A M/S. MARUTI UDYOG LTD.

v.

RAM LAL AND ORS.

JANUARY 25, 2005

B [N. SANTOSH HEGDE AND S.B. SINHA, JJ.]

Labour Laws:

Industrial Disputes Act, 1947—Sections 25F, 25FF, 25FFF, 25H, 25J,
C *2(oo)—Closure of undertaking—Retrenchment—Transfer of assets to new company on appointed day i.e. on the date of enactment of the 1980 Acquisition Act—Claim of retrenched workmen for re-employment in new company—Maintainability of—Held, in case of transfer or closure of undertaking, workmen are entitled to receive compensation only—Reemployment cannot be sought as*
D *they were not in employment of the company before appointed day—Expression "as if" used in Section 25FF and Section 25FFF relates only to computation of compensation in terms of Section 25F and not the other consequences flowing therefrom—Maruti Limited (Acquisition and Transfer of Undertakings) Act, 1980—Section 13.*

E *Interpretation of statutes:*

Deeming provision—Legal fiction—In construing, the purpose for which it is created should be kept in mind and not to be extended beyond the scope thereof or beyond the language by which it is created—Deeming provision not to be pushed too far as to result in an anomalous or absurd position.

F

Words and phrases—'As if'—Meaning of in the context of Section 25FF and S.25FFF of Industrial Disputes Act, 1947.

Respondents were workmen in Maruti Ltd. (erstwhile company). Their services stood terminated in 1977 as a result of closure of factory.
G **In terms of settlement with the official liquidator, retrenched workmen were paid one month's salary in lieu of notice.**

In 1980, Parliament enacted Maruti Limited (Acquisition and Transfer of Undertakings) Act, 1980 for the purpose of utilization of

H

production activities and equipment of erstwhile company. By virtue of this Act, assets of erstwhile company vested in Central Government w.e.f. 13.10.1980. However, in 1981, Central Government issued a notification directing that its right, title and interest in relation to the undertakings of erstwhile company shall vest in the appellant company. Workmen of erstwhile company filed writ petition in this Court seeking direction for re-employment in appellant company, which was dismissed in limine. A B

Sometime later, respondents raised industrial dispute seeking re-employment in terms of S.25-H of Industrial Disputes Act, 1947. Labour Court held that appellant company is successor-in-interest of erstwhile company and was liable to re-employ respondents with back wages. Aggrieved appellant company filed writ petition. Single Judge of High Court set aside the award of Labour Court. Respondent filed Letters patent appeal, which was allowed. Hence the present appeal. C

Appellant-company inter alia contended that the appellant is not successor-in-interest of the erstwhile company; that respondents had been paid compensation in terms of S.25FFF of 1947 Act, and hence S.25H thereof would have no application having regard to the definition of retrenchment contained in S.2(oo) thereof; that there is no provision in the Act for taking over the liability of erstwhile company and as same contains non-obstante clause, provisions thereof would prevail over the 1947 Act. D E

Respondent contended that with a view to give effect to S.13 of Acquisition Act, termination of employment by erstwhile company should be held to be a retrenchment under S.25F of 1947 Act. Alternatively it was contended that in view of fact that the term 'workmen' is used in S.25F, 25FF, 25FFF would include retrenched workman; that S.25H should be held to be applicable having regard to non-obstante clause contained in S.25J thereof. F

Allowing the appeal, the Court

G

HELD: 1. A workman who has ceased to be in employment of company before appointed day, is not entitled to the benefit of reemployment in terms of S. 13 of the Acquisition Act,1980. [802-F]

2. The Respondents could have claimed a legal right of employment in the Appellant company provided they were employed in any of the H

A undertakings of the company immediately before the appointed day. By virtue of S.13 of the Acquisition Act, only persons who were in the service on the date of the take over, viz. 13.10.1980, could become the employees of the appellant company and since the Respondents were not employed in the undertakings on the said date and had already been retrenched in 1977, they could, in no case, become the employees of the appellant B company. [802-E; 798-E]

3.1. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no C other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F and not the other consequences flowing therefrom. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into D effect, the relationship of employer and employee takes effect. [803-D-E]

3.2. The expression 'as if' has limited application and has been employed only for the purpose of computation of quantum of compensation and takes within its purview a case where retrenchment as contained in Section 2(oo) has taken place within the meaning of Section E 25F and not in a case falling under Sections 25FF or 25FFF thereof. [804-G-H]

Anakapalla Co-operative Agricultural and Industrial Society Ltd., [1963] Supp.1 SCR. 730 and *Hariprasad Shivshankar Shukla* v. *A.D. Divikar*, [1957] F SCR 121, Followed

3.3. Once it is held that Section 25F will have no application in a case of transfer of an undertaking or closure thereof as contemplated in Section 25FF and 25FFF, Section 25H will have no application. [805-A]

G 3.4. In the case of retrenchment simplicitor a person loses his job as he became surplus and, thus, in the case of revival of chance of employment, is given the preference in case new persons are proposed to be employed by the said undertaking, but in a case of transfer or closure of the undertaking the workman concerned is entitled to receive compensation only. It does not postulate a situation where a workman H despite having received the amount of compensation would again have to

be offered a job by a person reviving the industry. [805-C-D] A

The Workmen v. *The Bharat Coking Coal Ltd. and Ors.*, AIR (1978) SC 979 and [1978] 2 SCC 175, held inapplicable

Punjab Land Development and Reclamation Corporation Ltd., Chandigarh etc. v. *Presiding Officer, Labour Court, Chandigarh and Ors., etc.*, [1990] 3 SCC 682 ; *H.P. Mineral & Industrial Development Corporation Employees' Union* v. *State of H.P. and Ors.*, [1996] 7 SCC 139 and *Workmen represented by Akhil Bhartiy Koyla Kamgar Union* v. *Employers in relation to the Management of Industry Colliery of Bharat Coking Coal Ltd and ors.*, [2001] 4 SCC 55, referred to. B C

4. The principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the relevant sections, it would be inconsistent to read into the provisions a right given to workman "deemed to be retrenched" a right to claim reemployment as provided in Section 25H. In such cases, as specifically provided in the relevant sections the workmen concerned would only be entitled to notice and compensation in accordance with Section 25F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workmen is "as if the workmen had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of Section 25F. Section 25H of the 1947 Act cannot, thus, be invoked in favour of the Respondents in view of the fact that they were not in the employment of the company on the appointed day i.e. on 13.10.1980. D E

[805-H; 806-A-B; 808-H; 809-A] F

5. The words 'every workman' in Section 25FFF, which would include dismissed workmen in view of its definition contained in Section 2(s) of the 1947 Act, should not be widely interpreted so as to hold that even those workmen who had received compensation would be entitled to the benefit of Section 25H. Such a construction is not possible keeping in view the statutory scheme of the 1947 Act. Section 25F *vis-a-vis* Section 25B read with Section 2(oo) contemplates a situation where a workman is retrenched from services who had worked for a period of not less than one year on the one hand and those workmen who are covered by Section 25FF and Section 25FFF on the other keeping in view the fact that whereas in the case of the former, a retrenchment takes place, in the latter it does G H

not. Section 25FF and Section 25FFF were inserted therein by reason of the Industrial Disputes (Amendment Act), 1957 with effect from 28.11.1956, as it was found that having regard to the helpless condition to which workman would be thrown if his services are terminated without payment of compensation and presumably on the ground that if a reasonable compensation is awarded, he may be able to find out an alternative employment within a reasonable time. In the case of closure of an industrial undertaking the Act contemplates payment of compensation alone. [809-B-E]

6. In construing a legal fiction the purpose for which it is created should be kept in mind and should not be extended beyond the scope thereof or beyond the language by which it is created. Furthermore, it is well-known that a deeming provision cannot be pushed too far so as to result in an anomalous or absurd position. The Court must remind itself that the expressions like "as if" is adopted in law for a limited purpose and there cannot be any justification to extend the same beyond the purpose for which the legislature adopted it. [809-F]

7.1. The statutory scheme does not envisage that even in the case of closure of an undertaking, a workman who although had not been retrenched would be reemployed in case of revival thereof by another company. Such construction would not only run contrary to the statutory scheme but would make the definition of retrenchment contained in Section 2(oo) Act otiose. [810-C]

7.2. In terms of Section 25J of the 1947 Act, only the provisions of the Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including the Standing Orders made under the Industrial Employment (Standing Orders) Act, but it will have no application in a case where something different is envisaged in terms of the Statutory Scheme. A beneficial statute, as is well known, may receive liberal construction but the same cannot be extended beyond the statutory scheme. It stands accepted that the Appellant has no monetary liability as regard the amount of compensation payable to the workmen in view of Section 5 of the said Act. [810-D-E, F]

Deepal Girishbhai Soni and Ors. v. *United India Insurance Co. Ltd. Baroda* [2004] 5 SCC 385, relied on

P. Prabhakaran v. *P. Jayarajan,* JT (2005) 1 SC 173, referred to

7.3. It is well-settled that when both statutes containing non-obstante clauses are special statutes, an endeavour should be made to give effect to both of them. In case of conflict, the latter shall prevail. A

Solidaire India Ltd. **v.** *Fairgrowth Financial Services Ltd. and Ors.,* **[2001] 3 SCC 71;** *Engineering Kamgar Union* **v.** *Electro Steels Castings Ltd. and Anr.,* **[2004] 6 SCC 36, referred to.** B

8. The liability to pay compensation in the case of closure would be upon the employer which in this case would be the erstwhile company. By reason of the provisions of the said Act, only a special machinery has been carved out for payment of dues of all persons including workmen in terms of the provisions contained in Chapter VI of the said Act. If a workman contends that his lawful dues have not been paid, his remedy is to approach the Commissioner of Payments constituted under the provisions of the said Act and not to proceed against the Appellant in view of Section 5 of the Act. [811-G-H] C

9. While construing a statute, 'sympathy' has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the concerned workmen. [812-A] D

A. Umarani **v.** *Registrar, Cooperative Societies and Ors.,* **[2004] 7 SCC 112, referred to.** E

Teri Oat Estates (P) Ltd. **v.** *U.T., Chandigarh and Ors.,* **[2004] 2 SCC 130;** *Latham* **v.** *Richard Johnson & Nephew Ltd.,* **(1911-13) AER reprint p.117 and** *Ramakrishna Kamat and Ors.* **v.** *State of Karnataka and Ors.,* **JT (2003) 2 SC 88, Cited.** F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2846 of 2002.

From the Judgment and Order dated 16.10.2001 of the Punjab and Haryana High Court in L.P.A.No. 837 of 1995. G

Anil B. Divan, Bhargava V. Desai, Amit Bhasin, Sanjeev Kr. Singh and Pradeep Kr. Malik for the Appellant.

Anupal Lal Das and Ujjwal Jha for the Respondents.

The Judgment of the Court was delivered by H

S.B. SINHA, J . Maruti Udyog Limited, the Appellant herein, is a Government company within the meaning of Companies Act, 1956. In terms of a notification issued under Section 6 of the Maruti Limited (Acquisition and Transfer of Undertakings) Act, 1980 (hereinafter referred to as 'the said Act') the undertakings of the Maruti Limited (the Company) has vested in the Appellant. It is aggrieved by and dissatisfied with the judgment and order passed by a Division Bench of the Punjab and Haryana High Court in Letters Patent Appeal No.837 of 1995 whereby and whereunder a judgment and order passed by a learned Single Judge dated 19.4.1995 passed in C.W.P. No.15728 of 1993 questioning an Award dated 28.7.1993 passed by the Labour Court in Reference Nos. 437, 438 and 166 of 1988, was set aside.

BACKGROUND FACTS:

The Respondents herein who are three in number were appointed by Maruti Limited as Electrician, Helper and Assistant Fitter with effect from 27.4.1974, 8.11.1973 and 8.4.1974 respectively. Their services stood terminated by the said company on or about 25/26.8.1977 as a result of closure of the factory. The said company came to be wound up in terms of an order dated 6.3.1978 passed by the High Court of Punjab and Haryana in Company Petition No.126 of 1977 titled *Delhi Automobiles P. Ltd.* v. *Maruti Ltd.* whereupon an Official Liquidator was appointed to take charge of the assets thereof. A formal winding up order was also drawn up in terms of Form No.52 of the Company (Court) Rules, 1959. The company was formally wound up on 6.3.1978 whereupon it ceased to have any business activity. It is borne out from records that the learned Company Judge in the said proceedings by an order dated 5.8.1977 directed the company that in view of the fact that the industrial establishment of the company, namely, Maruti Limited cannot continue with its production activity and the workmen employed therein cannot be given any job, all workmen should be retrenched in accordance with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the 1947 Act'). Pursuant to or in furtherance of the said direction, a settlement was arrived at by and between the Official Liquidator and its employees, in terms whereof the employees were retrenched on or about 25/26.8.1977 on payment of one month's salary in lieu of notice. The employees agreed to forgo their right of three months' notice. The termination took effect immediately upon signing of the settlement.

The Parliament thereafter enacted the said Act for acquisition and transfer of undertakings of the Company which was preceded by an Ordinance for

Acquisition and Transfer of Undertakings of the said company with effect from 13.10.1980, by reason whereof the assets of the said company vested in the Central Government. The Central Government, however, on or about 24.4.1981 issued a notification in exercise of its power conferred upon it under Section 6 thereof directing that its right, title and interest in relation to the undertakings of the company in stead and place of continuing to vest in the Central Government shall vest in the Appellant Company.

INDUSTRIAL DISPUTE:

The erstwhile workmen of 'the Company' thereafter issued a notice of demand of reemployment upon the Appellant herein. It is also not in dispute that M/s R.K. Taneja and 72 others as workmen of the said establishment filed a writ petition before this Court, under Article 32 of the Constitution of India, inter alia, for a declaration that Section 13 of the said Act is unconstitutional. A direction was also sought for therein against the Appellant herein to offer re-employment to the said petitioners. The said writ petition was dismissed in limine by an order dated 5.5.1983. The Respondents herein, long thereafter raised an industrial dispute by serving demand notices seeking reemployment in the services of the Appellant purported to be in terms of Section 25H of the 1947 Act.

The State of Haryana in exercise of its power conferred upon it under Section 10(1)(c) of the 1947 Act issued a notification on 25.8.1988 referring the following disputes for adjudication before the Labour Court :

"(1) Whether Shri Ram Lal is entitled for reemployment, if yes, with what details ?

(2) Whether Shri Ghinak Prasad is entitled for re-employmenbt, if yes, with what details, with what details ?

(3) Whether Shri Sampath Prasad is entitled for re- employment, if yes, with what details ?"

In its Award dated 28.7.1993, the Labour Court upon holding that the Appellant herein is the successor-in-interest of the said company opined that it was liable to reemploy the Respondents with back-wages from the date of submitting their respective demand notices.

WRIT PROCEEDINGS:

The Appellant herein filed a writ petition before the Punjab & Haryana

A High Court questioning the said Award and the same was allowed by a learned Single Judge of the said court by a judgment and order dated 19.4.1995 holding :

"(i) workmen-Respondents retrenched by the company in August 1977 and did not challenge retrenchment. The company, thereafter, B went into liquidation and its undertakings came to vest in the Petitioner under Acquisition Act, but liabilities of the company were never taken over,.

(ii) Petitioner cannot be said to be successor-in-interest of the company and become liable to offer reemployment to the workmen C in terms of Section 25H of the Act.

(iii) Under Section 25H, a workman can claim reemployment after retrenchment only from that employer who had retrenched him. In the instant case, the workmen had never been in the employment of the Petitioner nor did the Petitioner retrench them. They were in D the employment of the company and it is the company which retrenched them in August 1977. Thus, the claim for reemployment, if any, could be made against the company only and not against the Petitioner.

(iv)By virtue of Section 13 of the Acquisition Act, only persons E who were in the service on the date of the take over, viz. 13.10.1980, could become the employees of the Petitioner and since, on admitted position, the Respondents were not employed in the undertakings on the said date and had already been retrenched in August 1977, they could, in no case, become the employees of the Petitioner.

F (v) Judgment of this Hon'ble Court in the case of Bharat Coking Coal Ltd., was distinguished on facts since in this case, the retrenchment of the workmen had become final and they had never challenged the same as in the other case."

G Aggrieved by and dissatisfied with the said judgment a Letters Patent Appeal came to be filed by the Respondents herein, which by reason of the impugned judgment was allowed reversing the aforementioned findings of the learned Single Judge.

Aggrieved, the Appellant is before us in this Appeal.

H

SUBMISSIONS:

Mr. Anil B. Divan, learned Senior Counsel appearing on behalf of the Appellant, had principally raised three contentions in support of the Appeal. Firstly, it was argued that in view of the fact that from a perusal of the said Act, it would appear that 'the company' was wound up in a proceeding for liquidation and as the undertakings of the company had not been functioning necessitating the enactment thereof; the Division Bench of the High Court committed a serious error in holding that the Appellant is the successor-in-interest of 'the company' and, therefore, liable to reemploy the Respondents herein. Secondly, it was urged that in any event as the closure of the undertakings of Maruti Limited is admitted and having regard to the fact that the Respondents herein had been paid the requisite amount of compensation in terms of Section 25FFF of the 1947 Act, Section 25H thereof will have no application having regard to the definition of 'retrenchment' contained in Section 2(oo) thereof.

Drawing our attention to the provisions of the said Act and in particular Section 3, 4, 5, 13 and 25 thereof, the learned counsel would, lastly, contend that the Act being a self-contained Code in terms whereof the liability of the company had not been taken over and as the same contains a non-obstante clause, the provisions thereof would prevail over the 1947 Act.

Mr. Anupal Lal Das, learned counsel appearing on behalf of the Respondents, on the other hand, would contend that in view of the decision of this Court in *Anakaplla Co-operative Agricultural* and *Industrial Society Limited* v. *Workmen,* [1963] Supp. 1 SCR 730, the Appellant is the successor-in-interest of the business of the said company. The learned counsel would submit that the concurrent findings of fact having been arrived at in this regard by the Labour Court as well as the Division Bench of the High Court, this court should not interfere therewith.

Placing reliance on the decision of this Court in *Workmen represented by Akhil Bhartiya Koyla Kamgar Union* v. *Employers in relation to the Management of Industry Colliery of Bharat Coking Coal Ltd. and Ors.,* [2001] 4 SCC 55, Mr. Das would argue that reemployment of the workmen in terms of the provisions of the 1947 Act being not a liability under the said Act and furthermore with a view to give effect to Section 13 thereof, the termination of the employment of the Respondents by the company should be held to be a retrenchment within the meaning of Section 25F of the 1947 Act. Alternatively, it was submitted that in view of the fact that the term 'workmen'

A is used in Section 25F, 25FF and 25FFF of the 1947 Act would include a retrenched workman, Section 25H should be held to be applicable having regard to the non-obstante clause contained in Section 25J thereof.

DISCUSSIONS:

B The basic fact of the matter, as noticed hereinbefore, is not in dispute. It is also not in dispute that although the services of the three Respondents were terminated by the company as a result of the closure of the factory, the formal retrenchment came into being in terms of the order of the learned Company Judge. It is furthermore not in dispute that a settlement had been C arrived at by and between the Official Liquidator and the workmen as regard the amount of compensation payable to the workmen of the said company.

The closure of the undertakings of the company, thus, stands admitted. It also finds mention in the Award passed by the Labour Court. In the aforementioned factual backdrop, we may notice the salient feature of the D said Act.

THE SAID ACT:

The said Act was enacted having regard to the liquidation proceeding pending in the High Court of Punjab and Haryana following an order of E winding up of the said company, inter alia, for utilization of the production facilities and equipment thereof as the company had not been functioning. In terms of Section 3 of the said Act, the right, title and interest of the company in relation to its undertakings vested in the Central Government. General effect of such vesting is contained in Section 4 thereof; Sub-sections (2) and F (4) whereof reads as under :

> "(2) All properties as aforesaid which have vested in the Central Government under section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage charge, lien and all other incumbrances affecting them, and any attachment, injunction, G decree or order of any Court restraining the use of such properties in any manner shall be deemed to have been withdrawn.
>
> (4) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (3) or any other person holding any charge, lien or other interest in, or in relation to, H any such property shall be entitled to claim, in accordance with his

rights and interests, payment of the mortgage money or other dues, in whole or in part, out of the amount specified in section 7, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government." A

Section 5 provides that the Central Government or the Government company, as the case may be, shall not be liable for prior liabilities of the said company. Section 6 envisages vesting of the undertakings in a Government company if a notification in this behalf is issued by the Central Government. Chapter IV of the said Act provides for management of the undertakings of the company. Chapter V provides for provisions relating to the employees of the company. Section 13 which is relevant for our purpose reads as under : B C

"13. Employment of certain employees to continue. - (1) Every person who has been, immediately *before the appointed day, employed in any of the* undertakings of the Company shall become, -

(a) on and from the appointed day an employee of the Central Government; and D

(b) where the undertakings of the Company are directed under sub-section (1) of section 6 to vest in a Government company, an employee of such Government company on and from the date of such vesting,

E

and shall hold office or service under the Central Government or the Government company, as the case may be, with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Central Government or the Government company, as the case may be, is duly F terminated or until his remuneration and other conditions of service are duly altered by the Central Government or the Government company, as the case may be.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer G of the services of any officer or other person employed in any undertaking of the Company to the Central Government or the Government company shall not entitle such officer or other employee to any compensation under this Act or entitle such officer or other employee to any compensation under this Act or under any other law H

A for the time being in force and no such claim shall be entertained by any Court, tribunal or other authority.

(3) Where, under the terms of any contract of service or otherwise, any person, whose services become transferred to the Central Government or the Government company by reason of the provisions
B of this Act, is entitled to any arrears of salary or wages or any payments for any leave not availed of or any other payment, not being payment by way of gratuity or pension, such person may enforce his claim against the Company, but not against the Central Government or the Government company."

C (emphasis supplied)

Chapter VI provides for appointment of the Commissioner of Payments for the purpose disbursing the amounts payable to the company under Sections 7 and 8 of the said Act and the procedure laid down therein. Section 25 contains a non-obstante clause stating that the provisions of the said Act shall
D have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than the said Act, or in any decree or order of any Court, tribunal or other authority.

E *APPLICATION OF THE ACT:*

The Respondents could have claimed a legal right of employment in the Appellant provided they were employed in any of the undertakings of the company immediately before the appointed day. Section 13 of the Act postulates a situation where a workman would continue to be a workman
F despite the statutory transfer. A workman, who has ceased to be in employment of the Company before the appointed day, therefore, would not be entitled to the benefit thereof. The order of winding up, as noticed hereinbefore, was passed by the High Court of Punjab and Haryana by order dated 6.3.1978 and a direction for terminating the services of all the workmen had also been
G issued by the learned Company Judge on 5.8.1977, pursuant whereto and in furtherance whereof, a settlement was arrived at by and between the Official Liquidator and the workmen.

Such settlement was arrived at indisputably having regard to the provisions contained in Section 25FFF of the 1947 Act. Section 25F provides
H for entitlement of compensation to a workman who has been in continuous

service for not less than one year and who is retrenched by the employer, until the workman has been given one month's notice in writing indicating the reasons for retrenchment or the workman has been paid one month's wages in lieu thereof as well as compensation, the amount whereof shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and a notice in the prescribed manner is served on the appropriate Government. Section 25FF envisages payments of compensation to a workman in case of transfer of undertakings, the quantum whereof is to be determined in accordance with the provisions contained in Section 25F, as if the workman had been retrenched. A similar provision for payment of compensation to a workman in case of closure of an undertaking is in Section 25FFF of the 1947 Act in terms whereof also the concerned workman would be entitled to notice and compensation in accordance with the provisions of Section 25F, as if he had been retrenched.

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

A Constitution Bench of this Court in *Hariprasad Shivshankar Shukla* v. *A.D. Divikar,* [1957] SCR 121 interpreted the word 'retrenchment' as contained in Section 2(oo) of the ID Act, holding :

> "For the reasons given above, we hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in s.2 (oo) 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 punishment inflicted by way of disciplinary action,

A 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...."

B

The history of the legislation has been noticed by a Constitution Bench of this Court in *Anakapalla Co-operative Agricultural and Industrial Society Ltd.*, (supra) and it, while holding that a company taking over the management of a closed undertaking may in a given situation become successor-in-interest but as regard the interpretation of the relevant provisions of the 1947 Act following *Hariprasad Shivshankar Shukla* (supra), opined :

C

"...The Legislature, however, wanted to provide that though such termination may not be retrenchment technically so-called, as decided by this Court, nevertheless the employees in question whose services are terminated by the transfer of the undertaking should be entitled to compensation, and so, s. 25FF provides that on such termination compensation would be paid to them as if the said termination was retrenchment. The words "as if" bring out the legal distinction between retrenchment defined by s. 2(oo) as it was interpreted by this Court and termination of services consequent upon transfer with which it deals. In other words, the section provides that though termination of services on transfer may not be retrenchment, the workmen concerned are entitled to compensation as if the said termination was retrenchment. This provision has been made for the purpose of calculating the amount of compensation payable to such workmen; rather than provide for the measure of compensation over again, s. 25FF makes a reference to s. 25F for that limited purpose, and, therefore, in all cases to which s.25FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against the transferee of the said concern."

D

E

F

G

The said decision, therefore, is an authority for the proposition that the expression 'as if' has limited application and has been employed only for the purpose of computation of quantum of compensation and takes within its purview a case where retrenchment as contained in Section 2(oo) of the 1947 Act has taken place within the meaning of Section 25F and not in a case falling under Sections 25FF or 25FFF thereof.

H

Once it is held that Section 25F will have no application in a case of transfer of an undertaking or closure thereof as contemplated in Section 25FF and 25FFF of the 1947 Act, the logical corollary would be that in such an event Section 25H will have no application.

The aforementioned provisions clearly carve out a distinction that although identical amount of compensation would be required to be paid in all situations but the consequence following retrenchment under Section 25F of the 1947 Act would not extend further so as to envisage the benefit conferred upon a workman in a case falling under Sections 25FF or 25FFF thereof. The distinction is obvious inasmuch as whereas in the case of retrenchment simpliciter a person looses his job as he became surplus and, thus, in the case of revival of chance of employment, is given the preference in case new persons are proposed to be employed by the said undertaking; but in a case of transfer or closure of the undertaking the workman concerned is entitled to receive compensation only. It does not postulate a situation where a workman despite having received the amount of compensation would again have to be offered a job by a person reviving the industry

Applicability of Section 25H of the 1947 Act in the case of closure of an undertaking came up also for consideration before this Court in *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh etc.* v. *Presiding Officer, Labour Court, Chandigarh and Ors etc.*, [1990] 3 SCC 682, wherein a Constitution Bench in no uncertain terms held :

> "...Very briefly stated Section 25FFF which has been already discussed lays that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman had been retrenched" (emphasis supplied). Section 25H provides for reemployment of retrenched workmen. In brief, it provides that where any workmen are retrenched, and the employer proposes to take into his employment any person, he shall give an opportunity to the retrenched workmen to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious *construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as*

A *contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to workman "deemed to be retrenched" a right to claim reemployment as provided in Section 25H.* In such cases, as specifically provided in the relevant sections the workmen concerned would only be entitled to notice and compensation in accordance with Section 25F. It is significant that in
B a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workmen is "as if the workmen had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of Section 25F."

C

(Emphasis supplied)

The said dicta was reiterated by a Bench of this Court in *H.P. Mineral & Industrial Development Corporation Employees' Union* v. *State of H.P. and Ors.*, [1996] 7 SCC 139, stating :

D

"...Since Section 25-(O) was not available on account of the said provision having been struck down by this Court the only protection that was available to the workmen whose services were terminated as a result of closure was that contained in Sections 25-FFA and 25-FFF of the Act. It is not disputed that both these provisions have been
E complied with in the present case."

DECISIONS RELIED UPON BY THE HIGH COURT:

The Division Bench of the High Court, however, proceeded on the basis that the case of the Respondents herein is covered by the two decisions
F of this Court, namely, *The Workmen* v. *The Bharat Coking Coal Ltd. and Ors.*, AIR (1978) SC 979 : [1978] 2 SCC 175 and *Workmen represented by Akhil Bhartiy Koyla Kamgar Union* (supra) rendered on interpretation of provisions of Section 17 of the Coking Coal Mines (Nationalization) Act, 1972 (hereinafter referred to as 'the 1972 Act') . It is no doubt true that the
G provisions of Section 17 of the 1972 Act and Section 13 of the said Act are in pari materia but before we proceed to deal with the said decisions, we may indicate that whereas in the present case, the said Act came into effect on 27.12.1980, the winding up order was passed on 6.3.1978 as a result whereof there had been no continuity of the business activity of the undertakings of the said company. The expression 'immediately before the appointed day'
H contained in Section 13 of the said Act *vis-a-vis* Section 17 of the 1972 Act

is of some importance. The coking coal mines which stood nationalized by reason of the 1972 Act were running concerns whereas admittedly the undertaking of the company had not been functioning and the enactment became necessary only having regard thereto and for the purpose of utilization of production facilities and the equipment thereof.

In *Bharat Coking Coal Ltd.* (supra), a distinction was made between a liability of the Central Government vis-a-vis the Government company as contained in Section 9 and Section 17 of the 1972 Act holding that the liabilities of the owner, agent, manager, or managing contractor, as the case may be, are liabilities which are referable to sub-section (2) thereof; whereas Section 17 contains a special provision relating to workmen and their continuance in service notwithstanding the transfer from private ownership to the Central Government or the Government company, as the case may be. The court holding that the said provision confers a statutory protection for the workmen and is express, explicit and mandatory and referring to the definition of 'workman' as contained in Section 2(s) of the 1947 Act, opined that even a workman who had been dismissed from his service and directed to be reinstated by an award of industrial adjudicator would come within the purview thereof. The said decision was rendered in the fact situation obtaining therein as the services of the concerned workmen therein were terminated by the erstwhile management of the New Dharmaband Colliery in October, 1969, whereupon an industrial dispute was raised followed by a reference in October, 1970 and during the pendency thereof, the Colliery was nationalized with effect from 1.5.1972. The question which, therefore, came up for consideration before this Court was as to whether an award of reinstatement can be enforced against the Bharat Coking Coal Ltd., a Government company, in whose favour a notification of vesting of the said Colliery was issued by the Central Government having regard to the provisions contained in Section 9 vis-a-vis Section 17 thereof. An award of reinstatement postulates continuity of service, and the same could be enforced against the company in which the undertakings vested in terms of the provisions of a Parliamentary Act. The said decision, therefore, cannot be said to have any application in the fact of the present case.

In *Workmen represented by Akhil Bhartiya Koyla Kamgar Union* (supra), the concerned workmen were retrenched by the management of Industry Colliery of Bharat Coking Coal Ltd. on 9.6.1971 owing to operational and financial problems and later on the management was taken over by the Central Government under the Coking Coal Mines (Emergency Provisions) Act, 1971

A followed by the Coking Coal Mines (Nationalisation) Act, 1972. Before the said Bench, the decision in *Anakapalla Cooperative Agricultural and Industrial Society Ltd.* (supra) was referred to but was distinguished on the ground that whereas in *Anakapalla Cooperative Agricultural and Industrial Society Ltd.* (supra) the provision of Section 25FF was attracted, therein the provision of Section 25F was attracted, stating :

B

> "9. Shri Sinha submitted that as soon as transfer had been effected under Section 25FF of the Act all the employees became entitled to claim compensation and thus those who had been paid such compensation will not be entitled to claim reemployment under Section
> C 25-H of the Act as the same would result in double benefit in the form of payment of compensation and immediate re-employment and, therefore, fair justice means that such workmen will not be entitled to such conferment of double benefit. It is no doubt true that this argument sounds good, but there has been no retrenchment as contemplated under Section 25-FF of the Act in the present case. The
> D workmen in question have been retrenched long before the Colliery was taken over the respondents and, therefore, the principles stated in Anakapalle Coop. Agricultural and Industrial Society Ltd. (AIR 1963 SC 1489) in this regard cannot be applied at all. The workmen had been paid compensation only under Section 25-F and not under Section
> E 25-FF of the Act on transfer of the Colliery to the present management. That case has not been pleaded or established. Hence, we do not think that the line upon which the High Court has proceeded is correct. The order made by the Tribunal will have to be restored."

F The said decision, therefore, in stead of advancing the case of the Respondents runs counter thereto inasmuch as in the said decision it has been categorically held that Section 25H would come into play only when a retrenchment in terms of Section 25F was made but the said provision would not come into play in a case attracting Section 25FF of the 1947 Act. Unfortunately, before the said Bench of this Court even the amended provisions
G of Section 17 of the 1972 Act were not brought to its notice.

THE 1947 ACT:

We have noticed hereinbefore that the consequences other than payment of compensation envisaged in Section 25F of the Act do not flow in case of
H transfer or closure of the undertaking. Section 25H of the 1947 Act cannot,

thus, be invoked in favour of the Respondents in view of the fact that they were not in the employment of the company on the appointed day i.e. on 13.10.1980. A

The submission of Mr. Das to the effect that the Parliament having used the words 'every workman' in Section 25FFF, which would include dismissed workmen in view of its definition contained in Section 2(s) of the 1947 Act, should be widely interpreted so as to hold that even those workmen who had received compensation would be entitled to the benefit of Section 25H of the 1947 Act, cannot be accepted. Such a construction is not possible keeping in view the statutory scheme of the 1947 Act. Section 25F vis-a-vis Section 25B read with Section 2(oo) of the 1947 Act contemplates a situation where a workman is retrenched from services who had worked for a period of not less than one year on the one hand and those workmen who are covered by Section 25FF and Section 25FFF on the other keeping in view the fact that whereas in the case of the former, a retrenchment takes place, in the latter it does not. The Parliament amended the provisions of the 1947 Act by inserting Section 25FF and Section 25FFF therein by reason of the Industrial Disputes (Amendment Act), 1957 with effect from 28.11.1956, as it was found that having regard to the helpless condition to which workman would be thrown if his services are terminated without payment of compensation and presumably on the ground that if a reasonable compensation is awarded, he may be able to find out an alternative employment within a reasonable time. In the case of closure of an industrial undertaking the Act contemplates payment of compensation alone. B C D E

In construing a legal fiction the purpose for which it is created should be kept in mind and should not be extended beyond the scope thereof or beyond the language by which it is created. Furthermore, it is well-known that a deeming provision cannot be pushed too far so as to result in an anomalous or absurd position. The Court must remind itself that the expressions like "as if" is adopted in law for a limited purpose and there cannot be any justification to extend the same beyond the purpose for which the legislature adopted it. F G

In a recent decision, the Constitution Bench of this Court in *P Prabhakaran* v. *P. Jayarajan,* JT (2005) 1 SC 173, opined :

> "A legal fiction pre-supposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Such consequences have got to be worked out only H

A to their logical extent having due regard to the purpose for which the legal fiction has been created. Stretching the consequences beyond what logically flows amounts to an illegitimate extension of the purpose of the legal fiction."

Furthermore, in a situation of this nature, the rule of purposive B construction should be applied.

The statutory scheme does not envisage that even in the case of closure of an undertaking, a workman who although had not been retrenched would be reemployed in case of revival thereof by another company. If the submission of Mr. Das is accepted, the same would not only run contrary to the statutory C scheme but would make the definition of retrenchment contained in Section 2(oo) of the 1947 Act otiose.

The interpretation of Section 25J of the 1947 Act as propounded by Mr. Das also cannot also be accepted inasmuch as in terms thereof only the D provisions of the said Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including the Standing Orders made under the Industrial Employment (Standing Orders) Act, but it will have no application in a case where something different is envisaged in terms of the Statutory Scheme. A beneficial statute, as is well known, may receive liberal construction but the same cannot be extended beyond the E statutory scheme. [See *Deepal Girishbhai Soni and Ors.* v. *United India Insurance Co. Ltd. Baroda,* [2004] 5 SCC 385.

In the instant case, we are not concerned with the liability of the erstwhile company. It stands accepted that the Appellant has no monetary liability as regard the amount of compensation payable to the workmen in view of Section F 5 of the said Act.

NON-OBSTANTE CLAUSE EFFECT OF :

The said Act contains a non-obstante clause. It is well-settled that when both statutes containing non-obstante clauses are special statutes, an endeavour G should be made to give effect to both of them. In case of conflict, the latter shall prevail.

In *Solidaire India Ltd.* v. *Fairgrowth Financial Services Ltd. and Ors.,* [2001] 3 SCC 71, it is stated :

H "9. It is clear that both these Acts are special Acts. This Court has

laid down in no uncertain terms that in such an event it is the later Act which must prevail. The decisions cited in the above context are as follows: *Maharashtra Tubes Ltd.* v. *State Industrial & Investment Corpn. of Maharashtra Ltd., Sarwan Singh* v. *Kasturi Lal; Allahabad Bank* v. *Canara Bank* and *Ram Narain* v. *Simla Banking & Industrial Co. Ltd.*

10. We may notice that the Special Court had in another case dealt with a similar contention. In *Bhoruka Steel Ltd.* v. *Fairgrowth Financial Services Ltd.* it had been contended that recovery proceedings under the Special Court Act should be stayed in view of the provisions of the 1985 Act. Rejecting this contention, the Special Court had come to the conclusion that the Special Court Act being a later enactment would prevail. The headnote which brings out succinctly the ratio of the said decision is as follows :

"Where there are two special statutes which contain non obstante clauses the later statute shall prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers the later enactment with a non obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment would continue to apply."

[See also *Engineering Kamgar Union* v. *Electro Steels Castings Ltd. and Anr.*, [2004] 6 SCC 36].

The right of the workmen to obtain compensation in terms of Section 25FFF has not been taken away under the said Act. The liability to pay compensation in the case of closure would be upon the employer which in this case would be the erstwhile company. By reason of the provisions of the said Act, only a special machinery has been carved out for payment of dues of all persons including workmen in terms of the provisions contained in Chapter VI of the said Act. If a workman contends that his lawful dues have not been paid, his remedy is to approach the Commissioner of Payments constituted under the provisions of the said Act and not to proceed against the Appellant herein, in view of Section 5 of the Act.

A *SYMPATHY :*

While construing a statute, 'sympathy' has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the concerned workmen.

B

In *A. Umarani* v. *Registrar, Cooperative Societies and Ors.*, [2004] 7 SCC 112, this Court rejected a similar contention upon noticing the following judgments :

> "In a case of this nature this court should not even exercise its
C jurisdiction under Article 142 of the Constitution of India on misplaced sympathy.
>
> In *Teri Oat Estates (P) Ltd.* v. *U.T., Chandigarh and Ors.* [2004] 2 SCC 130, it is stated :
>
> "We have no doubt in our mind that sympathy or sentiment by
D itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extra-ordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order, which would be in
E contravention of a statutory provision.
>
> As early as in 1911, Farewell L.J. in *Latham* v. *Richard Johnson & Nephew Ltd.*, [1911-13 AER reprint p.117] observed:
>
> "We must be careful not to allow our sympathy with the
F infant plaintiff to affect our judgment. Sentiment is a dangerous Will O' the Wisp to take as a guide in the search for legal principles."

Yet again recently in *Ramakrishna Kamat and Ors.* v. *State of Karnataka and Ors.*, JT (2003) 2 SC 88, this Court rejected a similar
G plea for regularization of services stating :

> "....We repeatedly asked the learned counsel for the appellants on what basis or foundation in law the appellants made their claim for regularization and under what rules their recruitment was made so as to govern their service conditions. They were not in a position
H to answer except saying that the appellants have been working

for quite some time in various schools started pursuant to resolutions passed by zilla parishads in view of the government orders and that their cases need to be considered sympathetically. It is clear from the order of the learned single judge and looking to the very directions given a very sympathetic view was taken. We do not find it either just or proper to show any further sympathy in the given facts and circumstances of the case. While being sympathetic to the persons who come before the court the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment."

CONCLUSION :

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. No costs.

D.G. Appeal allowed.