JUDICIAL LEGISLATION FOR COMPENSATORY RELIEF TO WORKMEN EXPOSED TO OCCUPATIONAL DISABILITIES

I Introduction

ANAND BIHARI v. *Rajasthan State Road Transport Corporation, Jaipur*[1] is an epoch-making judgment of the Supreme Court which has not only made a distinct contribution in labour law but also displayed in the absence of legislative norms, the creative role of judges to protect the interests of workers for premature incapicitation to do the required work due to occupational disability. Further, the court has given new dimension to clause (*c*) of section 2(*oo*) of the Industrial Disputes Act 1947, by enlarging the contours of the said clause.

II Factual background

In order to appreciate the decision it is necessary to examine the relevant facts. There were three appeals which raised common questions of law. The judgment covered all the three. In the first appeal the Rajasthan State Transport Corporation terminated the services of certain bus drivers aged over 40 years on the ground that they developed a weak or sub-normal eye sight or lost their required vision as drivers of buses of the corporation. The aggrieved drivers in a writ petition before the Rajasthan High Court challenged the validity of the order of termination of their services by the corporation on two grounds, *viz*., the termination of service, (*i*) amounted to "retrenchment" within the meaning of section 2(*oo*) of the Industrial Disputes Act 1947 (hereinafter referred to as the Act) and since the said retrenchment was effected without complying with the mandatory requirements of section 25-*F* of the Act it was illegal; and (*ii*) was illegal because it was contrary to an agreement alleged to have been entered into between the corporation and drivers' union whereunder it was provided that if a driver was found unfit for driving the bus, he should be posted as a helper. Further the corporation issued a circular on 10 March 1980 providing for giving the job of a helper to unfit drivers.

On the other hand, the corporation resisted both contentions of the workmen because, (*i*) the termination of services of the drivers by it did not amount to "retrenchment" and hence not illegal; and (*ii*) there was no agreement between it and the drivers' union and the said circular was later on withdrawn.

The Rajasthan High Court rejected the contentions of the drivers and upheld the plea of the corporation. The drivers, therefore, filed an appeal

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1. 1991 Lab. I.C. 494.

before the Supreme Court. The court directed that the (retired) workmen should be offered suitable employment if available. They should also be paid proportionate compensation under the scheme framed by it from the date of their retirement till they resume their duty.

In the second case also the corporation terminated the services of a driver on the ground that he lost vision of his right eye. Thereupon aggrieved by this order the driver filed a writ petition before the Rajasthan High Court challenging the management's order, *inter alia*, on the ground that since he had lost the sight of one eye, he was working from 11 March 1986 in the maintenance section of the vehicle and not as a driver and, therefore. the order of termination of services made on 27 February 1988 on the ground of his incapacity to work as a driver, and not for his being unfit to work in the maintenance section of the vehicles, was illegal. The High Court upheld the plea of the driver, quashed the order terminating his services and directed the corporation to absorb him in the post of helper or any other equivalent post for which he might be found fit. It further directed that the workman be treated to be in continuous service and the period between the date of termination of his services and his reinstatement should be treated as leave without pay. The corporation then filed an appeal before the Supreme Court, which set aside the decision of the High Court and directed the corporation to give the concerned workman the benefits of the scheme laid down by it.

In the third case the driver was offered employment as a helper from August 1985 since he developed weak eye-sight on account of an accident in the course of his employment till the date of retirement. The corporation terminated his services as a helper, even though he was not unsuitable to work as such. The aggrieved workman (helper) filed a writ petition before the Rajasthan High Court challenging the order of the corporation. The court upheld the order on the ground that he was unfit to work as driver. The workman, therefore, filed an appeal before the Supreme Court. On these facts it held that the termination of his services was unjustified and illegal as it was in contravention ofsection 25-*F* of the Act. It accordingly awarded reinstatement.

III Area of conflict

The court was called upon to decide the following main points :

(*i*) Whether the termination of service of workmen on account of incapacity due to sub-normal eye-sight or loss of required vision to work amounts to a "retrenchment" within the meaning of section 2(*oo*) of the Industrial Disputes Act 1947? If not is such termination of service covered by clause (*c*) of section 2(*oo*) of the Act?

(*ii*) Whether any benefit/compensation is payable for "loss of required eye-sight" of an insured employee/worker within the meaning of section 2(8)

of the Employees' State Insurance Act 1948, or section 3(2) of the Workmen's Compensation Act 1923?

(iii) Whether the order of termination of service of drivers (over 40 years of age) for developing weak or sub-normal eyesight or losing required vision on account of their occupation as drivers of the corporation was proper, equitable and just? If not what should be done? Is it desirable to evolve a compensatory or alternate scheme for employment to meet the hardship? If so what should be the scheme in these cases?

IV Response of the Supreme Court

(1) Scope of retrenchment

In order to appreciate the first issue it is useful to examine the statutory definition of "retrenchment". Section 2*(oo)* of the Industrial Disputes Act defines "retrenchment" as follows :

> [T]he 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 :
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> *(a)* voluntary retirement of the workman; or
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> *(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
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> *(c)* termination of service of a workman on the ground of ill-health.

This definition is very badly drafted for there are inherent contradictions in it. If retrenchment means termination of service by the employer, then what about exclusory clause *(a)*, namely, voluntary retirement of workmen which is certainly not a termination of service of workmen by the employer? Similarly, exclusory clause *(b)*, namely, retirement reaching the age of superannuation is also not a termination of service of workmen by the employer unless it is considered to be his formal act to remove the name of the workman from the muster roll. Here one fails to understand the purpose of exclusory clause for the aforesaid item.

Notwithstanding contradictions in the definition, particularly in exclusory clauses *(a)* and *(b)*, the exact nature and scope of clause *(c)* has been the subject-matter of controversy in the instant case. On the one hand, it was contended on behalf of the workmen that "ill-health" under clause *(c)* does not cover cases of loss of limb or an organ or of its permanent use, and covers cases only of a general physical, mental disability or incapacity to execute the work. On the other hand, it was argued on behalf of the corporation that "ill-health" includes also cases of permanent loss or incapacity of a limb or an organ such as eye or eyesight, ear or hearing capacity, of hand or leg, *etc.*, which is necessary for the required work. But the court

adopted the widest possible amplitude in view of context dictionary meanings, the consumers of the concerned products, services and judicial precedents and held that the termination of service of the workers, in the present case was covered by clause (*c*) of section 2(*oo*) and therefore, was not "retrenchment".

(i) Contextual interpretation

The court preferred to interpret the expression "ill-health" under clause (*c*) in the context when it observed:

> [T]he expression "ill-health" used in sub-clause (*c*) has to be construed relatively and in the context. It must have a bearing on the normal discharge of duties. It is not any illness but that which interferes with the usual ordinary functioning of the duties of the post which would be attracted by the sub-clause. Conversely, even if the illness does not affect general health or general capacity and is restricted only to a particular limb or organ but affects the efficient working of the work entrusted it will be covered by the phrase.[2]

The court added that it is not the capacity in general but that which is necessary to perform the duty for which the workman is engaged, is relevant and material.

(ii) Dictionary meaning

The court also referred to the dictionary meaning of "ill-health". Thus, the expression "ill-health" has been defined to mean, (*i*) "not good health; sick".[3] (*ii*) "disordered in physical condition; diseases; unwell; sick".[4] (*iii*) "one of health; sick; with disease; with anxiety (of health), unsound, disordered, morally bad."[5] (*iv*) "unsound, disordered; out of health, not well."[6] On the basis of these definitions the court came to the following conclusion :

> Any disorder in health which incapicitates an individual from discharging the duties entrusted to him or affects his work adversely or comes in the way of his normal and effective functioning can be covered by the said phrase.[7]

It is evident that the Supreme Court adopted a liberal and broad construction and rejected the literal and ordinarily understood construction of the expression ill-health.

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2. *Id.* at 498.
3. *New Collins Concise English Dictionary.*
4. Webster, *Comprehensive Dictionary.*
5. *Concise Oxford Dictionary* (3rd ed.).
6. *Shorter Oxford English Dictionary.*
7. *Supra* note 1 at 498.

(iii) Consumer's oriented interpretation

The Supreme Court preferred to construe "Ill-health" from the point of view of consumers of the concerned products and services and observed :

> If on account of a workman's disease or incapacity or disability in functioning, the resultant product or the service is likely to be affected in any way or to become a risk to the health, life or property of the consumer, the disease or incapacity has to be categorised as ill-health for the purpose of clause (*c*) of section 2(00).[8]

To hold otherwise, the court added, would frustrate the purpose of production for which the services of the workmen are engaged and would endanger the lives and properties of the consumers.

It appears that the court had to stretch and strain the expression "ill-health" to bring it outside the purview of "retrenchment". This might have become necessary because in a catena of cases[9] the Supreme Court has held that "retrenchment" must include every termination of service of workmen by an act of employer except those not expressly included. Be that as it may, if termination of service on failure to pass the required test for confirmation,[10] unsatisfactory service during the period of probation,[11] unauthorised absence from duty,[12] inefficiency and incompetence[13] or insubordination, *etc.*, was held to be retrenchment the termination of service of workmen incapicitated to do the required work, not expressly mentioned under clause (*c*), might have been a case of "retrenchment".

(iv) Decided cases

The Supreme Court[14] also referred to its earlier decision in *Workmen of the Bangalore Woollen, Cotton and Silk Mills Co. Ltd.* v. *Its management*[14a] wherein while interpreting the definition of retrenchment it observed :

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8. *Ibid.*

9. See, *L. Robert D'Souza* v. *Executive Engineer, Southern Railway*, 1982 Lab. I.C. 811; *State Bank of India* v. *N. Sundera Money*, (1976) 3 S.C.R. 160; *Hindustan Steel Ltd.* v. *Presiding Officer, Labour Court*, A.I.R. 1977 S.C. 31; *Santosh Gupta* v. *State Bank of Patiala*, A.I.R. 1981 S.C. 1219; *Delhi Cloth and General Mills Ltd.* v. *Shambhu Nath Mukherjee*, A.I.R. 1978 S.C. 8; *Surendra Kumar Varma* v. *Central Government Industrial Tribunal*, A.I.R. 1981 S.C. 422; *Mohan Lal* v. *Bharat Electronics Ltd.*, A.I.R. 1981 S.C. 1253; *Gujarat Steel Tubes Ltd.* v. *Gujarat Steel Tubes Mazdoor Sabha*, (1980) I L. L. J. 137.

10. *Santosh Gupta, ibid.*

11. *Mohan Lal, supra* note 9.

12. *Delhi Cloth and General Mills, ibid.*

13. *L.I.C. of India* v. *Sunil Kumar Mukherjee*, (1964) L.L.J. 442.

14. *Ramleshkumar* v. *Central Government Industrial Tribunal, Bombay*, 1980 Lab. I.C. 1116.

14*a*. A.I.R. 1962 S.C. 1363.

It is the contract of service which is terminated and that contract requires certain physical fitness in the workmen. Where therefore a workman is discharged on the ground of ill-health, it is because he was unfit to discharge the service which he had undertaken to render and therefore it had really come to an end itself. That this is the idea involved in the definition of the word "retrenchment" is also supported by S. 25-G of the Act which provides that where any workmen are retrenched, and the employer proposes to take in his employ any person, he shall give an opportunity to the retrenched workmen to offer themselves for re-employment and the latter shall have preference over other persons in the matter of employment. Obviously, it was not contemplated that one whose services had been terminated on grounds of physical unfitness or ill-health would be offered re-employment; it was because his physical condition prevented him from carrying out the work which he had been given that he had to leave and no question of asking such a person to take up the work again arises. If he could not do the work, he could not be offered employment again. It would follow that such a person cannot be said to have been retrenched within the meaning of the Act as amended by the Ordinance.[15]

(2) Scope and coverage of the Employees' State Insurance Act 1948 and the Workmen's Compensation Act 1923

Under the Employees' State Insurance Act the disablement benefit is available to an insured person suffering from disablement as a result of "employment injury" sustained as an employee in a factory or establishment to which the Act applies. The term "employment injury" includes injury caused by accident or an occupational disease arising out of and in the course of employment. Disablement may be permanent or temporary. Permanent disablement is of two kinds, *viz.*, (*i*) permanent partial disablement; and (*ii*) permanent total disablement. Thus, the Act[16] refers to "loss of sight to such an extent as to render the, claimant unable to perform any work for which eyesight is essential" and classifies such injury as permanent total disablement resulting in 100 per cent loss of earning capacity. The Act also refers to, (*i*) loss of one eye, without complications, the other being normal; ((*ii*) loss of vision of one eye without complications or disfigurement of eyeball, the other being normal; (*iii*) partial loss of vision of on eye and classify all such injuries as permanent partial disablement resulting in 40,30 and 10 per cent loss of earning capacity respectively. There is also reference to occupational cataract due to infra-red radiation incurred in "all work involving exposure to the risk concerned" and classify[18]

15. *Id.* at 1366.
16. Item 4, part I, second schedule.
17. Items 31, 32, 32*A*, pt. II, second schedule.
18. Item 11, third schedule.

it as one of the occupational diseases. On the basis of the provisions the court observed :

> [T]he present case, viz., that of sub-normal eye-sight or loss of required vision to work as driver would not be covered by the provisions of...(E.S.I.) Act, as employment injury or as an occupational disease, for no provision is made there for compensation for a disability to carry on a particular job.[19]

The court added :

> The present workmen cannot be said to have suffered either a permanent, total or partial disablement to carry on any job or to have developed cateract due to infra-red radiations. The workmen are and will be able to do any work other than that of a driver with the eye-sight they possess.[20]

Likewise the Workmen's Compensation Act also does not cover sub-normal eyesight or loss of the required vision to work as driver for no povision is made there for compensation for the disability to carry on a particular job.

(3) Policy considerations : justifiability of management's action

The Supreme Court itself poses an issue whether in the circumstances of the case and in the context of constitutional provisions the action of the corporation was proper, equitable and justified? The court answered the question in the negative because, (*i*) the drivers whose services were terminated were above 40 years of age and developed a weak or sub-normal eyesight or lost their required vision on account of their occupation; (*ii*) the corporation terminated the services of over 30 drivers within a short span which shows the extent of occupational hazard to which the drivers of the corporation are exposed during their service; (*iii*) weakening of the eyesight is not an isolated phenomenon but a widespread risk to which the drivers are exposed to; (*iv*) it was discriminatory on the part of the corporation to treat at *par* the cases of workmen who lost their required vision on account of their occupation and other workmen who for reasons not connected with the employment suffer from ill-health or continued ill-health.

(4) Formulation of compensatory scheme

In view of helplessness shown by the corporation, absence of any provision for compensation in the Employees' State Insurance Act or in the Workmen's Compensation Act to provide social security to workmen and for adequate safeguard to remedy the situation of the members of their

19. *Supra* note 1 at 501.
20. *Ibid.*

family and dependents who have been thrown out of their employment for the occupational injury, the Supreme Court evolved the following scheme of relief :

(*i*) The Corporation shall in addition to giving each of the retired workmen his retirement benefits, offer him any other alternative job which may be available and which he is eligible to perform.

(*ii*) In case no such alternative job is available, each of the workmen shall be paid along with his retirement benefits, an additional compensatory amount as follows :

(*a*) where the employee has put in 5 years or less than 5 years' service, the amount of compensation shall be equivalent to 7 days' salary per year of the balance of his service;

(*b*) where the employee has put in more than 5 years' but less than 10 years' service, the amount of compensation shall be equivalent to 15 days' salary per year of the balance of his service;

(*c*) where the employee has put in more than 10 years' but less than 15 years' service, the amount of compensation shall be equivalent to 21 days' salary per year of the balance of his service.

(*d*) where the employee has put in more than 15 years' service but less than 20 years' service, the amount of compensation shall be equivalent to one month's salary per year of the balance of his service;

(*e*) where the employee has put in more than 20 years' service, the amount of compensation shall be equivalent to two months' salary per year of the balance of his service.

The salary will mean the total monthly emoluments that the workman was drawing on the date of his retirement.

(*iii*) If the alternative job is not available immediately but becomes available at a later date, the Corporation may offer it to the workman provided he refunds the proportionate compensatory amount.

(*iv*) The option to accept either of the two reliefs, if an alternative job is offered by the Corporation, shall be that of the workman.[21]

The aforesaid scheme is subject to three limitations, namely, (*i*) incapitated workmen are not rendered incapable of taking any other job either

21. *Id.* at 501-2.

in the company/corporation or outside; (*ii*) workmen must be at the advanced stage of their life and it would be difficult for them to get a suitable alternative employment outside; and (*iii*) relief made available under the scheme should not be such as would "induce the workmen to feign disability which in the case of disability such as the present one, *viz.*, the development of a defective eyesight, it may be easy to do so".

V Conclusions

The aforesaid decision is a landmark in the development of labour law not for what the Supreme Court decided in this case but for the reason that it has formulated a scheme for compensatory relief to safeguard the interest of such workmen who have to face premature termination of service on account of disabilities contracted from their job. Indeed, the decision not only paved the way for the legislature but shows determination of the court to fill the gap created by the Employees' State Insurance Act 1948 and the Workmen's Compensation Act 1923. Further the decision highlights anxiety of the court to protect the sufferings caused by workmen at the advanced age by premature termination of their service and to members of their families. Moreover the court adopted a humanitarian approach when it observed :

> The workmen are not denizens of an Animal Farm to be eliminated ruthlessly the moment they become useless to the establishment. They have not only to live for the rest of their life but also to maintain the members of the family and other dependants and to educate and bring up their children. Their liability in this respect at the advanced age at which they are thus retired stands multiplied. They may no longer be of use to the corporation for the job for which they were employed but the need of their patronage to others intensifies with the growth in their family responsibilities.[22]

It is submitted that the aforesaid line of approach adopted by the court represents, to a large extent, the viewpoint of Holmes J. that "the life of law has not been logic : It has been experience."[23]

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22. *Id.* at 500.

23. See, *Common Law* 1 (1923) referred to in Edgar Bodennheimer, *Jurisprudence* 123 (1974).

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