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October 23.

PIPRAICH SUGAR MILLS LTD.

v.

PIPRAICH SUGAR MILLS MAZDOOR UNION.

[BHAGWATI, VENKATARAMA AYYAR, S. K. DAS and GOVINDA MENON JJ.]

Industrial Dispute—Definition—Claim in dispute arising prior to closure of industry—Government, if competent to issue notification for adjudication subsequent to such closure—Discharge of workmen on closure of industry and discharge on retrenchment—Distinction—Award of compensation for termination of service on closure, if permissible—U.P. Industrial Disputes Act (U.P. XXVIII of 1947), ss. 2, 3—Industrial Disputes Act (XIV of 1947), s. 2(k).

The appellant company could not work its Mills to full capacity owing to short supply of sugar-cane 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 communicated its resolution to the company. There was correspondence between the parties in course of which the company offered to pay to the workmen 25 per cent. of the profits of the sale on condition that the strike notice must immediately be withdrawn. The workmen did not fulfil the condition and made certain counter-proposals. The company insisted that the condition must first be fulfilled before the counter-proposals could be considered and renewed its offer. Although the workmen did not actually go on strike, they did not withdraw the strike notice, and did not co-operate with the management in the dismantling and delivery of the machinery to the purchaser, with the result that the company lost heavily. On the expiry of the lease and closure of the industry, the services of the workmen were duly terminated by the company on March 21, 1951. The workmen thereafter, claimed the share of profits on the basis of the offer made by the company in the correspondence and the dispute was referred to the Industrial Tribunal for adjudication by the U.P. Government by a notification under s. 3 of the U.P. Industrial Disputes Act of 1947. The Tribunal held that the company was bound by the offer it had made and awarded a sum of Rs. 45,000 to the workmen as representing their share of the profits. On appeal the award of the Industrial Tribunal was affirmed by the Labour Appellate Tribunal. It was contended on behalf of the appellant company that the notification was *ultra vires*, and the reference and the award void in consequence and that there having been no concluded agreement between the parties, it was not bound to pay.

Held, that the definition of an industrial dispute contained in s. 2(k) of the Industrial Disputes Act XIV of 1947 and adopted by the U.P. Industrial Disputes Act XXVIII of 1947 contemplated the

existence of an industry and a subsisting relationship of employer and employee between the parties and, therefore, there could be no industrial dispute within the meaning of those Acts where the industry had been closed, and the closure was real and *bona fide*, if the dispute arose on such closure, or thereafter, if that could be conceived.

Section 3 of the U.P. Industrial Disputes Act of 1947 only required that there must be an industrial dispute before the Government could make a reference under that section and, consequently, in the instant case where the claim in dispute had arisen, if at all, prior to the closing of the industry, the Government was fully competent to issue the notification.

Indian Metal and Metallurgical Corporation v. *Industrial Tribunal, Madras* (A.I.R. 1953 Mad. 98) and *K. N. Padmanabha Ayyar* v. *The State of Madras* ([1954] 1 L.L.J. 469), approved.

Messrs Burn and Co. Ltd., Calcutta v. *Their Workmen*, (Civil Appeal No. 325 of 1955, decided on October 11, 1956), referred to.

In the instant case, however, as the findings of the Tribunal were inconsistent and conflicting, the court examined the correspondence and held that it did not establish that there was a concluded agreement between the parties whereby the workmen could be entitled to any share of the profits and, consequently, the award made by the Labour Appellate Tribunal must be set aside.

Nor was the award sustainable as one for compensation for termination of the services of workmen on closure of the industry as such discharge was different from 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.

Employees of Messrs India Reconstruction Corporation Limited, Calcutta v. *Messrs India Reconstruction Corporation Limited, Calcutta*, ([1953] L.A.C. 563) and *Messrs Benett Coleman & Company Ltd.* v. *Their Employees*, ([1954] L.A.C. 24), distinguished and disapproved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 247 of 1954.

Appeal from the judgment and decree dated July 21, 1953 of the Labour Appellate Tribunal of India, Third Bench, Lucknow in Appeal No. Calcutta 44 of 1952.

G. C. Mathur, for the appellant.

H. J. Umrigar, amicus curiae for the respondent.

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1956. October 23. The Judgment of the Court was delivered by

VENKATARAMA AYYAR J.—The appellant is a limited Company, which had been carrying on business in crushing sugarcane at a place called Pipraich in Gorakhpur District from the year 1932. In 1946 it decided to expand its business, and with that object, sold its old machinery which had a crushing capacity of 160 tons per day, and purchased a new one with 650 tons capacity. The new plant was installed in 1947, and it actually started working in 1948-49. During this period, the sugar industry was passing through a crisis owing to shortage of sugarcane, and in consequence, the Government assumed control of its production and supply. The quota which was allotted to the appellant's Mill proved too small to its being worked profitably, with the result that in 1948-49 and 1949-50 the Company sustained losses which according to the appellant came to Rs. 2,67,042-7-4. After several unsuccessful attempts at getting a larger supply, the management wrote to the Government on May 11, 1950, either to increase their quota or to permit them to sell the Mills. In October, 1950, the Government granted permission for the sale of the plant and machinery, and pursuant thereto, the management sold them to a Madras party. As the crushing season was then on, the appellant obtained from the purchaser a lease of the Mills for the current season agreeing to deliver possession thereof on the termination of the lease. It should be mentioned that the appellant was also carrying on negotiations with the purchaser, for itself dismantling the machinery and erecting it at Madras for a lump consideration, expecting to perform the contract through its own workmen.

When the workmen became aware of the agreement of sale, their reaction to it was thoroughly hostile, and acting through their Union, the respondent herein, they decided to prevent the transaction going through, as otherwise they would be thrown out of employment. With that object, they moved the

Government to cancel the permission granted to the appellant for the sale of the Mills, and they also passed a resolution on December 26, 1950, to go on strike from January 12, 1951, and communicated the same to the appellant. This led to correspondence between the parties, and as that is the foundation of the claim for compensation put forward by the respondent and awarded by the Tribunal, it becomes necessary to set it out with sufficient fulness. On January 3, 1951, the Managing Director offered through the Manager of the Mills, to allot 25 per cent. of the profit on the sale transaction with the Madras party on certain terms and subject to the condition "that the notice of strike should be withdrawn at once and today, so that arrangement of work could be made". To this, the reply of the Union on January 5, 1951, was as follows:

"With reference to the assurance given by the Managing Director, communicated by your goodself to us under your No. 975 dated 4th January 1951, asking us to withdraw the notice of strike, we regret to inform you that our fight is with the Government, which is not solved with this only. Our members are *bent upon keeping the sugar mills here at any cost, either by strike, satyagrah, etc., or through any other means guided by our federation,* otherwise there is no assurance of employment of thousands of creatures".

Then the letter proceeded to take exception to some of the terms, and finally wound up by stating that the workmen were waiting for their President Kashinath Pandey to advise them in the matter. Replying to the objections raised by the respondent to some of the terms, the management wrote on January 8, 1951, that they were ready to reconsider them, but insisted on the withdrawal of notice of strike as "the chief point". On January 9, 1951, Kashinath Pandey came to Pipraich, and discussed the matter with the management, and following upon it, the General Manager wrote to the respondent on January 10, 1951, that "in case the strike notice was withdrawn at once, he would accede to the following points raised by the Union", and then the points were set down. The

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letter concluded by stating that the amount of compensation "will not be less than a lac". The respondent replied to this on the same day that the workers were waiting for the "final order" of Kashinath Pandey in the matter, and assured the management that "in the meantime the strike was not coming off from the 12th". After this, the appellant did not hear from the respondent, the strike also did not take place, and the crushing went on till the end of January, 1951, when the season came to an end. One of the points that arises for our determination in this appeal is whether on this correspondence there was a concluded and binding agreement that the appellant should pay 25 per cent. of the profits on the sale transaction to the workmen.

To continue the narration, the lease having expired with the crushing season, the purchaser came over to Pipraich to take delivery of the Mills and to arrange for the machinery being dismantled and removed to Madras for being erected there. The appellant who, as already stated, was negotiating to get the dismantling done for a lump consideration found that its workmen were as hostile to it as ever, and refused to help in the work. To adopt the language of the respondent in its written statement, "they declined out of sentiment to dig their own graves". After fruitless attempts at getting them to co-operate in dismantling the machinery, the management put up the following notice on February 28, 1951:

"The workers of Pipraich Sugar Mills Ltd. should know that we have sold our Mill to Madras party under the permission of the Government. The party has arrived for dismantling. Under the terms of agreement, we are bound to help them in this work. So the workers should know that we can do this favour that we can take contract of dismantling here and erection in Madras and keep the workers engaged and request the purchasers for providing them in their concern. Hence it is notified that workers who are not ready to co-operate they should consider themselves to be discharged from 1st March 1951. Fifteen days' notice is served on the workers. Those who

create obstructions will be deprived of benefits promised to them".

But the Union could not reconcile itself to the prospect of the Mills being shifted, and on March 4, 1951, Kashinath Pandey wrote a letter to the Government threatening to go on hunger strike, if the Mills were to be shifted from Pipraich. The workmen were thus in no mood to accept the terms contained in the notice dated February 28, 1951, and so, the management had to issue further notice on March 14, 1951, in the following terms:

"Whereas the workers have already been notified that we have sold our entire plant to a Madras party who have arrived to take charge of the Machines and whereas we have to hand over the plant from 15-3-1951 to the purchasers and thus there will be no work for our workers and whereas the Mazdoor Union has already refused our suggestion to engage the workers in the work of dismantling and erection at Madras. Now in pursuance of our notice dated 28-2-1951, it is notified that the following workers have been discharged from the services since 1-3-1951 subject of course to the payment of 15 days wages. The workers are hereby asked to take their wages of 15 days on the 15th and 16th instant".

It appears from a notice dated March 16, 1951, sent by the appellant to the respondent, that after the notice dated March 14, 1951, was issued, Kashinath Pandey had a discussion with the management, as a result of which the date of termination of service of the workers was extended from the 15th to 21st March pending the decision of the Government on the "future programme of the Pipraich factory", the workmen agreeing on their part to "take up the dismantling of the Mill after the said date". But the Government declined by its letter dated March 21, 1951, to interfere with the sale of the machinery, and in accordance with the understanding reached above, the workers should have co-operated with the appellant in dismantling the machinery from March 21. But they declined to do so, and thereupon, acting in accordance with its notices dated February 28, 1951,

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and March 14, 1951, the management duly discharged them. In view of the inability of the appellant to take up the contract, the purchaser entered into direct negotiations with the workmen, and on 1-4-1951 concluded an agreement with them for dismantling the machinery. The net result was that the appellant lost a contract on which, as admitted by the respondent, it would have earned a profit of at least Rs. 2 lakhs. The workers, having taken the benefit of a direct contract with the purchaser for dismantling the machinery, next turned their attention to the appellant, and on the basis of the letters dated January 3, 1951, and January 10, 1951, sent a notice to it on April 19, 1951, asking for distribution among the workers of the "25 per cent labour-share of the profits on sale of machinery". By its letter dated June 19, 1951, the appellant repudiated the claim, and stated:

"Then we also refer you to our notice dated 27-2-1951 in which we appealed to the labour to co-operate with us so that we might take the contract of dismantling here at Pipraich and erection at Etikoppaka and said definitely that those who do not co-operate should consider themselves discharged. This would have given us a good saving to meet the demand of the labour, but as you in spite of our appeal and notice refused to co-operate, we had to suffer a heavy loss, for which you are directly responsible".

Thereafter, the respondent moved the Government to take action in the matter, and the result was that on November 16, 1951, the U. P. Government issued a notification under section 3 of the U. P. Industrial Disputes Act XXVIII of 1947, hereinafter referred to as the Act, referring the following dispute to the adjudication of the Industrial Tribunal:

"Whether the services of workmen, if so how many, were terminated by the concern known as Pipraich Sugar Mills Ltd., Pipraich, District Gorakhpur, without settlement of their due claims and improperly; and if so, to what relief are the workmen concerned entitled?"

By its award dated February 28, 1952, the Indus-

trial Tribunal held firstly that the closure of the business and the sale of the machinery by the appellant was *bona fide*, as it had been continuously incurring losses and the supply position of sugarcane held out no immediate prospects of improvement, that the conduct of the workmen had been throughout unfair and such as to disentitle them to compensation but that the promise contained in the letters dated January 3 and 10, 1951, to pay 25 per cent. of the profits realised by the sale of the Mills, was binding on the management. It further held, repelling the contention of the appellant, that the notification dated November 16, 1951, was competent, notwithstanding that at that date the business had been closed. The Tribunal then proceeded to ascertain the profits made by the appellant on its sale of the Mills, and held that a sum of Rs. 45,000 representing the 25 per cent. of the net profits was payable to the workmen. The management appealed against this decision, but the same was confirmed by the Labour Appellate Tribunal by its order dated July 21, 1953. The matter now comes before us in appeal under art. 136. As the appeal raised questions of importance, and as the respondent was unrepresented we requested Mr. Umrigar to assist us, and we are indebted to him for his learned and comprehensive argument.

Two contentions have been urged in support of the appeal: (1) The notification dated November 16, 1951, referring the dispute to the adjudication of the Industrial Tribunal is *ultra vires*, and the reference and the award therein are in consequence void; and (2) there was no concluded or binding agreement by the appellant to pay the workmen any share of profits in the sale transaction and the award is therefore bad on the merits.

Taking the first contention, the provision of law under which the impugned notification dated November 16, 1951, was issued by the State is section 3 of the Act, which runs as follows:

"If in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience, or the maintenance of

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public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision—

.....

(d) for referring any industrial disputes for conciliation or adjudication in the manner provided in the order".

An "industrial dispute", as defined in s. 2(k) of the Industrial Disputes Act XIV of 1947—and by force of section 2, that definition applies to the Act—"means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person". Now, the contention of the appellant is that it is a condition precedent to the exercise by the State of its power under s. 3 of the Act that there should be an industrial dispute, that there could be no industrial dispute according to this definition, unless there is a relationship of employer and employee; that in the present case, as the appellant sold its Mills, closed its business and discharged the workmen on March 21, 1951, paying to them in full whatever was due in accordance with the standing orders, there was thereafter no question of any relationship of employer and employees between them, that accordingly there was no industrial dispute at the date of the notification on November 16, 1951, and that it was therefore incompetent. Reliance was placed in support of this position on the observation in *Indian Metal and Metallurgical Corporation* v. *Industrial Tribunal, Madras*(1) that the definition of an "industrial dispute" presupposes the continued existence of the industry, and on the decision in *K. N. Padmanabha Ayyar v. The State of Madras*(2) that there could be no industrial dispute with regard to a business, which was not in existence.

It cannot be doubted that the entire scheme of the Act assumes that there is in existence an industry,

(1) A I R. 1953 Mad. 98, 102. (2) [1954] 1 L.L.J. 469.

and then proceeds on to provide for various steps being taken, when a dispute arises in that industry. Thus, the provisions of the Act relating to lock-out, strike, lay off, retrenchment, conciliation and adjudication proceedings, the period during which the awards are to be in force have meaning only if they refer to an industry which is running and not one which is closed.

In *Messrs Burn and Co., Ltd., Calcutta* v. *Their Workmen*(1), this Court observed that the object of all labour legislation was firstly to ensure fair terms to the workmen, and secondly to prevent disputes between employers and employees, so that production might not be adversely affected and the larger interests of the public might not suffer. Both these objects again can have their fulfilment only in an existing and not a dead industry. The view therefore expressed in *Indian Metal and Metallurgical Corporation* v. *Industrial Tribunal, Madras* (supra) and *K. N. Padmanabha Ayyar* v. *The State of Madras* (supra) that the industrial dispute to which the provisions of the Act apply is only one which arises out of an existing industry is clearly correct. Therefore, where the business has been closed and it is either admitted or found that the closure is real and *bona fide*, any dispute arising with reference thereto would, as held in *K. N. Padmanabha Ayyar* v. *The State of Madras* (supra), fall outside the purview of the Industrial Disputes Act. And that will *a fortiori* be so, if a dispute arises —if one such can be conceived—after the closure of the business between the *quondam* employer and employees.

In the light of the principles stated above, we must examine the nature of the dispute which is the subject-matter of the reference under the impugned notification. The claim of the workmen is that the promise made by the management in its letters dated January 3, 1951, and January 10, 1951, is a binding agreement and that they are entitled to be paid in accordance therewith. Now, if this contention is well-founded, the dispute relates to a claim which arose

(1) Civil Appeal No. 325 of 1955, decided on October 11, 1956.

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while the industry was in existence and between persons who stood in the relationship of employer and employees, and that would clearly be an industrial dispute as defined in the Act. But it is argued for the appellant that even so, the notification dated November 16, 1951, would be incompetent as the industry had been closed before that date, and there was therefore no relationship of employer and employee at that point of time. In other words, the power of the State to make a reference under section 3 will depend, according to the appellant, not only on the dispute having arisen in an existing industry but further, on the continued existence of that industry on the date of the notification. We do not find anything in the language of section 3 of the Act to warrant the imposition of this additional limitation on the power of the State to make a reference. That section only requires, apart from other conditions, with which we are not concerned, that there should be an industrial dispute before there can be a reference, and we have held that it would be an industrial dispute if it arises out of an existing industry. If that condition is satisfied, the competence of the State for taking action under that section is complete, and the fact that the industry has since been closed can have no effect on it. Any other construction would, in our opinion, result in serious anomalies and grave injustice. If a workman improperly dismissed raises an industrial dispute, and before action is taken by the Government the industry is closed, what happens to the right which the Act gives him for appropriate relief, if the Act vanishes into thin air as soon as the industry is closed? If the contention of the appellant is correct, what is there to prevent an employer who intends, for good and commercial reason, to close his business from indulging on a large scale in unfair labour practices, in victimisation and in wrongful dismissals, and escaping the consequences thereof by closing down the industry? We think that on a true construction of s. 3, the power of the State to make a reference under that section must be determined with reference not to the date on which

it is made but to the date on which the right which is the subject-matter of the dispute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business.

It was next argued that even on this view, the notification dated November 16, 1951, was incompetent inasmuch as the management had offered by its letter dated January 3, 1951, to pay the workmen 25 per cent. of the profits on the sale transaction only on April 30, 1951, and the right to the amount thus accrued to the workmen only after the closure of the business on March 21, 1951. But this argument proceeds on a misapprehension of the correct position on the facts. The true scope of the promise contained in the letter dated January 3, 1951, is that the workmen acquired thereunder a right in *praesenti* to 25 per cent. of the profits, but that the amount became payable only on April 30, 1951, the reason obviously being that it could be precisely determined only after the transaction was completed. In this view, as the claim for share of profits arose on January 3, 1951, and January 10, 1951, when the industry was working, the reference dated November 16, 1951, would be valid, notwithstanding that the business was closed on March 21, 1951.

That brings us on to a consideration of the second question, as to whether there was a concluded agreement binding the appellant to pay 25 per cent. of the profits in the sale transaction to the workmen. The Tribunal has answered it in the affirmative, and its finding was accepted by the Appellate Tribunal as, being one of fact, it had to be, under section 7 of the Industrial Disputes (Appellate Tribunal) Act No. XLVIII of 1950. It is argued by Mr. Umrigar that following the usual practice of this Court in special appeals not to disturb findings of fact by Tribunals unless there were exceptional grounds therefor, we should not interfere with the finding of the Industrial Tribunal that there was a concluded and enforceable agreement. But our difficulty is that the Tribunal has spoken in two voices, and has given inconsistent

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and conflicting findings, and it has consequently become necessary for us to determine which of its findings should be accepted as supported by materials.

We start with the letter dated January 3, 1951, wherein the management made an offer to pay 25 per cent. of the profits of the sale transaction to the workmen. It was expressly subject to the condition that the strike should be called off "at once and today". That was not done. On the other hand, the respondent made certain counter-proposals in its letter dated January 5, 1951, and the management replied on January 8, 1951, that it would reconsider its terms provided the strike notice was withdrawn. Thus, the offer contained in the letter dated January 3, 1951, was not accepted and lapsed. Then on January 10, 1951, the management renewed its offer subject again to the condition that the strike notice was withdrawn at once. The respondent passed no resolution withdrawing the notice, and in its reply dated January 10, 1951, it made it clear that it was waiting for Kashinath Pandey for it to come to a final decision. There was no further communication from the Union. We do not see how on this correspondence it could be held that there was a concluded agreement between the parties, and that is the view which the Tribunal itself took of it when it observed that "no final agreement could be arrived at..... and consequently the management served a notice on 28th February 1951". But then, it went on to observe that, in fact, the workmen did not go on strike on January 12, 1951, and continued in service till they were served with notice of discharge on February 28, 1951, that that was consideration for the promise made by the agreement, which must therefore be taken to have become a term of service, and that in consequence "the promise of the management as contained in the letters of 3rd and 10th January 1951, is a binding agreement under which the workmen are entitled to compensation for termination of their services on the closure of the Mills". This argument rests on a confusion of thought. The question whether there was consideration for the promise made by the

management in its letters dated January 3, and January 10, 1951 arises only if the offer contained in the letters had been accepted by the respondent, so as to ripen into an agreement. And if there was no concluded agreement between the parties, as the Tribunal itself had held, then the further question as to whether it was supported by consideration would not arise, nor would there be any question of its becoming one of the terms of the service.

It was argued that though a formal resolution withdrawing the strike was not passed, in fact there was no strike, and that must be taken to be acceptance of the offer by conduct. That would not be acceptance as required by the appellant, and that alone would be sufficient to reject the contention of the respondent. But this contention must fail even on the merits. In its letter dated January 10, 1951, the respondent, while stating that the strike was not taking place on the 12th, made it clear that this was pending the final decision of the Union. That clearly is not an acceptance of the offer. The matter does not rest there. The object of the strike was, it should be remembered, not anything directly connected with the terms of employment but something collateral to it. It was to prevent the Mills from being removed from Pipraich to Madras. When the management offered to part with 25 per cent. of the profits of the sale transaction, its object was clearly to disarm the opposition of the workmen and to get the machinery dismantled and delivered to the purchaser peacefully. Did the workmen ever agree to it? As late as March 5, 1951, Kashinath Pandey wrote to the Government that if the Mills were to be shifted from Pipraich, he would go on hunger strike. Even after the Government had informed him that the sale could not be interfered with, the workmen did not co-operate with the management in the dismantling of the machinery with the result that the appellant had to give up the contract with reference thereto and to lose Rs. 2 lakhs profits. To crown all, the workmen having successfully prevented the appellant from getting the contract for dismantling, themselves

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entered into it directly with the purchaser and undoubtedly intercepted a part, if not the whole, of the profits which the appellant would have earned. It is impossible to hold on these facts that there was a concluded agreement between the parties binding the appellant to give the workmen a share of the profits of the sale transaction.

It was next contended by Mr. Umrigar that even if there was no concluded agreement by the management to pay the workmen a share of profits on the sale transaction, it would have been open to the Tribunal to have awarded compensation for the termination of their services, treating it as retrenchment, and that the award of compensation of Rs. 45,000 which was what the management itself had suggested, might be sustained on that footing. This contention assumes that the termination of the services of workmen, on the closure of a business, is retrenchment. But retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff or 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. It is however contended by Mr. Umrigar that the definition of retrenchment in section 2(oo) of the Industrial Disputes Act XIV of 1947 is wide enough to include discharge consequent on the closure of business, and that under section 25-F, compensation could be awarded therefor. Our attention has been invited on behalf of the appellant to the decision in *J. K. Hosiery Factory* v. *Labour Appellate Tribunal*(1), where it was held that retrenchment as defined in section 2(oo) does not comprehend discharge on the closure of business, but Mr. Umrigar contends that it is erroneous. We do not consider it necessary to decide this question, as the definition of "retrenchment" in section 2(oo) of Act XIV 1947 and section 25-F therein were inserted by the Industrial Disputes (Amendment) Act No. XLIII of 1953, and we have held in *Messrs Burn and Co., Ltd., Calcutta* v.

(1) A I R. 1956 All. 498.

Their Workmen (supra) that this Act has no retrospective operation. The rights of the parties to the present appeal must therefore be decided in accordance with the law as it stood on March 21, 1951, when the workmen were discharged.

It was next contended, on the strength of the decisions in *Employees of Messrs India Reconstruction Corporation Limited, Calcutta* v. *Messrs India Reconstruction Corporation Limited, Calcutta*(1) and *Messrs Benett Coleman & Company Ltd* v. *Their Employees*(2) that even prior to the enactment of Act XLIII of 1953, the Tribunals had acted on the view that retrenchment included discharge on closure of business, and had awarded compensation on that footing and that the award of the Tribunal in the present case could be supported in that view and should not be disturbed. In *Employees of Messrs India Reconstruction Corporation Limited, Calcutta* v. *Messrs India Reconstruction Corporation Limited, Calcutta* (supra), the Tribunal observed at p. 576 as follows:

"Ordinarily retrenchment means discharge from service of only the surplus part of the labour force but in the case of closure the whole labour force is dispensed with. In substance the difference between closure and normal retrenchment is one of degree only. As in the case of retrenchment so in the case of closure the workmen are not responsible for closing their jobs. In both the cases, what is called compensation by way of retrenchment relief should be admissible".

We are unable to agree with these observations. 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. Moreover, there was no question of closing of business in *Employees of Messrs India Reconstruction Corporation Limited, Calcutta* v. *Messrs India Reconstruction Corporation*

(1) [1953] L.A.C. 563. (2) [1954] L.A.C. 24.

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Limited, Calcutta (supra), as what happened there was that one of the units of the company, that at Calcutta, was closed and that would be a case of retrenchment, and the observations quoted above were purely *obiter*. They were, however, quoted and followed without discussion by the Appellate Tribunal in *Messrs Benett Coleman & Company Ltd.* v. *Their Employees* (supra), which further remarked at p. 27:

"Thus whether the closure was justified or not, the workmen who have lost their jobs would in any event get compensation. If it was not *bona fide* or not justified, it may be that the measure of compensation would be larger than if it was otherwise".

For the reasons given above, we cannot assent to these observations. It should be mentioned that in *Messrs Benett Coleman and Company Ltd.* v. *Their Employees* (supra), there was no closure of business, but winding up of the Calcutta unit by a newspaper publishing company which had its headquarters at Bombay. We must accordingly overrule this contention also. We should add that the Tribunal was of the opinion that, apart from agreement, the workmen should not, in view of their conduct, be awarded compensation, and we entirely agree with it. And as we have found against the agreement, we must allow this appeal, and set aside the award of compensation to the workmen made by the Tribunal. In the circumstances, the parties will bear their own costs throughout.

Appeal allowed.