(1958) 07 BOM CK 0025

Bombay High Court

Case No: In Appeal (I.C.) No. 92 of 1958

Chhaganlal Textile Mills (Private) Ltd.		APPELLANT
	Vs	
Its Employees (Chalisgaon Girni Kamgar Union)		RESPONDENT

Date of Decision: July 31, 1958

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25F, 25G, 25J

Citation: (1959) 1 LLJ 83

Hon'ble Judges: Syed Taki Bilgrami, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

1. This appeal is directed against an order of the Judge of the First Labour Court at Bombay, dated 31 March 1958, directing the mill to reinstate the respondent-employees and to pay them half the wages including dearness allowance which they would have earned from the date of their discharge to the date of their reinstatement with a further direction that the amount of notice salary and retrenchment compensation which they would have already been paid may be set off against this amount.

2. The facts of the case are briefly as follows. The appellant mill gave a notice of retrenchment to sixteen workers including the fourteen respondents on 1 November 1957. These employees were apprentices, clerks and mazdoors. The retrenchment was found necessary as a result of closure of the second shift. The respondents, it may be noted, are not workers in the second shift. On 9 November 1957, a notice of change was given to the effect that the company wishes to abolish 27 posts, including the posts of the respondents. The respondents, who filed the application against thin action in the Court below, said in their application that the retrenchment was an illegal change; if the

company wanted to retrench them, it should have proceeded in accordance with S. 42(1) of the Bombay Industrial Relations Act. The company in its written statement says that these workers were being retrenched on account of the closure of the second shift and because on account of this closure no work was available for them. The retrenchment, therefore, falls under the standing orders, and therefore the procedure under S. 42(1) is not necessary. It also says that later on they did give a notice of change when they wanted to abolish the same posts including those held by the applicants (respondents). The Court below held that the action of the company amounted to an illegal change and passed the order stated above, which is the subject-matter of this appeal.

3. Sri Kolah on behalf of the appellant mills contends that the retrenchment became necessary on account of the closure of the second shift, and that it was only a temporary measure, and therefore no notice of change was necessary. These workers were not actually working in the second shift. Their retrenchment therefore is not covered by model standing order 10(d), and as the lower Court has pointed out there is nothing on record to show that there was any chance of the second shift being started again when the retrenchment notice was served. The second shift was closed on 9 August 1957. The notice for retrenchment was given on 1 November 1957. The delay can be attributed to the fact that the effect of the closure was fully felt and realized after some time. One can also understand that the company required time to consider whether the retrenchment is to be permanent or not. But what is difficult to believe is that the company was unaware on 1 November 1957 that permanent abolition of the posts will be necessary, and that it only realized the necessity of it within the following eight or nine days. There is nothing on record to show what were the reasons which in this short period following the notice persuaded the company to believe that permanent reduction in its staff is necessary, and prompted it to give a notice of change. I agree with the Court below in not believing that at the time when these workers were retrenched, the company thought that the retrenchment was going to be only temporary.

4. The next question that arises for decision is whether S. 42(1) will be applicable to this case or not. If there are two laws covering the same ground and one law imposes additional conditions and mandates not inconsistent with the other law, both the mandates have to be obeyed and the question of inconsistency cannot arise. I am supported in this opinion by the decision of the Labour Appellate Tribunal in the National Art Silk Mills, Ltd. v. Mill Mazdoor Sabha and others 1954 I L.L.J. 678. In addition to the requirements of Ss. 25F, 25G and 25J of the Industrial Disputes Act, Sub-section (1) of S. 42 of the Bombay Industrial Relations Act lays down that in regard to all matters specified in Sch. II if an employer intends to effect any change he should give a notice of such intention in the prescribed form to the representative of employees. I agree with the Court below that the retrenchment of the kind effected by the company in this case falls under item I of Sch. II as it relates to reduction of permanent employees. It is necessary, therefore, to give a notice of change before the number of employees is reduced. In this view of the matter I think the lower Court was right in declaring the change as illegal and

directing withdrawal of this illegal change. The order of retrenchment cannot therefore stand. If the company so feels, it may give a notice of change according to law and then proceed as required under the above provisions of the Bombay Industrial Relations Act. The compensation which has been ordered to be paid does not appear to be either excessive or inadequate. I therefore find no reason to interfere in the order under appeal. The appeal is, therefore, dismissed.