CIVIL WRIT

Before Bishan Narain, J.

THE MAHARAJ WEAVING MILLS, LAWRENCE ROAD, AMRITSAR,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 806 of 1957.

1957

Dec., 30th

Industrial Disputes Act (XIV of 1947)—Sections 2(00) and 25FFF—Scope and applicability of—Discharge of workmen on closure of business—Whether retrenchment—Workmen discharged, whether entitled to get compensation—Dispute as to compensation—Whether an individual dispute—Machinery provided under the Act, whether available to settle such dispute—Interpretation of Statutes—Court, whether entitled to take into consideration the circumstances in which the enactment came to be passed.

Held, that after the 27th November, 1956, (the date from which the provisions of the Industrial Disputes (Amendment) Act, XVIII of 1957, were enforced) any workman discharged on closure of an undertaking must be considered to have been retrenched as defined in section 2(00) of the Industrial Disputes Act, subject to certain conditions laid down in section 25FFF and that he is entitled to get compensation. That being so, any dispute relating to such compensation is a dispute within the Act and the machinery provided under the Act is available to settle a dispute relating to compensation payable on discharge of workmen on closure of the industry. The mere fact that the reference of the dispute to the Industrial Court was made after the closure of the mill does not make it invalid.

Held, that it is always open to courts of law while construing provisions of an enactment to take into consideration the circumstances in which that enactment came to be passed.

Pipraich Sugar Mills, Limited v. *Pipraich Sugar Mills Mazdoor Union* (1), and *Hariprasad* v. *A. D. Divelkar* (2), distinguished.

(1) A.I.R. 1957 S.C. 95.
(2) A.I.R. 1957 S.C. 121.

Petition under Article 226 of the Constitution of India, praying that a Writ in the nature of Mandamus or Prohibition be issued quashing the reference, dated the 23rd of July, 1957.

BHAGIRATH DAS, for Petitioner.

L. D. KAUSHAL, Deputy Advocate-General and ANAND SARUP, for Respondents.

JUDGMENT

BISHAN NARAIN, J.—The Governor of Punjab, being of opinion that an industrial dispute exists between the Maharaj Weaving Mills of Amritsar (hereinafter called the Mill) and its workmen, referred by order, dated the 23rd July, 1957, the following dispute to the Labour Court under section 10(1)(d) of the Industrial Disputes Act, 1947, (hereinafter called the Act) for adjudication— Bishan Narain, J.

> "Whether the workmen of the Maharaj Weaving Mills, (list to be supplied by the Union) who were retrenched by the management on the closure of the Mills, are entitled to retrenchment compensation? If so, what should be the quantum of such compensation and the terms and conditions of its payment to the workmen concerned?"

The Mill has filed this petition under Article 226 of the Constitution challenging the validity of this order.

The facts relevant for the decision of this petition are not in dispute. On the 10th December, 1956, the management of the Mill gave a notice to its workmen individually that it decided to close the Mill from the 10th January, 1957, in view of heavy financial losses. In reply some workmen sent a counter-notice on the 15th December, 1956, to the management calling upon it *inter alia* to

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recall the notice of closure, as the proposed closure was *mala fide* and had been taken to harass the workmen, and they also made certain other demands on the Mill. The Mill informed one Ram Lal by letter, dated the 30th January, 1957, that the Mill had been closed on the 10th January, 1957, and the workmen had been paid their dues in full and final settlement till the 10th, and a copy of this letter was sent to the Labour Inspector. The Punjab Government then made the reference reproduced above.

It is contended on behalf of the Mill that the Act applies only to that dispute which arises out of an existing undertaking and that when there is a *bona fide* closure of an industry, then any dispute arising with reference thereto falls outside the purview of the Act, and as the present dispute had arisen after the closure of the business, the action taken under section 10(1)(c) is invalid. In support of this contention the learned counsel has relied on the Supreme Court judgment in *Pipraich Sugar Mills Limited* v. *Pipraich Sugar Mills Mazdoor Union* (1).

Now, in this Supreme Court case the industry concerned closed down in 1951. At that time the Act did not contain any definition of "retrenchment". Their Lordships held that this expression in ordinary sense means discharge of the workmen of the surplus and not their discharge on closure of business. Their Lordships observed—

> "The view * * * that the industrial dispute to which the provisions of the Act apply is only one which arises out of an existing industry is clearly correct. Therefore, where the business has been closed and it is either admitted or

(1) A.I.R. 1957 S.C. 95.

found that the closure is real and *bona fide*, any dispute arising with reference thereto would, as held in *K. M. Padmanabha Ayyar* v. *State of Madras* (1) fall outside the purview of the Industrial Disputes Act. And that will *a fortiori* be so, if a dispute arises—if one such can be conceived—after the closure of the business between the *quondam* employer and employees."

Their Lordships in this decision did not deal with the effect of section 2(oo) defining 'retrenchment' and section 25F regulating compensation payable on retrenchment, as these provisions had been introduced in the Act by the Industrial Disputes (Amendment) Act, 1953 (No. 43 of 1953). A similar matter again arose before the Supreme Court in *Hariprasad* v. *A. D. Divelkar* (2), in which case the industries concerned closed their business after the 1953 Amending Act had come into force. Their Lordships construing section 2(oo) and section 25F laid down—

"Retrenchment as defined in section 2(oo) and as used in section 25F has no wider meaning than the ordinary accepted connotation of the word. It means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and *bona fide* closure of business * * *."

(1) (1954)1 Lab. L.J. 469 (Mad.).
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Thereafter the Legislature stepped in and an Ordinance, The Industrial Disputes (Amendment) Ordinance, 1957 (No. 4 of 1957), was promulgated on the 27th April, 1957, by which section 25FF was completely recast and a new section 25FFF was inserted in the main Act. This Ordinance became effective from the 1st December, 1956, but it was repealed by the Industrial Disputes (Amendment) Act, 1957 (No. 18 of 1957) and the aforesaid provisions of the Ordinance were re-enacted but they were made enforceable retrospectively with effect from the 28th November, 1956. In the present case, we are concerned with section 25FFF. It is to be noted that this section has been made applicable from the 28th November, 1956, while the Supreme Court gave its judgment in *Hariprasad's case* (1) on the 27th November, 1956. In that case the Supreme Court had rejected the contention that the words "for any reason whatsoever" occurring in section 2(oo) would bring a workman's discharge on closure of the industry within "retrenchment" as defined in the Act, and in the course of that judgment it was observed—

> "What is being defined is retrenchment, and that is the context of the definition. It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended."

Section 25FFF is obviously designed to bring such a workman within the term "retrenchment" provided other conditions laid down in this section

(1) A.I.R. 1957 S.C. 121.

are satisfied. It is always open to Courts of law while construing provisions of an enactment to take into consideration the circumstances in which that enactment came to be passed. In my opinion, the legislature has used words of sufficient amplitude to accomplish this object. It must, therefore, be held that after the 27th November, 1956, any workman discharged on closure of an undertaking must be considered to have been retrenched as defined in section 2(oo) of the Act subject to certain conditions laid down in section 25FFF and that he is entitled to get compensation. That being so, any dispute relating to such compensation is a dispute within the Act. This is not seriously contested.

It is, however, argued that this dispute is not such an industrial dispute that can be referred for adjudication under section 10(1)(c) of the Act, and reliance is placed on the observations of the Supreme Court in *Pipraich Sugar Mills' case* (1), that the Act only relates to matters arising out of a living and existing business and not out of a dead business. I am unable to accept this argument. It is true that the 1957 amendment does not specifically provide that such a dispute can be referred to an industrial tribunal under section 10(1)(c) of the Act, but to my mind it is implicit. In this very Supreme Court decision, it was observed—

> "The power of the State to make a reference under that section (Section 3) must be determined with reference not to the date on which it is made but to the date on which the right which is the subject-matter of the dispute arises.

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and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business."

The right in the present case accrued on the closure of business and instantaneously with it. The artificial definition of the word "retrenchment" has the effect of artificially prolonging the life of the undertaking or has the effect of making the machinery provided under the Act available for working out this right. It seems to me clear from the way that the Legislature intervened immediately after the decision of the Supreme Court in *Hariprasad's case* (1), that it considered that the decision had revealed a defect in law which must be immediately removed and such a dispute should be decided under the Industrial Disputes Act. The language used in section 25FFF is of sufficient amplitude to lead this Court to come to the conclusion that this object has been achieved. I am of the opinion that the machinery provided under the Act is available to settle a dispute relating to compensation payable on discharge of workmen on closure of the industry. It has been fairly and rightly conceded by the learned counsel for the Mill that the mere fact that the reference was made after the closure of the Mill does not make it invalid (*vide* Pipraich Sugar Mills' Case) (2) if it is held that the dispute could be decided under the Act.

In this view of the matter, it must be held that the impugned reference is in accordance with law. This petition, therefore, fails and is accordingly dismissed with costs.

B.R.T.

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(1) A.I.R. 1957 S.C. 121.
(2) A.I.R. 1957 S.C. 95.