PETITIONER:
STATE BANK OF INDIA

Vs.

RESPONDENT:
SHRI N. SUNDARA MONEY

DATE OF JUDGMENT16/01/1976

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
CHANDRACHUD, Y.V.
GUPTA, A.C.

CITATION:
1976 AIR 1111 1976 SCR (3) 160
1976 SCC (1) 822
CITATOR INFO :

F	1977 SC 31	(2,4)
R	1979 SC 170	(17)
F	1980 SC1219	(11,12,13)
RF	1981 SC 422	(5)
RF	1981 SC1253	(7,8)
R	1982 SC 854	(5,6)
D	1983 SC 865	(6)
E	1983 SC1320	(7,8,9,11,12)
R	1984 SC 500	(2)
R	1984 SC 684	(50)
RF	1986 SC 132	(7)
RF	1986 SC1680	(4)
E&D	1990 SC1808	(5)

ACT:
Constitution of India-Art. 133(1)-Scheme of -Conditions precedent for the issue of a certificate under in exercise of power under Art. 136 of the Constitution on such a certificate.
Industrial Disputes Act. 1947 (Act 14 of 1947)-Section 25F read with ss. 2(oo) and 25(B) (2)-Scope of the concept of retrenchment under s.2(oo).
Statutory construction of social welfare legislation-Guidelines.
Words and phrases-Meaning of the words "termination.....for any reason whatsoever" includes automatic extinguishment of service by virtue of a preemptive provision to terminate in the appointment order itself.

HEADNOTE:
Section 25(F)(b) of the Industrial Disputes Act, 1947, provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until he has been paid at the time of the retrenchment, compensation which shall be equivalent to 15 days' average pay for every completed year of service or any part thereof in excess of six months Section 2(oo) of the Act defines 'retrenchment' as meaning the termination by the employer of the service of a workman for any reasons whatsoever, otherwise than as a

punishment inflicted by way of disciplinary action. In the "Hospital Mazdoor Sabha's" the Supreme Court held that the statutory requirement of the payment of compensation under s. 25(F)(b) of the Industrial Disputes Act, 1947 is a condition precedent for the retrenchment of a workman and any retrenchment without payment at the time of the retrenchment makes the retrenchment order invalid and inoperative

As the automatic extinguishment of his service consequent to the preemptive provision in his appointment order as to the temporariness and the period of his employment was covered by the words "termination . for any reasons whatsoever" occurring in s. 2(oo) of the Act, in an application under Art. 226 of the Constitution by the respondent claiming that by virtue of his deemed continuous service of one year within the meaning of s. 25B(2) of the Industrial Disputes Act, he was entitled to be reinstated for non-compliance of s. 25F of the Act. The High Court of Madras allowing the writ made the rule nisi
absolute. The writ appeal filed by the appellant respondent also failed. However, the High Court granted a certificate under Art. 133(1)(c) of the Constitution.

Dismissing the appeals and negativing the contentions of the appellant, the Court.
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HELD: (1) The grant of a Constitutional passport to the Supreme Court by the High Court is not a matter of easy insouciance but anxious advertence to the dual vital requirements built into Art. 133(1) by specific amendment. A substantial question of law of general importance is a sine quo non to certify fitness for hearing by the apex court. Nay, more; the question, however, important and substantial, must be of such pervasive import and deep significance that in the High Court's judgment it imperatively needs to be settled at the national level by the highest bench. Failure here stultifies the scheme of the Article and floods this court with cases of lesser magnitude with illegitimate entry.

[162 C-E]

Union of India v. Hafiz Mohmd. Said, ILR [1973] II Delhi 673, 676, approved.

(2) While exercising the vital powers under Art. 136 the Supreme Court must have due regard to the constitutional limitations of Art. 133(1) and owe allegiance to those restraints save in exceptional cases. [163 A]
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(3) If the workman swims into the harbour of s. 25F of the Industrial Disputes Act, 1947, he cannot be retrenched without payment, at the lime of retrenchment, compensation computed as prescribed therein read with s. 25B(2)

[164 D]

State of Bombay and others v. Hospital Mazdoor Sabha & others [1960] (2) S.C.R. &66. applied.

(4) Statutory construction, when courts consider welfare legislation with an economic justice bias, cannot turn on cold print, glorified as grammatical construction, but on teleological purpose and protective intendment. Sections 25F, 25B and 2(oo), of the Industrial Disputes Act, 1947 have a workers' mission and the input of Part IV of the Constitution also underscores this benignant approach. while canons of traditional sanctity cannot wholly govern, courts cannot go hay wire in interpreting provisions, ignoring the text and context. Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. Dictionaries are not dictators of

statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation. Section 2(00) is the master of the situation and the Court cannot truncate its amplitude. The words "for any reason whatsoever" in s. 2(00) of the Industrial Disputes Act are very wide and almost admit of no exception.

[163 G, 164 H, 165 B, 166 B]

(5) A breakdown of s. 2(00) unmistakably expands the semantics of retrenchment. "Termination .. for any reason whatsoever" are the key words. Every termination spells retrenchment. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination how soever produced. Retrenchment is no longer terra incognita but area covered by an expansive definition. It means 'to end' conclude, cease'. That to write into the order of appointment the date of termination confers no moksha from s. 25F(b) is inferable from the proviso to s. 25F(1). A separate subsequent termination of the service is not the sole magnetic pull of the provision. A preemptive provision to terminate is struck by the same vice as a post appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision. [165 B-C, D, E, 166 C]

Observation:-Social justice has two sides and occasionally one party or he other makes myopic mistakes resulting in further litigation. [166 G]

[The Court reiterated its views held out in Trustees of Port, Bombay's case, namely, where the law is not free from obscurity and needs this Court's pronouncement and one of the affected parties is weak, being a worker, the costs must come out of public funds and suggested the constitution by the State of a "Suitors Fund" which will take care of hardships and public interest in the area of necessary litigation.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 933 and 934 of 1975.

From the judgment and orders dated the 24th and 25th March, 1975 of the Madras High Court at Madras in writ appeal No. 231 of 1973 and writ petition No. 5062 of 1973.

F. S. Nariman, M/s. 1. N. Shroff and H. S. Parihar, for the appellant.

M. K. Ramamurthi and J. Ramamurthi, for the respondent.

The Judgment of the Court was delivered by

KRISHNA 1 YEAR, J.-The appellant employer, undaunted by a double defeat at both tiers in the High Court, has appealed against the ad verse judgments, by certificate, on the only ground that there was no retrenchment of the respondent-employee (within the meaning of

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Of s. 2(00) of the Industrial Disputes Act, 1947 (Act XIV of 1947) hereinafter called the Act) and, consequently the latter was ineligible to-the statutory compensation the non-payment of which, along with the termination of service, nullified the termination itself. The end result was that the Division Bench of the Court ruled that the respondent 'was entitled to retrenchment compensation' which, not

having been paid, 'the termination would be invalid'. The subtle r legal issue, substantial in its financial impact, is whether s. 25F read with s. 2(00), vis a vis a short employment, casts a lethal spell on the cessation of service for non-compliance with the condition precedent set out in the provision.

The Certificate

The certificate issued by the High Court under Art.133(1) is bad on its face, according to counsel for the respondent and the appeal consequently incompetent. We are inclined to agree that the grant of a constitutional passport to the Supreme Court by the High Court is not a matter of easy insouciance but anxious advertence to the dual vital requirements built into Art. 133(1) by specific amendment. Failure here stultifies the scheme of the Article and floods this Court with cases of lesser magnitude with illegitimate entry. A substantial question of law of general importance is a sine qua non to certify fitness for hearing by the apex court. Nay, . more; the question, however important and substantial, must be of such pervasive import and deep significance that in the High Court's judgment it imperatively needs to be settled at the national level by the highest bench. The crux of the matter has been correctly set out in a decision(l) of the Delhi High Court in words which find our approval:

> "A certificate can be granted only if the case involves a question of law:- .
>
> (i) which is not only substantial but is also of general importance; and
>
> (ii) the said question, in our opinion, needs to be decided by the Supreme Court. r _
>
> It has to be noted that all the above requirements should be satisfied before a certificate can be granted. It means that it is not sufficient if the case involves a substantial question of law of general importance but in addition to it the High Court should be of the opinion that such question needs to be decided by the Supreme Court. Further, the word 'needs' suggests that there has to be a necessity for a " decision by the Supreme Court on the question, and such a necessity can be said to exist when, for instance, two views are possible regarding the question and the High Court takes one of the said views. Such a necessity can also said to exist when a different view has been expressed by another High Court.
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> (1) Union of India v. Hafiz Mohd. Said: ILR [1973] II Delhi 673, 676.

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It is but fair to add an implied but important foot note that while exercising the wider power under Art. 136 this Court must have due regard to the constitutional limitations on Art. 133(1) and owe allegiance to those restraints save in exceptional cases.

This view o f the certificate would have put the lid on this appeal but on hearing counsel we feel that the omission of the High Court to assess the case explicitly from this angle does not disable us from B. granting special leave, if applied for. So much so counsel have proceeded to argue on the merits, the penumbral area of industrial law covered by the subject matter being one which cannot be left in legal twilight.

The facts

One of the two employees involved in these appeals has been re-absorbed in service and his case is therefore of lesser import, but the other is still out in the cold and

his legal fate falls for examination in the matrix of facts which we proceed to state. This respondent was appointed as cashier, off and on, by the state Bank of India between July 31, 1973 and August 29, 1973. The intermittent breaks notwithstanding, his total number of days of employment answered the test of 'deemed' continuous service within s. 258(2) and both sides accept that fact situation. But the order of appointment, which bears in its bosom the 'good bye' to the employee after a few days, calls for construction in the light of s.2(oo) and s. 25F and we may as well read it here:

"(1) The appointment is purely a temporary one for a period of 9 days but may be terminated earlier, without assigning any reason therefor at the bank's discretion;

(2) The employment, unless terminated earlier, will automatically cease at the expiry of the period i.e., 1972."

This nine days' employment, tacked on to what has gone before, Fr has ripened to a continuous service for a year on the antecedent arithmetic of 240 days of broken bits of service.

The legal issue

The skiagram of the employment order must now be. studied to ascertain which of the rival meanings counsel have pressed deserves preference. Statutory construction, when courts consider welfare legislation with an economic justice bias, cannot turn on cold print glorified as grammatical construction but on teleological purpose and protective intendment. Here s. 25F, 25B and 2(oo) have a workers' mission and the input of Part IV of the Constitution also underscores this benignant approach. While canons of traditional sanctity can not wholly govern, courts cannot go haywire in interpreting provisions, ignoring the text and context. With these guidelines before us, we seek to decode the implications of the order of appointment. But before doing so, an analysis of the legal components of s. 25F will facilitate the diagnostic task.

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The leading case on this facet of law is The Hospital Mazdoor Sabha(1). Gajendragadkar, J. (as he then was) observed:

"Section 25F(b) provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until he has been paid at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months. Clauses (a) c and (e) of the said section prescribe similar conditions but " we are not concerned with them. On a plain reading of s. 25F(b) it is clear that the requirement prescribed by it is a condition precedent for the retrenchment of the work man. The section provides that no workman shall be .1, retrenched until the condition in question has been satisfied. It is difficult to accede to the argument that when the P section imposes in mandatory terms a condition precedent, non-compliance with the said condition would not render the impugned retrenchment invalid .... failure to comply with the said provision renders the impugned orders invalid and inoperative."

Without further ado, we reach the conclusion that if the workman swims into the harbour of s. 25F, he cannot be retrenched without payment, at the time of retrenchment,

compensation computed as prescribed therein read with s. 25B(2). But, argues the appellant all these obligations flow only out of retrenchment, not termination outside that species of snapping employment. What, then, is retrenchment ? The key to this vexed question is to be found in s. 2(oo) which reads thus:

> "2(oo) "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 supera-annuation 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;

for any reason whatsoever-very wide and almost admitting of no exception. Still, the employer urges that when the order of appointment carries an automatic cessation of service, tho period of employment works itself out by efflux of times, not by act of employer.

(1) [1960] 2 S.C.R. 866, 871-872.

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Such cases are outside the concept of 'retrenchment' and cannot entail the burdensome conditions of s. 25F. Of course, that a nine-days' employment, hedged in with an express condition of temporariness and automatic cessation, may look like being in a different street (if we may use a colloquialism) from telling a man off by retrenching him. To retrench is to cut down. You cannot retrench without trenching or cutting. But dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation. Section 2(oo) is the master of the situation and the Court cannot truncate its amplitude.

A break-down of s. 2(oo) unmistakably expands the semantics of retrenchment. 'Termination... for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is-has the employee's service been terminated ? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master of the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of s.25F and s.2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It means 'to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from s.25F(b) is inferable from the proviso to s. 25F(1). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract s. 25F and automatic extinguishment

of service by effluxion of time cannot be sufficient. An English case R. v. Secretary of State(l) was relied on where Lord Denning MR observed:

> "I think that the word 'terminate' or 'termination' is by itself ambiguous. It can refer to either of two things either to termination by notice or to termination by effluxion of time. It is often used in that dual sense in landlord and tenant and in master and servant cases. But there are several indications in this paragraph to show that it refers here only to termination by notice.

Buckley L.C., concurred and said:

> "In my judgment the words are not capable of bearing that meaning. As counsel for the Secretary of State has point- ed out, the verb 'terminate' can be used either transitively or
> 1973] 2 All E.R. 103.
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> intransitively. A contract may be said to terminate when it s comes to an end by effluxion of time, or it may be said to be terminated when it is determined at notice or otherwise by some act of one of the parties. Here in my judgment the 7 word 'terminated' is used in this passage in para 190 in the transitive sense, and it postulates some act by somebody which is to bring the appointment to an end, and is not applicable to a case in which the appointment comes to end merely by effluxion of time."

Words of multiple import have to be winnowed judicially to suit the c social philosophy of the statute. So screened we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision.

What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point ? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be rank below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.

We substantially dismiss the appeal (C.A. 934 of 1975) subject to the slight modification made above. There was some intervening suggestion for settlement of the dispute but it fell through. We are persuaded to make the observation based on that circumstance that social justice

has two sides and, occasionally, one party or the other makes r myopic mistakes resulting in further litigation.

Subject to the above observations, the appeal is dismissed. The parties will bear their costs throughout, although, in cases like this, where the law is not free from obscurity and needs this Court's pronouncement and one of the affected parties is weak, being a worker, the costs must come out of public funds as suggested in Trustees of Port, Bombay(1). The State, we hope, will constitute a suitors' fund

(1) [1974] 4 S.C.C. 710.

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which will take care of hardships and public interest in the area of necessary litigation.

In C.A. 933 of 1975 the respondent has been re-employed by the appellant although in his case also we declare, for reasons already given and subject to the same term till his absorption that the retrenchment is invalid. The costs, in this appeal, will be borne by each of the parties.

S.R. Appeal dismissed .

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