Privy Council Appeal No. 27 of 1993

Commercial Finance Company Limited (in liquidation) *Appellant*

v.

Indira Ramsingh-Mahabir *Respondent*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH JULY 1994

Present at the hearing:-

LORD TEMPLEMAN
LORD GOFF OF CHIEVELEY
LORD SLYNN OF HADLEY
LORD WOOLF
LORD NOLAN

*[Delivered by **Lord Slynn of Hadley**]*

This appeal from the Court of Appeal of Trinidad and Tobago raises the question whether the appellant company in liquidation is liable to pay severance benefits to the respondent under the Retrenchment and Severance Benefits Act, 1985 (Act No. 32 of 1985) ("the Act"). The Industrial Court and the Court of Appeal both held that the company was so liable.

The relevant facts are short and (although the respondent was not represented before the Board or before the Court of Appeal) do not seem to be in dispute. From the Court of Appeal's judgment it appears that the respondent was formerly employed by the appellant as a clerk typist. On 15th September 1986 the Central Bank of Trinidad and Tobago, acting under section 28(2) of the Financial Institutions (Non-Banking) Act No. 52 of 1979, ordered the appellant to suspend business forthwith. On 14th October 1986 the bank caused the Inspector of Banks to apply to the court for an order to wind up the company. Such an order was made on 18th December 1986 and the Deposit Insurance Corporation was appointed as liquidator.

The respondent's service with the company was treated as automatically terminated by law on the making of the winding up order (on the basis of such cases as *In re General Rolling Stock Company (Chapman's Case)* (1866) L.R. 1 Eq. 346) though the company had ceased business and the respondent had ceased to work for the company on 15th September 1986, the date of the Central Bank's order that the appellant should cease business.

The liquidator refused to pay severance benefits under the Act on the basis that the respondent was not a "retrenched worker".

The Act is entitled:-

> "An Act to prescribe the procedure to be followed in the event of redundancy and to provide for severance payments to retrenched workers."

Section 2 provides that:-

> "'redundancy' means the existence of surplus labour in an undertaking for whatever cause;
>
> 'retrenchment' means the termination of employment of a worker at the initiative of an employer for the reason of redundancy;"

It is accepted that the respondent is "a worker" within the meaning of the Act and that she is not in one of the categories excluded from the application of the Act. By section 4:-

> "4.(1) Where an employer proposes to terminate the services of five or more workers for the reason of redundancy he shall give formal notice of termination in writing to each involved worker, to the recognised majority union and to the Minister.
>
> (2) The notice shall state -
>
> (a) ...
>
> (b) the length of service and current wage rates of the involved workers;
>
> (c) the reasons for the redundancy;
>
> (d) the proposed date of the termination of employment;
>
> (e) the criteria used in the selection of the workers to be retrenched;
>
> (f) any other relevant information."

By section 5:-

> "Notwithstanding section 4, an employer may, prior to the giving of formal notice in writing of retrenchment, enter into consultation with the recognised majority union with a view to exploring the possibility of averting, reducing or mitigating the effects of the proposed retrenchment."

By section 18:-

" (1) Where any part of the employer's retrenchment proposals is eventually put into effect, severance benefits shall be payable by the employer to the retrenched worker in accordance with this section.

(2) Where the retrenched worker is covered by a registered Collective Agreement, the terms of which with respect to severance benefits are no less favourable than those set out in this Act with respect to severance benefits, the provisions of the said Collective Agreement shall apply.

(3) Where the retrenched worker is not covered in the manner set out in subsection (2), the minimum severance benefits payable by the employer are as follows -

(a) where he has served the employer without a break in service for between more than one but less than five years, he is entitled for each such completed year of service to two weeks' pay at his basic rate if he is an hourly, daily or weekly rated worker, or one half month's pay at his basic rate if he is a monthly rated worker;

...

(5) Every worker to whom this Act applies retrenched on or after 1st January, 1985, is entitled to the severance benefits contemplated by this section regardless of the number of workers in his employer's work force.

(6) This section shall not apply to a retrenched worker who is eligible to receive from his employer terminal benefits that are no less favourable than those set out in this section."

By section 24:-

"In the event of a winding up or the appointment of a receiver all severance benefits, including terminal benefits referred to in section 18(6), due to a retrenched worker shall enjoy the same priority as wages or salary due to any clerk or servant in respect of services rendered to a company under sections 78 and 250 of the Companies Ordinance but without limitation."

The Court of Appeal held in the first place that:-

"... the Act does make provision for the payment of severance benefits to a worker whose services are terminated in a surplus labour situation and so envisages the continuation of the business. I also agree with his [the appellant's attorney's] submission that the services of the respondent were not terminated as a result of the initiative of the employer for the reason of redundancy."

This conclusion was in accordance with two judgments of the Supreme Court of India although the statutory language was in those cases different. In *Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union* [1956] S.C.R. 872 in giving the judgment of the court Venkatarama Ayyar J. said at page 886:-

> "This contention assumes that the termination of the services of workmen, on the closure of a business, is retrenchment. 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 closing of the business cannot therefore be properly described as retrenchment."

And at page 887:-

> "We are unable to agree with these observations. Although there is discharge of workmen both when there is retrenchment and closure of business, the compensation is to be awarded under the law, not for discharge as such but for discharge on retrenchment, and if, as is conceded, retrenchment means in ordinary parlance, discharge of the surplus, it cannot include discharge on closure of business."

Similarly in *Hariprasad Shivshankar Shukla v. A.D. Divikar* [1957] S.C.R. 121, 130, the relevant section provided that:-

> "'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."

S.K. Das J. said at page 130:-

> "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?"

Then, having cited the passage in *Pipraich* to which reference has been made, the learned judge continued at page 131:-

> "But the observations do explain the meaning of retrenchment in its ordinary acceptation."

Their Lordships agree with this approach. In this case it is plain that retrenchment means termination for the reason of redundancy and redundancy means the existence of surplus labour in an undertaking for whatever cause. It does not apply to the termination of employment simply because the business has ceased to exist. Retrenchment contemplates that the business will continue in existence but that there are too many workers for the purposes of the business so that some have to be made redundant. Moreover the termination of a worker's employment has to be at the initiative of the employer. Termination by operation of law, following a compulsory winding up order made at the suit of a third party, is not a termination at the initiative of the employer. On this point their Lordships agree with the Court of Appeal.

The Court of Appeal, however, considered other provisions of the Act which they concluded entitled the respondent to severance pay. In the first place they referred to section 17, which provides that the parties to a Collective Agreement may adopt a procedure other than that prescribed in the Act, and they said that payments in Collective Agreements may cover situations other than those where surplus labour exists. It is in those other situations that they may provide for payments to be made to workers.

Secondly they considered that because section 18(6) and section 24 referred to "terminal benefits":-

> "the Act envisages that provision for terminal benefits can include but is not limited to severance benefits (in a surplus labour situation) and all such benefits can fall under the umbrella of 'terminal benefits'."

The judgment continued:-

> "... it seems to me that the intention of the subsection (and that of section 24 for that matter) is to ensure that terminal benefits, like severance benefits, come within the ambit of the Act and where those terminal benefits are not more favourable than those set out in subsection 18(3) the worker is entitled to receive the minimum benefits prescribed by subsection (3). ...
>
> In my judgment, in the light of the meaning attributable to terminal benefits (supra), bearing in mind that the purpose of severance and terminal benefits is to compensate a worker for loss of employment, it seems that the Act not only provides for severance benefits to be paid to a worker whose

services are terminated for reason of redundancy (i.e. where there is a surplus labour situation and the business continues) but it also makes provision for payment of minimum terminal benefits to a worker whose services are terminated on the winding up of the employer company or on the appointment of a receiver if the terminal benefits which he is eligible to receiver from his employer are less favourable than those set out in subsection (3). Section 18, subsections (2) and (6), therefore, in my view, govern two distinct circumstances."

On the basis of this approach they continued:-

"I now turn to the question of entitlement. Is the respondent entitled to any terminal benefits under the Act?

To answer this question I think that it is imperative that a purposive interpretation be given to subsection 18(6) which accords with the intention of the Act having regard to what is stated in the preamble namely, the payment of a monetary sum for loss of employment to a retrenched worker. And I do not think that the word 'retrenched worker' in subsection (6) can be limited to one made redundant in a surplus labour situation only, having regard to what i have said about, and the meaning I have attributed to, terminal benefits in the various sections. While I appreciate that the meaning attributed to the word 'retrenchment' (the noun) in the *Sugar Mill* case (supra) 'connotes, in its ordinary acceptation that the business itself is being continued but that a portion of the labour force is discharged as surplusage and could not include discharge on the closure of the business'. I do not accept, in the context of this Act, that 'retrenched worker' is intended to apply specifically to a worker whose services are terminated on a redundancy. If 'retrenchment' in its ordinary connotation means what the *Sugar Mill* case says it means then there would have been no need to specifically define it in the Act as occurring on a redundancy. The fact that the Act specifically defines 'retrenchment' it intends, in my view, to limit the definition to the noun and not where it is used in an adjectival sense (notwithstanding section 13 of the Interpretation Act Ch.3:01). Since, in my view, the Act intends that at least minimum benefits be paid to a worker on loss of his employment either in circumstances where there is a surplus labour situation and the business continues or where the employment comes to an end on a winding up of the employer company or on an appointment of a receiver it appears that the adjective is used to describe a worker whose services have been terminated and not necessarily to restrict such termination to a redundancy situation."

Whilst fully sympathetic to the Court of Appeal's obvious desire to find a way which entitled the respondent to be paid severance benefit on termination of her employment without any fault on her part, their Lordships find it impossible to accept this approach which is based on a misreading of sections 17, 18(6) and 24.

The structure of section 18 is clear. The basic rule is that if the employer's retrenchment proposals are put into effect the retrenched worker is entitled to severance benefits in accordance with the section. However if the parties to a collective agreement have adopted a different procedure in accordance with section 17 then that procedure is to be followed. If the Collective Agreement provides terms with respect to severance benefits which are no less favourable than those set out in the Act with respect to severance benefits then the provisions of the Collective Agreement are to apply. That merely means that severance benefits are to be those provided for in the Collective Agreement which take the place of those which would otherwise have been payable under the Act. Collective Agreements may well provide for other payments. The fact that they may do so does not affect the nature of severance payments under the Act. A worker still has to satisfy the conditions for the payment of severance benefits in accordance with the general scheme of the Act.

The same is true of section 18(6). That again substitutes, for severance benefits which would otherwise be payable under the Act, "terminal benefits" to which the worker is otherwise entitled. This subsection does not create additional rights in respect of terminal benefits which are different from severance benefits payable under the Act, unless the worker is otherwise entitled to them, as for example and as is most likely, under his contract of employment. The reference to terminal benefits for this purpose does not change the meaning of severance benefits for the purposes of section 18(1) of the Act.

Section 24 of the Act is dealing with preferential payments. Its primary purpose is to ensure that severance benefits in the event of a winding up or the appointment of a receiver shall enjoy the same priority as wages or salary due to any clerk or servant in respect of services rendered to a company under the Companies Ordinance. The reference to terminal benefits in that section, where they are also given priority, is to ensure that the worker shall have the same rights of preference in relation to those terminal benefits, which are substituted for the severance benefits which would be payable under the Act, as the worker would have in respect of those severance benefits provided for under the Act. Section 24 does not in any way change the nature of severance benefits for the purpose of the Act.

The Court of Appeal then sought to draw a distinction between the noun "retrenchment" and the adjective "retrenched". In their Lordships' view it is not a possible distinction in this Act. In the first place the distinction is contrary to the provisions of section 13 of the Interpretation Act Ch. 3:01 which provides:-

> "Where a word is defined in a written law, other parts of speech and grammatical variations of that word have corresponding meanings in that written law."

In any event it is clear to their Lordships that in the present case, and even apart from that provision of the Interpretation Act, no such distinction can be drawn. A retrenched worker is one who has undergone the process of retrenchment as defined in the Act.

Their Lordships accordingly allow the appeal. As in the Court of Appeal there will be no order as to costs before their Lordships' Board.