(1955) 01 BOM CK 0005

Bombay High Court

Case No: None

K.N. Joglekar (Barsi Light Railway Men''s Union)		APPELLANT
	Vs	
Barsi Light Railway Company Ltd. and Others		RESPONDENT

Date of Decision: Jan. 24, 1955

Acts Referred:

- Payment of Wages Act, 1936 - Section 15

Citation: AIR 1955 Bom 294 : (1955) 57 BOMLR 448 : (1955) ILR (Bom) 826 : (1955) 1 LLJ 371

Hon'ble Judges: Chagla, C.J; Dixit, J

Bench: Division Bench

Judgement

Chagla, C.J.

This is a petition under Articles 226 and 227 of the Constitution by the president, Barsi Light Railwaymen''s Union, on behalf of the workers of the railway company, and the petition came to be filed under the following circumstances. The railway company was taken over by the Union of India on 1 January 1954 and on 11 November 1953 a notice was served by the railway company terminating the services of all its workmen. Some of the employees filed an application u/s 15 of the Payment of Wages Act to the authority under that Act, contending that they had been retrenched by the railway company and therefore they were entitled to compensation u/s 25F of the Industrial Disputes Act. The authority held on merits in favour of the employees, bat he came to the conclusion that he had no jurisdiction to entertain the application of the petitioners. Having coma to that conclusion, he dismissed the application and the petitioners have now come to this Court challenging the decision of the authority and contending that the authority wrongly refused to exercise jurisdiction vested in him under the Payment of Wages Act.

2. Now, Mr. Palkhivala, on behalf of the railway company, has very fairly suggested that that even assuming we hold that the authority had jurisdiction, the controversy between the parties on merits will not come to an end, because Mr. Palkhivala''s contention on merits is that no compensation is payable to the workmen u/s 25F of the Act, Mr. Palkhivala rightly points out that if we bold that the authority had Jurisdiction and if the authority passes an order for payment in favour of the workmen, he will have a right to appeal to the district court. The decision of the district judge may be challenged by either party in revision before this Court, and the matter may further be taken up to the Supreme Court, because according to Mr. Palkhivala it is of the utmost Importance that either the High Court or the Supreme Court should construe Section 25F and determine the rights and liabilities of the parties. Mr. Palkhivala, therefore, suggests that on this petition we should decide on merits the contentions of the parties with regard to Section 25F. Mr. Palkhivala says he is prepared to give up his contention that the authority had no jurisdiction. Both parties are agreed that on this petition we should review the judgment of the authority on merits u/s 25F. We have ample jurisdiction to do so under Article 227 of the Constitution, and as we just said both parties are agreed that we should exercise that jurisdiction. Therefore, Instead of this petition proceeding on an issue of jurisdiction it will proceed on the issue of merits whether the authority was right In the conclusion that he came to, viz., that the railway company was liable to pay compensation to its workers u/s 25F of the Act. Mr. Palkhivala agrees and undertakes on behalf of his clients that in the event of this Court holding that the railway company was liable to pay to its workers compensation u/s 25F, he will pay such compensation as is payable under that section to each of the workmen who was retrenched by the railway company. This undertaking is subject to any appeal he may prefer to the Supreme Court from the decision of this Court and subject to the railway company paying the compensation u/s 25F only to those employees who are workmen within the meaning of the Industrial Disputes Act, Mr. Patel also very fairly gives up the claim of the workmen to wages for January and February 1954 and also the claim to any compensation u/s 15(3) of the Payment of Wages Act. Mr. Palkhivala admits that in the overwhelming number of oases which have come before the Payment of Wages Authority the railway company does not dispute that the applicants are workmen within the meaning of the Industrial Disputes Act, bat the company wants to safeguard their right in the event of any stray application being made by a parson who is not covered by the definition of "workman" in the Industrial Disputes Act. In such a case both Mr. Patel and Mr. Palkhivala are agreed that the question as to whether a particular person is a workman or not should be decided by the conciliator, central division, Poona, as an arbitrator and his decision will be binding upon both the parties. In the event of the conciliator not being able to undertake this arbitration, parties are agreed that this question should be decided by the authority under the Payment of Wages Act also as an arbitrator and his decision will also be binding upon the parties. The undertaking given by Mr. Patel and by Mr. Palkhivala and the agreement arrived at between Mr. Patel and Mr.

Palkhivala will not only apply to the applications covered by this petition but also to applications still pending before the authority or applications intended to be filed before the authority and to suits filed or to be filed in the civil court. In short they will apply to all cases of workmen of the railway company who claim compensation u/s 25F.

3. On the merits of the petition, the question that we have to consider is whether the case of the railway company falls within the ambit of Section 25F of the Industrial Disputes Act. This section was introduced into the Industrial Disputes Act, 1947, by Act XLIII of 1953. It forms part of Chap. VA and as a matter of fact the whole of that chapter was introduced into the Act by the amending Act XLIII of 1953. Now, on the facts it is not disputed that the railway company ceased to do business and the business of the company was taken over by the Central Government on 1 January 1954, and the contention of Mr. Palkhivala is that on a true reading of the section it does not apply to an employer who has ceased to do business. In the first place, we must look at the definition of "retrenchment" which is to be found in Section 2(oo):

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.

and then three cases are set out which are not included in the definition of "retrenchment" and those cases are of voluntary retirement, retirement of the workman on reaching the age of superannuation, and termination of the service of a workman on the ground of continued ill-health. The contention of the petitioner is that the workman''s services have been terminated by the employer and whatever the reason for the termination may be the expression "retrenchment" applies to the termination of the workman''s services. Now, when one looks at the plain natural meaning of the word "retrenchment," the essential element present in that expression is that the employer should terminate the service of an employee on grounds of economy, and Mr. Palkhivala concedes--as indeed he must concede--that the definition of "retrenchment" given by the legislature is an artificial definition. But what he contends is that by this artificial definition the legislature has enlarged the scope of the expression "retrenchment" without doing away with the essential content of that word. He asks us to give a restricted meaning to the expression "retrenchment" by holding that it applies only to those cases where an employer dismisses an employee while the business is still running and not to apply it to a case where the dismissal is the result of the business being closed. Now, in putting forward this argument, Mr. Palkhivala forgets that he is doing away with the essential element present in the expression "retrenchment." The essential element is not whether the business is carried on or the business is closed. As we have just pointed out, the essential element is that the termination of service must be in the interest of economy. Once it is conceded that even though an employer may

terminate the services of an employee for a reason which is not the reason of economy, then the legislature obviously has given a meaning to the expression "retrenchment" which is far divorced from its ordinary natural meaning. Mr. Palkhivala is obviously confronted with the difficulty of explaining away the very wide expression used by the legislature, viz., termination by the employer of the service of a workman for any reason whatsoever, and the difficulty is met by him by suggesting that if the employer dismisses an employee in a running business for a reason which is not a reason of economy, even then the termination of his service would constitute retrenchment. In other words, according to him the legislature did not intend that the employer should have to give any particular reason in order to justify the termination of the service of an employee in a running business. From the point of view of the legislature it was sufficient if the services were terminated and the business was a running business. In our opinion, this is putting an entirely unwarranted restriction upon the expression used by the legislature. If the legislature uses an artificial ''expression or a term of art, then that expression or that term must be construed according to the language used by the legislature, and if the legislature advisedly provides that the termination of the service of an employee for any reason whatsoever shall be deemed to be retrenchment, within the meaning of the Act, there is no reason why the Court should select or accept certain reason as coming within the meaning of the definition and certain other reasons as not coming within the meaning of the definition. Whether the reason is that the employer is dismissing his servant on the ground of economy or that he is dismissing him because he does not like the colour of his politics or that he wishes to close down his business, these are all different reasons for termination of service of an employee, and the legislature clearly and emphatically says that never mind the reason, if the employer dismisses the employee it will constitute retrenchment within the meaning of that expression.

4. Mr. Palkhivala emphasizes what he thinks will be the anomalous consequence upon such a construction being put upon the expression "retrenchment." He says that the legislature could never have intended that a business which was being run at a loss and which the owner of the business wanted to close down for that reason should be penalized by having to pay the compensation contemplated by Section 25F. When it was put to Mr. Palkhivala that every business is not closed down because of its being run at a LOSS--a business may be closed down because the owner of that business may feel that he had made enough profit out of that business and it was time to retire--the answer Mr. Palkhivala gave was that in the latter case, independently of Chap. VA, the industrial court would have the jurisdiction to determine on an industrial dispute being raised what compensation should be paid to an employee of a profit-making business which had been closed down. We are not prepared to accept the position in law that in one case where the business is being run at a loss no compensation should be determined either under Chap. VA or by the industrial court, and in the case where a business is being run at

a profit and which is closed down the compensation should be determined by the industrial court. The whole object of Chap. VA was to standardize the compensation to be paid on the termination of the services of an employee and not to leave it to various industrial tribunals awarding different compensation on different bases. It is well known that before Chap. VA was enacted industrial courts did in certain cases award compensation for determination of services by the employer.

5. It is then pointed out that an employer may have suffered such heavy losses in his business that he may not be in a position to pay this compensation at all and it would be erroneous to assume that the legislature could possibly have intended that such an employer who wishes to close down his business out of sheer necessity should be further penalized by having to pay the compensation u/s 25F. In our opinion, Section 25F imposes a statutory liability upon the employer to pay a certain amount when he terminates the services of an employee. No employer is heard to say that because his business suffers loss and because he wishes to close down the business ha should not be made to pay the wages due to the employees. Just as there is a contractual liability upon the employer to pay the wages due to the employees whether the business is running at a loss or not and whether he intends to close the business, similarly the legisla-lature has imposed a statutory liability upon the employer to pay to the employees, over and above the wages and whatever other dues he may be liable to pay, the amount fixed u/s 25F, Therefore, in our opinion, this contention of Mr. Palkhivala has not much substance.

6. It is then urged that apart from the definition of "retrenchment," when one looks at the scheme of Chap. VA it only applies to cases of a running business. Turning first to Section 25F itself, which as we have already pointed out provides for the statutory liability of the employer to pay compensation when he terminates the services of his employee, it provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until three conditions are satisfied. The first condition is that one month''s notice must be given to the workman. The second condition is that the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days'' average pay for every completed year of service or any part thereof in excess of six months. This is the right that the workman is claiming and this is the liability which is being disputed by the employer. And the third condition is that a notice has to be served in the prescribed manner on the appropriate Government.

7. The two other sections to which reference has been made, which deal with cases of retrenchment as understood under the Act, are Sections 25G and 25H. Section 25G deals with procedure for retrenchment and it provides that when it is proposed to have a retrenchment of a workman who belongs to a particular category of workmen, then the ordinary mode of retrenchment should be that the workman who was the last person to be employed in that category should be retrenched first,

unless for reasons to be recorded the employer retrenches any other workman. Mr. Palkhivala says that this section can only refer to a going concern. Undoubtedly that is so. Section 25G was never intended and could not be intended to deal with a case where the whole business is stopped. But the mere fact that the legislature deals with a particular case of retrenchment does not lead to the inference that that was the only case of retrenchment the legislature was contemplating. The next section referred to is Section 25H which deals with re-employment of retrenched workmen, and it casts a certain obligation upon the employer to re-employ a retrenched workman, Here again the legislature was dealing with a specific case of retrenchment and re-employment and obviously this section also can only deal with a going concern.

8. Mr. Palkhivala says that we should hesitate to put a construction upon the expression "retrenchment" which seriously interferes with the freedom of contract and the freedom of the employer to close down his business if he is so minded to do. Now, it is undoubtedly true that when a piece of legislation interferes with freedom of contract the restriction upon the freedom must be strictly construed. But there is another canon of construction which is equally well established and important that when the court is dealing with social legislation it must inquire what the social need is which is intended to be satisfied, and it is notorious how badly and how poorly in our country labour is paid, and the whole object of Parliament is to raise the level of labour in this country and to make it possible that they should get a living wage and should attain a decent standard of life. Therefore, the Court must be inclined to give a construction to a social legislation which helps the legislature to satisfy the social need, and in this case we do not see how the sanctity of contract is being interfered with. Just as an employer knows that he has got to pay wages, when this Act was passed he knows and should know that over and above wages he has got to pay compensation if he terminates the services of any employee for any reason whatsoever. It is with that knowledge that ha should launch upon business or he should carry on his business. In one sense every legislation is interference with freedom of contract, bat we have travelled very far since the days when the employer could say, "I can treat my employee as I like, I can pay him what I like, I can dismiss him when I like."

9. Therefore, if we give to the expression "retrenchment" the wide meaning which the legislature obviously intended should be given to it, than there can be no doubt that this case falls u/s 25F. Admittedly the railway company has terminated the services of the workmen and by doing so they have become liable to pay compensation as calculated under Clause (b) of Section 25F.

10. The next challenge put forward by Mr. Palkhiwala is to the constitutionality of Section 25F, and it is contended that the section is ultra vires of the legislature because it contravenes the provisions of Article 19(1)(g). The article guarantees to every citizen the right to carry on any trade or business. The right is subject to

Article 19(6) which entitles the legislature in the interest of the general public to impose reasonable restrictions upon this right or this freedom. It may be that Mr. Palkhiwala is right when he contends that the right to carry on business must imply the right to carry on a business as the owner of the business likes, including the right to close it down when he chooses, and if the legislature were to pat a restriction upon the right of a businessman to close his business, it may be that the case may fall within the ambit of Article 19(1)(g). But we fail to see how this legislation prevents any businessman from closing his business as and when he likes. The legislature does not dictate to those who are carrying on business whether they should carry on the business at a loss or whether they should close it down and when they should close it down. But what is urged by Mr. Palkhiwala is that the penalty imposed by Section 25F for closing down the business is so severe that in effect it might prevent a businessman from closing his business. Mr. Palkhiwala says that if a businessman has to contemplate paying the compensation u/s 25F he may think twice before dismissing all his workmen and paying the compensation required under that section. Now, there is a perfectly clear alternative before a businessman whose business is running at a loss. He may calculate what he will have to pay if he closes the business and he may equally calculate what loss he will have to suffer if he continues the business, and no fetter is put upon his right to decide to follow the one or the other alternative. There is neither any obligation upon him to close the business or to carry on the business and he knows exactly what price he will have to pay if he closes the business and dispenses with the services of his workmen. It is suggested that the restriction is unreasonable because it casts the same obligation to pay compensation u/s 25F, whether the business is run at a profit or at a loss. In our opinion, that argument is entirely untenable. Labour legislation has gradually proceeded to standardize several rights of workmen and when the legislature standardizes these rights it does not consider whether the employer is making a profit or a loss. The legislation is put on the statute book from the point of view of the workmen and what the legislature is considering is what the workman is entitled to receive irrespective of whether the employer makes a profit or not, and Section 25F is nothing more than a farther step towards the standardization of the rights of the workman. The legislature has fixed a certain amount as the proper amount to be paid to a workman whose services have been terminated. What exactly should be the rights of labour, where the line must be drawn, are matters of policy with which the Court is not concerned. But it cannot possibly be said that if the legislature passes a law in order to improve the status and position of labour and to confer upon it certain rights and to standarize those rights, the restriction imposed upon the employer to carry on his business is not a reasonable restriction or not in public interest.

11. It is then pointed out that this restriction is unreasonable because it may confer a right upon the workman, although the termination of his services may not result in any detriment to him. Instances are given where a workman may be dismissed

and his services may be continued by the successor business where there may be no break in the continuity of the business at all, and it is pointed out that in such a case the workman has suffered no prejudice by his services being terminated by one business because his services are continued by the succeeding business. In our opinion that is a wrong approach to this piece of legislation. What the legislature was contemplating was the prejudice caused to the workman by his losing his job with a particular employer with whom he was employed. It was not contemplating the possibility of workman getting employment with the successor business or getting employment with some other employer. There is no obligation on the successor business employing a workman who has been dismissed by the owner of a business to which it succeeds, nor has the workman any guarantee that after his services are terminated he would be re-employed. Therefore, the legislature was satisfied with providing for compensation for loss of service without entering into the region of speculation as to whether in certain cases the employee may or may not be employed. We are not also prepared to accept the contention that merely because an employee immediately gets fresh employment or is re-employed by the same business no prejudice or detriment is caused to him. If an employee has continued in service for a certain length of time, the termination of his service by its very nature causes some detriment or prejudice to him. The new business may not have the same security of tenure, it may not be acceptable as the previous business, and it is precisely because of various human factors which it is impossible to legislate about that the legislature did not provide for cases where the employee receives employment immediately on the termination of his services.

12. Therefore, we are not prepared to hold that merely because the legislature did not provide for a case where a business is being closed down because the owner of the business has suffered loss and therefore the services of the workman have been terminated, and the case where the employee obtains fresh employment immediately on his services being terminated, the restriction imposed upon a person carrying on business to pay compensation on his terminating the services of his workmen Is an unreasonable restriction. That the restriction is in the Interests of the public goes without saying. As we have already pointed out, welfare of labour is in public interest and any legislation intended to advance the welfare of labour must satisfy the test of public interest.

13. In this connexion perhaps we may look at a recent decision of the Supreme Court in Bijay Cotton Mills Ltd. Vs. The State of Ajmer, , where the Supreme Court was considering the constitutionality of the Minimum Wages Act, and some of the arguments advanced there are reminiscent of the arguments advanced by Mr. Palkhiwala before us. Mr. Seervai who was arguing the case for the employer advanced the argument that the compulsion with regard to payment of minimum wages was unreasonable and even oppressive with regard to one class of employers who for purely economic reasons were not able to pay the minimum wages, and this argument was rejected by the Supreme Court by observing at page 35:

Individual employers might find it difficult to carry on the business on the basis of the minimum wages fixed under the Act, but this must be due entirely to the economic conditions of these particular employers. That cannot be a reason for striking down the law itself as unreasonable.

Applying the same argument to the impugned Act before us, the mere fact that some employers are not in a position to pay the compensation fixed u/s 25F may be unfortunate from the point of view of the employers, but that is no reason for declaring the law as unconstitutional.

14. The third contention raised by Mr. Palkhivala, which he did not elaborate but just stated it, was that Section 25F will not apply to the case of a business which was succeeded by another business. Now, our reasons for rejecting this contention have already been set out in the earlier part of our judgment. We may mention only one thing more that if the legislature intended to exempt certain classes of termination of service from the operation of Section 25F, no reason is suggested why the legislature should not have added to the three classes mentioned in Section 2(oo) which are not included in the definition of "retrenchment." Nothing was easier and simpler than for the legislature to say that retrenchment shall not include a case where the business is closed or a case where the continuity of the business is maintained by another business succeeding to the business already being carried on. But the very fact that the legislature has not chosen to exempt these cases is sufficient for us to take the view that we should not add to the three classes expressly ennumerated by the legislature in Section 2(oo).

15. The result is that in our opinion the railway company is liable to pay compensation to its workmen u/s 25F of the Industrial Disputes Act. The railway company must pay the costs of the petition. No order as to costs of the Union Government. The order of the Payment of Wages Authority who dismissed the application will be. get aside.

16. Undertaking la given by Mr. Palkhivala on behalf of his client not to withdraw the amount from the Central Government corresponding to the claims of all the workmen of the railway company who fall u/s 25F According to Mr. Palkhiwala the total amount is Rs. 14 lakhs and according to Mr. Patel the total amount is Rs. 30 lakhs. Mr. Palkhiwala also agrees and undertakes to pay the amount due to the workmen u/s 25F. In the event of his not filing an appeal to the Supreme Court within the time to be mentioned, or in the event of the appeal having been filed the appeal being dismissed by the Supreme Court, The Union Government to pay to the railway company the amount due to it lees Rs. 15 lakhs which the Union Government should retain pending the final disposal of this matter. Out of the amount received from the Union Government a sum of Rs. 15 lakhs to be kept in fixed deposit with the Bank of India in the joint names of Messrs. Crawford Bayley & Co., attorneys of Mr. Palkhivala, and Mr. Jaykar, partner in Messrs Nanu Hormusji & Co., instructing Mr. Patel. Messrs. Crawford Bayley & Co. and Mr. Jaykar agree and

undertake not to withdraw this deposit or to deal with this deposit without the sanction of this Court. Save and except the sum of Rs. 30 lakhs referred to above, liberty to the railway company to withdraw the amount, from the Union Government and to deal with it as it wishes.

17. In atamp No. 11200 of 1954 the injunction granted by the district judge will be dissolved. No order as to costs.

18. In order to obtain the decision of the Supereme Court as expeditiously as possible, both Mr. Palkhivala and Mr. Patel suggest that we should immediately give leave to the railway company to appeal to the Supreme Court. The rules require the filing of a formal petition, and Mr. Palkhivala undertakes to file a formal petition. On that undertaking being given we will give leave to the railway company to prefer an appeal to the Supreme Court and we grant a certificate under Article 132(1) and Article 133(1)(c). Costs of the petition to be filed, coats in the appeal to the Supreme Court.

19. Liberty to apply.