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AMRIT BANASPATI CO. LTD.

V.

S. TAKI BILGRAMI & ORS.

August 12, 1971

B

[G. K. MITTER, C. A. VAIDIALINGAM AND P. JAGANMOHAN REDDY, JJ.]

Bombay Industrial Relations Act (11 *of* 1947), *ss.* 42(1), 46(2) *and Schedule II item* 1—*Closing of shift and terminating employment of surplus staff—If reduction of posts.*

C

The appellant company was the proprietor of certain mills, which was working three shifts in some of its departments. The third shift was closed and the appellant issued a month's notice to three clerks terminating their services. The subordinate tribunals and the High Court held that it was a case of reduction of posts of clerks without following the procedure prescribed by he Bombay Industrial Relations Act 1946, namely, giving of notice of change as required by s. 42, and thus committed an illegal change in contravention of s. 46, in respect of an industrial matter in item 1 of Schedule II of the Act.

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Allowing the appeal to this Court,

HELD : (1) The reply sent by the management justifying their action, to the Union of workers, indicates, that they had only effected a retrenchment of clerks whom they considered to be surplus. There was no admission that they had effected a reduction in the posts of clerks. Read as a whole, the letter only shows that the termination was necessitated by the closure of the third shift and that the reduction in the clerical strength in consequence of such termination did not result in any increase in the work load of others. [155 B-D]

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(2) Unless there is a reduction in posts item 1 of Sech. II will have no application. The item refers to reduction intended to be of permanent or semi-permanent character in the number of persons to be employed in a shift, that is, the shift is not abolished but is working and the employer effects a reduction in the number of persons employed in the shift in consequence of which the work load on the remaining persons may be more. Under such a contingency it may be considered that the employer has effected a reduction in the posts occupied by the persons whose services have been terminated. But when the working of the entire shift is stopped there is no question of a reduction in the number of persons employed in a shift. On the other hand, it is a case of termination of employment of all the persons employed in the shift which has been stopped.]156 A-H]

G

Chaganlal Textile Mills Private Ltd. v. *Chatisgoan Girni Kamgar Union*, A.I.R. 1959 S.C. 722, followed.

H

(3) In the present case, on the closure of the third shift what the employer did was to retrench the employees working in that shift

they were found to be surplus in the establishment. It was a case of reduction of persons employed and not one of reduction of the number of persons employed. Hence, it was not a case of reduction of posts. [157 F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1922 of 1966.

Appeal by special leave from the judgment and order dated January 5, 1965 of the Bombay High Court in Special Civil Application No. 1261 of 1963.

K. K. Jain and *H. K. Puri* for the appellant.

B. P. Maheshwari and *S. M. Jain* for respondent No. 2.

G. L. Sanghi and *P. N. Tiwari*, for respondent No. 3.

The Judgment of the Court was delivered by

Vaidialingam, J.—The short question that arises for consideration in this appeal, by special leave, is whether by terminating the services of the three clerks in question, the appellant Company had made any illegal change within the meaning of s. 46 of the Bombay Industrial Relations Act, 1946 (Bombay Act XI of 1947) (hereinafter to be referred as the Act).

The facts leading up to the appeal may be stated. The appellant Company was the former proprietor of the New Pralhad Mills, Bombay. At the material time, namely, 1957, the mills were working three shifts in some of their departments. On December 8, 1957, the third shift was closed. On January 7, 1958 the appellant issued notices to the three clerks Nayak, Kelwalkar and Mhatre, with whom we are concerned in these proceedings terminating their services with effect from February 8, 1958.

The second respondent herein, the Union of the workers employed in the mills, by their letter dated February 7, 1958 requested the management to cancel the notices terminating the services of the clerks. The management sent a reply to the Union on February 10, 1958 justifying their action and declining to accede to the request of the Union. The exact terms of the notices dated January 7, 1958 as well as the reply dated

A February 10, 1958 will be adverted to later. There was another clerk Dhuri against whom a notice of termination of service had also been issued. But we are not concerned with that clerk in these proceedings.

The Union filed four applications before the Second B Labour Court at Bombay, challenging the termination of the services of the four clerks, referred to above, on the ground that the appellant had reduced the clerical strength of the Company without following the procedure prescribed in the Act and as such the appellant had committed an illegal change. In consequence the Union prayed C for a declaration that the appellant Company had committed an illegal change and further prayed for the reinstatement of the clerks after directing the management to withdraw the illegal change. An additional ground for reinstatement was also urged. It was urged that the management had also contravened s. 25G of the D Industrial Disputes Act, 1947. On these allegations the Union after praying for the reinstatement of the clerks desired also payment of compensation from the date of termination of their services till their reinstatement.

The main defence of the appellant was that no illegal E change has been made and hence the Labour Court had no jurisdiction to entertain the applications. They further denied that there has been any contravention of s. 25G of the Industrial Disputes Act, 1947 inasmuch as no clerks junior to those whose services were terminated had been retained in service. According to the F appellant the clerks were retrenched as they were surplus to the requirement of the mills.

The Labour Court, on a consideration of the materials produced before it, held that by terminating the services of the clerks, the appellant has really effected a reduction G in three clerical posts. It is the further view of the Labour Court that as this reduction of posts had been done without giving a notice of change under the Act, its action was illegal and that the Company was guilty of making illegal change in contravention of s. 46 of the Act. The Labour Court further held that so far as Nayak and H Kelwalkar were concerned the principles of "last come first go" embodied in s. 257 of the Industrial Disputes Act had been contravened as those two clerks were

senior to several others who were still retained in service. As regards the third clerk Mhatre, the Labour Court accepted the appellant's plea that he was only a temporary clerk for the third shift and that with the stoppage of the third shift his termination was justified. In consequence, the Labour Court passed an order, on June 19, 1959 directing the appellant to withdraw the illegal change introduced by it and reinstate Nayak and Kelwalkar and also to pay them 50% of their wages including Dearness Allowance till the date of reinstatement. The Union's application, so far as Mhatre was concerned, was dismissed.

The appellant appealed to the Industrial Court at Bombay against the decision of the Labour Court regarding Nayak and Kelwalkar. The Union also filed an appeal against the decision of the Labour Court refusing to grant relief to Mhatre. The two appeals were (I.C.) Nos. 182 of 1959 and 188 of 1959 respectively.

The Industrial Court did not agree with the findings of the Labour Court that Mhatre had been appointed only temporarily for the third shift. On the other hand it held that Mhatre was in the permanent employ of the Company. The Industrial Court held that the appellant had contravened the provisions of s. 25G. when it terminated the services of Nayak, Kelwalkar and Mhatre. It did not consider the main question whether the appellant had committed an illegal change when it terminated the services of the clerks. On the basis of its findings regarding contravention of s. 25G, the Industrial Court, by its order dated January, 30, 1960 affirmed the decision of the Labour Court with a slight variation regarding payment of compensation, wages and Dearness Allowance. At this stage we may say that Mhatre, whose claim was rejected by the Labour Court, was also granted the same relief that was given to the other two clerks by the Labour Court. The result was that the management's appeal No. I. C. 182 of 1958 stood dismissed and the appeal of the Union, No. I.C. 188 of 1959 was allowed.

Aggrieved by these orders of the Industrial Court the appellant filed in the Bombay High Court Special Civil Application No. 368 of 1960 under Arts. 226 and 227 of the Constitution. This writ petition was dismissed *in*

A *limine* by the High Court on March 22, 1960. The appellant came by special leave to this Court in Civil Appeal No. 230 of 1962.

Before this Court the counsel for the Union conceded that the appellant has not violated s. 25G of the Industrial B Disputes Act. But nevertheless it was urged by the Union that the order of the Industrial Court confirming the decision of the Labour Court was correct, as the latter has recorded a finding that the appellant had reduced the number of posts of clerks and thus com- C mitted an illegal change without issuing the necessary notice under the Act. This Court was of the opinion that the main basis of the decision of the Industrial Court was that s. 25G of the Industrial Disputes Act had been violated. That finding of the tribunal was clearly erro- neous in view of the concession made on behalf of the D Union. This Court was further of the view that the Industrial Court has not considered the correctness or otherwise of the more important question decided by the Labour Court against the management, namely, whether the appellant had committed an illegal change in con- travention of the Act. In view of this serious infirmity E in the order of the Industrial Court, by its judgment and order dated January 14 1963 this Court remanded the proceedings to the Industrial Court to adjudicate upon on the abovementioned aspect. This Court further gave a direction that if the Industrial Court came to the conclusion that any illegal change was made F by the management, it was to give appropriate relief to the workmen concerned and that if, on the other hand, it came to the conclusion that no illegal change had been made, the applications filed by the Union had to be dismissed.

G On remand the Industrial Court by its order dated July 18, 1963 has agreed with the findings of the labour Court that by termination of the services of the three clerks in question, the Company has reduced its clerical strength and thus has effected a reduction in the posts of clerks. For coming to this conclusion the Industrial H Court has placed considerable reliance on the reply dated February 10, 1958 sent by the appellant to the Union. It is the view of the Industrial Court that in this

letter, the appellant has indicated in very clear terms its intention when it terminated the services of the clerks. In the end the industrial Court held that the appellant had committed an illegal change under s. 46 by not giving a notice of change under s. 42 (1) of the Act. The Industrial Court also gave certain consequential directions regarding the amount of compensation to be paid to the workmen.

The appellant filed before the Bombay High Court Special Civil Application No. 1261 of 1963 under Art. 227 of the Constitution challenging the decision of the Industrial Court. The High Court by its judgment and order dated January, 5, 1965, after a reference to the material provisions of the Act, as well as the terms of the notice dated January 7, 1958 issued to the clerks and the reply dated February 10, 1958 sent by the management to the Union, agreed with the conclusion arrived at by the Industrial Court that the appellant had committed an illegal change in an industrial matter referred to in item 1 of Schedule II wihout giving the notice of change as required by s. 42. It is against this judgment and order of the High Court that the appellant has come to this Court by special leave.

Before we proceed to set out the contentions of the learned counsel, it may be stated that the appellant Company, which was formerly the proprietor of New Pralhad Mills had sold the same to the third respondent on September 8, 1962. The third respondent was not a party to the proceedings before the Industrial Court when it passed its order dated May 3, 1963. Though the appellant does not claim any relief against the third respondent, it had been impleaded as a party in these proceedings.

Mr. K. K. Jain, learned counsel appearing for the appellant, urged that by terminating the services of the three clerks, in view of the closure of the third shift, the Company has only effected a retrenchment of surplus hands in the employ of the comany. There has been no reduction of posts of clerks and no such reduction can be considered to have happened in law in the particular circumstances of this case when the third shift itself was closed. The notices had been issued to

A the clerks terminating their services as they were found to be surplus. The counsel further urged that there has been no reduction of posts of clerks when it terminated the services of the clerks in consequence of the closure of the third shift. The question of illegal change
B and contravention of the Act will arise only when there has been a reduction in the posts of the clerks. He also pointed out that the Union does not dispute the fact regarding the closure of the third shift with effect from December 8, 1957. The counsel further urged that the third shift was resumed on November 1, 1958
C and notices were issued to the three clerks to join the Company, which they did not do. The counsel further pointed that the letter dated February 10, 1958 sent by the appellant has been completely misunderstood by the High Court and the subordinate tribunals. He contended that there has been no admission of reduction
D of posts made by the appellant in the said letter as wrongly assumed by the High Court and the two subordinate tribunals. This error has vitiated the decision of the High Court. This contention of Mr. Jain has been supported by Mr. G. L. Sanghi, learned counsel appearing for the third respondent.
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On the other hand Mr. B. P. Maheshwari, learned counsel for the Union, supported in full the decision of the High Court confirming the orders of the two subordinate tribunals. The counsel pointed out that the appellant, by terminating the services of the three
F clerks has really effected a reduction in the clerical strength of the Company. Such a reduction, according to the counsel, amounts in law to a reduction of clerical posts attracting the provisions of ss. 42 and 46 read with Item 1 of Schedule II of the Act. It is his further contention that the finding that there has been a reduc-
G tion of posts of clerks is one of fact concurrently recorded by the two tribunals and affirmed by the High Court. On that finding, the counsel urged, the view of the High Court that the appellant is guilty of effecting an illegal change without giving notice of
H change is justified.

In order to appreciate the contention of the learned counsel on both sides, it is pertinent to refer to the relevant

provisions of the Act. Before we refer to those provisions, it should be stated that it is common ground that the working of the third shift was stopped on December 8, 1957. According to the management the work of the third shift was again resumed on November 1, 1958. It is the further case of the management that the three clerks were offered employment, but they declined to accept the offer, as, according to them, the offer was made subject to the condition that the Union withdraws the applications that had already been filed before the Labour Court. At any rate, one thing is clear namely, that the working of the third shift which was closed on December 8, 1957 was resumed only on November 1, 1958 and an offer of employment was then made to the three workmen. Another aspect to be noted is that it was represented before us that no standing orders relating to the appellant's industry had been framed or had come into operation at the material time. Therefore, the model standing orders notified by the Government were operative.

The notices issued to the workmen on January 7, 1958 was as follows :

"Dear Sir,

We regret to inform you that your services will no longer be required from 8th February, 1958. This may be treated as one month's notice.

Yours faithfully
for New Prahlad Mills,
Sd/-
Superintendent

The letter dated February 10, 1958 sent by the appellant to the Union was as follows :

"Dear Sir,

Re: No. N. D. 5090/57, d/7-2-1958 application under rule 53 of B. I. R. Act, Shri S. A. Nayek.

A

With reference to the above we have to inform you that Shri Nayak's services were terminated with a month's notice, owing to closure of 3rd shift, which necessitated a reduction in our clerical strength. We may point out
B that clerks have been reduced from all departments, according to juniority and further reductions are still contemplated and the cases of other juniors like Shri Sharma and Shah are also under consideration. As such reduction has not effected any increase in work load, and as the
C individual clerks who are reduced are offered all their legal dues, we submit that notice of change is not necessary.

We submit that whatever is done is legal and proper and regret we cannot comply with your request.

D

Yours faithfully
Sd/-
for New Pralhad Mills,
Manager.

E Now we will refer to the material provisions of the Act. Section 35 (1) of the Act provides for the procedures for framing of standing orders in regard to matters mentioned in Schedule 1 of the Act. Under sub-s. (5) the model standing orders notified by the Government would apply till standing orders framed
F under the section come into operation. We have already referred to the fact that there are no standing orders framed by the appellant Company relating to its industry at the material time. Section 40 (1) provides that standing orders for the time being in operation shall be determinative of the relations between the employer and
G his employee in regard to all industrial matters referred to in Schedule I. Item 3 of Schedule I deals with:

"Shift working including notice to be given to employees of starting, alteration or discontinuance of two or more shifts in a department or departments".

H Item 10 in the same Schedule again relates to :

"Termination of employment including notice to be given by employer and employee."

The model standing order 8 (1) (c) provided that whenever an additional shift is started, altered or discontinued, seven day notice has to be given, but one month's notice will have to be given if as a result of the the discontinuance of the shift any permanent employee is likely to be discharged. There is no grievance in the case before us that the requisite notice regarding the stoppage of the third shift has not been given. Similarly, standing order 23 (1) provided that employment of a permanent employee may be terminated by one month's notice or on payment of one month's wages (including all allowance in lieu of notice). We have referred to these provisions in order to appreciate the contents of Item 1 of Schedule II with which we are concerned in this appeal.

Section 42 (1) of the Act provides for an employer intending to effect any change in respect of an industrial matter specified in Schedule II to give notice of such intention in the prescribed form to the representatives of the employees. The other authorities to whom a copy of such notice is to be given as well as the publication to be given to the said notice are also contained therein. A notice under s. 42 (1) is called "notice of change". Section 46 (2) prohibits an employer from making any change in any industrial matter mentioned in Schedule II, without giving the notice of change as required by the provisions of sub-section (1) of s. 42. Item 1 of Schedule II runs as follows :

"Schedule II

(1) Reductions intended to be of permanent or semi-permanent character in the number of persons employed or to be employed in any occupation or process or department or departments or in a shift not due to forie majeure."

We have already indicated that the industrial Court, in particular, has placed very great reliance on the letter dated February,10 1958, for holding that by terminating the services of the clerks, the appellant has really effected a reduction in the clerical strength of the establishment which has the effect of reducing the posts of clerks. In fact the Industrial Court goes

A further and holds that there is an admission by the management itself in the said letter regarding their having effected reduction in the posts of clerks. The interpretation has found favour with the High Court.

We are not inclined to agree with the learned Judges B of the High Court in the interpretation placed on the letter dated February 10, 1958. The letter which has to be read as a whole clearly indicates that the termination of the serivces of the clerks was necessitated owing to the closure of the third shift and that the reduction in the clerical strength in consequence of such termination has C not resulted in any increase in the work load of others. This itself clearly shows that the appellant have not effected any reduction in the posts of clerks. On the other hand, they have only effected a retrenchment of the clerks, whom they considered to be surplus, in consequence of the closure of the third shift. There is a D marked difference between the matters dealt with under Items 3 and 10 of Schedule I and Item 1 of Schedule II.

Item 1 of Schedule II has come up for consideration before this Court in *Chaganlal Textile Mills Private Ltd.*, v. *Chalisgaon Girni Kamgar Union* (1). After an E analysis of the contents of Items 3 and 10 of Schedule I and Item 1 of Schedule II, it has been held that Item 1 relates only to posts and not to the personnel occupying the posts. Dealing with item No. 1 of Schedule II this Court observes as follows:

> "Furthermore, the language of Item No. 1 of F Schedule I clearly refers to a reduction in posts. It deals with the reduction not of persons employed but with the number of persons employed. Therefore it clearly contemplates posts. Again, this item also refers to the number of persons to be employed. That of course has nothing to do with G the retrenchment of persons actually employed. Again, when a notice of change in respect of Item No. 1 of Schedule II is to be given, it is not to be given to any employee but to the representative of the employees which would include a union of employees. It could hardly have been intended that H when employees were to be retrenched they would not be given any notice."

(1) A.I.R. 1959 S.C. 722

From the above observations, it is clear that unless there is a reduction in posts. Item 1 of Schedule II will have no application and in consequence there is no necessity to give a notice of change under s. 46 (2) read with s. 42 (1) of the Act. In the light of the above principles, if we examine the facts of the case before us, it is clear that on the closure of the third shift what the employer did was to retrench the employees working in that shift as they were found to be surplus in the establishment. Therefore, it was a case of reduction of persons employed and not one of reduction of the number of persons employed. Hence it is not a case of reduction of posts.

The matter also can be considered from another point of view. Item No. 1 of Schedule II leaving out the portions which are not necessary for the present case refers to:

> "reduction intended to be of permanent or semi-permanent character in the number of persons to be employed in a shift."

If read in that manner it is clear that the shift is not abolished but is working and the employer effects a reduction in the number of persons employed in the shift. Under such a contingency it may be considered that the employer has effected a reduction in the posts occupied by the persons whose services have been terminated, in which case it will be an illegal change unless notice has been given under s. 42 (1) as contemplated by s. 46 (2) of the Act. That is, for instance twenty persons occupying twenty posts are necessary to work is a shift and if five persons are sent out, that will amount to a reduction of five posts, in consequence of which the work load on the remaining fifteen persons may be more. In these circumstances the act provides for giving a notice of change and under s. 42 (1) copies of such notice have to be given apart, from the representative of employees, to the Chief Conciliator and other officers mentioned therein. That will be a case of reduction of posts. But when the working of the entire shift is stopped there is no question of a reduction in the number of persons employed in a shift. On the other hand it is a case of termination of employment of all the persons employed in that shift which has been stopped. Such

A a case will not attract Item No. 1 of Schedule II. To the employees whose services have been so terminated, as the consequence of the closure of the entire shift. Though other remedies are available to them in law, but they cannot invoke Item No. 1 of Schedule II.

B We may also refer briefly to the facts of the case reported in *Chaganlal Mills Textile Private Ltd.*, v. *Chalisgoan Girni Kamgar Union* (1) On July 9, 1957 the Company therein gave notice that the working of the second shift in their mill would be discontinued after one month. On August 9, 1957 the second shift was actually closed C in terms of the notice. Fourteen employees, who were not workmen in the second shift but whose services were necessary to make all arrangements ready for the second shift to start working, were served with the notice on September 1, 1957 that their services were terminated. They were paid retrenchment compensation and other D dues according to law. On November 9, 1957 the Company gave a notice called "notice of change" that it wished to abolish 27 posts including the posts held by the 14 employees, whose services were terminated by the notice dated November 1, 1957. Even under those circumstances E this Court held that the notice given on November 1, 1957 terminating the services of 14 employees was only by way of retrenchment and was legal. It was further emphasised that as the said notice was legal, it did not cease to be so because within eight days a notice of change was also given. In the case before us it is not contended F that the three clerks to whom notice had been given on January 7, 1958 were not given proper notice and that their dues have not been paid. Nor is it contended that after the admitted closure of the third shift with effect from December 8, 1957 the services of these three clerks did not become surplus to the appellant. We are G satisfied that the notice dated January 7, 1958 is only a notice of retrenchment of surplus staff. By that notice the appellant has not effected any reduction in posts so as to attract Item No. 1 of Schedule II, read with 42 (1) and 46 (2) of the Act. If that is so, it follows that by terminating the services of the three clerks, the appel- H lant has not made any illegal change within the meaning of s. 46 of the Act.

(1) A.I.R. 1959 S.C. 722.

In consequence, the judgment and order of the High Court are set aside and the applications filed on behalf of the three clerks before the Labour Court will stand dismissed. The appeal is allowed. Parties will bear their own costs.

V.P.S. *Appeal allowed.*