

M/S. HONDARAM RAMCHANDRA

A

v.

YESHWANT MAHADEV KADAM (DEAD) THROUGH LRS.

DECEMBER 12, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

B

Industrial Disputes Act, 1947—s.25FFF—Closure of undertaking—High Court directing reinstatement of workmen instead of directing payment of compensation in terms of s. 25FFF—Correctness of—Held, not correct—Workmen entitled to compensation only in terms of s.25FFF and not relief of reinstatement with back wages.

C

The question which arose for consideration in the present appeal is whether in the aftermath of the closure of the sales office of Appellant, the High Court erred in directing re-instatement of the respondents-workmen instead of directing payment of compensation to them in terms of s. 25FFF of the Industrial Disputes Act, 1947.

D

Disposing of the appeals, the Court

E

HELD: 1. The High Court evidently committed an error in not taking into consideration the factum of closure of the business from the premises of the appellant, for the purpose of grant of relief. If the undertaking of the appellant had been closed down, the workmen were entitled to compensation only in terms of Section 25FFF of the Industrial Disputes Act, 1947 and not the relief of reinstatement with back wages. The question of passing an award directing reinstatement with full back wages, in the aforementioned fact situation, did not and could not arise.

F

[Paras 12 and 13] [476-B-C]

G

2. Two questions arise for consideration; firstly, whether the closure was affected in the year 1983 or 1991 and secondly, whether the amount of compensation should be computed as if the establishment

- A of the appellant was closed in 1983 or 1991, as the case may be, or are the workmen entitled to some other reliefs. Interest of justice would be subserved if the Labour Court, where the application of the respondents under Section 33(C-2) of the Act is pending, be directed to determine the aforementioned questions as the said Court can determine the said questions more effectively. [Paras 14 and 16] [476-F; 477-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5834-5835 of 2007.

- C From the final Judgment and Order dated 11.1.2000 of the High Court of Judicature at Bombay in Appeal No. 1340 of 1999 in Writ Petition No. 1693 of 1997

WITH

C.A. Nos. 5840-5841 of 2007.

- D Shekhar Naphade, Shivaji M. Jadhav, Himanshu Gupta, Brij Kishor Sah and Rahul Joshi for the Appellant.

K. Sarada Devi for the Respondents.

- E The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Delay condoned.

2. Leave granted.

- F 3. A limited notice was issued by this Court as to whether the High Court was right in directing reinstatement of the respondents-workmen instead of directing payment of compensation in terms of Section 25FFF of the Industrial Disputes Act, 1947.

- G 4. Appellant had a sales office at Mulji Jetha Cloth Market, Mumbai. Respondents-workmen were employed therein. The said shop was closed. The factum of the closure of the shop is not in dispute. What is disputed is as to whether it was done in the year 1983 or 1991. Upon closure of the said shop, the respondents were transferred to work in a factory at Goregaon which did not belong to the respondents. An application for payment of wages was filed against the appellant before the Prescribed
- H

M/S. HONDARAM RAMCHANDRA v. YESHWANT 473
MAHADEV KADAM (DEAD) THROUGH LRS. [SINHA, J.]

Authority. The said application was dismissed, *inter alia*, on the premise A
that the respondents had refused to join their duties at the transferred place.
A domestic enquiry was purported to have been held in April, 1984 on
the premise that the respondents had neither reported for duties at
Goregaon nor at Mumbai. The services of the respondents were B
terminated in December, 1985. In January, 1986, the premises in which
the sales office was being run was admittedly handed over to another
Company.

5. An industrial dispute was raised by the respondents demanding
their reinstatement with full back wages as well as continuity in services. C
A reference was made by the appropriate Government.

6. A preliminary issue was raised as to whether in the said reference,
the domestic enquiry conducted against the respondents was fair and
proper. The said preliminary issue was decided in favour of the employer
and against the workmen by an order dated 5.12.1996. The parties to D
the reference, thereafter adduced their evidences before the Industrial
Court.

7. By an award dated 31.7.1996, the Presiding Officer of the Labour
Court, Mumbai held that the termination of the services of the respondents E
was proper and valid and, thus, were not entitled to any relief. Questioning
the correctness of the said award, the workmen filed writ applications. A
learned single Judge of the High Court of Bombay allowed the said writ
petitions being W.P.No.1693 of 1997 and W.P.No.1691 of 1997 by a
judgment and order dated 30.08.1999 setting aside both the awards F
opining:-

“I do not find any merit in the contention advanced on behalf of
respondent No.1. Firstly, as stated hereinabove, there is nothing
to show that a proper Domestic Enquiry has been held. Secondly, G
there is no evidence on record to indicate that transfer constituted
service condition. Thirdly, the evidence on record clearly indicates
that Khanna Textile Industry was a separate legal entity *vis-a-vis*
respondent No.1 and under the circumstances, the workman cannot
be asked to join separate legal entity. I have gone through the entire
record. There is no proof to show that the findings of the Enquiry H

A Officer were forwarded to the chargesheeted employee. The
findings on record show that the petitioner was asked to work for
a separate legal entity, without terminating his services in
accordance with law and without paying him compensation under
B Section 25-F of the Industrial Disputes Act, 1947. He was also
not paid gratuity. He was also not paid wages during the period
when the Enquiry was going on. Taking into account the above
facts, the Labour Court erred in dismissing the Reference”.

8. An intra court appeal was preferred thereagainst wherein, *inter*
C *alia*, a contention was raised by the appellant that the sales office of the
appellant having been closed, no award of reinstatement could have been
passed. The said appeal was dismissed by a Division Bench of High Court
by reason of the impugned judgment dated 11.01.2000.

D A review application preferred thereagainst has also been dismissed
by an order dated 17.01.2003.

9. Mr. Shekhar Naphade, learned senior counsel appearing on behalf
of the appellant, submitted that keeping in view the admitted fact that the
sales office of the appellant was closed, the workmen were entitled only
E to the amount of compensation payable in terms of Section 25FFF of
the Industrial Disputes Act, 1947 and not the relief of reinstatement with
back wages.

F It was urged that even the learned single Judge in the judgment
noticed:-

“Shri Khanna has further deposed that he has sold the Sales Office.
The evidence of Shri Khanna clearly indicates that Khanna Textile
Industry was a separate legal entity to which the workman was
sought to be transferred”.

G Our attention was also drawn to the written statement filed on behalf
of the appellant wherein it was averred :

H “There is no relation between the shop and the Goregaon factory.
Prior to the 3-4 years from today, the said place of my work was
sold by the company and prior to the sale the place of work was

M/S. HONDARAM RAMCHANDRA v. YESHWANT 475
MAHADEV KADAM (DEAD) THROUGH LRS. [SINHA, J.]

given by the employer on leave and licence to the 3rd party near
about 10 years". A

It was furthermore brought to our notice that the following contentions
were raised before the Division Bench of the High Court, as would appear
from the Memo of Appeal: B

"That there is total non application of mind on the part of the
learned single judge in observing that there is no evidence on record
to indicate that transfer constituted service condition and that
Khanna Dyeing was a separate legal entity viz-a-viz appellant
herein. Had the Learned Single Judge appreciated the fact that
asking the first Respondent to resume duties at Goregaon factory
was an offer of alternate employment due to closure of sales office
where the first respondent was employed, he ought to have come
to the conclusion that the action on the part of the Appellant was
bonafide and with intention to secure employment of the
Respondent and that the Appellant was constrained to terminate
the service of the first Respondent for not attending his duties". D

10. It appears from the records that the following contention was
also raised in the review petition : E

"The petitioner submits with great respect that this fact was through
oversight not gone into by the learned Division Bench. Had this
fact been considered by the Learned Division Bench and the
Learned Single Judge having held that the Respondent's job was
a non-transferable one, it is respectfully submitted that reinstatement
with the Petitioner company would not have been granted. Also
payment of back wages would not have been granted. The
Respondent at best was entitled to closure compensation". F

11. The learned counsel for the respondents, on the other hand, G
contended that the respondents have filed an application under Section
33(C-2) of the Industrial Disputes Act, 1947 before the Labour Court,
Mumbai which is pending. It was argued that the respondents may not
be entitled for their reinstatement but would indisputably be entitled to
back wages in lieu of reinstatement. H

A It was further submitted that the closure of the unit was affected only in 1991 and not in 1983.

B 12. From the records, it appears that the sales office of the appellant had been closed down. We have noticed heretofore that there exists a dispute as to whether the said closure, for all intent and purport, was effected in 1983 or 1991. The High Court evidently committed an error in not taking into consideration the factum of closure of the business from the premises of the appellant, for the purpose of grant of relief. If the undertaking of the appellant had been closed down, the workmen were entitled to compensation only in terms of Section 25FFF of the Industrial Disputes Act, 1947 and not the relief of reinstatement with back wages.

C 13. The question of passing an award directing reinstatement with full back wages, in the aforementioned fact situation, did not and could not arise. However, the purported order of transfer was evidently not a legal one. Appellants furthermore initiated a domestic enquiry against the respondents. It was held *ex parte*. On the basis of the report made by the Enquiry Officer in the said domestic enquiry alone the services of the respondents were terminated. It was at this stage a reference was made by the appropriate government for adjudication of the dispute raised by the respondent herein in terms of Section 10(1)(c) of the Industrial Disputes Act, 1947.

D 14. Two questions arise for our consideration.

E Firstly, whether the closure was affected in the year 1983 or 1991?
F Secondly, whether the amount of compensation should be computed as if the establishment of the appellant was closed in 1983 or 1991, as the case may be, or are the workmen entitled to some other reliefs?

G 15. Ordinarily, we would have remitted the matter back to the High Court for consideration of the matter afresh to determine the said questions. Our attention, although, has been drawn to the evidences brought on record, it is difficult for us to arrive at one or the other opinion in regard to the question as to when the establishment of the appellant was closed. In the aforementioned premise it is also not possible for us to determine the effect of termination of service of the workmen.

H

M/S. HONDARAM RAMCHANDRA v. YESHWANT 477
MAHADEV KADAM (DEAD) THROUGH LRS. [SINHA, J.]

16. We are, therefore, of the opinion that the interest of justice would A
be subserved if the Labour Court, where the application of the respondents
under Section 33(C-2) of the Industrial Disputes Act, 1947 is pending,
should be directed to determine the aforementioned questions as the said
court can determine the said questions more effectively. For the said
purpose, the Labour Court would permit the parties to adduce fresh B
evidence. We would request the Presiding Officer, Labour Court to pass
an award as expeditiously as possible.

17. We, however, direct that the appellant, in the meanwhile, shall C
pay a sum of Rs.25,000 each to the concerned workmen within four
weeks from the date of receipt of this judgment by way of litigation
expenses. The said amount may also be deposited before the concerned
Labour Court.

18. With the aforementioned observations and directions, this appeal D
is disposed of. No costs.

B.B.B.

Appeals disposed of.