Workmen of Blundell Eomite Paints Ltd. Vs. Blundell Eomite Paints Ltd. and ors.

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Court : Kerala

Decided On : Jun-10-1971

Reported in : (1971)IILLJ265Ker

Judge : V. Balakrishna Eradi, J.

Appellant : Workmen of Blundell Eomite Paints Ltd.

Respondent : Blundell Eomite Paints Ltd. and ors.

Judgement :

V. Balakrishna Eradi, J.

1. Two industrial disputes which had arisen between the management of the Cochin Division of Messrs Blundell Eomite Paints Ltd., Bombay and their workmen represented by the General Secretary, the Cochin Commercial Employees' Association, were referred by the Government of Kerala by G.O.Rt. 928/67/HLD dated 6-3-1967, to the Industrial Tribunal, Calicut and the adjudication conducted pursuant thereto ultimately culminated in an award made by the Tribunal on the 6th January, 1970. The challenge in these writ petitions is directed against the validity and correctness of the Tribunal's award in respect of I.D. No. 39 of 1967 wherein the issue referred to the Tribunal related to the validity of the action taken by the management in retrenching from its service seven workmen on the ground

that they were rendered surplus consequent on a reorganization of the company's business with a view to effect economy in its operation and the conversion of the divisional office in Cochin into a mere depot. The Tribunal held that the retrenchment was effected without bona fide reasons and hence was not legal and proper. However, in view of the fact that out of the seven employees concerned in the reference all excepting one P.A. Hussain had obtained other employment and the union had not tried to prove the various dates on which those employees secured such employment the Tribunal held that Shri P.A. Hussain alone was entitled to be granted relief and directed that he should be reinstated by the management with back wages. The Tribunal rejected the case set up by the union that the anterior service put in by three of the employees in another company by name Messrs Anuradha Private Ltd. was also liable to be taken into account in determining their claim for compensation in respect of the termination of their service by the management. In the result, the Tribunal passed an award granting relief of reinstatement with back wages only to P.A. Hussain and rejecting the claims put forward on behalf of the other six workmen. The original petition No. 2710 of 1970 has been filed by the General Secretary, Cochin Commercial Employees' Association questioning the correctness of the award in so far as it has denied any relief to the six workmen and also to the extent to which it has held that the workmen are not entitled to claim any compensation in respect of the service put in by them under Messrs Anuradha Private Ltd. O.P. No. 3660 of 1970 has been filed by the management seeking to quash the finding of the Tribunal that the retrenchment of the workmen was illegal and not bona fide and the direction given by the Tribunal for reinstatement of the workman by name P. A. Hussain with back wages.

2. Messrs Blundell Eomite Paints Ltd. (hereinafter referred to as the management) opened a divisional office at Ernakulam on the 1st July, 1964. The workmen involved in the dispute were recruited by the management to the establishment of the said branch office shortly after the opening of the said branch. They were retrenched from service with effect from 1-1-1967 on the ground that the divisional office at Ernakulam (Cochin) had been reduced to a depot pursuant to a reorganisation of the company's business for the purposes of economy and that in consequence, their services had been rendered redundant. The case put forward

before the Tribunal by the union was that the retrenchment was effected by the management only with a view to victimise the employees in the Cochin divisional office because of their having joined the union and raised some demands for better service conditions. According to the case of the union the management effected the retrenchment under the pretext of reorganising its business at a time when conciliation proceedings were pending before the District Labour Officer, Always and it was only a device adopted without good faith for defeating the claims of the workmen and victimising them for having raised the demands. It is also contended on behalf of the workmen that the management's plea that the retrenchment became necessary because of the reorganisation of the sale set up and the conversion of the Cochin divisional office into a depot could not stand since these workmen could have been transferred by the management to any other office of the company and thereby retained in its employment. On this basis the union took the plea that the retrenchment was in violation of the provisions of Section 25G of the Industrial Disputes Act, 1947 since persons with lesser length of service were allegedly being retained by the management in other offices and there had also been recruitment of fresh hands in some of those offices. The union also disputed the correctness of the quantum of retrenchment compensation paid by the management to three of the workmen on the ground that the service of those employees under Messrs Anuradha Private Ltd. was also liable to be taken into account, the plea taken by the union being that at the time of the opening of the divisional office in Cochin the management had taken over a business which was till then being carried on by Messrs Anuradha Private Ltd. with all its employees including the said three workmen.

3. The management filed a written statement before the Tribunal denying all the contentions put forward by the union. It submitted that the retrenchment was effected bona fide in consequence of a policy decision taken by the company in November-December, 1966. According to the management the Chairman and Directors of the company who are in the United Kingdom, visited India in November-December, 1966 and at that time an over-all review of the company's working was conducted; pursuant thereto it was decided to adopt various measures of economy in its operation and one such measure which was decided upon was to effect a change in the set up of the company's sales organisation by

converting the divisional offices in Cochin and Madras into depots and by completely closing down the divisional office at Ahmedabad. Accordingly with effect from 1-1-1967 the Madras and Cochin divisional offices were reduced to the status of depots which are comparatively much smaller units. Eight employees of the Cochin office were consequently rendered surplus and they were retrenched from service for bona fide trade' reasons with a view to effect economy in the company's operation. The management pleaded that, such being the circumstances, the retrenchment which was effected by them after fully complying with all the formalities regarding payment of notice pay and compensation, was perfectly valid and legal and that the workmen were not entitled to any of the reliefs claimed by them before the Tribunal.

4. The Tribunal formulated the following three points as arising in the case for determination by it;--

Is the retrenchment effected exclusively for the reasons of commercial necessity Is there any victimisation for trade union activities? Is there any justification on the part of the management for having treated each unit as a separate establishment for effecting retrenchment which has resulted in retrenchment?

5. On behalf of the management M.W. 1, who was the manager of the branch at Ernakulam at the relevant time, gave evidence about the changes effected in the set up of the sales Organisation of the company and the conversion of the divisional offices at Madras and Cochin into depots and the closing down of the divisional office at Ahmedabad. He deposed that retrenchment was effected in all the three offices mentioned above and that in the Cochin office eight persons were rendered surplus necessitating their retrenchment from service. He categorically swore that it was not at all correct to say that the retrenchment was effected because of any disputes or demands raised by the employees in Cochin. According to the witness, the reorganisation had been effected as a measure of economy and besides the conversion of the three divisional offices into depots the company asked some of its senior officers to retire and also reduced the number of cars in Bombay. Excepting for eliciting from the witness that the sales of the company at Cochin had exceeded the target fixed for the said office during the

year 1964-65 and that one junior clerk had been appointed in the Cochin office in or about April, 1969, there has not been any serious attempt on behalf of the workmen to cross-examine this witness in regard to the facts spoken to by him regarding the reorganisation of the sales set up of the company and the retrenchment having been necessitated in consequence thereof. The main witness examined on behalf of the workmen is W.W. 1 who is one of the retrenched employees. It is significant that in his deposition he has affirmed that the Cochin division was in fact converted into a depot as a result of the reorganisation of the company's business referred to in Ext. W2. He has further sworn that after such conversion it is the Bangalore divisional office that looks after the accounting in respect of the sales conducted by the Cochin depot. It is also spoken to by him that the Madras divisional office also became reduced to a depot and that there was retrenchment of staff in the said office also. The only other witness examined on behalf of the workmen, is the Secretary of the Cochin Commercial Employees' Association and he has only stated that he has no knowledge about the reorganisation of the business of the company or the reduction of the status of the Ernakulam office from a divisional office to a depot. He has, however, admitted that he was aware that similar retrenchment had taken place in other offices of the company situated in other places. Thus, the evidence given on behalf of the management concerning the reorganisation of its business and the consequent reduction of status of its office at Cochin stood practically uncontradicted. Strangely enough, however, the Tribunal in paragraph 26 of the award, where this matter is discussed, appears to have taken the view that the management has not proved the factum of such reorganisation. The first reason given by the Tribunal for coming to the said conclusion is that there is no mention about the reorganisation in the annual report and account of the company for the year 1966-67 which was marked as Ext. M-10. In stating so the Tribunal overlooked the fact that the reorganisation was only effected in the beginning of 1967-68 and any mention about it would have been completely out of place in the report of the company's working relating to the year 1966-67. The next part of the reasoning of the Tribunal runs thus:--

But the management has not produced documents showing the details of action taken by the management in pursuance of the decision to reorganise the work.

There is only the oral evidence of M.W. 1. W.W. 1. would say that there was no reorganisation at all.

It is not known what document the Tribunal had in mind in making the above criticism about the conduct of the case on the side of the management. Having regard to the state of the pleadings and the oral evidence it cannot be said that there was even any serious controversy about the factum of the reorganisation of business referred to by the management. No reason has been stated by the Tribunal for not accepting and acting upon the evidence of M.W. 1 who is a responsible officer of the company conversant with the details of the reorganisation. Even if it was felt by the Tribunal that any further document should be produced by the management, the proper course was to direct its production and unless the company had failed to make the evidence available in spite of such a direction it was not proper or fair on the part of the Tribunal to draw any adverse inference against the management on the ground of the non-production of documents. Though it is true that W.W. 1 has asserted in one place in his deposition that there was no reorganisation of the company's business, he has admitted on being further cross-examined that pursuant to the reorganisation referred to in Ext. W2, the Cochin division was reduced to a depot and that similarly the Madras divisional office was also converted into a depot. He has also said that there was retrenchment of the staff in Madras also. W.W.2, as already mentioned, has merely denied any knowledge about the reorganisation which is quite natural because he is an outsider who comes into the picture in his capacity as the Secretary of the Cochin Commercial Employees' Association. It is, therefore, apparent that there is little substance in any of the above three reasons mentioned by the Tribunal for not accepting the testimony of M.W. 1 and upholding the truth of the management's 'case regarding the reorganisation. There is yet one more reason stated by the Tribunal in paragraph 27 of the award as justifying an inference that there was no reorganisation of the company's business. The Tribunal refers to the fact that the management had been informed by the District Labour Officer, Always towards the end of October, 1966, about the approach made to him by the union and that it had sent two letters Exts. W8 and W9 to the District Labour Officer requesting him not to commence conciliation proceedings. According to the Tribunal, if any proposal for the reorganisation of the business was under the consideration of the management they should have given advance information to the Labour Officer and to the union and that the fact that no such information was given justifies the inference that there was really no reorganisation of the business at all. This reasoning does not at all appeal to me as correct or sound.

6. Counsel appearing for the management and the union took me through the oral evidence recorded in the case and also through the relevant documents. In the preceding paragraph 1 have already referred to the fact that the testimony of M.W. 1 regarding the reorganisation of the business of the company is virtually uncontradicted and that even though W.W. 1 made an assertion in the chief examination that there was no reorganisation of the company's business he has admitted in cross-examination that the divisional office at Cochin was reduced to a depot with effect from 1-1-1967 and that there was a similar reduction and retrenchment of personnel in the Madras office also. M.W. 1 has deposed that the decision for reorganising the business of the company was taken when the Directors of the company, who are in England, visited India towards the end of 1966 and conducted an over-all review of the company's working and that as part of the measures of economy the divisional office at Ahmedabad was closed down, some of the top executives were asked to retire and the number of cars in the Head Office was also reduced. This witness who was the manager in charge of the Cochin divisional office at the relevant time and was thus holding a responsible post in the company, was fully competent to depose about these matters and it is difficult to appreciate why the Tribunal felt that his testimony, which stood uncontradicted, could not be acted upon in the absence of 'documents relating to the reorganisation'. It is not known what the documents referred to by the Tribunal were. But, whatever they may be, the Tribunal was in error in thinking that on the evidence of M.W. 1 the case of the management regarding the reorganisation could not be said to have been proved. The circumstance that the management did not inform the union or the Labour Officer in advance about the proposal for reorganisation does not warrant any inference negativing the factum of reorganisation and the contrary view expressed by the Tribunal is incorrect. On the evidence as it stands, it is not reasonably possible to arrive at the conclusion recorded by the Tribunal that the management's case that they had effected a

reorganisation of the company's business was not proved. The said finding is unreasonable and perverse and will stand quashed.

7. 1 shall now proceed to consider the reasons given by the Tribunal for holding that the retrenchment was effected by the company without bona fides. The Tribunal has begun its discussion of this aspect by stating that the question to be considered by it was whether the retrenchment was a dire necessity and was inevitable. It has then referred to the fact that some sales representatives had been transferred by the company from the Cochin office to other places and States, that prior to the said transfer those personnel had tendered their resignation from the union. The Tribunal has observed that though the management has set up a case that the terms and conditions of the sales representatives were different from those of the employees who are concerned in the dispute, the documents or orders showing their relative service conditions had not been produced and that 'the special reasons or obligation by which this management was obliged to transfer the sales representatives from Cochin office avoiding retrenchment are not made clear in this Court.' After making the above observation the Tribunal has proceeded to reject the management's case rather summarily, its only reasoning being contained in the following sentences extracted from para 29 of the award:

So their case that they retrenched persons without transferring are not based on sound reasons. The retrenchment effected by the management has to be viewed in this background. Looking at the circumstances of this retrenchment it can be stated that the retrenchment was not the only way out. If they so desired they could have transferred them to other places.

8. The plea raised by the management that they took one unit as an establishment for the purpose of retrenchment was overruled by the Tribunal by stating that the management had discriminated by affording special treatment to the sales representatives who were transferred and that no sound basis for such classification had been established by production of documents. It is on the basis of the aforesaid discussion relating to the transfer of the sales representatives that the Tribunal has thought it fit to record the finding that the retrenchment had been

effected by the management without bona fides.

9. I am constrained to observe that the above finding has been entered by the Tribunal in a light-hearted and casual manner without even making a serious attempt to discuss the material evidence relating to the transfer of the sales representatives. The entire reasoning of the Tribunal in paragraphs 28 to 31 of the award is based on the assumption that the sales representatives were transferred from Cochin with a view to save them from retrenchment in consideration of their having tendered their resignation from the union, There is absolutely nothing in the evidence to warrant such an inference and the material that is available on record goes to negative any such theory. It is only on 1-10-1966 that Ext. W 4, a memorandum of demands, was served on the management by the union and till then there was no kind of dispute or strained relations between the management and the workers. The resignation of the three salesmen of their membership of the union had been effected as early as on 28-11-1965 as seen from Ext. W12 which is nearly 11 months before any demand had been raised by the workmen. Not even any faint suggestion is contained in the depositions of W.W. 1 and W.W. 2 that there was any connection between the transfer of these salesmen and their resignation from the union or that the transfers were effected for the purpose of giving them any preferential treatment. Nor is there any evidence even to show when those transfers took place. M.W. 1 has stated in his evidence that the terms and conditions of service and the nature of the work performed by the salesmen were wholly different from those of the clerical staff employed in the divisional office and that while the policy of the company was to recruit clerical staff locally in respect of each branch and not to effect any transfer of such staff, sales representatives stood on a different footing and were often transferred from one division to another. His evidence in regard to this matter remains uncontradicted. One fact referred to by the Tribunal is that one Mr. Moorthy who was a person appointed along with the employees concerned in the dispute had been transferred to Madras and that this constitutes a discrimination. It has been clearly brought out in the evidence that the said Moorthy was a sectional head and not a mere clerk and that despite his transfer to Madras he was also retrenched from service consequent on the reduction of the Madras divisional office into a depot. If only the Tribunal had examined the evidence with a little more care these crucial

facts which go to negative the theory of discrimination would not have escaped its notice. The Tribunal's finding that an unfair discrimination had been practised by the management cannot be sustained since it is not supported by any legal evidence.

10. The only remaining ground stated by the Tribunal is that the retrenchment was not a dire necessity or inevitable since the management could have transferred the employees to other places. This reasoning also is totally unsound. M.W. 1 has given evidence that the policy of the company was to recruit the clerical staff for each office locally and that they were never transferred, each of such establishments being treated as a distinct unit. The mere fact the company had reserved to itself a right to transfer such employees will not operate to confer a corresponding right on the employees to insist that they should be transferred to any of the other branches in the event of there being any reduction of staff and consequent retrenchment in the particular branch. As observed by the Supreme Court in Messrs Parry and Co. Ltd. v. P.C. Pal 1970--II L.L.J. 429 at p.,439 'the liability of an employee to be transferred and the rights of the company to transfer him did not mean that there was a corresponding obligation on the company to transfer the employee to another branch'. The Tribunal committed an obvious error in thinking that there was an obligation on the part of the company to transfer these employees to any of its other offices on their being found to be surplus hands in its Cochin office.

11. Further, no evidence has been let in by the union to show that if transferred, these workmen could have been absorbed in any of the other offices of the company by showing that there were vacancies or that the work at those places was the same as was done by them at Cochin. There is also no evidence whether wage scales, dearness allowance and other conditions of service were the same in the other centres. It is without making any inquiry into these relevant aspects that the Tribunal has thought it fit to hold that the retrenchment was not the only way out because the management, if they so desired, could have transferred the workmen to other places. The said finding is based not on any evidence but on mere guess-work and surmise and cannot be allowed to stand.

12. It is well-established that it is within the managerial discretion of an employer to organise and arrange his business in the manner he considers best and that so long as that is done bona fide, it is not competent to the Tribunal to question its propriety. If a scheme for such a reorganisation results in a surplusage of employees no employer is expected to carry the burden of such economic dead-weight and retrenchment of such hands, however unfortunate it may be, has to be accepted as inevitable. It is not the function of the Tribunal to examine the propriety of the scheme of reorganisation adopted by the employer because, it is essentially for the employer to decide whether a policy of running its business will be profitable, economic or convenient. It is no doubt competent for the Tribunal to investigate into the question whether the policy of reorganisation of business relied on by the management as the ground for retrenchment was bona fide and true or whether it was actuated by any motive of victimisation or unfair labour practice. In the present case, I have already held that the factum of the reorganisation has been fully established by the management. There is nothing whatever in the evidence to warrant any inference that either in taking the said policy decision or in its implementation the management of the company was not acting bona fide or that it was actuated by any motive of victimisation or unfair labour practice. As already observed the reasoning of the Tribunal that because the company failed to transfer these employees to some other centres the retrenchment should be regarded as not justified, is based on a misconception of law. While that is understandable, it is difficult to appreciate the casualness of approach and the light-hearted manner in which the Tribunal has proceeded to record the finding that the retrenchment was effected without bona fide reasons. The only reason given by the Tribunal for coming to the said conclusion is that some of the sales representatives who had tendered their resignation from their membership of the union had been transferred by the management for avoiding a retrenchment. As already observed by me earlier in this judgment, there is absolutely no evidence linking the transfer of those sales representatives with their resignation from the union and it is not even brought out in evidence when those transfers took place. The resignations were long before any demands had been made by the union. In the evidence adduced on the side of the workmen there is not even any suggestion that the transfers of these salesmen were effected after the

reorganisation was decided on and that it was with a view to save them from retrenchment; nor was any such specific suggestion put to M.W. 1 during his cross-examination. On the other hand, the clear testimony of M.W. 1 is that the sales representatives belonged to a distinct category and were governed by different terms and conditions of service and that unlike clerical staff they used to be transferred from one division to another.

13. As pointed out by the Supreme Court in Bareilly Electricity Supply Co. Ltd. v. Sirajuddin 1960--I L.L.J. 556, a finding of mala fides can be made by the Industrial Tribunals only after sufficient reliable evidence is led in support of it and should not be made light-heartedly or in a casual manner. In the present case the Tribunal's finding that the retrenchment was effected without bona fide reasons is not supported by any evidence and is perverse.

14. The conclusion that emerges from the foregoing discussion is that there was no justification whatever for the Tribunal to hold that the retrenchment effected by the company was not valid or proper, and the Tribunal acted illegally in granting the relief of reinstatement with back wages to P.A. Hussain. The Tribunal's award will stand set aside to that extent.

15. In the light of my above conclusion the contentions raised by the union in O.P. No. 2710 of 1970 on behalf of the workmen, who were denied relief by the Tribunal, do not arise for consideration.

16. In the result, O.P. No. 3660 of 1970 is allowed and the direction given by the Tribunal in Ext. P1 that the management should reinstate Shri. P.A. Hussain into its service with back wages is quashed. O.P. No. 2710 of 1970 is dismissed. The parties will bear their respective costs in both the writ petitions.