is whether on a proper construction of the definition of "retrenchment" in section 2(oo) of the act, it means termination by the employer of the service of a workman as surplus labour for any reason whatsoever, or it means termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and those expressly excluded by the definition. In other words, the question to be decided is whether the word "retrenchment" in the definition has to be understood in its narrow, natural and contextual meaning or in its wider literal meaning.
15. Mr. N.b. Shetye, mr. K.k. Venugopal, and the learned counsel adopting their arguments refer to the introduction of the provision of "retrenchment" in the act. Retrenchment was not defined either in the repealed trade disputes act, 1929, or in the industrial disputes act, 1947, as originally enacted. Owing to a crisis in the textile industry in bombay, apprehending large scale termination of services of workmen, the government of india issued an ordinance which later became the industrial disputes (amendment) act, 1953 which was deemed to have come into force on october 24, 1953. Besides introducing the definitions of "lay off" [clause 2(kkk)] and "retrenchment" [clause 2(oo)] this amendment act of 1953 also inserted chapter v-a in the act which dealt with "lay off" and "retrenchment". That chapter contained sections 25-a to 25-j. Section 25-a provided that sections 25-c to 25-e inclusive shall not apply

to certain categories of industrial establishments. Section 25-c dealt with right of workmen laid off for compensation. Section 25-d provided for maintenance of muster rolls of workmen by employers and section 25-e stated the cases in which the workmen were not entitled to lay off compensation. Section 25- f dealt with conditions precedent to retrenchment of workmen. Section 25-g dealt with procedure for retrenchment and section 25-h dealt with reemployment of retrenched workmen; and section 25-j dealing with the effect of laws inconsistent with this chapter said that the provisions of this chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law (including standing orders made under the industrial employment (standing orders) act, 1946 (20 of 1946); provided that nothing contained in this act shall have effect to derogate from any right which a workman has under any award for the time being in operation or any contract with the employer.

16. The statement of objects and reasons of the amendment act, 1953 was as under: the industrial disputes (amendment) bill, 1953 seeks to provide for payment of compensation to workmen in the event of their lay off or retrenchment. The provisions included in the bill are not new and were discussed at various tripartite meetings. Those relating to lay-off are based on an agreement entered into between the representatives of employers and workers who attended the 13th session of the standing labour committee. In regard to retrenchment, the bill provides that a workman who has been in continuous employment for not less than one year under an employer shall not be retrenched until he has been given one month's notice in writing or one month's wages in lieu of such notice and also a gratuity calculated at 15 days' average pay for every completed year of service or any part thereof in excess of six months. A similar provision has included in the labour relations bill, 1950, which has since lapsed. Though compensation on the lines provided for in the bill is given by all progressive employers, it is felt that a common standard should be set for all employers.

19. In ***pipraich sugar mills ltd.*** **Verses** ***pipraich sugar mills mazdoor union***, the appellant company could not work its mills to full capacity owing to short supply of sugarcane and got the permission of the government to sell its machinery but continued crushing cane under a lease from the purchaser. The workmen's union in order to frustrate the transaction resolved to go on strike and serving a strike notice did not cooperate with the management with the result that it lost heavily. On the expiry of the lease and closure of the industry, the services of the workmen were duly terminated by the company. The workmen claimed the share of profits on the basis of the offer earlier made by the company and accepted by the workers. The company having declined to pay and the dispute having been referred, the industrial tribunal held that the company was bound to pay and accordingly awarded a sum of rs. 45,000 representing their share of the profits and the award was affirmed by the labour appellate tribunal. Question before this court in appeal was whether the termination of the workmen on the closure of the industry amounted to retrenchment. It was held that the award was not one for compensation for termination of the services of workmen on closure of the industry, as such discharge was different from the discharge on retrenchment, which implied the continuance of the industry and discharge only of the surplusage, and the workmen were not entitled either under the law as it stood on the day of their discharge or even on merits to any compensation. 20. The contention of the workmen was that even before the enactment of industrial disputes (amendment) act, 1953, the tribunal had acted on the view that the retrenchment included discharge on closure of business and had awarded compensation on that footing and that the award of the tribunal in ***pipraich*** case could be supported in that view and should not be disturbed. This was based on the decision in ***employees*** **verses** ***india reconstruction corporation ltd***. And ***bennett coleman and company ltd.*** **Verses.** ***Employees***. But their lordships did not agree. Venkatarama ayyar, j. Speaking for the four-judge bench said:

Though there is discharge of workmen both when there is retrenchment and closure of business, the compensation is to be awarded under the law, not for discharge as such but for discharge on

retrenchment, and if, as is conceded, retrenchment means in ordinary parlance, discharge of the surplus, it cannot include discharge on closure of business.

21. As a result it was held that the award in ***pipraich*** was against the agreement and could not be supported as one of compensation to the workmen.

22. Thus this court in ***pipraich*** was dealing with the question whether the discharge of the workmen on closure of the undertaking would constitute retrenchment and whether the workmen were entitled on that account to retrenchment compensation; and it was observed that retrenchment connoted in its ordinary acceptation that the business itself was being continued but that a portion of the staff or the labour force was discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business could not, therefore, be properly described as retrenchment, which in the ordinary parlance meant discharge from the service and did not include discharge on closure of business.

23. Under an agreement dated august 1, 1895 between the secretary of state for india in council and the railway company, the secretary of state could purchase and take over the undertaking after giving railway company a notice. On december 19, 1952 a notice was given to the railway company for and on behalf of the president of india that the undertaking of the railway company would be purchased and taken over as from january 1, 1954. On november 11, 1953, the railway company served a notice on its workmen intimating that as a result of the taking over, the services of all the workmen of the railway company would be terminated with effect from december 31, 1953. As a result of the closure, the services of all 450 workmen and 20 clerks were terminated and the appellant company claimed that the closure was bona fide being due to heavy losses sustained by the company. The principal respondent claimed retrenchment compensation for the workmen of the appellant under clause (b) of section 25-f of the act.

25. In both the appeals the question before the constitution bench was whether the claim of the erstwhile workmen both of the railway company and of sri dinesh mills ltd., to the compensation under clause (b) of section 25-f of the act was a valid claim in law. Observing that the act had a 'plexus of amendments', and some of the recent amendments had been quite extensive in nature and that section 25-f occurred in chapter v-a of the act which dealt with 'lay off and retrenchment' in the amending act, and analyzing section 25-f as it then stood, s.k. Das, j. Speaking for the constitution bench observed that in the first part of the section both the words 'retrenched' and 'retrenchment' were used and obviously they had the same meaning except that one was verb and the other was a noun and that to appreciate the true scope and effect of section 25-f one must first understand what was meant by the expression 'retrenched' or 'retrenchment'.

26. Analysing the definition of 'retrenchment' in section 2(oo) the court found in it the following four essential requirements: (a) termination of the service of a workman; (b) by the employer; (c) for any reason whatsoever; and (d) otherwise than as a punishment inflicted by way of disciplinary action. The court then said: it must be conceded that the definition is in very wide terms. The question, however, before us is - does this definition merely give effect to the ordinary, accepted notion of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or does it go so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona fide closure or discontinuance of his business by the employer?

The court further said:

There is no doubt that when the act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the legislature; our task is to get at the intention as expressed in the statute.

Therefore, we propose first to examine the language of the definition and see if the ordinary, accepted notion of retrenchment fits in, squarely and fairly, with the language used.

The court reiterated the following observations in ***pipraich*:**

But retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff of the labour force is discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business cannot therefore be properly described as retrenchment. This was the ordinary accepted notion of 'retrenchment' in an industry before addition of section 2(oo) to the act, as retrenchment in that case took place in 1951. Replying to the argument that by excluding the bona fide closure of business as one of the reasons for termination of the service of workmen by the employer, one would be cutting down the amplitude of the expression 'for any reason whatsoever' and reading into the definition the words which did not occur there, the court agreed that the adoption of the ordinary meaning would give to the expression 'for any reason whatsoever' a somewhat narrower scope; one might say that it would get a colour in the context in which expression occurred; but the court did not agree that it amounted to importing new words in the definition and said that the legislature in using that expression said in effect: "it does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment". In the absence of any compelling words to indicate that the intention was to include bona fide closure of the whole business, it would be divorcing the expression altogether from its context to give it such a wide meaning as was contended. About the nature of the definition it was said:

It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined.

27. The court in ***hariprasad*** dealt with two other contentions; one was that before the amending act of 1953 the retrenchment had acquired a special meaning which included the payment of compensation on a closure of business and the legislature gave effect to that meaning in the definition clause and by inserting section 25-f. The second was that section 25-ff inserted in 1956 by act 41 of 1956 was 'parliamentary exposition' of the meaning of

The definition clause and of section 25-f. Rejecting the contentions the court held that retrenchment meant the discharge of surplus workmen in an existing or continuing business; it had acquired no special meaning so as to include discharge of workmen on bona fide closure of business, though a number of labour appellate tribunals awarded compensation to workmen on closure of business as an equitable relief for variety of reasons. The court accordingly held:

That retrenchment as defined in section 2(oo) and as used in section 25 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 a 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 real and bona fide closure of business as in the case of sri 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.(emphasis in original)

28. It is interesting to note that the amending act 41 of 1956 inserted original section 25- ff on september 4, 1956. The objects and reasons were stated thus: doubt has been raised whether retrenchment compensation under the industrial disputes act, 1947 becomes payable by reason merely of the fact that there has been a change of employers, even if the service of the workman is continued

without interruption and the terms and conditions of his service remain unaltered. This has created difficulty in the transfer, reconstitution and amalgamation of companies and it is proposed to make the intention clearly by amending section 25-f of the act. ***Hariprasad*** case was decided on november 27, 1956. The industrial disputes (amendment) ordinance, 1957 (4 of 1957) was promulgated immediately thereafter with effect from december 1, 1956 and that ordinance was replaced by the industrial disputes (amendment) act, 1957 (18 of 1957). The following was the statement of objects and reasons:

In a judgment delivered on november 27, 1956, the supreme court held that no retrenchment compensation was payable under section 25-f of the industrial disputes act, 1947, to workmen whose services were terminated by an employer on a real and bona fide closure of business, or when termination occurred as a result of transfer of ownership from one employer to another. This has led and is likely to lead to a large number of workmen being rendered unemployed without any compensation. In order to meet this situation which was causing hardship to workmen, it was considered necessary to take immediate action and the industrial disputes (amendment) ordinance, 1957 (4 of 1957), was promulgated with retrospective effect from december 1, 1956. This ordinance was replaced by an act of parliament enacting the provisions contained in section 25-ff and 25-fff. These sections provide that 'compensation would be payable to workmen whose services are terminated on account of the

Transfer or closure of undertakings'. In the case of transfer of undertakings, however, if the workman is re-employed on terms and conditions which are not less favourable to him, he will not be entitled to any compensation. This was the position which existed prior to the decision of the supreme court. In the case of closure of business on account of the circumstances beyond the control of the employer, the maximum compensation payable to workmen has been limited to his average pay for three months. If the undertaking is engaged in any construction work and it is closed down within two years on account of the completion of its work, no compensation would be payable to workmen employed therein. ***Hariprasad*** having accepted the ordinary contextual meaning of retrenchment, namely,

Termination of surplus labour as the major premise it was surely open to the parliament to have amended the definition of retrenchment in section 2(oo) of the act. Instead of doing that the parliament added sections 25-ff and 25-fff. Thus, by this amendment act the parliament clearly provided that though such termination may not have been retrenchment technically so-called, as decided by this court, nevertheless the employees in question whose services were terminated by the transfer or closure of the undertaking would be entitled to compensation, as if the said termination was retrenchment. As it has been observed, the words "as if" brought out the legal distinction

Between retrenchment defined by section 2(oo) as it was interpreted by this court and termination of services consequent upon transfer of the undertaking. In other words, the provision was that though termination of services on transfer or closure of the undertaking may not be retrenchment, the workmen concerned were entitled to compensation as if the said termination was retrenchment.

29. Thus we find that till then the accepted meaning of retrenchment was ordinary, contextual and narrower meaning of termination of surplus labour for any reason whatsoever.

30. In ***anakapalle co-operative agricultural and industrial society ltd.*** **Verses** ***workmen***, a company running a sugar mill was suffering losses every year due to insufficient supply of sugarcane and wanted to shift the mill. The cane growers formed a cooperative society and purchased the mill. As agreed between the company and the society, the company terminated the services of the employees and paid retrenchment compensation to them under section 25-ff of the act. The society employed some of the old employees and refused to absorb some of them who raised an industrial dispute. The industrial tribunal having directed the purchaser-society by its award to re-employ them, the society contended that it was not a successor-in-interest of the company and hence the claim of re-employment was not sustainable and the services of the employees having been terminated upon payment of compensation

by the company under section 25-ff no claim could be made against the transferee society. This court held that the society was the successor-in-interest of the company as it carried on the same or similar business as was carried by the vendor-company at the same place and without substantial break in continuity. It was further held that the employees were not entitled to both compensation for termination of service and immediate

Re-employment at the hands of the transferee and section 25-h was not applicable to the case as the termination of service upon transfer or closure was not retrenchment properly so called and that termination of service dealt with in section 25-ff could not be equated with retrenchment covered by section 25-f. It was observed that the words 'as if' in section 25-ff clearly distinguished retrenchment under section 2(oo) and termination under section 25-ff.

32. In ***delhi cloth and general mills ltd.*** **Verses.** ***Shambhu nath mukherjee***, where the post of motion setter was abolished and the respondent was given a job of a trainee on probation for the post of assistant line fixer and the management found him unsuitable for the job even after extending his probation period up to nine months and offered him the post of fitter on the same pay and the respondent instead of accepting the offer wanted to be given another chance to show his efficiency in his job and the management struck off his name from the rolls without complying with the provisions of section 25-f(a) and (b) of the act and the labour court having given award in the respondent's favour and the appellant's writ petition was rejected by the high court, goswami, j. Speaking for three

Judges bench said: striking off the name of the workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning of section 2(oo) of the act. There is nothing to show that the provisions of section 25-f(a) and (b) were complied with by the management in this case. The provisions of section 25-f(a), the proviso apart, and (b) are mandatory and any order of retrenchment, in violation of these two peremptory conditions precedent, is invalid.

The appeal was accordingly dismissed. The earlier decisions were not referred to.

33. Next comes the decision in ***state bank of india*** **verses.** ***N. Sundara money*** (y.v chandrachud, versesr. Krishna iyer and a.c. Gupta, jj.). In an application under article 226, the respondent on automatic extinguishment of his service consequent to the preemptive provision as to the temporariness of the period of his employment in his appointment letter claiming to have been deemed to have had continuous service for one year within the meaning of section 25(b)(2) of the act, the single judge of the high court having allowed his writ petition and the writ appeal of the appellant having also failed, this court in appeal found as fact that the appointment was purely temporary one for a period of 9 days but might be terminated earlier, without assigning any reason therefore at the petitioner's discretion; and the employment unless terminated earlier, would automatically cease at the expiry of the period i.e. November 18, 1972. This 9 days' employment added on to what had gone before ripened to a continuous service for a year "on the antecedent arithmetic of 240 days of broken bits of service" and considering the meaning of 'retrenchment' it was held that the expression for any reason whatsoever was very wide and almost admitting of no exception. The contention of the employer was that when the order of appointment carried an automatic cessation of service, the period of employment worked itself out by efflux of time, not by act of employer and such cases were outside the concept of retrenchment. This court observed that to retrench is to cut down and one could not retrench without trenching or cutting, but "dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation".

34. Accepting the literal meaning, krishna iyer, j. Observed: a breakdown of section 2(oo) unmistakably expands the semantics of retrenchment. 'termination… for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the

employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of

The master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of section 25-f and section 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer *terra incognita* but area covered by an expansive definition. It means 'to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days – automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no *moksha* from section 25-f(b) is inferable from the

Proviso to section 25-f(1) [sic 25-f(a)]. True, the section speaks of retrenchment from section 25-f(b) is inferable from the proviso to section 25-f(1) [sic 25-f(a)]. True, the section speaks of retrenchment *by the employer* and it is urged that some act of volition by the employer to bring about the termination is essential to attract section 25-f and automatic extinguishment of service by effluxion of time cannot be sufficient. (emphasis in original)

36. The precedents including ***hariprasad*** do not appear to have been brought to the notice of their lordships in this case. It may be noted that since ***delhi cloth and general mills*** a change in interpretation of retrenchment in section 2(oo) of the act is clearly discernible.

37. Mr. Venugopal would submit that the judgment in ***sundara money*** case and for that matter the subsequent decisions in the line are *per incuriam* for two reasons: (1) that they failed to apply the law laid down by the constitution bench of this hon'ble court in ***hariprasad shukla*** case and (2) for the reason that they have ignored the impact of two of the provisions introduced by the amendment act of 1953 along with the definition of "retrenchment" in section 2(oo) and section 25-f namely, sections 25-g and 25-h. We agree with the learned counsel that the question of the subsequent decisions being *per incuriam* could arise only if the ratio of ***sundara money*** case and the subsequent judgments in the line was in conflict with the ratio in the ***hariprasad shukla*** case and ***anakapalle*** case.

The issue, it is urged, was, whether it was necessary for the court to interpret section 2(oo) as being restricted to termination of services of workmen rendered surplus for arriving at a decision in the case and if it was unnecessary to so interpret section 2(oo) for the purpose of arriving at a decision in that case, the interpretation of section 2(oo) would necessarily be rendered obiter. According to counsel, the long discussion on interpretation of section 2(oo) could not be brushed aside as either obiter or mere casual observations of the constitution bench.

40. We now deal with the question of *per incuriam* by reason of allegedly not following the constitution bench decisions. The latin expression *per incuriam* means through inadvertence. A decision can be said generally to be given *per incuriam* when this court has acted in ignorance of a previous decision of its own or when a high court has acted in ignorance of a decision of this court. It cannot be doubted that article 141 embodies, as a rule of law, the doctrine of precedents on which our judicial system is based. In ***bengal immunity company ltd.*** **Verses** ***state of bihar*** , it was held that the words of article 141, "binding on all courts within the territory of india", though wide enough to include the supreme court, do not include the supreme court itself, and it is not bound by its own judgments but is free to reconsider them in appropriate cases. This is necessary for proper development of law and justice.

43. As regards the judgments of the supreme court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the supreme court may not be said to "declare the law" on those subjects if the relevant provisions were not really present to its mind. But in this cases sections 25-g and 25-h were not directly attracted and even if they could be said to have been attracted in laying down the major premise, they were to be

interpreted consistently with the subject or context. The problem of judgment *per incuriam* when actually arises, should present no difficulty as this court can lay down the law afresh, if two or more of its earlier judgments cannot stand together. The question however is whether in this case there is in fact a judgment *per incuriam*. This raises the question of *ratio decidendi* in ***hariprasad*** and ***anakapalle*** cases on the one hand and the subsequent decisions taking the contrary view on the other.

48. Analysing the complex syllogism of ***hariprasad*** case we find that its major premise was that retrenchment meant termination of surplus labour of an existing industry and the minor premise was, that the termination in that case was of all the workmen on closure of business on change of ownership. The decision was that there was no retrenchment. In this context it is important to note that subsequent benches of this court thought to be the *ratio decidendi* of ***hariprasad***, and that matter of ***anakapalle*****.**

49. In ***santosh gupta*** **verses** ***state bank of patiala***, o. Chinnappa reddy, j. Sitting with krishna iyer, j. Deduced the *ratio decidendi* of ***hariprasad*** thus: in ***hariprasad shivshankar shukla*** **verses** ***a.d. Divikar***, the supreme court took the view that the word 'retrenchment' as defined in section 2(oo) did not include termination of services of all workmen on a bona fide closure of an industry or on change of ownership or management of the industry. In order to provide for the situations which the supreme court held were not covered by the definition of the expression 'retrenchment', the parliament added section 25-ff and section 25-fff providing for the payment of compensation to the workmen in case of transfer of undertakings and in case of closure of undertakings respectively.

50. In ***hariprasad*** the learned judges themselves formulated the question before them as follows: (scr p. 130)

The question, however, before us is - does this definition merely give effect to the ordinary, accepted notion of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or does it go so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona fide closure or discontinuance of his business by the employer?

51. The question was answered by the learned judges in the following words: in the absence of any compelling words to indicate that the intention was even to include a bona fide closure of the whole business, it would, we think, be divorcing the expression altogether from the context to give it such a wide meaning as it contended for by learned counsel for the respondents… it would be against the entire scheme of the act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen

By the employer when the business itself ceases to exist. Rejecting the submission of dr. Anand prakash that "termination of service for any reason whatsoever" meant no more and no less than discharge of a labour force which was a surplusage, it was observed in ***santosh gupta*** that the misunderstanding of the observations and the resulting confusion stem from not appreciating the lead question which was posed and answered by the learned judges and that the reference to 'discharge on account of surplusage' was illustrative and not exhaustive on account of transfer or closure of business.

52. Mr. V a. Bobde submits, and we think rightly, that the sole reason for the decision in ***hariprasad*** was that the act postulated the existence and continuance of an industry and where the industry i.e. The undertaking, itself was closed down or transferred, the very substratum disappeared and the act could not regulate industrial employment in the absence of an industry. The true position in that case was that section 2(oo) and section 25-f could not be invoked since the undertaking itself ceased to exist. The ratio of ***hariprasad***, according to the learned counsel, is discernible from the discussion at pp. 131-32 of the report about the ordinary accepted notion of retrenchment 'in an industry' and ***pipraich*** case was referred to for the proposition that continuance of the business was essential; the emphasis was not on the discharge of surplus labour but on the fact that "retrenchment connotes in its ordinary acceptation that the business itself is being continued… the termination of services of all the workmen as a result of

the closure of the business cannot therefore be properly described as retrenchment". At page 134 in the last four lines also it was said: "but the fundamental question at issue is, does the definition clause cover cases of closure of business, when the closure is real and bona fide?" The reasons for arriving at the conclusion are given as "it would be against the entire scheme of the act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen by the employer when the business itself ceases to exist" and that the industrial dispute to which the provisions of the act applies is only one which arises out of an existing industry. Thus, the court was neither called upon to decide nor did it decide whether in a continuing business, retrenchment was confined only to discharge of surplus staff and reference to discharge of surplusage was for the purpose of contrasting the situation in that case, i.e. Workmen were being retrenched because of cessation of business and those observations did not constitute reasons for the decision. What was decided was that if there was no continuing industry the provision could not apply. In fact the question whether retrenchment did or did not include other terminations was never required to be decided in ***hariprasad*** and could not, therefore have been, or be taken to have been decided by this court.

We agree with mr. Bobde when he submits that ***hariprasad*** case is not an authority for the proposition that section 2(oo) only covers cases of discharge of surplus labour and staff. The judgments in ***sundara money*** and the subsequent decisions in the line could not be held to be *per incuriam* inasmuch as in ***hindustan steel*** and ***santosh gupta*** cases, the division benches of this court had referred to ***hariprasad*** case and rightly held that its ratio did not extend beyond a case of termination on the ground of closure and as such it would not be correct to say that the subsequent decisions ignored a binding precedent.

54. In ***hindustan steel ltd.*** **Verses** ***presiding officer, labour court***, the question was whether termination of service by efflux of time was termination of service within the definition of retrenchment in section 2(oo) of the act. Both the earlier decisions of the court in ***hariprasad*** and ***sundara money*** were considered and it was held that there was nothing in ***hariprasad*** which was inconsistent with the decision in ***sundara money*** case. It was observed that the decision in ***hariprasad*** was only that the words "for any reason whatsoever" used in the definition of retrenchment would not include a bona fide closure of the whole business because it would affect the entire scheme of the act. The decisions in which contrary view was taken, were over-ruled in ***santosh gupta*** holding that the discharge of the workman on the ground that she did not pass the test which would have enabled her to be confirmed was 'retrenchment' within the meaning of section 2(oo) and therefore, the requirement of section 25-f had to be complied with. The workman was employed in the state bank of patiala from july 13, 1973 till august 1974 when her services were terminated. According to the workman she had worked for 240 days in the year preceding august 21, 1974 and the termination of her services was retrenchment as it did not fall within any of the

Three accepted cases. The management's contention was that termination was not due to discharge of surplus labour but due to failure of the workman to pass the test which could have enabled her to be confirmed in the service and as such it was not retrenchment. This contention was repelled.

55. Both mr. Shetye and mr. Venugopal submit that judicial discipline required the smaller benches to follow the decisions in the larger benches. This reminds us of the words of lord hailsham of marylebone, the lord chancellor, "in the hierarchical system of courts which exists in this country, it is necessary for each lower tier… to accept loyally the decisions of the higher tiers". However, in view of the *ratio decidendi* of ***hariprasad*****,** as we have seen, there is no room for such a criticism.

56. In ***karnataka srtc*** **verses** ***m. Boraiah***, a division bench of a.n. Sen and ranganath misra, jj. Held that in the above series of cases that have come later, the constitution bench decision in ***hariprasad*** has been examined and the ratio indicated therein has been confined to its own facts and the view indicated by

the court in that case did not meet with the approval of parliament and, therefore, the law had been subsequently amended.

57. Speaking for the court, r.n. Misra, j. Significantly said: we are inclined to hold that the stage has come when the view indicated in ***money*** case has been 'absorbed into the consensus' and there is no scope for putting the clock back or for an anti-clockwise operation.

58. More than a month thereafter in ***gammon india ltd.*** **Verses** ***niranjan das***, a three judges bench (d.a. Desai, r.b. Misra and ranganath misra, jj.) Construing the one month's notice of termination in that case due to reduction of volume of business of the company said: on a true construction of the notice, it would appear that the respondent had become surplus on account of reduction in volume of work and that constitutes retrenchment *even in the traditional sense of the term* as interpreted in ***pipraich sugar mills ltd.*** **Verses** ***pipraich sugar mills mazdoor union***, though that view does not hold the field in view of the recent decisions of this court in ***state bank of india*** **verses** ***n. Sundara money; hindustan steel ltd.*** **Verses** ***presiding officer, labour court, orissa; santosh gupta*** **verses** ***state bank of patiala; delhi cloth and general mills ltd.*** **Verses** ***shambhu nath mukherjee; mohan lal*** **verses** ***bharat electronics ltd.*** **And** ***l. Robert d'souza*** **verses** ***executive engineer, southern railway***. The recitals and averments in the notice leave no room for doubt that the service of the respondent was terminated for the reason that on account of recession and reduction in the volume of work of the company, respondent has become surplus. Even apart from this, the termination of service for the reasons mentioned in the notice is not covered by any of the clauses (a), (b) and (c) of section 2(oo) which defines retrenchment and it is by now well settled that where the termination of service does not fall within any of the excluded categories, the termination would be *ipso facto* retrenchment. It was not even attempted to be urged that the case of the respondent would fall in any of the excluded categories. It is therefore indisputably a case of retrenchment.

59. In a fast developing branch of industrial and labour law it may not always be of particular importance to rigidly adhere to a precedent, and a precedent may need be departed from if the basis of legislation changes.

61. When we analyse the mental process in drafting the definition of "retrenchment" in section 2(oo) of the act we find that firstly it is to mean the termination by the employer of the service of a workman for any reason whatsoever. Having said so the parliament proceeded to limit it by excluding certain types of termination, namely, termination as a punishment inflicted by way of disciplinary action. The other types of termination excluded were (a) voluntary retirement; or (b) retrenchment of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation on that behalf; or (c) termination of service of a workman on the ground of continued ill health. Had the parliament envisaged only the question of termination of surplus labour alone in mind, there would arise no question of excluding (a), (b) and (c) above. The same mental process was evident when section 2(oo) was amended inserting another exclusion clause (bb) by the amending act of 49 of 1984, with effect from august 18, 1984, "termination of the service of workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry of such contract being terminated under a stipulation in that behalf contained therein".

62. This is literal interpretation as distinguished from contextual interpretation said tindal, c.j. In ***sussex peerage*** case:

The only rule of construction of acts of parliament is that they should be construed according to the intent of the parliament which passed the act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.

68. In the case before us the difficulty was created by defining 'retrenchment' to mean something wider than what it naturally and ordinarily meant. While naturally and ordinarily it meant discharge of surplus labour, the defined meaning was termination of service of a workman for any reason whatsoever except those excluded in the definition itself. Such a definition creates complexity as the draftsman himself in drafting the other sections using the defined word may slip into the ordinary meaning instead of the defined meaning.

71. Analysing the definition of retrenchment in section 2(oo) we find that termination by the employer of the service of a workman would not otherwise have covered the cases excluded in (a) and (b), namely, voluntary retirement and retirement on reaching the stipulated age of retirement. There would be no volitional element of the employer. Their

Express exclusion implies that those would otherwise have been included. Again if those cases were to be included, termination on abandonment of service, or on efflux of time, and on failure to qualify, although only consequential or resultant, would be included as those have not been excluded. Thus, there appears to be a gap between the first part and the exclusion part. Mr. Venugopal, on this basis, points out that cases of voluntary retirement, superannuation and tenure appointment are not cases of termination 'by the employer' and would, therefore, in any event, be outside the scope of the main provisions and are not really provisions.

72. The definition has used the word 'means'. When a statute says that a word or phrase shall "mean" – not merely that it shall "include" – certain things or acts, "the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition" [per esher, m.r., ***gough* verses *gough***]. A definition is an explicit statement of the full connotation of a term.

73. Mr. Venugopal submits that the definition clause cannot be interpreted in isolation and the scope of the exception to the main provision would also have to be looked into and when so interpreted, it is obvious that a restrictive meaning has to be given to section 2(oo).

74. It is also pointed out that section 25-g deals with the principle of 'last come, first go', a principle which existed prior to the amendment act of 1953 only in relation to termination of workmen rendered surplus for any reasons whatsoever. Besides, it is submitted, by its very nature the wide definition of retrenchment would be wholly inapplicable to termination simpliciter. The question of picking out a junior in the same category for being sent out in

Place of a person whose services are being terminated *simpliciter* or otherwise on the ground that the management does not want to continue his contract of employment would not arise. Similarly, it is pointed out that starting from ***sundara money*** where termination *simpliciter* of a workman for not having passed a test, or for not having satisfactorily completed his probation would not attract section 25-g, as the very question of picking out a junior in the same capacity for being sent out instead of the person who failed to pass a test or failed to satisfactorily complete his probation could never arise. If, however, section 25-g were to be followed in such cases, the section would itself be rendered unconstitutional and violative of fundamental rights of the workmen under articles 14, 19(1)(g) and 21 of the constitution. It would be no defence to this argument to say that the management could record reasons as to why it is not sending out the juniormost in such cases since in no single case of termination *simpliciter* would section 25-g be applicable and in every such case of termination *simpliciter,* without exception, reasons would have to be recorded. Similarly, it is submitted, section 25-h which deals with re-employment of retrenched workmen, can also have no application whatsoever, to a case of termination *simpliciter* because of the fact that the employee whose services have been terminated, would have been holding a post which '*eo instanti*' would become vacant as a result of the termination of his services and under section 25-h he would have a right to be reinstated against the very post from which his services have been terminated, rendering the provision itself an absurdity. It is urged that section 25-f is only procedural in character along with sections 25-g and 25-h and do not prohibit the

substantive right of termination but on the other hand requires that in effecting termination of employment, notice would be given and payment of money would be made and the later procedure under sections 25-g and 25-h would follow.

75. Mr. Bobde refutes the above argument saying that sections 25-f, 25-g and 25-h relate to retrenchment but their contents are different. Whereas section 25-f provides for the conditions precedent for effecting a valid retrenchment, section 25-g only provides the procedure for doing so. Section 25-h operates after a valid retrenchment and provides for reemployment in the circumstances stated therein. According to counsel, the argument is misconceived firstly for the reasons that section 2 itself says that retrenchment will be understood as defined in section 2(oo) unless there is anything repugnant in the subject or context; secondly section 25-f clearly applies to retrenchment as plainly defined by section 2(oo); thirdly section 25-g does not incorporate in absolute terms – the principle of 'last come, first go' and provides that ordinarily last employee is to be retrenched, and fourthly section 25-h upon its true construction should be held to be applicable when the retrenchment has occurred on the ground of the workman becoming surplus to the establishment and he has been retrenched under sections 25-f and 25-g on the principle 'last come, first go only then should he be given an opportunity to offer himself for reemployment.

In substance it is submitted that there is no conflict between the definition of section 2(oo) and the provisions of sections 25f, 25g and 25h. We find that though there are apparent incongruities in the provisions, there is room for harmonious construction.

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to there being anything repugnant in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-f prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are that giving of one month's notice indicating the reasons for retrenchment and payment of wages for the period of the notice. Section 25-ff provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workman who has been in continuous service for not less than one year in an undertaking 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 25-f, *as if the workman had been retrenched"*. Section 25-h provides for re-employment of retrenched workmen. In brief, it provides that where any workmen are retrenched, and the employer proposes to take into his employment any person, he shall give an opportunity to the retrenched workmen to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-h. In such cases, as specifically provided in the relevant sections the workmen concerned would only be entitled to notice and

Compensation in accordance with section 25-f. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workmen is "as if the workmen had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-f.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the standing orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by introduction of sections 2(oo), 25-f and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an

additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the affected workmen, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi*; the will of the people stands in place of a reason.

80. The definitions in section 2 of the act are to be taken 'unless there is anything repugnant in the subject or context'. The contextual interpretation has not been ruled out. In ***r.b.i.*** **Verses** ***peerless general finance and investment co. Ltd***: interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire act and by reference to what preceded the enactment and the reasons for it that the court construed the expression 'prize chit' in ***srinivasa*** [***srinivasa enterprises*** **verses** ***union of india*** and we find no reason to depart from the court's construction.

81. As we have mentioned, industrial and labour legislation involves social and labour policy. Often they are passed in conformity with the resolutions of the international labour organisation. In ***duport steels*** **verses** ***sirs*** the house of lords observed that there was a difference between applying the law and making it, and that judges ought to avoid becoing involved in controversial social issues, since this might affect their reputation in impartiality. Lord diplock said:

A statute passed to remedy what is perceived by parliament to be a defect in the existing law may in actual operation turn out to have injurious consequences that parliament did not anticipate at the time the statute was passed; if it had, it would have made some provision in the act in order to prevent them… but if this be the case it is for parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the acts…

82. Applying the above reasoning, principles and precedents, to the definition in section 2(oo) of the act, we hold that "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section.

Uptron india ltd. Verses shammi bhan

[in the absence of a fixed term contract, termination in pursuance of such stipulation is not saved by s. 2(oo) (bb).}

facts

Respondent 1 was appointed as an operator (trainee) on 13-5-1980 in the petitioner's establishment. On completion of training, she was absorbed on that post with effect from 13-7-1981 and was confirmed on 13-7-1982. She thus acquired the status of a permanent employee.

With effect from 7th of november, 1984, respondent 1 proceeded, and remained till 29th january, 1985, on maternity leave. Thereafter, she allegedly remained absent with effect from 31-1-1985 to 12-4-1985 without any application for leave and 1consequently, by order dated 12th april, 1985, the petitioner informed respondent 1

that her services stood automatically terminated in terms of clause (17(g) of the certified standing orders. Respondent 1 raised an industrial dispute for adjudication. Her application, filed before the deputy labour commissioner, lucknow was registered as c.b. Case no. 310-1985. The state government by its order dated 18-7-1990, referred the following questions for adjudication to the industrial tribunal, lucknow:

"whether the termination of the services of female smt. Shammi bhan, operator, daughter of c.n. Kaul, by the management by its letter dated 12-4-1-985 is proper and legal. If not, the relief which the employee will be entitled to?"

Clause i7(g) of the certified standing orders, which constitutes the bone of contention between the parties, is quoted below:

"the service of a workman are liable to automatic termination if she overstays on leave without permission for more than seven days. In case of sickness, the medical certificate must be submitted within a week."

Issue

Whether the stipulation for automatic termination of service of overstaying the leave would be legally bad or not?

Decision of the supreme court

Definition of retrenchment ip s. 2(oo) is conclusive in the sense that "retrenchment" has been defined to mean the termination of service of a workman by employer for any reason whatsoever. If the termination was by way of punishment as a consequence of d isplinary action, it would not amount to "retrenchment". Provision for automatic termination of services on account of absence is not covered by exception (bb) of s.2(oo).

The contract of employment referred to in the earlier part of s. 2(oo) (bb) has to be the same as is referred to in the latter part. This is clear by the use of the words "such contract" in earlier part of this clause. Section 2(oo) (bb) therefore means that there should have been a contract of employment for a fixed term between employer and workman containing stipulation that the services could be terminated even before the expiry of period of contract. If such contract, on expiry of its original period, is not renewed and services are terminated as a consequence of that period, if would not amount to "retrenchment". Similarly, if services are terminated even before the expiry of period of contract but in pursuance of a stipulation contained in that contract that the services could be so terminated, then in that case also, termination would not amount to "retrenchment".

There was no fixed term contract of service in the present case. There was, therefore, no question of service being terminated on expiry of that contract between the parties, the question relating to second contingency, namely, that the termination in pursuance of a stipulation to that effect in the contract of employment, does not arise. This case does not fall in either of the two situations contemplated by s. 2(oo) (bb). The "rule of exception", therefore, is not applicable in the instant case. Respondent's termination is therefore a retrenchment.

The concept of employment under industrial law involves, like any other employment, three ingredients:

(1) management/industry/factory/employer, who employs or, to put it differently, engages the services of the workman;

(2) employee/workman, that is to say, a person who works for the employer for wages or monetary compensation; and

(3) contract of employment or the agreement between the employer and the employee whereunder the employee/workman agrees to render services to the employer, in consideration of wages, subject to the supervision and control of the employer.

The general principles of the contract act applicable to an agreement between two persons having capacity to contract, are also applicable to a contract of industrial employment, but the relationship so created is partly contractual, in the sense that the agreement of service may give rise to mutual obligations, for examples, the obligation of the employer to pay wages and the corresponding obligation of the workman to render services, and partly non-contractual, as the states have already, by legislation, prescribed positive obligations for the employer

towards his workmen, as, for the example, terms, conditions and obligations prescribed by the payment of wages act, 1936; industrial employment (standing orders) act, 1946; minimum wages act, 1948; payment of bonus act, 1965; payment of gratuity act, 1972 etc.

Any clause in the certified standing orders providing for automatic termination of services of a permanent employee, not directly related to "production" in a factory or industrial establishment, would be bad if it does not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically.

Note: the uptron decision was followed later in *haryana state ec. C. W. Store ltd. Verses ram niwas*.

S.m. Nilajkar verses telecom. District manager, karnataka

[*"undertaking" is a concept narrower than industry. Closure of a government project or scheme would attract the proviso to s.25-fff(1).]*

Facts

A number of workers were engaged as casual labourers for the purpose of expansion of telecom facilities in the district of belgaum, karnataka, during the years 1985-86 and 1986-87. The services of these workers were utilized for digging, laying cables, erecting poles, drawing lines and other connected works. It appears that the

services of these workmen were terminated sometime during the year 1987 and they were not engaged on work thereafter.

Issue

Whether the termination of services of the appellants casual labour was justified or not? If not, to what relief the workman is entitled?

Decision of the supreme court

The court said:

" 'retrenchment' in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well-settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well-settled in case of doubt or where it is possible to take two views of a provision. It is also well-settled that the parliament has employed the expression "the termination by the employer of the service of a workman^/- *any reason whatsoever*" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term 'retrenchment' a meaning wider than what is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term 'retrenchment,' and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of 'retrenchment' *de hors* the reasons for termination. To be expected from within the meaning of 'retrenchment' the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of 'retrenchment'.

The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:

(1) that the workman was employed in a project or scheme of temporary duration;

(2) the employment was on a contract, and not as a daily-wages simlicitor, which provided *inter alia* that the employment shall come to an end on the expiry of the scheme or project; and

(3) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

(4) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being envisaged in a scheme or project which was to last only for a particular length of time or upto the occurrence of some event, and therefore, the workman ought to know that his employment was short lived. The contract of employment consciously entered into the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the above said ingredients so as to attract the applicability of sub-clause (bb) above said. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want to proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment. The appropriate provision which should govern the cases of the appellants is section 25fff."

The court held that the appropriate provision which should govern the cases of the appellants in s. 25-fff, which deals with closing down of undertakings. The term "undertaking" is not defined in the act. The relevant provisions use the term "industry". Undertaking is a concept narrower than industry. An undertaking may be a

part of the whole, that is, industry. It carries a restricted meaning. Closure of a project or scheme by the state government would be covered by closing down of an undertaking within the meaning of s. 25-fff. The workman would therefore be entitled to notice and compensation in accordance with the provisions of s. 25-f though the right of the employer to close the undertaking for any reason whatsoever cannot be questioned. Compliance with s. 25-f shall be subject to such relaxations as are provided by s. 25-fff. The undertaking having being closed on account of unavoidable circumstances beyond the control of the employer i.e. By its own force as it was designed and destined to have a limited life only, the compensation payable to the workman under clause (b) of s. 25-f shall not exceed his average pay for three months. This is so because of failure on the part of the respondent employer to allege and prove that the termination of employment fell within sub-clause (bb) of clause (oo) of s. 2 of the act.

The workmen of m/s firestone tyre and rubber co. Of india (p) ltd. Verses . The firestone tyre & rubber co.

(lay-off strictly speaking, is not a temporary discharge of the workman or a temporary suspension of his contract of service.) Facts

Due to strike from 3rd march, 1967 to 16th may, 1967 and again from 4th october, 1967 in the bombay factory of the respondent company, the was a short supply of tyres etc to the distribution office at delhi. In the delhi office,

there were 30 employees at the relevant time. 17 workmen out of 30 were laid off by the management from 5th february, 1968 "due to much reduced production in the company's factory resulting from strike in one of the factory departments." the workmen were not given their wages or compensation for the period of lay-off. An industrial dispute was raised and referred by the delhi administration. The industrial tribunal held that the workmen were not entitled to any lay-off compensation. Therefore, the union of the workers appealed. Issue

"whether the action of the management to lay-off" 17 workmen with effect from 5th february, 1968 was illegal and or unjustified, and, if so, to what relief are these workmen entitled?" decision of the supreme court

Before the amendment in 1953 many a time when the lay-off was found to be justified workmen were not found entitled to any wages or compensation. But b> the amending act-act 43 of 1953—clause (kkk) in section 2 was added. By the same amending act, chapter va was introduced in the act to provide for lay-off and retrenchment compensation. Section 25-a excluded the industrial establishment in which less than 50 workmen on an average per working day had been employed in the proceeding calender month from the application of 25c to 25e. According to section 25c the laid-off workers are entitled to compensation and broadly speaking this is 50% of the total of basic wages and dearness allowance. The respondent company employed only 30 workmen at its delhi office at the relevant time. According to section 25j if a workman is entitled to benefits which are more favourable to him than those provided under the industrial disputes act (chapter. Va) he shall continue to be entitled to the more favourable benefits.

Lay-off means the failure, refusal or inability of employer on account of the reasons or contingencies mentioned in clause (kkk) of section 2 to give employment to a workman whose name is borne on the muster rolls of his industrial establishment. *Of contract of service concerning such right of lay off.* In such a situation the conclusion seem to be inescapable that the workmen were laid-off without any authority of law or the power in the management under the contract of service. *Industrial establishments where there is a power in the management to lay-off a workmen and to which the provisions of chapter va apply, the question of payment of compensation will be governed and determined by the said provisions. Otherwise chapter va is not a complete code as was argued on behalf of the respondent company in the matter of payment of lay-off compensation.* This case therefore, goes out of chapter va. Ordinarily and generally the workmen would be entitled to their full wages but in a reference made under section 16(1) of the act, it is open to the tribunal or the court to award a lesser sum finding the justifiability of the layoff."

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S.b. Sinha, j. - whether direction to pay back wages consequent upon a declaration that a workman has been retrenched in violation of the provisions of section 6-n of the u.p. Industrial disputes act, 1947 (equivalent to section 25f of the industrial disputes act, 1947) as a rule is in question in this appeal which