

N.T.C. (SOUTH MAHARASHTRA) LIMITED

v.

RASHTRIYA MILL MAZDOOR SANGH AND ORS. ETC. ETC.

NOVEMBER 24, 1992

[KULDIP SINGH, P.B. SAWANT AND N.M. KASLIWAL, JJ.]

The Textile Undertakings (Taking over of Management) Act, 1983—Preamble—Object and purpose of—"Workman" and "Contract of employment"—Construction.

The Textile Undertakings (Taking Over of Management) Act, 1983—Sections 3(3), (4) and 13 read with Sections 25-F, 25-FF, I.D. Act—Transfer of management of textile mill—Whether ends contract of employment of workmen—Notice and payment of compensation to workmen—Whether necessary.

The workmen of all textile mills went on strike on 14.1.1982. The strike was declared illegal on 8.2.1982.

On 10.2.1984, the management of the textile mills was taken over by the National Textile Corporation Limited (NTC) under the provisions of the Textile Undertakings (Taking Over of Management) Act, 1983, which came into force on 18.10.1983.

On the question whether the workmen ceased to be the workmen of the textile mills and, therefore, of the NTC after the management of the mills was taken over by the NTC w.e.f. 10th February, 1984, the Labour Court and the High Court took the view that they continued to be the workmen of the mills and, therefore, of the NTC.

The appellant - NTC contended before this Court that the employees ceased to be workmen of the mills when the mills were taken over; that the appellants had implicit and explicit power to choose which of the employees and how many of them they would take over; that the task was of making the undertaking viable, the appellants were given a free-hand to re-organise their affairs which impliedly included also the re-organisation of the labour as they thought fit and necessary; that the contract of employment with the workmen came to an end from the appointed day, viz.

- A 18th October, 1983 on which day the Textile Undertakings (Taking Over of Management) Act came into force; that since the Government had not issued any notification under Section 6(1)(a) of the Act, the provisions of the I.D. Act mentioned in the Second Schedule of the Act, were applicable to the appellants; and that the provisions of Section 25-FF of the I.D. Act in effect terminated the contract of employment of the workmen on account of the transfer of management of the textile mills to the appellant.
- B

Dismissing the appeals and transferred cases, this Court

- C HELD: 1.1. The statute was enacted because the affairs of the textile mills were mismanaged and it was necessary to invest very large sums of money "for re-organising and rehabilitating the said undertakings and, thereby, to protect the interests of the workmen employed therein and to augment the production and distribution at fair prices of different varieties of cloth and yarn so as to subserve the interests of general public".
- [238-C]

- D 1.2. One of the principal objects of the Act is to protect the interests of the workmen who were already employed in the textile mills. Consistent with this objective, the Act nowhere refers to the termination of the contract of employment of the workmen. [238-D]

- E 1.3. The legislature has taken precaution to abolish only certain contracts and provide for the vacation of the offices of only those persons who were in charge of management. [239-B]

- F 1.4. The contracts of managements and the persons who were in charge of the management had, therefore, necessarily to go if the mills were to be re-organised and rehabilitated both to protect the interests of the workmen employed as well as to augment the production and distribution of the cloth at fair prices to subserve the interests of the general public.
- [239-C]

- G 1.5. The work 'workman' has not been specifically defined in the Act. However, it cannot be disputed that looking at the nature, scope and the object of the Act, the said word will carry the same meaning as it attributed to it under Section 2(s) of the ID Act which is also specifically mentioned in the Second Schedule of the Act and has in no way been modified by the Government under the provisions of Section 6 of the Act although a
- H specific power is vested in the Government to do so. [238-E-F]

1.6. The contract of employment of the workmen does not relate "to be management of the business and affairs of the textile undertaking" nor can the workmen be said to be person "in charge of the management" and "holding offices as directors, managers or any other managerial personnel". [238-G] A

2.1. Section 13 of the Act by itself does not put and end to the contract of employment on the transfer of the ownership or management of the undertaking to the new employer. There is nothing in the provisions to indicate such a consequence on the transfer of the undertaking. The section only provides for compensation to the workmen if such transfer aliunde results in the termination of the contract of employment. B C

[240-D]

2.2. Whether the transfer results in the termination of the contract of employment or not, will depend upon either the terms of the agreement of transfer or on the provisions of the law which effects the transfer. D

[240-D]

2.3. The proviso to section 13 makes clear as to when the transfer will have no effect on the contract of employment and the workmen would not be entitled to the notice and retrenchment compensation under Section 25-F. Those cases are where (a) the service of a workman has not been interrupted by such transfer; (b) the terms and conditions of service applicable to the workmen after such transfer are not in any way less favourable to him than those applicable immediately before the transfer; and (c) the new employer is, under the terms of the transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and had not been interrupted by the transfer. [240-F-H] E F

2.4. The three conditions under which the workman becomes ineligible to the notice and retrenchment compensation under Section 25-F; further make it abundantly clear that by itself neither Section 25-F nor the transfer of the undertaking as such, puts an end to the contract of employment. [241-A] G

2.5. The section envisages the continuation of employment, and makes provision for the compensation, only if the transfer results in the termination of the contract of employment. [241-B] H

A 2.6. Where the employment continues in spite of the transfer of the undertaking, the workmen would not be entitled to notice and retrenchment compensation under Section 25-F from the transferor-employer. It is only if there is a transfer of the undertaking and the three conditions are not satisfied that a workmen would be entitled to such notice and
B retrenchment compensation from the transferor-employer. [241-C]

2.7. Transfer of ownership of an undertaking may not in all cases amount to the termination of employment. It was, therefore, necessary to provide as to in what circumstances the transfer by itself would not be considered as termination of employment and the workmen need not be
C paid the retrenchment compensation. [243-D]

2.8. Unless the transfer falls under the proviso, the employees of the undertaking concerned are entitled to claim compensation against the transferor and they cannot made any claim for re-employment against the
D transferee of the undertaking. In other words, when the transfer falls under the said proviso, the transfer does not result in the termination of the contract of employment. [243-E]

2.9. Section 13 of the Act does not repeal Section 25-FF of the I.D. Act. However, Section 25-FF by itself does not terminate the contract of
E employment and only provides for compensation to be paid to the workmen if the transfer either by the terms of the transfer or by the provisions of the law results in the termination of the contract of employment. [243-G]

F 2.10. Sections 3(3) and 3(4) read with Section 13 of the Act make it abundantly clear that the transfer of management in the present case has not resulted in the termination of the contract of employment of the workmen. [239-D]

G *Gurnail Singh & Ors. v. State of Punjab & Ors.*, [1991] 1 SCC 189 and *Bira Kishore Naik v. Coal India Limited & Ors.*, [1986] 2 SCR 1044, distinguished.

H *Hariprasad Shivshankar Skukla v. A.D. Divikar*, [1957] SCR 121 and *Anapapalla Co-operative Agricultural and Industrial Society Limited v. Workmen*, [1963] Supp. 1 SCR 703, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.4976-83 of 1992. A

From the Judgments and Orders dated 30.9.1987, 17.11.1986, 18.1.1989, 30.8.1990, 9.2.1990, 17.7.1991, 5.2.1992 and 23.3.1992 of the Bombay High Court in W.P. No.2486/86, Appeal No.1098 of 1986, W.P. No.666/86, Application (IDA) No.1199 of 1987, W.P. No.112/90, W.P. No.2059 of 1991, Appeal No.37/91 in W.P. No.2494 of 1991 and W.P. No.1310 of 1992. B

AND

Transferred Cases Nos. 16 to 44 of 1992. C

G. Ramaswamy, Attorney General, T.V.S.N. Chari, Ms. Bharati Reddy for the Appellant.

Harish N. Salve, Narayan B. Shetye, Ms. Indra Jaisingh, Kailash Vasdev, Ms. Alpana Kirpal, Mukul Mudgal, M.N. Shroff and Ms. Charu Sharma for the Respondents. D

The Judgment of the Court was delivered by

SAWANT, J. Leave granted in all the special leave petitions and the transfer petitions are allowed. E

The facts common to all the appeals/cases are as follows:

On 14th January, 1982, the workmen of all textiles mills in Bombay went on strike. The strike was declared illegal on 8th February, 1982. On 18th October, 1983, the Textile Undertakings [Taking Over of Management] Act, 1983 [the 'Act'] came into operation. On 10th February, 1984, the management of the respondent-mills was taken over by the National Textile Corporation Limited (NTC) under the provisions of the Act. F

2. It is not necessary to go into the details of the facts involved in each of the above appeals/cases. The point of law which is common to all the matters is whether the workmen have ceased to be the workmen of the textile mills and, therefore, of the NTC after the management of the mills was taken over by the NTC w.e.f. 10th February, 1984. Both, the Labour Court while granting interim relief and the High Court when confirming the same by the impugned order have taken the view that they continue to be workmen of the mills and, therefore, of the NTC. G H

A 3. The contention of the appellant-NTC is that in the 13 mills which
have been taken over, in all 54,338 employees were working on the date of
the strike. On the date of the take over, there were only 40,039 left. They
had ceased to be the workmen of the mills when the mills were taken over.
In all, 10,002 of them resigned voluntarily and the appellants paid them
B gratuity. Of the remaining, the appellants took over only 20,394 leaving
9,643. The present dispute concerns the said 9,643 employees. The
appellants' contention is that the appellants had power both implicit and
explicit to choose which of the employees and how many of them they
would take over. This is obvious, according to the appellants, from the
provisions of the Act.

C 4. To support his contention, the learned Attorney General appearing
for the appellants, invited our attention first to the preamble of the Act
which states, among other things, that the the need to enact the legislation
in question for taking over the management of the textile mills arose
D because there was mismanagement of their affairs on account of which
their financial condition had become wholly unsatisfactory even before the
commencement of the strike in January 1982. Their financial condition had
thereafter further deteriorated. The public financial institutions had al-
ready advanced large sums of money to the companies owning the textile
undertakings and a further investment of very large sums was necessary for
E re-organising and rehabilitating them. Pending the acquisition of the un-
dertakings, it was, therefore, felt expedient in the public interest to take
over their management. The re-organisation and rehabilitation of the un-
dertakings was to be done by the appellants in whom the management of
the mills was vested by the Act. Since the task was of making the under-
F takings viable, the appellants were given a free-hand to re-organise their
affairs which impliedly included also the re-organisation of the labour as
they thought fit and necessary.

G 5. According to him, further, the provisions of Section 3(3) to (7) of
the Act make the powers of the appellants in this connection clear. The
said provisions read as follows:

H "(3) Any contract, whether express or implied, or other
arrangement, in so far as it relates to the management of
the business and affairs of the textile undertaking and in
force immediately before the appointed day, or any order

made by any court in so far as it relates to the management of the business and affairs of the textile undertaking and in force immediately before the appointed day shall be deemed to have terminated on the appointed day.

(4) All persons in charge of the management, including persons holding offices as directors, managers or any other managerial personnel, of the textile company in relation to the textile undertaking, immediately before the appointed day, shall be deemed to have vacated their offices as such on the appointed day.

(5) Notwithstanding anything contained in any other law for the time being in force, no person in respect of whom any contract of management or other arrangement is terminated by reason of the provisions contained in sub-section (3), or who ceases to hold any office by reason of the provisions contained in sub-section (4), shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the loss of office, as the case may be.

(6) Notwithstanding any judgment, decree or order of any court, tribunal or other authority or anything contained in any other law (other than this Act) for the time being in force, every receiver or other person in whose possession or custody or under whose control the textile undertaking or any part thereof may be immediately before the appointed day, shall, on the commencement of this Act, deliver the possession of the said undertaking or such part thereof, as the case may be, to the Custodian, or where no Custodian has been appointed, to such other person as the Central Government may direct.

(7) For the removal of doubts, it is hereby declared that any liability incurred by a textile company in relation to the textile undertaking before the appointed day shall be enforceable against the concerned textile company and not against the Central Government or the Custodian."

A 6. He also relied upon the fact that towards that purpose, under
Section 6 (1) of the Act, the Central Government was given the power to
declare by notification that all or any of the enactments specified in the
Second Schedule of the Act shall not apply or shall apply with such
B modification additions or omissions to the undertakings taken over, as may
be specified in the notification. One of the Acts mentioned in the Schedule
is the Industrial Disputes Act, 1947 (ID Act). Under Section 6(2), the
Central Government was also given the power to suspend the operation of
all or of any of the rights, privileges, obligations, submissions, settlements
or standing orders or other instruments in force to which the concerned
C textile undertaking were a party or which were applicable to them im-
mediately before the issue of the notification. The notification issued both
under Section 6 (1) and Section 6(2) shall have effect notwithstanding
anything to the contrary contained in any other law, agreement or instru-
ment or any decree or order of a court, tribunal, officer or other authority,
settlement or standing order etc.

D Relying on the aforesaid provisions, the learned Attorney General
contended that the contract of employment with the workmen came to an
end from the appointed day, viz., 18th October, 1983 on which day the Act
came into force, and since the appellants had taken over the management
under the Act on 10th February, 1984, there was no subsisting contract of
E employment between the appellants and the workmen on that day.

7. His second contention was that since the Government had not
issued any notification under Section 6(1)(a) of the Act, the provisions of
the ID Act mentioned in the Second Schedule of the Act, were applicable
F to the appellants. Section 25-FF of the ID Act makes provision for com-
pensation to workmen in cases of transfer of undertakings. The said Section
reads as follows:

G "25-FF. Compensation to workmen in case of transfer of
undertaking. - Where the ownership or management of an
undertaking is transferred, whether by agreement or by
operation of law, from the employer in relation to that
undertaking to a new employer, every workman who has
been in continuous service for not less than one year in
that undertaking immediately before such transfer shall be
H entitled to notice and compensation in accordance with

the provisions of Section 25-F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if -

(a) the service of the workman has not been interrupted by such transfer;

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

(c) the new employer is under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

In view of the aforesaid provisions, it is the textile mills which were under an obligation to give the notice and pay the compensation to the workmen in accordance with the provisions of Section 25-F of that Act, as if the workmen had been retrenched since, admittedly, in the present case the management of the textile mills was transferred by operation of law, i.e., by virtue of the provisions of the Act, to the appellants. The Act further made no provision for the transfer of the workmen to the appellants or for imposing a liability on the appellants to pay them wages/salaries on the basis that their services has been continuous and not interrupted by the said transfer, as required by the provisions of clause (c) of the proviso to Section 25-FF.

8. The learned Attorney General contended that the provisions of Section 25-FF in effect terminated the contract of employment of the workmen on account of the transfer of management of the textile mills to the appellants, and all that the workmen were entitled to was the notice and compensation from the textile mills in accordance with the provisions of Section 25-F of the I.D. Act as if the workmen were retrenched. The workmen could not remain in service in continuance of the contract of

A employment after the transfer, and in any case not with the appellants. Hence, there was no obligation on the appellants to continue the services of the workmen after the take over of the management. In this connection, he relied also on a decision of this Court in *Gurnail Singh & Ors. v. State of Punjab & Ors.*, [1991] 1 SCC 189.

B 9. The reliance placed by the learned Attorney General on the provisions of Section 3(3) to 3 (7) of the Act to contend that the said provisions put an end to the contract of employment of the workmen is not well-founded. The preamble of the Act shows, among other things, that the statute was enacted because the affairs of the textile mills were mis-managed and it was necessary to invest very large sums of money "for re-organising and rehabilitating the said undertakings *and, thereby, to protect the interests of the workmen employed therein* and to augment the production and distribution at fair prices of different varieties of cloth and yarn so as to subserve the interests of the general public" (emphasis supplied).

C This recital in the preamble makes it clear that one of the principal objects of the Act is to protect the interests of the workmen, who were already employed in the textile mills. Consistent with this objective, the Act nowhere refers to the termination of the contract of employment of the workmen. The word 'workmen' has not been specifically defined in the Act.

D However, it cannot be disputed that looking at the nature, scope and the object of the Act, the said word will carry the same meaning as is attributed to it under Section 2 (s) of the ID Act which is also specifically mentioned in the Second Schedule of the Act and has in no way been modified by the Government under the provisions of Section 6 of the Act although a specific power is vested in the Government to do so. On the other hand, the provisions of Section 3 (3) of the Act state that any contract in so far as it relates to "the management of the business and affairs of the textile undertaking" shall be deemed to have terminated on the appointed day. Similarly, Section 3 (4) states that "all persons in charge of the management, including persons holding offices as directors, managers or any other managerial personnel" shall be deemed to have vacated their offices as such on the appointed day. Section 3(5) then provides that notwithstanding anything contained in any other law, no compensation will be payable either on account of the termination of the contract of management of the

E

F

G

H business under Section 3(3) or on account of the termination under Section

3(4) of the offices of the persons concerned. It cannot be argued that the contract of employment of the workmen is covered either by the provisions of Section 3(3) or of Section 3(4) of the Act. The said contract does not relate "to the management of the business and affairs of the textile undertakings" nor can the workmen be said to be persons "in charge of the management" and "holding offices as directors, managers or any other managerial personnel". The Legislature has taken precaution to abolish only certain contracts and provide for the vacation of the offices of only those persons who were in charge of management. That was, as it should have been, since, as the preamble of the Act shows, the legislation had become necessary because there was mismanagement of the affairs of the textile undertakings. The contracts of managements and the persons who were in charge of the management had, therefore, necessarily to go if the mills were to be re-organised and rehabilitated both to protect the interests of the workmen employed as well as to augment the production and distribution of the cloth at fair prices to subserve the interests of the general public.

10. That the provisions of Section 3(3) and 3 (4) do not refer to the contract of employment of the workmen but have in their view contracts other than the contracts of employment of workmen, is made amply clear by the provisions of Section 13 of the Act which reads as follows:

"13. If the Custodians of opinion that any contract of employment entered into by any textile company or managing or other director of the company in relation to its textile undertaking at any time before the appointed date is unduly onerous, he or it may, by giving to the employee one month's notice in writing or salary or wages for month in lieu thereof, terminate such contract of employment".

The aforesaid provisions specifically provide for contract of employment with workmen as is clear by the language thereof. The said provisions state that if the contract of employment of a workman is to be terminated, the custodian can do so if he is of the opinion that it is unduly onerous. However, while terminating the contract, he has to give one month's notice in writing or salary or wages, as the case may be, for one month in lieu of

A the notice. This provision is consistent with the object of the Act and also
with the provisions of the ID Act. It is, therefore, amply clear that Section
3(3) and 3(4) do not have the effect of terminating the contract of employ-
ment of the workmen. It is also not disputed that neither the custodian nor
B the appellants who stepped into his shoes had at any time put an end to
the contract of employment of any of the workmen involved in the present
dispute pursuant to the provisions of Section 13. The first contention of the
learned Attorney General has, therefore, to be rejected.

11. As regards the second contention which is based on the
provisions of Section 25-FF of the ID Act, we are afraid that the same
C proceeds on a wrong presumption of the law. As is clear from the
provisions of the said section which are reproduced above, the section by
itself does not put an end to the contract of employment on the transfer
of the ownership or management of the undertaking to the new employer.
D There is nothing in the said provisions to indicate such a consequence on
the transfer of the undertaking. The section only provides for compensation
to the workmen if such transfer *aliunde* results in the termination of the
contract of employment. Whether the transfer results in the termination of
the contract of employment or not, will depend upon either the terms of
the agreement of transfer or on the provisions of the law which effects the
E transfer. The section in terms states that if the terms of the agreement or
the provisions of the law have the effect of terminating the contract of
employment, every workman in employment in the transferor undertaking
would be entitled to notice and compensation in accordance with the
provisions of Section 25-F as if the workmen had been retrenched. How-
F ever, the proviso to the section makes clear as to when the transfer will
have no effect on the contract of employment and the workmen would not
be entitled to the notice and retrenchment compensation under Section
25-F. Those cases are where (a) the service of a workman has not been
interrupted by such transfer; (b) the terms and conditions of service
G applicable to the workman after such transfer are not in any way less
favourable to him than those applicable immediately before the transfer;
and (c) the new employer is, under the terms of the transfer or otherwise,
legally liable to pay to the workman, in the event of his retrenchment,
H compensation on the basis that his service had been continuous and had
not been interrupted by the transfer. The three conditions under which the

workman becomes ineligible to the notice and retrenchment compensation under Section 25-F, further make it abundantly clear that by itself neither Section 25-FF nor the transfer of the undertaking as such, puts an end to the contract of employment. In fact, the section envisages the continuation of employment, and makes provision for the compensation, only if the transfer results in the termination of the contract of employment. These provisions show that where the employment continues in spite of the transfer of the undertaking, the workmen would not be entitled to notice and retrenchment compensation under Section 25-F from the transferor-employer. It is only if there is a transfer of the undertaking and the said three conditions are not satisfied that a workmen would be entitled to such notice and retrenchment compensation from the transferor-employer.

It is, therefore, more than clear that neither Section 25-FF nor the transfer by itself has the effect of putting an end to the contract of employment of the workmen.

12. The history of Section 25-FF as it is found to-day is illuminating on the subject. The said section was introduced in the ID Act in 1956. Before the introduction of the Section, the industrial adjudicator had to consider the question as to whether on the transfer, the contract of employment continued with the transferee-employer by examining various facts. It was not possible to lay down inflexible rules in that behalf. The Legislature, therefore, enacted Section 25-FF on September 4, 1956 which read as follows:

"Notwithstanding anything contained in section 25-F, no workman shall be entitled to compensation under that section by reason merely of the fact that there has been a change of employers in any case where the ownership or management of the undertaking in which he is employed is transferred, whether by agreement or by operation of law, from one employer to another :—

Provided that—

- (a) the service of the workmen has not been interrupted by reason of the transfer;
- (b) the terms and conditions of service applicable to the

- A workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
- (c) the employers to whom the ownership or management of the undertaking is so transferred is, under the terms of the transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer."
- C The section was conceived on the assumption that if the ownership of an undertaking was transferred, the cases of employees affected by the transfer would be treated as cases of retrenchment to which Section 25-F would apply. The validity of this assumption was successfully challenged in the case of *Hariprasad Shivshankar Skukla v. A.D. Divikar*, [1957] SCR 121.
- D In that case, the Court was called upon to consider the true scope and effect of the concept of retrenchment as defined in Section 2(oo) of the ID Act. The Court held that the said definition had to be read in the light of the accepted connotation of the word, and as such, it could have no wider meaning than the ordinary connotation of the word according to which retrenchment meant the discharge of surplus labour or staff by the
- E employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and did not include termination of services of all workmen on a *bona fide* closure of industry or on change of ownership or management thereof. The effect of this decision was that though the definition of the word 'retrenchment' may have included also
- F the termination of services caused by the closure of the concern or by its transfer, the termination of services on account of the closure or transfer could not be called retrenchment since retrenchment meant discharge of the surplus labour according to the ordinary accepted connotation of the word. As a result of this decision which was pronounced in November 1957,
- G the present Section 25-FF was inserted and was brought into force retrospectively from 1st December, 1956. The first part of the section is enacted to provide compensation to the workmen since the effect of the transfer of the undertaking to the new employer is ordinarily the termination of the contract of employment of the workmen engaged by the transferor-employer. In order that such termination of employment on transfer
- H should be deemed to be retrenchment for the purposes of Section 25-F,

the words "as if" were inserted in the last clause of the first part of the section. They state the effect of nullifying the interpretation placed by this Court in *Hariprasad's* case (supra). The insertion of these words brought out clearly the legal distinction between "retrenchment" defined by Section 2(oo) as it was interpreted by this Court and "termination of service consequent upon transfer" with which Section 25-FF deals. In other words, the present section provides that though termination of services on transfer may not be retrenchment, the workmen concerned are entitled to compensation as if the said termination was retrenchment. The provision is obviously made for the purpose of calculating the amount of compensation payable to the workmen. Rather than providing for the measure of compensation over again, Section 25-FF makes a reference to Section 25-F for the limited purpose.

However, such transfer may not in all cases amount to the termination of employment. It was, therefore, necessary to provide as to in what circumstances the transfer by itself would not be considered as termination of employment and the workmen need not be paid the retrenchment compensation. Those conditions have been taken care of by the proviso to Section 25-FF. The reading of Section 25-FF as a whole, therefore, shows that unless the transfer falls under the proviso, the employees of the undertaking concerned are entitled to claim compensation against the transferor and they cannot make any claim for re-employment against the transferee of the undertaking. In other words, when the transfer falls under the said proviso, the transfer does not result in the termination of the contract of employment. A reference in this connection may be made to the decision of this Court in *Anakappala Cooperative Agricultural and Industrial Society Limited v. Workmen*, [1963] Supp. 1 SCR 730.

13. The contention of the learned Attorney General that Section 13 of the Act does not repeal Section 25-FF is undoubtedly correct. Since, however, Section 25-FF, as pointed out above, by itself does not terminate the contract of employment and only provides for compensation to be paid to the workmen if the transfer either by the terms of the transfer or by the provisions of the law results in the termination of the contract of employment, the contention does not take the appellants' case any further. We have also pointed out above that in fact the provisions of Section 3 (3) and 3(4) read with Section 13 of the Act make it abundantly clear that in fact

A the transfer of management in the present case has not resulted in the termination of the contract of employment of the workmen. Hence, there is no substance in the second contention either.

B 14. The reliance placed by the learned Attorney General on the decision of this Court in *Gurnail Singh's* case (supra) in this connection is misplaced. There, the claim made by the employees who were retrenched on account of transfer, was for re-employment in the transferee establishment. The facts there clearly show that the contract of employment of the employees was with the State of Punjab which transferred all the tubewells under it to the Punjab State Tubewell Corporation - a company C wholly owned and managed by the State of Punjab.

D On the facts of that case it was found that the State Government had acted arbitrarily towards the employees and had abridged their rights by purporting to transfer only the tubewells and had retrenched the employees as a consequence thereof. The tubewells had further continued to be run at the cost of the State since the Corporation was wholly owned by it. That was something which was grossly unfair and inequitable since it had deprived the employees of substantial benefits which had accrued to them as a result of their long service with the State Government. It was in these circumstances that the Court had directed the employment of the E retrenched employees on certain conditions. The case does not advance the contention of the appellants in any manner.

F 15. Reliance placed by the learned Attorney General on yet another decision of this Court in *Bira Kishore Naik v. Coal India Limited & Ors.*, [1986] 2 SCR 1044 is also not well-merited. In that case, there was no provision in the Coal Mines (Taking Over of Management) Act, 1973 for protecting the interests of the employees of the coal mines unlike the provisions of Section 14 of the coal Mines (Nationalisation) Act, 1973 or under the present Act. As we have pointed out above, in the present case G Section 13 read with the preamble and Sections 3(3) and 3(4) of the Act give protection to the workmen.

H 16. In fact, we are surprised that the appellants should have taken the stand that the workmen had not continued in their employment. As has been pointed out at the outset, 10,002 workmen had resigned voluntarily and the appellants had accepted their resignation and had also paid them

gratuity. If the workmen had not continued in employment, there was no question of accepting their resignation and paying them the gratuity. A

17. In the result, we dismiss the appeals and transferred cases with costs. Since the matter is pending before the Labour Court, we direct the Labour Court to dispose of the same within two months of the receipt of this Judgment. All interim orders passed by this Court shall stand vacated. B

V.P.R.

Appeals and transferred cases dismissed.