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November 27.

HARIPRASAD SHIVSHANKAR SHUKLA

v.

A. D. DIVIKAR

(With Connected Appeal)

(S. R. DAS C. J., BHAGWATI, VENKATARAMA AYYAR, S. K. DAS and GOVINDA MENON JJ.)

Industrial Dispute—'Retrenchment', Meaning of—If includes termination of service on bona fide *closure of industry or change of ownership or management—Construction of statute—Industrial Disputes Act (XIV of 1947), as amended by Act XLIII of 1953, ss. 2(00), 25F.*

The word 'retrenchment' as defined in s. 2(00) and the word 'retrenched' in s. 25F of the Industrial Disputes Act, 1947, as amended by Act XLIII of 1953, have no wider meaning than the ordinary accepted connotation of those words and mean 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 do not include termination of services of all workmen on a *bona fide* closure of industry or on change of ownership or management thereof.

Pipraich Sugar Mills Ltd. v. *Pipraich Sugar Mills Mazdoor Union* [1956] S.C.R. 872, followed.

Burn & Co., Calcutta v. *Their Employees* [1956] S.C.R. 781, referred to.

The provisions of the Act have in view an existing and continuing industry and cls. (a), (b) and (c) of the definition only exclude certain categories of termination of service from within its ambit but do not indicate what are to be included therein.

The word 'retrenchment' has acquired no special meaning so as to include a discharge of workmen on a *bona fide* closure of an industry, as a result of certain Labour Appellate Tribunals awarding compensation to workmen on such closure as an equitable relief for a variety of reasons. The intention of the legislature in enacting s. 25F of the Act appears to have been to simplify and standardise the payment of compensation for retrenchment, as ordinarily understood, on the basis of the length of service of the retrenched workman.

The Hyderabad Vegetable Oil Products Ltd. v. Their Workers [1950] 2 L.L.J. 1281, *Employees of Messrs. India Reconstruction Corporation* [1953] L.A.C. 563 and *Kandan Textiles Ltd.* v. *Their Workers* [1954] 2 L.L.J. 249, considered.

Section 25FF, which was inserted into the Act by the amending Act of 1956, is not retrospective and does not apply to the instant

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cases, and the object the legislature had in view in enacting the same was to partially nullify the effect of certain judicial decisions relating to the effect of a change of ownership or management and it was not intended to be a parliamentary exposition of the pre-existing law.

The language of item 10 of the third and fourth schedules, engrafted into the Act by s. 29 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, indicates that the legislature envisaged a distinction between retrenchment and closure and the former does not include the latter.

Although on such construction, s. 25F applies only to an existing industry and s. 25FF becomes largely redundant, no question of any hardship arises as the judicial decisions on the basis of which s. 25FF was enacted were themselves incorrect and must be overruled.

In construing a parliamentary statute the time when and the circumstances in which it was enacted may be taken into consideration and the general principle of parliamentary exposition or subsequent legislation as an aid to construction of prior legislation, can have no application where the subsequent statute itself was based on incorrect assumptions and judicial decisions based on such assumptions.

Great Northern Railway v. *United States of America,* 315 U.S. 262 and *Ormond Investment Co. Limited* v. *Betts* [1928] A.C. 143, referred to.

If the other conditions of the definition clause are fulfilled, the transfer of ownership or management of an industry and its closure stand on the same footing so far as the definition clause is concerned, notwithstanding that there is a distinction in fact between the two; there is, however, no retrenchment within the meaning of the definition clause unless there is a discharge of surplus labour or staff by the employer in a continuing industry, for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action.

Consequently, in the instant cases, where in one the services of all the workmen were terminated by the employer on a real and *bona fide* closure of the industry and in the other on a change of ownership, such termination did not amount to retrenchment within the meaning of s. 2(00) or s. 25F of the Act and the appellants were not bound to pay any compensation under cl. (b) of s. 25F of the Act.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 103 & 105 of 1956.

Appeal from the judgment and order dated January 24, 1955, of the Bombay High Court in Special Civil Application No. 2546 of 1954.

N. A. Palkiwala and *J. B. Dadachanji, S. N. Andley* and *Rameshwar Nath,* for appellants in Civil Appeal No. 103 of 1956.

M. C. Setalvad, Attorney General for India, C K. Daphtary, Solicitor-General for India, Porus A. Mehta and *R. H. Dhebar,* for respondents.

S. M. Bose, Advocate-General of West Bengal, N. A. Palkiwala, J. B. Dadachanji, S. N. Andley and *Rameshwar Nath,* for the appellant in Civil Appeal No. 105 of 1956

Rajni Patel, M. V. Jayakar and *I. N. Shroff,* for respondent No. 1.

Porus A. Mehta and *R. H. Dhebar,* for respondents Nos. 4 & 5.

1956. November 27. The Judgment of the Court was delivered by

S. K. Das J.—These two appeals, brought on certificates granted by the High Court of Bombay, raise common questions of law and for that reason, have been heard together. This judgment will govern them both.

CIVIL APPEAL No. 105 OF 1956.

In Civil Appeal No. 105 of 1956 the main appellant is the Barsi Light Railway Company Limited, Kurduwadi, within the State of Bombay (hereinafter called the Railway Company). The principal respondent is the President of the Barsi Light Railwaymen's Union, respondent No. 1 to the appeal. The General Manager, Central Railway, Bombay, and the Secretary, Railway Board, New Delhi, are respondents Nos. 4 and 5. The facts, so far as they are relevant for our purpose, are these. Under an agreement dated August 1, 1895, between the Secretary of State for India in Council and the Railway Company, the latter constructed, maintained and worked a light railway between Barsi Town and Barsi Road Station on the railway system, known then as the Great Indian Peninsular Railway. It is not necessary to state here the various clauses of the aforesaid indenture of agreement except to mention

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that it contained a clause under which the Secretary of State could purchase and take over the undertaking after giving the Railway Company not less than twelve calendar months' notice in writing of the intention so to do. On December 19, 1952, a notice was given to the Railway Company, for and on behalf of the President of India, by the Director of the Railway Board to the effect that the undertaking of the Railway Company would be purchased and taken over as from January 1, 1954. The notice stated *inter alia* :

"The President of India hereby gives this notice to the Company of the determination of the original contract of the 1st day of August, 1895, and the contract of the 26th day of August, 1902, between the Secretary of State in Council and the Barsi Light Railway Company Ltd., and of all the contracts supplemental thereto, at the expiration of 12 calendar months next after the current month and the contracts shall terminate accordingly on the expiration of 12 calendar months next after the current month and the President of India will on the 1st day of January, 1954, purchase and take over the entire railway system of the Company including all the extension and all the railways together with all its rolling stock, machinery, equipments buildings and property etc., and together with all other things, stores and fixtures etc., as specified and in the manner provided in clause 43 of the Indenture of the 1st August, 1895, and in clause 63 of the Indenture of the 26th August, 1902."

On November 11, 1953, the Railway Company served a notice on its workmen intimating that as a result of the Government of India's decision to terminate the contract of the Railway Company and take over the railway from January 1, 1954, the services of all the workmen of the Railway Company would be terminated with effect from the afternoon of December 31, 1953. The notice further stated that the Government of India intended to employ such of the staff of the Company as would be willing to serve on the railway on terms and conditions which were to be notified later. On December 15, 1953, the Railway Board intimated the terms and conditions

on which the staff of the Railway Company would be taken over and employed by Government. The letter by which the terms and conditions were communicated enclosed three forms—one for clerical and like categories, a second for categories of staff needing training or refresher course, and a third for workshop staff and other tradesmen requiring trade-testing. In substance, the new terms and conditions as embodied in the letter and the three forms stated that the service of the staff employed by Government would be treated as continuous for certain specific purposes only, such as, contribution to provident fund, leave, passes and privilege ticket orders, educational and medical facilities etc. It was made clear, however, that the Government Railway rules applicable to other staff appointed on the same day would be applicable to the staff of the Railway Company, and previous service under the Railway Company would not count for the purpose of seniority. It appears from the statement of respondents 4 and 5 that when the undertaking was actually taken over on January 1, 1954, about 77 per cent. of the staff of the Railway Company were re-employed on the same scales of pay, about 23 per cent. were re-employed on somewhat lower scales of pay though the pay which they actually drew at the time of re-employment was not affected ; only about 24 of the former employees of the Railway Company declined service under the Government.

Soon after, respondent No. 1 filed some sixty-one applications on behalf of the erstwhile workmen of the Railway Company under s. 15 of the Payment of Wages Act, 1936, for payment of retrenchment compensation to the said workmen under cl. (b) of s. 25F of the Industrial Disputes Act, 1947 (hereinafter called the Act). The applications were made to respondent No. 3, Civil Judge (Junior Division) Madha, who was the relevant authority under the Payment of Wages Act, 1936.

These applications were contested by the present appellants and several issues were framed. Three of the issues were—(1) whether the authority under the

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Payment of Wages Act, 1936, had jurisdiction to deal with and adjudicate on the claim of retrenchment compensation; (2) whether the erstwhile workmen were entitled to claim compensation under clause (b) of s. 25F of the Act; and (3) whether they had been 'retrenched' by their former employer, the present appellants, on December 31, 1953, within the meaning of the expression 'retrenchment' in the Act. The Civil Judge of Madha found against the workmen on issue No. 1 but in their favour on the other two issues. By consent of parties, the aforesaid findings given on one of the applications (Miscellaneous Application No. 27 of 1954) governed the other applications also, and the applications were dismissed as a result of the finding on the question of jurisdiction.

Respondent No. 1 then moved the High Court of Bombay in Civil Application No. 2546 of 1954 and prayed for writs or appropriate directions under the provisions of Arts. 226 and 227 of the Constitution, for quashing the order of dismissal passed by respondent No. 3, the Civil Judge of Madha, and directing the latter to dispose of the applications before him on merits. In the High Court the question of jurisdiction of the authority under the Payment of Wages Act, 1936, was not argued, because learned counsel for the Railway Company rightly pointed out that assuming that the said authority had jurisdiction to deal with the claim of the workmen, the controversy between the parties would not come to an end by a decision on the question of jurisdiction only; because the Railway Company still contended that the workmen had not been 'retrenched' within the meaning of the Act and were not entitled to claim compensation under cl. (b) of s. 25F. Thereupon, both parties agreed in the High Court that Civil Application No. 2546 of 1954 should not be restricted to the question of jurisdiction but should be decided on merits; that is, on the validity or otherwise of the claim of the erstwhile workmen to compensation under cl. (b) of s. 25F on the termination of their services by the Railway Company on December 31, 1953. Learned counsel for the Railway Company agreed and undertook on behalf of

his client to accept whatever finding was given by the High Court on merits, subject to an appeal to this Court. The High Court (Chagla C. J. and Dixit J.) held by its judgment and order dated January 24, 1955, that the workmen were entitled to claim compensation under clause (b) of s. 25F of the Act and the Railway Company was liable to pay such compensation to them. It is from that decision that Civil Appeal No. 105 of 1956 has been brought.

CIVIL APPEAL No. 103 OF 1956.

The facts in this appeal are somewhat different. The main appellant is Shri Dinesh Mills Ltd., Baroda, and the principal respondent is the District Labour Officer and Inspector under the Payment of Wages Act, 1936, at Baroda. The appellant Company was running a woollen mill at Baroda for several years and had in its employ at the relevant time 450 workmen and 20 clerks. The work was done in shifts, day and night. On or about October 31, 1953, the appellant put up a notice declaring its intention to close down the entire mills from December 1, 1953. On November 19, 1953, this notice was withdrawn and another notice was put up declaring the intention of the appellant to close down the second shift with effect from December 20, 1953. A third notice was put up saying that the second shift would be closed on December 20, 1953, as notified earlier, and the first shift would be closed as from January 8, 1954. A similar notice was put up on the same date terminating the services of the clerks with effect from January 19, 1954. It was not disputed that though the steps in the process of closure of the business of the appellant Company were staggered, the process was really one, and as a result of the closure the services of all 450 workmen and 20 clerks were terminated. The appellant Company claimed that the closure of its business was *bona fide,* being due to heavy losses sustained by the Company.

On April 27, 1954, the principal respondent made an application to the relevant authority (respondent No. 3) under the Payment of Wages Act, 1936, claiming retrenchment compensation for the workmen of the

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appellant under cl. (b) of s. 25F of the Act. The application was contested by the appellant Company, and here again the same questions of jurisdiction of the authority under the Payment of Wages Act, 1936, to deal with the claim and the maintainability of the claim under cl. (b) of s. 25F of the Act arose for decision. The authority under the Payment of Wages Act decided against the erstwhile workmen on all the important issues. The respondent then moved the High Court of Bombay for appropriate writs or directions, and the High Court (Bavdekar and Shah JJ.) held that the authority under the Payment of Wages Act, 1936, had jurisdiction to deal with the claim of retrenchment compensation ; on the merits of the claim, the learned Judges felt bound to accept the decision of the Bench (Chagla C. J. and Dixit J.) in the case of the Railway Company. Accordingly, the order of respondent No. 3 was set aside and he was directed to dispose of the application before him in accordance with law. Civil Appeal No. 103 of 1956 is from the aforesaid decision of the High Court dated July 25, 1955.

It should be apparent from the facts stated above, though they are a little different with regard to the two appeals before us, that a common question of law emerges therefrom, namely, whether the claim of the erstwhile workmen—both of the Railway Company and of Shri Dinesh Mills Limited—to compensation under cl. (b) of s. 25F of the Act is a valid claim in law. The second question, that of jurisdiction of the authority under the Payment of Wages Act, 1936, is not a live question in Civil Appeal No. 105 of 1956 after the agreement of parties in the High Court. It does arise, however, in Civil Appeal No. 103 of 1956. But learned counsel for the appellants in that appeal has been ingenuous enough to state that he does not wish to take our time by addressing us on that question—not because he considers that the question of jurisdiction is devoid of all merit, but by reason of the fact that under the provisions of S. 25 I of the Act the claim for retrenchment compensation, if found to be legally valid, can still be enforced against the

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appellants. Section 19 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, purports to repeal s. 25 I of the principal Act, but that section has not yet been brought into force with the result that the provisions of s. 25 I are still available for the recovery of retrenchment compensation. Learned counsel has, therefore, submitted before us that these appellants will be content to abide by our decision on the principal question in these two appeals, namely, the validity or otherwise of the claim for retrenchment compensation under cl. (b) of s. 25F of the Act.

The Act which has been in force since April 1, 1947, has had a plexus of amendments, and some of the recent amendments have been quite extensive in nature. Section 25F occurs in Ch. VA of the Act; that chapter dealing with 'lay off and retrenchment' was inserted by an amending Act (Act XLIII of 1953) in 1953. Section 25F is in these terms:

"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:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(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 service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government."

In the first part of the provisions of the section, the word used is 'retrenched' and in cls. (a) and (b) the word used is 'retrenchment'. Obviously, they have

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the same meaning, the only difference being that in the first part the word used is a verb and in the clauses the word is used as a noun. It is obvious that to appreciate the true scope and effect of s. 25F, we must first understand what is meant by the expression 'retrenched' or 'retrenchment'. By the same amending Act of 1953 a new definition was added to the definitions in s. 2, being a definition of the word 'retrenchment' in cl. (00) of s. 2. The definition is in these terms :

Section 2(00)—" 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman ; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ; or

(c) termination of the service of a workman on the ground of continued ill-health."

Leaving out the excluding sub-cls. (a), (b) and (c) for the time being—these sub-clauses not being directly applicable to the cases under our consideration—the definition when analysed consists of the following four essential requirements—(a) termination of the service of a workman ; (b) by the employer ; (c) for any reason whatsoever ; and (d) otherwise than as a punishment inflicted by way of disciplinary action. It must be conceded that the definition is in very wide terms. The question, however, before us is—does this definition merely give effect to the ordinary, accepted notion of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or does it go so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a *bona fide* closure or discontinuance of his business by the employer ? Learned counsel for the appellants contend that the

first gives the correct meaning of the definition, while learned counsel for the principal respondents urge that by reason of the wide words used in the definition, the second gives the correct meaning of the expression 'retrenchment'.

There is no doubt that when the Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the legislature; our task is to get at the intention as expressed in the statute. Therefore, we propose first to examine the language of the definition and see if the ordinary, accepted notion of retrenchment fits in, squarely and fairly, with the language used. What is the ordinary, accepted notion of retrenchment in an industry? We have had occasion to consider this question in *Pipraich Sugar Mills Ltd.* v. *Pipraich Sugar Mills Mazdoor Union*(1) where we observed: "But retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff or the labour force is discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business cannot therefore be properly described as retrenchment." It is true that these observations were made in connection with a case where the retrenchment took place in 1951, and we specially left open the question of the correct interpretation of the definition of 'retrenchment' in s. 2 (00) of the Act. But the observations do explain the meaning of retrenchment in its ordinary acceptation. Let us now see how far that meaning fits in with the language used. We have referred earlier to the four essential requirements of the definition, and the question is, does the ordinary meaning of retrenchment fulfil those requirements? In our opinion, it does. When a portion of the staff or labour force is discharged as surplusage in a continuing business, there are (a) termination of the service of a workman; (b) by the employer; (c) for any reason whatsoever; and (d) otherwise than as a punishment

(1) [1956] S. C. R. 872.

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inflicted by way of disciplinary action. It has been argued that by excluding *bona fide* closure of business as one of the reasons for termination of the service of workmen by the employer, we are cutting down the amplitude of the expression[6] for any reason whatsoever' and reading into the definition words which do not occur there. We agree that the adoption of the ordinary meaning gives to the expression 'for any reason whatsoever' a somewhat narrower scope; one may say that it gets a colour from the context in which the expression occurs; but we do not agree that it amounts to importing new words in the definition. What after all is the meaning of the expression 'for any reason whatsoever'? When a portion of the staff or labour force is discharged as surplusage in a running or continuing business, the termination of service which follows may be due to a variety of reasons; e.g., for economy, rationalisation in industry, installation of a new labour-saving machinery etc. The legislature in using the expression 'for any reason whatsoever' says in effect: "It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment." In the absence of any compelling words to indicate that the intention was even to include a *bona fide* closure of the whole business, it would, we think, be divorcing the expression altogether from its context to give it such a wide meaning as is contended for by learned counsel for the respondents. 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. Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined.

There is another way of looking at the problem. Let us assume that the definition clause is so worded that

the requirements laid down therein are fulfilled, whether we give a restricted or a wider meaning: to that extent there is an ambiguity and the definition clause is readily capable of more than one interpretation. What then is the position ? We must then see what light is thrown on the true view to be taken of the definition clause by other provisions of the Act or even by the aim and provisions of subsequent statutes amending the Act or dealing with the same subject-matter. In *Pipraich Sugar Mills Ltd.* v. *Pipraich Sugar Mills Mazdoor Union*(1) it was observed : "It cannot be doubted that the entire scheme of the Act assumes that there is in existence an industry, and then proceeds on to provide for various steps being taken, when a dispute arises in that industry. Thus, the provisions of the Act relating to lock-out, strike, lay-off, retrenchment, conciliation and adjudication proceedings, the period during which the awards are to be in force, have meaning only if they refer to an industry which is running and not one which is closed." In *Burn & Co., Calcutta* v. *Their Employees*(2) this Court observed that the object of all labour legislation was firstly, to ensure fair terms to the workmen, and secondly, to prevent disputes between employers and employees so that production might not be adversely affected and the larger interests of the public might not suffer. It was then observed in *The Pipraich Sugar Mills' case*(1) (supra), "Both these objects again can have their fulfilment only in an existing and not a dead industry. The view therefore expressed in *Indian Metal and Metallurgical Corporation* v. *Industrial Tribunal, Madras* ( ) and *K. M. Padmanabha Ayyar* v. *The State of Madras*(4), 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 found that the closure is real and *bona fide,* any dispute arising with reference thereto would, as held in *K. M. Padmanabha Ayyar* v *The State of Madras*(4), fall outside the

(1) [1956] S. C. R. 872.
(2) [1956] S. C. R. 781
(3) A. I. R. 1953 Madras 98.
(4) (1954) 1 L. L. J. 469.

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purview of the Industrial Disputes Act." In view of these observations, it would be against the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen by the employer when the business itself ceases to exist. Learned counsel for the appellants in the two appeals have pointed out that the definition clause is inartistically drawn up and sub-clas, (a) and (b) of s. 2 (00) are not easily intelligible with reference to one of the essential requirements of the definition, namely, that the termination of service of the workman *must* be by the employer. It has been submitted that voluntary retirement of the workmen cannot be termination of service by the employer. We do not, however, think that sub-cls. (a), (b) and (c) are conclusive of the question before us; they, no doubt, apply to a running or continuing business only, but whether inserted by way of abundant caution or on account of excessive anxiety for clarity, they merely exclude certain categories of termination of service from the ambit of the definition. They do not necessarily show what is to be included within the definition.

Two other cognate sections to which our attention has been drawn are ss. 25G and 25H. They are applicable, clearly enough, to a running business only. The learned Attorney-General, who has appeared for the principal respondent in one of the appeals, has pointed out that if the definition clause covers the case of termination of service in a continuing business as also termination of service on a closure of business, the circumstance that ss. 25G and 25H provide for some instances of retrenchment only is no ground for holding that they exhaust all possible cases of retrenchment or that s. 25F must also be restricted to a running business only. We agree that if it is conceded that the definition clause includes cases of closure of business, no difficulty is presented by ss. 25G and 25H. But the fundamental question at issue is, does the definition clause cover cases of closure of business, when the closure is real and *bona fide*? The point to be emphasised in that connection is that there is no

provision (except perhaps s. 25FF inserted in 1956 by Act XLI of 1956 to which we shall presently refer) which can be said to bring a closed or dead industry within the purview of the Act. The provisions of the Act, almost in their entirety, deal with an existing or continuing industry. All the provisions relating to lay off in ss. 25A to 25E are also inappropriate in a dead business.

Learned counsel for the appellants have also adverted to some surprising results which would follow the wider interpretation of the definition clause. If an employer dies and his heirs carry on the business or there is compulsory winding up of a company and the company is reconstructed or a business is converted into a limited company, or a new partner is taken into the business, there is in law a termination of service by a particular employer and a new employer appears on the scene ; will the workmen in such circumstances be entitled to retrenchment compensation though they continue in service as before ? There must indeed be found very compelling reasons in the words of the statute before it can be held that such was the intention of the legislature. We think that no such compelling reasons are available from the provisions of the Act : on the contrary, they point really one way—that the Act contemplates an existing or continuing industry and not a dead industry.

This brings us to two other arguments advanced by the learned Attorney-General. One is that before the enactment of the amending Act of 1953 (Act XLIII of 1953) retrenchment had acquired a special meaning—a meaning which included the payment of compensation on a closure of business, and the legislature gave effect to that meaning in the definition clause and by inserting s. 25F. The second argument is that s. 25FF inserted in 1956 (Act XLI of 1956) is 'parliamentary exposition' of the meaning of the definition clause and of s. 25F. We shall now consider these two arguments.

As to the first argument, a large number of decisions of Industrial or Labour Appellate Tribunals have

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been placed before us. The learned Attorney-General has relied particularly on three decisions: *The Hyderabad Vegetable Oil Products Ltd.* v. *Their Workers*(1); *Employees of Messrs. India Reconstruction Corporation Ltd., Calcutta* v. *Messrs. India Reconstruction Corporation Ltd., Calcutta*(2); *Kandan Textiles Ltd.* v. *Their Workers*(3). The decision in *Employees of Messrs. India Reconstruction Corporation Ltd., Calcutta* v. *Messrs. India Reconstruction Corporation Ltd., Calcutta*(2) was considered by us in *Pipraich Sugar Mills Ltd.* v. *Pipraich Sugar Mills Mazdoor Union*(4) where we said that we were unable to accept the observation of the Tribunal that in substance the difference between closure and normal retrenchment was one of degree only. We are aware that in some cases Labour Appellate Tribunals awarded retrenchment compensation on closure of business, even when the closure was *bona fide* or justified. We expressed our dissent from those decisions in the *Pipraich Sugar Mills case* (4). When closely examined, none of those decisions show, however, that discharge of workmen on *bona fide* closure of business was held to fall within the meaning of normal retrenchment. In *The Hyderabad Vegetable Oil Products Ltd.* v. *Their Workers*(1) the grounds on which compensation was allowed were (1) involuntary or forced unemployment of the workmen, (2) absence of any social security scheme like unemployment insurance and (3) financial position of the company. On similar grounds compensation was awarded in *Kandan Textiles Ltd.* v. *Their Workers*( ) as an equitable relief, and a variety of factors were referred to as determining the appropriate relief to be given in a particular case. We consider it unnecessary to examine all the decisions on this point, and it is enough to indicate what we consider to be the correct position in the matter. Retrenchment means discharge of surplus workmen in an existing or continuing business; it had acquired no special meaning so as to include discharge of workmen on *bona fide* closure of business, though a number of Labour Appellate Tribunals awarded compensation to

(1) [1950] 2 L. L. J. 1281.
(2) [1953] L. A. C. 563.
(3) [1954] 2 L. L. J. 249.
(4) [1956] S. C. R. 872.

workmen on closure of business as an equitable relief for a variety of reasons. It is reasonable to assume that in enacting s. 25F, the legislature standardised the payment of compensation to workmen retrenched in the normal or ordinary sense in an existing or continuing industry; the legislature did away with the perplexing variety of factors for determining the appropriate relief in such cases and adopted a simple yard stick of the length of service of the retrenched workmen. If the intention of the legislature was to give statutory effect to those decisions which awarded compensation on real and *bona fide* closure of business, the legislature would have said so instead of being content by merely adding a definition clause, every requirement of which is fulfilled by the ordinary, accepted meaning of the word 'retrenchment'.

We turn now to the second argument. We have said that s. 25FF was inserted in 1956 by amending Act XLI of 1956, which came into force on September 4, 1956. Before that date, the two decisions under appeal had been given by the Bombay High Court as also a further decision in *The Hospital Mazdoor Sabha* v. *The State of Bombay*(1) where it was held that the failure to comply with the condition for payment of compensation to an employee at the time of his retrenchment under s. 25F (b) of the Act gave the employee the right to challenge his retrenchment and to contend that his services were not legally and effectively terminated. Faced with the situation created by those decisions, the legislature stepped in and enacted s. 25FF. That section is in these terms:

"Notwithstanding anything contained in section 25F, no workman shall be entitled to compensation under that section by reason merely of the fact that there has been a change of employers in any case where the ownership or management of the undertaking in which he is employed is transferred whether by agreement or by operation of law, from one employer to another:

Provided that—

(1) [1956] 58 Bom. L. R. 769.

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(a) the service of the workman has not been interrupted by reason of the transfer;

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

(c) the employer to whom the ownership or management of the undertaking is so transferred is, under the terms of the transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer."

The section is not retrospective and does not in terms apply to any of the two cases before us. But the question is—what light does it throw on the meaning of s. 25F? The learned Attorney-General has placed great reliance on the *non-obstante* clause with which the section begins, and has contended that it shows by necessary intendment that a workman whose service has been terminated by reason of a change of employers on account of a change of ownership or management will be entitled to retrenchment compensation under s. 25F unless the conditions (a), (b) and (c) laid down in s. 25FF are fulfilled. This, according to the learned Attorney-General, is parliamentary exposition of the true meaning of retrenchment in the definition clause and in s. 25F. At first sight there appears to be considerable force in this argument, and the learned Attorney-General, has cited English and American decisions of high authority in support of his contention: *Attorney General* v. *Clarkson*(1); *Ormond Investment Co., Ltd.* v. *Betts*(2); *George H. Cope* v. *Jonet Cope*(3); *Great Northern Railway Co.* v. *United States of America*(4). In considering the effect of s. 25FF we must take note of the circumstances in which it was inserted in the Act. The situation was that any transfer or closure of business and any change of

(1) [1900] 1 Q. B. 156.
(2) [1928] A. C. 143.
(3) [1891] 137 U. S. 682, 688.
(4) [1941] 315 U. S. 262.

employer or management was judicially held to give rise to a claim for retrenchment compensation, with consequences which might result in a complete industrial deadlock. The legislature could not declare the decisions to be incorrect, but could partially supersede their effect by an amendment of the law. These were the circumstances in which s. 25FF was enacted. We agree with learned counsel for the appellants that the aim or object of the enactment was to supersede partially the effect of the aforesaid judicial decisions, at least with regard to the urgent matter of change of ownership or management of a business undertaking which is of quite frequent occurrence, rather than parliamentary exposition of the pre-existing law; the general question of closure of business, of a lesser degree of urgency, was naturally left to be dealt with, if necessary, after the appeals had been disposed of. We are fortified in this view by an examination of the provisions of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. Be it noted that this Act was passed on August 28, 1956,—only about seven days before the enactment of s. 25FF. Section 29 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, inserts new schedules to the Act, and item 10 of the Third Schedule (Matters within the jurisdiction of Industrial Tribunals) is: "Retrenchment of workmen and closure of establishment"; in the Fourth Schedule, item 10 is: "Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen." It is true that these new Schedules have not yet come into force, but the wording of the items mentioned therein shows that the legislature clearly envisaged a distinction between retrenchment and closure and retrenchment did not include closure of business; item 10 of the Fourth Schedule almost clinches the issue, because it shows how retrenchment of surplus labour may occur in a running industry. If we are to choose between the two amending Acts of 1956 on the point of parliamentary exposition, we unhesitatingly hold that the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956

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(Act XXXVI of 1956) is more in the nature of parliamentary exposition than the Industrial Disputes (Amendment) Act, 1956 (Act XLI of 1956) which merely supersedes the effect of certain judicial decisions. We are aware that on the narrower interpretation of the definition clause on the basis of the ordinary, accepted connotation of retrenchment, s. 25F will apply to a continuing or running business only and s. 25FF will become largely unnecessary. We do not think that that consideration need cause any difficulty; the judicial decisions on the basis of which s. 25FF was enacted being held to be erroneous by us, no hardship is caused if s. 25FF is rendered superfluous, because its aim is served by the correct interpretation now given of the definition clause and of the provisions of s. 25F, both of which are on that interpretation brought into harmony with the rest of the Act.

A few words more about the authorities relied on by the learned Attorney-General: the American decisions merely enunciate the general principle that "several Acts of Congress, dealing as they do with the same subject-matter, should be construed not only as expressing the intention of Congress at the dates the several Acts were passed, but the later Acts should also be regarded as legislative interpretations of the prior ones." This general rule is not an inflexible rule, and as stated in the *Great Northern Railway Co.* v. *United States of America*(1), "we are not limited to the lifeless words of the statute and formalistic canons of construction in our search of the intent of Congress (Parliament in our case) and in construing a statute, we may with propriety recur to the history of the times when it was passed." That history shows indubitably the aim and purpose of the enactment of s. 25FF. As Lord Atkinson pointed out in his speech in *Ormond Investment Co. Limited* v. *Betts*(2), "an Act of Parliament does not alter the law by merely betraying an erroneous opinion of it." Legislation founded on a mistaken or erroneous assumption has not the effect of making that the law which the legislature had erroneously assumed to be so. In the cases before us,

(1) [1942] 315 U. S. 262, 273. (2) [1928] A. C. 143, 164.

the legislature proceeded on the basis of the judicial decisions then available to it, and on that basis enacted s. 25FF. We do not think that the general principle of parliamentary exposition or subsequent legislation as an aid to construction of prior Acts can be called in aid for construing the definition clause and s. 25F of the Act.

For the reasons given above, we hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in s. 2 (00) and as used in s. 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 as in the case of Shri Dinesh Mills Ltd. or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the Railway Company. Mr. Mehta, appearing for respondents Nos. 4 and 5 in Civil Appeal No. 105 of 1956, tried to make a distinction between transfer of ownership with continuation of employment (which according to him did not come within the definition) and termination of service on closure of business. There is *in fact* a distinction between transfer of business and closure of business; but so far as the definition clause is concerned, both stand on the same footing if they involve termination of service of the workmen by the employer for any reason whatsover, otherwise than as a punishment by way of disciplinary action. On our interpretation, in no case is there any retrenchment, unless there is *discharge of surplus labour or staff* in a continuing or running industry.

We have so far dealt with the question of construction of the definition clause and s. 25F of the Act. On behalf of the appellants a further question as to the constitutional validity of s. 25F has been raised. The argument on that question has proceeded from two

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points of view : one of which is based on the point of view that retrenchment includes termination of service on closure of business and the other even in respect of a running or continuing business. Under Art. 19 (1), sub-cls. (f) and (g), of the Constitution, all citizens have the right to acquire, hold and dispose of property and to practise any profession, or to carry on any occupation, trade or business. Under cls. (5) and (6) of the said Article, the right is, *inter alia,* subject to reasonable restrictions in the interests of the general public. The right to carry on a business, it is contended, has three facets—(a) the right to start a business, (b) the right to continue a business and (c) the right to close a business. Section 25F of the Act, it is argued, imposes a restriction on that right, if the section is so widely interpreted as to include a closure of business. The restriction, it is submitted, is not a reasonable restriction in the interests of the general public, because (a) it is unrelated to the capacity of the employer to pay and (b) unrelated to the needs of the employee. From the other point of view, the argument is that even in respect of a running or continuing industry, s. 25F imposes an unreasonable restriction. Reasonableness, it is submitted, has to be considered with regard to the object of the legislation and if the direct and immediate object of s. 25F is relief against involuntary unemployment, then the restriction imposed is excessive, because a provision for such relief unrelated to the period of unemployment and other relevant factors is over-simplification of a complex problem. Such over-simplification, it is stated, itself amounts to an unreasonable restriction.

On the construction which we have adopted of the definition clause and of s. 25F of the Act, we are relieved of the task of making any final pronouncement on this constitutional question. On our construction, s. 25F has no application to a closed or dead industry and the constitutional arguments based on a different construction need not be considered in these appeals. So far as a running or continuing industry is concerned, an obvious answer may be that unemployment relief is not the only purpose or object of s. 25F. We have pointed out

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earlier that it is reasonable to assume that standardisation of retrenchment compensation and doing away with a perplexing variety of factors for granting retrenchment compensation may well have been the purposes of s. 25F, though the basic consideration must have been the granting of unemployment relief. However, on our view of the construction of s. 25F, no compensation need be paid by the appellants in the two appeals. It is unnecessary therefore to decide whether, in other cases of a different character, s. 25F imposes a reasonable restriction or not.

In the result, we must allow the two appeals and set aside the decisions of the High Court of Bombay in the two cases. We hold that the appellants in the two appeals are not liable to pay any compensation under s. 25F of the Act to their erstwhile workmen who were not retrenched within the meaning of that expression in that section. In the circumstances of these two cases, the parties must bear their own costs throughout.

Appeals allowed.

BANARAS ICE FACTORY LIMITED

v.

ITS WORKMEN

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November 28.

(S. R. DAS C. J., BHAGWATI, VENKATARAMA AYYAR B. P. SINHA *and* S. K. DAS JJ)

Industrial Dispute—Appeal pending before Labour Appellate Tribunal—Closure of factory—Termination of services of workmen without permission of the Tribunal—Legality—"Discharge", meaning of—Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950), ss. 22, 23.

Clause (b) of s. 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, provides that during the pendency of any appeal under the Act no employer shall discharge any workmen concerned in such appeal, save with the express permission in writing of the Appellate Tribunal, and s. 23 enables any employee to make a complaint in writing to such Appellate Tribunal if the employer contravenes the provisions of s. 22 during the pendency of proceedings before the said Tribunal.