

INDIAN PETROCHEMICALS CORPN. LTD.

A

v.

SHARMIK SENA AND ANR.

JANUARY 29, 2001

[S.S.M. QUADRI AND S.N. PHUKAN, JJ.]

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Labour Law:

Industrial Disputes Act, 1947: Sections 25-H, 25-N and 25-S.

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Workmen—Regularisation of—Workmen were employed in a canteen run by the management through a contractor—High Court directed their regularisation subject to the worker, inter-alia, being within the prescribed minimum and maximum age limits—and providing that those not regularised may be retrenched under S.25-H—Supreme Court approved these conditions—Subsequently in proceeding initiated to give effect to the said directions—High Court directed that maximum age as limit be taken that of superannuation and retrenchment to be under S.25-N—Validity of—Held: Minimum and maximum age limits should be as at the time of the initial appointment of the workmen—Hence, High Court erred in directing that the maximum age limit as that of superannuation—Retrenchment compensation to be paid under S. 25-N and re-employment to be considered under S.25-H—Factories Act, 1948, S.46.

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Practice and Procedure:

Contentions urged before High Court—Whether can be gone into—Held: The question as to what is really argued before the High Court cannot be gone into as records of the High Court cannot be allowed to be contradicted—Hence, plea that contentions not correctly recorded by High Court, rejected.

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The Appellant-management was running a canteen in compliance with the requirements of Section 46 of the Factories Act, 1948, in which the respondent-workmen were employed purporting to be the employees under a contractor. The High Court directed the appellant-management to regularise the services of these workmen subject to their being within the prescribed minimum and maximum age limits and providing those not regularised that

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A may be retrenched under Section 25-H of the Industrial Disputes Act, 1947. This Court approved these conditions.

B Subsequently in proceedings initiated to give effect to the said conditions the High Court directed that for the purposes of regularisation the maximum age limit should be taken as the age of superannuation and that the workmen who did not fulfil the conditions for regularisation should be retrenched in terms of Section 25-N of the Act. Hence this appeal.

Allowing the appeal, the Court

C HELD : 1.1. For regularising the services of the workmen, the minimum and the maximum age limits prescribed under the policy of the Corporation (18 years and 25 years respectively) has to be considered *as at the time of their initial appointment*. This condition is too clear to admit of any controversy. The order of the High Court that the maximum age should be the age of superannuation cannot be sustained. [664-G-H; 665-G]

D *Railway Parcel & Goods Handling Mazdoor Union v. Union of India*, [2000] 1 LLJ 1050; *R.K. Panda v. Steel Authority of India*, [1994] 5 SCC 304; *Parimal Chandra Raha v. Life Insurance Corporation of India* [1995] 2 Supp. SCC 611 and *Indian Petrochemicals Corporation Ltd. v. Sharmik Sena*, [1999] 6 SCC 439, referred to.

E 1.2. The plea that the contentions urged by the parties are not correctly recorded by the High Court cannot be accepted. The question as to what was really argued before the High Court cannot be gone into as the records of the High Court cannot be allowed to be contradicted. [665-C-D]

F *State of Maharashtra v. Ramdas Shrinivas Nayak*, [1983] 1 SCR 8, relied on.

G 2. It is not disputed that the management is an industrial establishment to which Chapter V-B of the Industrial Disputes Act, 1947 applies; if that be so, Sections 25-N and 25-H read with Section 25-S will be attracted. Therefore, in the event of the management choosing to retrench the workmen who do not fulfil the conditions for regularisation, they shall be paid retrenchment compensation under Section 25-N and their cases for re-employment should be considered under Section 25-H of the Industrial Disputes Act. [667-C-D]

H CIVIL APPELLATE JURISDICTION: Civil Appeal No. 892 of 2001.

From the Judgment and Order dated 26.4.2000 of the Bombay High Court in W.P. No. 979 of 2000. A

T.R. Andhyarujina, K.S. Parihar, S. Birla, M.M. Varma and H.S. Parihar for the Appellants.

K.K. Singhvi, R.R. Chandrachud, S. Pakale and Sanjay Parikh for the Respondents. B

The Judgment of the Court was delivered by

SYED SHAH MOHAMMED QUADRI, J. Leave is granted.

The Judgment and order of a Division Bench of the High Court of Judicature at Bombay in Writ Petition No. 979 of 2000 passed on April 26, 2000, is brought under challenge in this appeal by special leave. Appellant No.1 is Government of India Undertaking and appellant No. 2 is its General Manager (hereinafter they will be referred to as 'the management'). The first respondent is the union of workmen of appellant No.1 and the second respondent is its member and a workman (hereinafter they will be referred to as 'the workmen'). C D

To comprehend the controversy in this appeal, narration of the following facts will be useful. E

The management is running a canteen in compliance with the requirements of Section 46 of the Factories Act, 1948, in which the workmen were employed purporting to be the employees under a contractor. The litigation between the parties commenced with the filing of Writ Petition No. 2206 of 1997 by the workmen in the High Court of Judicature at Bombay seeking a direction that they (specified in the Annexure 'A' thereto) be absorbed as regular employees of the management with parity of pay-scales and other service conditions applicable to regular employees with effect from their actual date of entry into service with the contractor. On August 29, 1997, the High Court disposed of the writ petition taking the view that as the workmen were engaged in a statutory canteen they *ipso facto* became the employees of the principal employer, namely, the management and ordered their absorption subject to conditions (a) to (e) which will be referred to presently. That judgment was assailed by the management in this Court, by special leave, in Civil Appeal No. 1854 of 1998. And inasmuch as the High Court imposed certain conditions for their absorption, the workmen also filed H

- A Civil Appeal No.1855 of 1998, by special leave of this Court. Those appeals were dismissed by a three Judge Bench of this Court on August 4, 1999, reported in *Indian Petrochemicals Corporation Ltd. & Anr. v. Shramik Sena & Ors.*, [1999] 6 SCC 439. Thereafter, for similar reliefs the workmen filed Writ Petition No. 5817 of 1999 in the High Court, but the same was dismissed as withdrawn on November 17, 1999. The present writ petition which has given rise to this appeal, is the third in the series. The High Court, by the judgment impugned in this appeal, held, in regard to condition (a), that for purposes of regularisation of the workmen the maximum age limit should be taken as the age of superannuation and, in regard to condition (e), that the workmen who did not fulfil conditions for regularisation should be retrenched in terms of the provisions of Chapter V-B of the Industrial Disputes Act, 1947 (for short, 'the I.D. Act') and directed that the process of regularisation of the workmen in accordance with the said judgments be completed within two months from the date of the impugned judgment. The validity of the pronouncement of the High Court on those two aspects is assailed by the management in this appeal before us.

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- Mr. T.R. Andhyarujina, the learned senior counsel appearing for the management, submitted that it was the case of the management that the maximum age limit of 25 years would be applicable as on the date of their entry into service and not as on the date of hearing of the present writ petition but the High Court had not appreciated properly the contention of the management and having erroneously interpreted condition (a), directed that the age of superannuation should be taken as the maximum age limit which in effect had altered condition (a). The second contention of the learned counsel relates to retrenchment compensation. He argued that condition (e) provided that the workmen who could not be absorbed, should be considered for future absorption in accordance with the provisions of Section 25H and be paid retrenchment compensation in accordance with law but the High Court introduced a new condition, viz., retrenchment of workmen under Section 25N of the I.D.Act, which had nullified condition (e), as such the impugned judgment was illegal and liable to be set aside.

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- Mr. K.K. Singhvi, the learned senior counsel appearing for the workmen, contended that they had been working for number of years and as no rules were applicable to them for purposes of their absorption, the maximum age limit that could be taken into consideration was only the age of superannuation as was done by the Supreme Court in *Railway Parcel & Goods Handling Mazdoor Union & Ors. v. Union of India & Ors.*, (2000) 1 LLJ 1050. In any

event, submitted Mr. Singhvi, there existed in the management the power to relax the age limit, therefore, the management should relax the age limit and absorb the workmen. The conditions laid down for regularisation of the workmen, it was submitted, were virtually lifted from the decisions in *R.K. Panda & Ors. v. Steel Authority of India & Ors.*, [1994] 5 SCC 304 and *Parimal Chandra Raha & Ors. v. Life Insurance Corporation of India & Ors.* [1995] 2 Suppl. SCC 611, so the conditions be interpreted in the light of the judgments in those cases. As the workmen were found to be the employees of the management, an industrial establishment, and not of the contractor, argued Mr. Singhvi, payment of retrenchment compensation could only be in terms of Section 25N and not under Section 25F of the I.D. Act and that in approving condition (e) the Supreme Court could not have deprived the workmen of the benefits which they would otherwise be entitled to under Chapter V-B of the I.D. Act.

On the contentions raised by the learned counsel, the question that merits our consideration is : what is the true interpretation of conditions (a) and (e) imposed by the High Court and confirmed by this Court.

It will be apt to refer to the relevant findings of this Court and the conditions confirmed by this Court in the aforementioned appeals. While negating the contention of the management that in view of the contract between the management and the contractor the workmen could not be treated as the employees of the management, this Court held that on the facts of the case the contractor was engaged only for the purpose of record and for all purposes the workmen in that case were in fact the workmen of the management. Further, the contention of the workmen that after holding them the employees of the management there was no reason to impose those conditions, was also rejected by this Court observing as follows :

"It should be borne in mind that the initial appointments of these workmen are not in accordance with the rules governing the appointments or the established policy of recruitment of the management. The said recruitments could also be in contravention of the various statutory orders including the reservation policy. Further, the respondent is an instrumentality of the State and has an obligation to conform to the requirements of Articles 14 and 16 of the Constitution. In spite of the same the services of the workmen are being regularised by the Court not as a matter of right of the workmen arising under any statute but with a view to eradicate unfair labour practices and in equity to undo social injustice and

A *as a measure of labour welfare. Therefore, it is necessary that in this process suitable guidelines or conditions be laid down at the time of courts issuing directions to regularise the services of the workmen so concerned depending upon the facts of each case. This Court has consistently followed this practice in the earlier cases of regularisation and we do not find any reason to differ from the same.*"

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The directions/conditions, referred to above, read thus :

"Respondent 1 should absorb the employees listed in Exhibit 'A' to the petition, in its employment subject to their fulfilling the following conditions:

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(a) at the time of initial appointment the workmen should be complying with the minimum and the maximum age-limits prescribed under the policy of the Corporation;

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(b) they must be medically fit according to the standards prescribed by the Corporation;

(c) those who were appointed prior to the filing of the writ petition must have three years' minimum service to their credit on the date of the present judgment;

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(d) those who were appointed during the pendency of the writ petition must have four years of minimum service to their credit on the date of the present judgment;

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(e) all those who are not absorbed in the service of the Corporation for any of the reasons indicated above, their cases shall be considered in accordance with the provisions of the Industrial Disputes Act, 1947 when fresh recruitment to the canteen staff is made by the Corporation;

All the workmen who are not absorbed for any of the conditions enumerated above, shall be given retrenchment compensation in accordance with law."

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Adverting to the first contention of Mr. T.R. Andhyarujina, from a plain reading of condition (a), extracted above, we find that the age eligibility for regularising the services of the workmen, the minimum and the maximum age limits prescribed under the policy of the Corporation (18 years and 25 years respectively) has to be considered *as at the time of their initial appointment.*

H This condition is too clear to admit of any controversy.

Mr. Andhyarujina submitted that it was not the contention of the management that the maximum age should be determined as on the date of passing of the order by the High Court and that on the wrong assumption that the management was denying the benefit of regularisation to some of the workmen, the High Court found fault with it and observed that it would not be permissible for the Corporation (management) to deny the benefit of regularisation to some of the workers on the ground that they were not *at the present time* below the age of 25 years and that it was merely a device reflective of an unfortunate attempt on its part to evade its obligation to comply with the direction issued by the High Court and confirmed by this Court. A perusal of the impugned judgment shows that the contention of the management before the High Court was that the workmen who had crossed the age of 25 years at the time of regularisation, were not entitled to that benefit. We cannot accept that the contentions urged by the parties are not correctly recorded by the High Court. We cannot go into the question as to what was really argued before the High Court as we cannot allow the records of the High Court to be contradicted. See : *State of Maharashtra v. Ramdas Shrinivas Nayak & Anr.*, [1983] 1 SCR 8. Be that as it may, we have already pointed out that condition (a), referred to above, does not warrant any polemic.

It is correct that in the aforesaid appeals while confirming conditions (a) to (e) laid down by the High Court, this Court referred to the decisions in *Panda's* case (supra) and *Raha's* case (supra) but that fact would not permit a different interpretation of condition (a) whereunder the minimum and the maximum age as *on the date of initial appointment* have to be looked into for purposes of regularisation of services of the workmen in this case. The High Court is, therefore, not justified in coming to the conclusion that the maximum age referred to in condition (a) meant the age of superannuation. No support can be drawn for the said conclusion from the judgment of this Court in *Panda's* case (supra) or in *Railway Parcel & Goods Handling Mazdoor Union's* case (supra) as in those cases this Court prescribed the age of superannuation as the maximum age for absorption/regularisation whereas in the instant case this Court confirmed, without any modification, condition (a) imposed by the High Court, which needs to be interpreted correctly and not altered with reference to other decisions. We, therefore, cannot sustain the order of the High Court on this aspect.

We are of the view that any further direction by this Court in regard to relaxation of maximum age limit would amount to recasting condition (a) which

A we are not inclined to do. We may, however, observe that it will be open to the management to relax maximum age limit in appropriate cases.

B The other point that remains to be considered is about payment of retrenchment compensation; whether it should be paid under the provisions of Section 25F or in terms of Section 25N of the I.D. Act. It may be noticed here that conditions (a) to (d), noted above, deal with the requirements which have to be fulfilled by the workmen for their regularisation. Such of the workmen who do not satisfy them and are not eligible for regularisation, have to be dealt with under condition (e) which incorporates benefits for unabsorbed workmen who would be rendered out of service. A close reading of condition C (e) discloses that it is in two parts. The first part provides for their re-employment in accordance with the provisions of I.D. Act as and when the management proposes to make fresh recruitment to the canteen staff. The second part directs payment of retrenchment compensation in accordance with law. To understand the import of these two parts, it will be necessary to bear in mind that the High Court imposed the aforementioned conditions D for purposes of absorption of the workmen in the service of the management because though they were treated as the employees of the management under the Factories Act, they were purportedly working as the employees of the contractor. Now, in the context of the aforementioned findings recorded (that they are in fact the workmen of the management) and the direction issued by E this Court for their 'regularisation' in the service of management that both the parts of condition (e) have to be interpreted. It is difficult to assume that while conferring the benefit of regularisation on the workmen, subject of course to the said conditions, this Court impliedly took away the rights available to the unabsorbed workmen under the I.D. Act. There is nothing in the judgment of this Court, in the above-mentioned appeals, to suggest that the status of F the workmen who remained unabsorbed for non-fulfillment of conditions (a) to (d) would be changed to that of retrenched employees. Equally there is nothing therein to infer that it directs their retrenchment in accordance with law. It is needless to point out that once it is held that they are the employees of the management, they can be retrenched only in accordance with the G provisions of the I.D. Act.

H Mr. T.R. Andhyarujina, however, contended that having regard to the provisions of Section 25N of the I.D. Act retrenchment of unabsorbed workmen would be next to impossible. We are unable to accede to such a broad proposition. Whether retrenchment of an employee is justified or not has to be determined by the appropriate Government on the facts of each case. In

our view, the apprehension expressed by the learned counsel may not be justified in a case where the workmen are found to be lacking in the requisite eligibility criteria for absorption laid down by the High Court and confirmed by this Court and therefore cannot be continued in the present status. However, this is not germane to the issue with which we are concerned and should not detain us any longer.

From the above discussion, it follows that the obligation to comply with condition (e) is contingent upon the retrenchment of the workmen in accordance with law. It is not disputed that the management is an industrial establishment to which Chapter V-B complies; if that be so, Sections 25N and 25H read with Section 25S will be attracted. Therefore, we are of the view that the following direction in the impugned order of the High Court, "*We direct that those workers who do not fulfill directions (a), (b), (c) & (d) of the conditions for regularisation, be retrenched in accordance with law after following the provisions of Chapter V-B of the Industrial Disputes Act, 1947,*" does not correctly interpret condition (e). In our view, condition (e) postulates that in the event of the management choosing to retrench the workmen who do not fulfil directions (a) to (d) of the conditions for regularisation, they shall be paid retrenchment compensation under Section 25N and their cases for re-employment should be considered under Section 25H of the I.D. Act.

For all these reasons, the impugned order of the High Court is set aside to the extent indicated above. The appeal is allowed accordingly. There shall be no order as to costs.

V.S.S.

Appeal allowed.