

CASE NO.:
Appeal (civil) 3735-3738 of 2007

PETITIONER:
District Red Cross Society

RESPONDENT:
Babita Arora & Ors

DATE OF JUDGMENT: 14/08/2007

BENCH:
G.P. Mathur & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T
(Arising out of Special Leave Petition (C) Nos.17874-17877 of 2003)
G.P. Mathur, J.

1. Leave granted.
2. These appeals, by special leave, have been preferred against the judgment and order dated 24.10.2002 of High Court of Punjab and Haryana, by which four writ petitions filed by the appellant herein were dismissed by a common order. In the writ petitions challenge was raised to the awards dated 7.9.2001 of Industrial Tribunal-cum-Labour Court, Karnal, in Reference Nos.1433 to 1436 of 1999.
3. We will give the facts of Civil Writ Petition No.1236 of 2002 which was directed against the award made in Reference No.1433 of 1999. Babita Arora (respondent herein) filed a claim petition before the Presiding Officer, Industrial Tribunal-cum-Labour Court, Karnal, (hereinafter referred to as 'the Tribunal') on the ground, inter alia, that she was appointed as staff nurse in the appellant District Red Cross Society, Karnal, by the order dated 20.3.1992 and she continuously worked on the said post till her services were terminated on 30.9.1998, due to the closing down of the Red Cross Maternity Hospital, but the management had not followed the procedure laid down in Sections 25F to 25H of the Industrial Disputes Act (hereinafter referred to as 'the Act') which was a clear violation of the statutory provisions. The management had also not followed the principle of 'first come last go' while terminating her services and had thereby contravened Section 25G of the Act. No retrenchment compensation was paid to her at the time of termination of her services. The alleged closing down of the Maternity Hospital was only a paper transaction as the Out Patient Department was still functioning and the patients were being given treatment by the doctors as well as other staff. Tubectomy operations were still being conducted in the hospital. Her case further was that there were several other schemes/projects under the appellant, like, Family Welfare Scheme, Drug De-addiction-cum-Research Centre, etc., where the respondent could be absorbed. It was accordingly prayed that an award may be passed directing the appellant to reinstate her in service with continuity of service and full back wages.
4. The appellant District Red Cross Society, Karnal, filed written statement on the ground, inter alia, that claim petition was not maintainable as the hospitals and social organizations were not covered under the Industrial Disputes Act. The services of the respondent were terminated on account of closing down of the Red Cross Maternity Hospital w.e.f. 30.9.1998 as the hospital was being run on donations and not on government grant. The donations had considerably reduced and due to financial constraints and heavy expenditure, the appellant had no option but to close the maternity hospital. It was further pleaded that on account of closure of the

charitable Maternity Hospital, the services of the entire staff working therein had been terminated and no one was retained in service. The respondent was, however, offered a post in another organization, viz., Drug De-Addiction-cum-Rehabilitation Centre, Karnal, wherein a post of nurse was sanctioned by the Government on 2.11.1998, but the respondent refused to accept the said offer.

5. The parties adduced oral and documentary evidence in support of their case. The appellant employer examined Brahm Dutt, Clerk, incharge of the District Red Cross Society, Karnal, who stated that the management carried on social work and the same was done on charitable basis from the donations received from public. The appellant Society was also running a Drug De-Addiction-cum-Rehabilitation Centre, a Family Planning Centre and a Viklang Kendra, which were being run as separate establishments as they were receiving grants from the Government to the extent of 90% to 100%. A decision was taken in a meeting held on 4.9.1998 to close down the Maternity Hospital on account of extreme financial stringency as it was not receiving any aid from the Government and was being run entirely from donations. In the said meeting Civil Surgeon, Karnal, had suggested that all the facilities of a Maternity Hospital were available in the Civil Hospital which was nearby and the hospital being run by the Red Cross Society was not serving any useful purpose. He also stated that the respondent had been offered service in Drug De-Addiction-cum-Research Centre but she refused the said offer.

6. The Tribunal held that the appellant Society was running a Drug De-Addiction-cum-Rehabilitation Centre, a Family Planning Centre and a Viklang Kendra and thus it cannot be said that the establishment of the appellant had been closed. It was further held that the respondent had completed more than 240 days of service in the year preceding the date of termination of her service and, therefore, she was entitled to reinstatement compensation which had not been given by the management and thus termination of her service was in violation of Section 25F of the Act. It was also held that persons junior to the respondent were working in the aforesaid other centres of the appellant and thus the termination of her service was in clear violation of Section 25G of the Act. On these findings, the Tribunal held that the termination of service of the respondent was illegal and contrary to law and accordingly gave an award directing her reinstatement with continuity of service and full back wages from the date of demand notice i.e. 6.11.1998. Similar awards were given in the three other adjudication cases and orders for reinstatement with continuity of service and full back wages were passed in favour of the concerned employees (respondents herein). The appellant challenged the awards of the Tribunal by filing four writ petitions in the High Court. The High Court held that from the evidence on record it could be safely concluded that the appellant Red Cross Society was running other projects like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra and they had not been closed. The Red Cross Society, Karnal, itself had not ceased to exist and its other units were functioning. It was further held that in a case where other units which are under the same management are functioning and the Red Cross Society was receiving grants from the Government, the termination of the services of the respondents was clearly illegal. On these findings, the writ petitions were dismissed.

7. As mentioned earlier, it was the specific case of the appellant District Red Cross Society that the Maternity Hospital had been closed down w.e.f. 30.9.1998 as it was not receiving any grant from the Government, but was being run on donations and was thus experiencing extreme financial stringency. It was also the case of the appellant that the services of the entire staff of the Maternity Hospital had been terminated on account of closing down of the hospital and the respondent Babita Arora had been offered the post in another organization viz. Drug De-Addiction-cum-Rehabilitation Centre. In fact, there is no dispute from the side of the respondent regarding

closing down of the Maternity Hospital. Paragraph 2 of the claim statement filed by the respondent Babita Arora reads as under :

"2. That the services of the workman have been terminated due to the closing down of Red Cross Maternity Hospital, Karnal w.e.f. 30.9.98 but the management has not followed the procedures laid down in Section 25-F and 25-H of the Industrial Disputes Act which is a clear violation of the Act."

8. The question which arises for consideration is whether the respondent is entitled to protection of Section 25F and 25G of the Act if the establishment in which she was working itself has been closed down though certain other wings or units of the appellant District Red Cross Society, Karnal, have not been closed down and are still functioning. Section 25F of the Industrial Disputes Act lays down the conditions precedent to retrenchment of workmen and it reads as under:

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Section 25FFF deals with compensation to workmen in case of closing down of undertakings. The relevant part of Sub-section (1) of Section 25FFF (omitting the proviso) reads as under :

25FFF. Compensation to workmen in case of closing down of undertakings.- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided

Therefore, the legislature has treated closing down of undertakings which automatically result in termination of services of all workmen working therein differently from a retrenchment simpliciter as defined in Section 25F of the Act.

In Workmen of the Indian Leaf Tobacco Development Co. Ltd., Guntur v. The Management of Indian Leaf Tobacco Development Co. Ltd., Guntur AIR 1970 SC 860, it was held as under :

"No Industrial Tribunal, even in a reference under Section 10(1)(d) can interfere with discretion exercised by a company in the matter of closing down some of its

branches or depots. Even if such closure may not amount to closure of business of the Company, the Tribunal has no power to issue orders directing a Company to reopen a closed depot or branch, if the Company, in fact, closes it down and that closure is genuine and real. The closure may be treated as stoppage of part of the activity or business of the Company. Such stoppage of part of a business is an act of management which is entirely in the discretion of the Company carrying on the business.

....."

In *Management of Hindustan Steel Ltd. v. The Workmen & Ors.* 1973 Labour & Industrial Cases 461, it was held by this Court as under in para 10 of the reports :

"10. The word undertaking as used in S.25FFF seems to us to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer as was suggested on behalf of the respondents. Even closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by this sub-section. The question has indeed to be decided on the facts of each case."

In *workmen of the Straw Board Manufacturing Company Limited v. M/s Straw Board Manufacturing Company Limited* (1974) 1 LLJ 499, this Court laid down the test of closure of a unit by observing that the most important aspect in a case relating to closure is whether one unit has such componental relation that the closing of one must lead to the closing of the other or the one cannot reasonably exist without the other. Functional integrity will assume an added significance in the case of closure.

9. It appears that after the aforesaid decisions of the Supreme Court, the legislature by an amendment made in the year 1982 to the Industrial Disputes Act defined the word "closure" by adding Section 2(cc). Section 2(cc) of the Act reads as under :
2(cc). "closure" means the permanent closing down of a place of employment or part thereof.

It is, therefore, clear that in order to attract Section 25FFF it is not necessary that the entire establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In *J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors.* (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In *Maruti Udyog Ltd. v. Ram Lal & Ors.* (2005) 2 SCC 638, it was held as under in para 21 of the report :

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing therefrom. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive

and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.

11. The cases of other three respondents are exactly identical to that of Babita Arora as they were all working in the Maternity Hospital. Therefore, the awards passed by the Tribunal directing their reinstatement in service and back wages have to be set aside.

12. In the result, the appeals succeed and are hereby allowed. The judgment and order dated 24.10.2002 of the High Court and the awards dated 7.9.2001 of the Tribunal are set aside. The appellant shall pay the compensation to the respondents in accordance with Section 25FFF of the Act within two months from today, failing which it will be open to the respondents to approach the Tribunal for computation of the amount. No costs.