Anand Bihari and others Vs Rajasthan State Road Transport Corporation, Jaipur and another

Court: Supreme Court of India

Date of Decision: Dec. 20, 1990

Acts Referred: Industrial Disputes Act, 1947 â€" Section 2, 25

Citation: (1991) ACJ 848 : AIR 1991 SC 1003 : (1990) 4 JT 794 : (1991) LabIC 494 : (1990) 2 SCALE 1286 : (1991) 1 SCC 731 : (1990) 3 SCR 622 Supp : (1991) 1 UJ 385 : (1991) 1 UPLBEC 52

Hon'ble Judges: S.C. Agrawal, J; P. B. Sawant, J

Bench: Division Bench

Advocate: Gobinda Mukhoty, L.M. Singhvi, S. K. Verma, R.B. Mishra and D. Bhandari, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.B. Sawant, J.
Civil Appeals Nos. 1859-61 of 1990 are preferred by the workmen of the Rajasthan State Transport Corporation

(hereinafter referred to as the ""Corporation"") against the decision dated March 8, 1989 of a Division Bench of the High Court of Rajasthan and

Civil Appeal No. 1862 of 1990 is preferred by another workman against the decision dated March 15, 1989 of the same Division Bench whereas

Civil Appeal No. 1863 of 1990 is preferred by the Corporation against the decision dated March 15, 1989 of another Division Bench of the High

Court. Since the issues involved in all these appeals are common, we are deciding them all together.

2. The facts of Civil Appeals Nos. 1859-62 are same. The workers in question were appointed as drivers to drive the roadways buses of

Corporation in the region of Ajmer, Jaipur and Bharatpur. They had put in a long service discharging their duties to the satisfaction of the

Corporation. Sometime in 1987, their routine medical examination showed that they had developed defective eye-sight and did not have the

required vision for driving heavy motor vehicles like buses for which they were engaged by the Corporation. The Corporation, therefore,

constituted a medical Board and directed the workers to appear before it for testing their eye-sight. The Board found them totally unfit for driving

heavy motor vehicles. The Corporation issued notices to the workmen to show cause as to why their services should not be terminated since they

were found unfit for driving its buses. The workmen submitted their explanations in which they asked for conducting a second test of their eye-sight

and also prayed that in case they were found unfit for driving the buses, they should be given some other job in the Corporation. The Corporation

after considering the explanation of the workmen came to the decision that since the workmen''s eyesight was not of the standard required to drive

the buses they could not be retained in service, and terminated their services. The orders of termination of services were challenged by the

workmen before the High Court by filing individual writ petitions, on two grounds, viz., that the termination amounted to retrenchment within the

meaning of Section 2(00) of the Industrial Disputes Act, 1947 (hereinafter referred to as the ""Act"") and since the retrenchment was effected

without following the mandatory provisions of Section 25F of the Act, it was illegal. Secondly, it was urged that there was an agreement between

the drivers'' Union (AITUC) and the Corporation on February 21, 1979 whereunder it was provided that if a driver was found unfit for driving the

bus, he should be posted as a helper. In pursuance of the said agreement, the Corporation had also issued a circular on March 10, 1980 providing

for giving the job of a helper to an unfit driver. Hence, it was urged that the termination of the services was illegal on that ground as well. The

workmen on these grounds not only prayed for the quashing of the orders terminating their services but in the alternative also prayed for direction

to the Corporation to offer them the alternative job of a helper. The Corporation, on the other hand, contended that the termination of the

workmen''s services did not amount to retrenchment within the meaning of Section 2(00) of the Act and hence there was no illegality from which

the termination orders sufferred. The Corporation also stated that there was no agreement between it and the driver''s Union as alleged, and that

the circular dated March 10, 1980 was later on withdrawn. Hence, the workmen could not claim any right under the circular. The High Court

upheld both the contentions of the Corporation and dismissed the workmen''s writ petitions. However, while dismissing the petitions, the High

Court also added that in case the workmen approached the Corporation for absorbing them as helpers, their cases for such absorption be

considered sympathetically if they were otherwise found fit and eligible. It is this order which the workmen have challenged before us in these

appeals.

3. The facts in Civil Appeal No. 1863 of 1990 filed by the Corporation are that the services of the workmen similarly working as a driver were

terminated on the ground that he had lost vision of his right eye. He had approached the High Court with the same grievances as the workmen in

the other writ petitions. The workman in this case had further pointed out that in fact since he had lost the sight of one eye on March 11, 1986, he

was not working as a driver but was working in the maintenance section of the vehicles. For that work, he was not found unfit and yet his services

were terminated by the impugned order of February 27, 1988 on the ground of his said incapacity to work as a driver. The High Court by its

impugned decision held that although the workman had lost the vision of one eye, he was fit to discharge the duties of any technician or helper or

any other employee of that cadre. This was also the report of the Medical Officer and hence the Corporation should have absorbed the workman

in any other job according to his capacity instead of terminating his services. The High Court, therefore, quashed the order terminating his services

and directed the Corporation to absorb him in the post of a helper or any other equivalent post for which he might be found fit. The Court further

directed that the workman should be treated as being in continued service, and the period between the date of the termination of his services and

his reinstatement should be treated as leave without pay which may be to his credit or which he may earn in future. It is this order which is

challenged by the Corporation in this appeal.

4. Since the workmen were unable to produce any material with regard to the alleged agreement of February 21, 1979 between their Union and

the Corporation, the contention based on it was not rightly pressed before us on behalf of the workmen. It was also an admitted position that the

circular dated March 10, 1980 issued by the Corporation was withdrawn long before the services of the present workmen were terminated. No

arguments were therefore available on its basis and none was advanced. However, what was contended was that in the circumstances of the case

the workmen should have been continued in employment in other post such as that of a helper for which they were fit, whether there was an

agreement or a circular, or not. We will deal with this contention after we have dealt with the only other contention.

5. The definition of ""retrenchment"" u/s 2(00) of the Act is as follows:

2(00). ""retrenchment"" means the 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 but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman

concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the

workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health.

There is no dispute before us that the only Sub-clause of the definition which can cover the present termination of service is Sub-clause (c). There

was some debate before us as to the exact import of the expression ""continued ill-health"". While it was urged on behalf of the workmen that ill-

health which is spoken of there does not cover the cases of a loss of a limb or an organ or of its permanent use, and covers cases only of a general

physical or mental debility or incapacity to execute the work, the argument on behalf of the Corporation was that it would include also cases of a

permanent loss or incapacity of a limb or an organ such as eye or eye-sight, ear or hearing capacity, of hand or leg etc. which is necessary for

discharging the duty in question. For this purpose, reliance was placed on behalf of the Corporation on a decision of this Court in Workmen of the

Bangalore Woolen,Cotton and Silk Mills Co. Ltd. v. Its Management, [1962] I LLJ 213. In that case the Court while interpreting the definition of

retrenchment has held as follows:.

The definition ""retrenchment"" in Section 2(00) of the Act means termination of service. A service cannot be said to be terminated unless it was

capable of being continued. If it is not capable of being continued, that is to say, in the same manner in which it had been going on before, and it is,

therefore, brought to an end, that is not a termination of the service. It is the contract of service which is terminated and that contract requires

certain physical fitness in the workmen. Where therefore a workman is discharged on the ground of ill-health, it is because he was unfit to

discharge the service which he had undertaken to render and therefore it had really come to an end itself. That this is the idea involved in the

definition of the word ""retrenchment"" is also supported by Section 25G of the Act which provides that whereas any workmen are retrenched, and

the employer proposes to take in his employ any person, he shall give an opportunity to the retrenched workmen to offer themselves for re-

employment and the latter shall have preference over other persons in the matter of employment. Obviously, it was not contemplated that one

whose services had been terminated on grounds of physical unfitness or ill-health would be offered re-employment; it was because his physical

condition prevented him from carrying out the work which he had been given that he had to leave and no question of asking such a person to take

up the work again arises. If he could not do the work, he could not be offered employment again. It would follow that such a person cannot be

said to have been retrenched within the meaning of the Act as amended by the Ordinance.

(emphasis supplied)

6. Even otherwise, it can scarcely be disputed that the expression "" who have its any by are is to and The of the in p as has which a from mean an

place also It they for his with him that on said be such We it view not but present if would or ill-health? used Sub-clause (c) relatively context. must

bearing discharge duties. interferes usual orderly post attracted Conversly, even illness does affect restricted particular limb organ efficient

entrusted, For capacity general necessary perform duty relevant material considered purpose. expresion ?ill-health? defined new Collins ?not good

Webster?s Comprehensive (International ?disordered physical condition; diseased; unwell; sick?; Concise (3rd Edition) ?out health; sick; disease;

anxiety (of health), unsound; disordered, morally bad?, Shorter Oxford English Dictionary mean: ?Unsound, disordered; Out well?. Therefore,

disorder health incapacitates individual discharging duties entrusted affects work adversely comes effective functioning can covered construed point

consumers products services. If account work-man?s debility functioning, resultant product likely affected way become risk health, life consumer,

disease incapacity categorised ill-health sub-clause. Otherwise, purpose production services workman engaged frustrated worse still will endanger

lives property consumers. Hence, we realistic technical pedantic meaning phrase. are, more than satisfied phrase include drivers ones developed

defective subnormal vision eye-sight bound interfere their normal working drivers.< therefore, only concerned one cases should service>

7. In the view we have taken of the said sub-clause, it is obvious that the termination of the services of the workers in the present case being

covered by Sub-clause (c) of Section 2(00) would not amount to retrenchment within the meaning of Section 2(00) of the Act. Hence, the

termination per se is not illegal because the provisions of Section 25F have not been followed while effecting it.

8. Allough the order of termination of service per se cannot be faulted on the ground of the breach of the Act, the important question that still

remains to be considered is whether in the circumstances of the case and against the background of the relevant provisions of our Constitution, it

can be said that the action of the Corporation is proper, equitable and justified. The facts on record show that all the workmen have put in service

with the Corporation for long periods. All of them are above 40 years of age. Their superannuation age is 58 years. There is no dispute that they

developed a weak or sub-normal eye-sight or lost their required vision on account of their occupation as drivers in the Corporation. As is

commonly known, the drivers of the buses run by the Corporation such as the present one, have to drive the heavy motor vehicles in sun, rain, dust

and dark hours of night. In the process, they are exposed to the glaring and blazing sun light and beaming and blinding lights of the vehicles coming

from the opposite direction. They are required to strain their eye-sight every moment of the driving, keeping a watchful eye on the road for the

bumps, bends and slopes, and to avoid all kinds of obstacles on the way. It is this constant training of eyes on the road which takes its inevitable

toll of the vision. The very fact that in a short period, the Corporation had to terminate the services of no less than 30 drivers who are before us

shows the extent of the occupational hazard to which the drivers of the Corporation are exposed during their service. It also shows that weakening

of the eye-sight is not an isolated phenomenon but a widespread risk to which those who take the employment of a driver expose themselves. Yet

the Corporation treats their cases in the same manner and fashion as it treats the cases of other workmen who on account of reasons not

connected with the employment suffer from ill-health or continued ill-health. That by itself is discriminatory against the drivers. The discrimination

against the employees such as the drivers in the present case, also ensues from the fact that whereas they have to face pre-mature termination of

service on account of disabilities contracted from their jobs, the other employees continue to serve till the date of their superannuation. Admittedly,

no special provision is made and no compensatory relief is provided in the service condition for the drivers for such premature incapacitation.

There is no justification in treating the cases of workmen like drivers who are exposed to occupational diseases and disabilities on par with the

other employees. The injustice, inequity and discrimination is writ large in such cases and is indefensible. The service conditions of the workmen

such as the drivers in the present case, therefore, must provide for adequate safeguards to remedy the situation by compensating them in some

form for the all-round loss they suffer for no fault of theirs.

9. It is for this reason that we had suggested to the Corporation to frame a suitable scheme of compensatory relief to the drivers. The Corporation

has filed two affidavits-one dated 9th October, 1990 by one Shri Navin Chaturvedi, Depot Manager at Delhi and the other dated 17th November,

1990 by one Shri L.N. Shah, Executive Director (Administration) who is also incharge of the present litigation. In paragraph 2 of the first affidavit

an amusing statement has been made that ""the Corporation considered the difficulties of the drivers who have been terminated from their service

u/s 2(00) of the Industrial Disputes Act"" without realising that it has all along been the case of the Corporation that the services of the drivers were

not terminated u/s 2(00) of the Act. This statement shows a total non-application of mind and a casual approach to the issues involved in the case.

The same attitude is discernible by what is proposed in the latter portion of the said paragraph by way of a relief scheme for the drivers, which is as

under:

The Corporation after considering the matter sympathetically resolved as under:

Shri L.N. Shah, Executive Director (Admn.) explained the background of the proposal, specifically with reference to the observations made by the

Hon''ble Supreme Court on last date of hearing of the case. After detailed discussions and exploring the possibilities of the scheme of rehabilitation

for their alternative employment.

Resolution No. 51/90: As a measure of rehabilitation for the drivers terminated on medical grounds, it was resolved that RSRTC may provide

margin money loan to the extent of shortfall in the borrowers'' own contribution, comprising of benefits available under Industrial Disputes Act and

inclusive of CPF, Gratuity etc. in case these employees form a Co-operative Society duly registered and willingly agree to engage such financed

new bus (es) with RSRTC on contract till RSRTC loan along with interest is repaid.

In the additional affidavit of 17th November, 1990 Shri L.N. Shah himself has stated firstly that neither the Employees State Insurance Act

(hereinafter referred to as the ""ESI Act"") nor the Workmen''s Compensation Act, 1923 (hereinafter referred to as the ""WC Act""), the provisions of

which we had suggested should be applied to the drivers, would ""strictly speaking"" cover the loss of sight in question as ""employment injury"" as

defined in Section 2(8) of the Employees Insurance Act. ""Loss of sight in question is also not covered in Section 3(2) of the WC Act"". The

affidavit then proceeds to state that loss suffered by the Corporation upto 1989-90 is to the extent of Rs. 37.15 crores and the loss estimated for

the current year is Rs. 15 crores. The Corporation on an average operates fleet of 2800 buses and runs approximately 240 lacs kilometers in a

month, for which the Corporation is presently having a huge staff of 24000 and thus the ratio of staff per bus comes to 8.35 which is approximately

double the normal ratio of staff. The average operated kilometres by a bus is 276 kilometres per day for which normally 5 to 6 hours'' working of

the driver would be needed. The drain on account of wages is 42 per cent of the income.

10. In other words, the Corporation has taken an unhelpful stand in the matter. The scheme with which it has come out is both unrealistic and

impracticable. The Corporation has not appreciated that what we had asked them was to formulate a scheme of relief which is the legitimate due of

the workmen and not a scheme on compassionate or charitable basis. The workmen are not denizens of an Animal Farm to be eliminated ruthlessly

the moment they become useless to the establishment. They have not only to live for the rest of their life but also to maintain the members of their

family and other dependants, and to educate and bring up their children. Their liability in this respect at the advanced age at which they are thus

retired stands multiplied. They may no longer be of use to the Corporation for the job for which they were employed, but the need of their

patronage to others intensifies with the growth in their family responsibilities.

11. Although as stated by the Corporation, the workmen are covered by the Employees Insurance Act no provision is made there for

compensation of the occupational injury such as the present one. Item 4 of Part I of the Second Schedule of the Employees Insurance Act talks of

loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential"" and classifies such injury as

permanent total disablement resulting in hundred per cent loss of earning capacity. Items 31, 32 and 32A of Part II of the same Schedule refer

respectively to (i) ""loss of one eye, without complications, the other being normal (ii) loss of vision of one eye without complications or

disfigurement of eye-ball, the other being normal (iii) partial loss of vision of one eye"" and classify all the said injuries as permanent partial

disablement resulting in 40, 30 and 10 per cent loss of earning capacity respectively. Item 11 in Third Schedule refers to occupational cataract due

to infrared radiations incurred in ""all work involving exposure to the risk concerned"" and classifies it as one of the occupational diseases.

It is, therefore, clear from the provisions of the Employees Insurance Act that the present case, viz., that of sub-normal eye-sight or loss of the

required vision to work as a driver would not be covered by the provisions of that Act as an employment injury or as an occupational disease, for

no provision is made there for compensation for a disability to carry on a particular job. The present workmen cannot be said to have suffered

either a permanent, total or partial disablement to carry on any job or to have developed cataract due to infra-red radiations. The workmen are

and will be able to do any work other than that of a driver with the eye-sight they posssess. Hence, a provision tor a compensatory relief for such

workmen has to be made separately on a different basis suitable to the peculiar loss that they suffer on account of the pre-mature retirement

necessitated by their unfitness to work as drivers.

12. In view of the helplessness shown by the Corporation, we are constrained to evolve a scheme which, according to us, would give relief as best

as it can to the workmen such as the ones involved in the present case. While evolving the scheme and giving these directions we have kept in mind

that the workmen concerned are incapacitated to work only as drivers and are not rendered incapable of taking any other job either in the

Corporation or outside. Secondly, the workmen are at an advanced age of their life and it would be difficult for them to get a suitable alternative

employment outside. Thirdly, we are also mindful of the fact that the relief made available under the scheme should not be such as would induce the

workmen to feign disability which, in the case of disability such as the present one, viz., the development of a defective eye-sight, it may be easy to

do. Bearing in mind all the aforesaid factors, we direct the Corporation as follows:

(i) The Corporation shall in addition to giving each of the retired workmen his retirement benefits, offer him any other alternative job which may be

available and which he is eligible to perform.

(ii) In case no such alternative job is available, each of the workmen shall be paid along with his retirement benefits, an additional compensatory

amount as follows:

(a) where the employee has put in 5 years'' or less than 5 years'' service, the amount of compensation shall be equivalent to 7 days'' salary per year

of the balance of his service;

(b) where the employee has put in more than 5 years'' but less than 10 years'' service, the amount of compensation shall be equivalent to 15 days''

salary per year of the balance of his service;

(c) where the employee has put in more than 10 years'' but less than 15 years'' service, the amount of compensation shall be equivalent to 21 days''

salary per year of the balance of his service;

(d) where the employee has put in more than 15 years'' service but less than 20 years'' service, the amount of compensation shall be equivalent to

one month''s salary per year of the balance of his service;

(e) where the employee has put in more than 20 years'' service, the amount of compensation shall be equivalent to two months'' salary per year of

the balance of his service.

The salary will mean the total monthly emoluments that the workmen was drawing on the date of his retirement.

(iii) If the alternative job is not available immediately but becomes available at a later date, the Corporation may offer it to the workmen provided

he refunds the proportionate compensatory amount.

(iv) The option to accept either of the two reliefs, if an alternative job is offered by the Corporation, shall be that of the workmen.

13. The scheme proposed by us in paragraph 12 above disposes of Civil Appeals Nos. 1859-61 of 1990. Since the workmen involved in these

appeals have been retired already, in case suitable jobs are available to be offered and the Corporation offers them and the workmen concerned

accept them, they would be employed on such jobs from the date they resume their duty. They should be paid proportionate compensation under

the above scheme for the interregnum from the date of their retirement till they resume the duty. In case no such job is available then they should be

paid the compensatory amount as indicated in the scheme.

14. As far as Civil Appeal No. 1862 of 1990 is concerned, admittedly the workmen was given employment as a helper from August 1985 since

he developed weak eye-sight on account of an accident in the course of his employment and he was working as such helper till he was retired from

service on and from April 27, 1988. There is no dispute that he was not unsuitable to work as a helper. The termination of his services as a helper

was, therefore, clearly unjustified and also illegal being in contravention of the provisions of Section 25F of the Act. The High Court obviously

erred in treating his case on par with those of the workmen involved in Civil Appeal Nos. 1859-61 of 1990. The appellant-workman will,

therefore, be entitled to his retirement benefits as a driver as if he had retired from service as a driver from the date of his employment as a helper.

He would further be entitled to be reinstated in service as a helper with all arrears of back wages as a helper. In case he opts for receiving the

compensatory amount under the scheme which we have framed above, he may do so for the period beginning from the date from which his

services as a helper were terminated.

15. As regards Civil Appeal No. 1863 of 1990 preferred by the Corporation, the impugned decision of the High Court is hereby set aside and the

Corporation is directed to give the concerned workman the benefit of the scheme propounded by us.

The appeals are disposed of in the above terms. In the circumstances of the case, the parties will bear their own costs.