

Workmen of the Punjab State Electricity Board v. Haryana State
Electricity Board & others (M. M. Punchhi, J.)

come to our notice that the trial Courts treat the complaints specially against the public servants in a most casual manner. It is desirable that in such complaints where the aggrieved persons are not even heard by the police, the Courts had to take very serious view and should proceed with the complaint promptly and without causing any delay in determining the matter.

(20) No other point was urged.

(21) For the foregoing reasons, I am of the view that the order of the learned trial Court in dismissing the complaint against the Deputy Commissioner and the Superintendent of Police for want of sanction is not at all justified and is consequently set aside. The learned trial Court is directed to proceed against them in accordance with law.

S. C. K.

Before M. M. Punchhi, J.

WORKMEN OF THE PUNJAB STATE ELECTRICITY BOARD,—
Petitioners.

versus

HARYANA STATE ELECTRICITY BOARD and others,—
Respondents.

Civil Writ Petition No. 589 of 1969.

July 13, 1981.

Industrial Disputes Act (XIV of 1947)—Section 25-FF—Transfer of an Undertaking—Workmen paid compensation on transfer by the transferor and some of them employed afresh by the transferee—Rights and liabilities of such workmen—Transferee of the undertaking—Whether a successor-in-interest of the transferor qua such rights and liabilities.

Held, that on transfer of an Undertaking without the undertaken obligation of the transferee to retain the workmen, the employment of the workmen with the transferor comes to an end giving rise to their claim for retrenchment compensation and if that is

so, the transferee, despite being the successor-in-interest as commonly understood, would not be a successor to the liability to pay the same wages to the workmen in case of re-employment. The continuity of service and the link having been broken, the transferee cannot by any means be termed such a successor-in-interest under the liability to re-employ the workmen and in that event to pay them the same wages as were being paid by the transferor. Thus, the transfer of an undertaking attracting the provisions of section 25-FF of the Industrial Disputes Act, 1947 does not make the transferee the successor-in-interest, of the rights and liabilities of the workmen, who have been paid compensation by the transferor. (Para 3).

Petition under Articles 226 and 227 of the Constitution of India praying that the following reliefs be granted to the petitioners :—

- (a) *A writ in the nature certiorari be issued calling for the records of respondent No. 3 relating to the Award, Annexure 'X' and after a perusal of the same, the impugned Award be quashed.*
- (b) *Any other suitable writ, directing or order be issued that may be deemed proper by this Hon'ble Court in the circumstances of this case ;*
- (c) *Costs of this petition be allowed to the petitioners ;*

R. S. Mittal, Advocate, for the Petitioner.

D. N. Awasthy, Advocate, for the Respondent.

JUDGMENT

M. M. Punchhi J.

(1) This petition under Articles 226 and 227 of the Constitution of India raises the question whether the transfer of an undertaking attracting the provisions of section 25-FF of the Industrial Disputes Act, 1947, makes the transferee the successor-in-interest of the rights and the liabilities of the retrenched workmen, who have been paid retrenchment compensation by the transferor.

(2) Messrs. Jagadhri Electric Supply and Industrial Company Private Limited had a licence for the supply of electricity at Jagadhari. After the expiry of the period of licence, the undertaking

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was taken over by the Punjab State Electricity Board on the night between 12th|13th November, 1965. The said company paid retrenchment compensation to its workmen under section 25-FF of the Industrial Disputes Act, 1947. Undisputably, the proviso to section 25-FF did not come into play inasmuch as the service of the workmen came to be interrupted by such transfer. The terms and conditions of the old service came to an end. The new undertaking did not bind itself under the terms of such transfer, or otherwise keeping the services of the workmen continuous and uninterrupted. However, steps were taken to re-employ some of the workmen and they were interviewed. Ultimately each of them was conveyed an appointment letter specifying therein the wages offered and the conditions of service. The workmen did not raise any real protest against the same and by conduct agreed to assume work. Later a trade union of the workmen served a demand notice on the Board *inter alia* raising a demand that the total emoluments of the workmen which they were getting while at service of the company should not have been in any case reduced and some of the workmen who had been put on the lower jobs should have been provided with similar or same jobs which they were performing while in service of the company. An individual demand with regard to the one specified workmen was also raised. The demands ultimately having not been complied with gave occasion to the State Government to refer an industrial dispute for adjudication. The Presiding Officer of the Industrial Tribunal, Haryana, Chandigarh, who became seisin of it,—*vide* his impugned award dismissed the claim of the workmen as untenable. This has given rise to the present writ petition.

The subject of dispute was contained in item No. 1 which was to the following effect :—

“Whether the emoluments of the workmen in the list enclosed as annexure ‘A’ have been adversely affected with the taking over of the Jagadhri Electric Supply and Industrial Company, Jagadhri by the Punjab State Electricity Board, Patiala ? If so, to what relief the workmen are entitled ?”

The contention of the workmen before the Tribunal as is here now, was that the Board must be treated as a successor-in-interest of the

company and must as such be compelled to pay the same emoluments which the aforesaid company was paying to its workmen. And in the calculation thereof the workmen have claimed the house rent which the company was paying the various other amenities which the company was providing. All the same the workmen did not deny that the basic wages which they were getting have been kept intact and that they have merely been divided into two parts (1) pay and (2) dearness pay. It is also not disputed that the workmen were getting all other amenities which the other workmen of the Board were getting. Now in the circumstances would the Board be such a successor-in-interest to the original company must engage our attention.

(3) In *Indian Hume Pipe Co. Ltd., v The Workmen*, (1), the Supreme Court spelled out the object of the Parliament in enacting section 25-FF of the Industrial Disputes Act to be:—

“To give partial protection to workmen who are thrown out of employment for no fault of their own, to tide over the period of unemployment.”

It goes without saying that on transfer of an undertaking without the undertaken obligation of the transferee to retain the workmen, the employment of the workmen with the transferor comes to an end giving rise to their claim for retrenchment compensation. And if that is so, the transferee, despite being the successor-in-interest, as commonly understood, would not be a successor to the liability to pay the same wages to the workmen in case of re-employment. The continuity of service and the link having been broken, the transferee cannot by any means be termed such a successor-in-interest under the liability to re-employ the workmen and in that event to pay them the same wages as were being paid by the transferor.

(4) The Tribunal rejected the plea raised by the workmen on that score as ill-conceived as the transfer had come into being

(1) A.I.R. 1960 S.C 251.

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from the company to the Board by operation of law. In the circumstances, the Tribunal held that it was difficult to take the view that the Board was in any way successor-in-interest to the original company. So far the Tribunal was right. No error can be found to such view of the Tribunal. It, however, went further on the assumption that even if the Board was the successor-in-interest, there was nothing in law to compel the Board to pay the same emoluments to the workmen as that of the company, since the workmen had received retrenchment compensation under section 25-FF on the basis that their services had come to an end and that they had been duly retrenched. Reliance was placed by the Tribunal on *Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen and others*, (2).

(5) The learned counsel for the petitioner relies on the finding in assumption of the Tribunal and the same precedent to contend that the question whether the purchaser would be a successor-in-interest of the vendor of an industrial concern will have to be decided on a consideration of several relevant facts. He contends that it is possible to hold the purchaser to be a successor-in-interest of the vendor and the instant was a case in which the Board should be taken to be the successor-in-interest burdened with all the rights and the liabilities of the vendor. The contention of the learned counsel for the petitioner is ill-founded. Their Lordships of the Supreme Court have held in the said case that the decision on the question must ultimately depend upon the evaluation of all relevant factors and it cannot be reached by treating any one of them as of overriding or conclusive significance. The mere fact that the workmen were interviewed a few days before the 12th of November, 1965 with a view to find out whether any of them was suitable for appointment in the Board in the event of taking over of the industrial concern is of no significance. The fact remains that fresh appointment letters were issued to the workmen on the strength of which they came in employment on specific terms and conditions with regard to wages and others under their new employer.

(6) It would be advantageous to extract a portion from the aforesaid Supreme Court judgment in *Anakapalle Co-operative*

Agricultural and Industrial Society Ltd.'s case (supra) as under:—

“As soon as the transfer is effected under section 25-FF, all employees are entitled to claim compensation, unless, of course, the case of transfer falls under the proviso; and if Mr. Chari is right, these workmen who have been paid compensation are immediately entitled to claim re-employment from the transferee. This double benefit in the form of payment of compensation and immediate re-employment cannot be said to be based on any considerations of fair play or justice. Fair play and justice obviously mean fair play and social justice to both the parties. It would, we think not be fair that the vendor should pay compensation to his employees on the ground that the transfer brings about the termination of their services, and the vendee should be asked to take them back on the ground that the principles of social justice require him to do so.”

and then again:

“Therefore, if the transferor is by statute required to pay retrenchment compensation to his workmen, it would be anomalous to suggest that the workmen who received compensation are entitled to claim immediate re-employment in the concern at the hands of the transferee. The contention that in cases of this kind the workmen must get retrenchment compensation and re-employment almost simultaneously is inconsistent with the very basis of the concept of retrenchment compensation”

If the workmen are not entitled to claim immediate re-employment in the concern at the hands of the transferee, it is inconceivable to think that they are entitled, if re-employed to the same wages as they were getting from the transferor. The law in this regard is clear and well understood.

(7) For the foregoing reasons, this petition fails and is hereby dismissed with no order as to costs.

N. K. S.