NATIONAL ACADEMY FOR TRAINING AND RESEARCH IN SOCIAL SECURITY
High Court Judgement - Gujarat

1985-(LB2)-GJX -0024 -GUJ
D. S. Vasavada, Textile Labour Association, Ahmedabad V. Regional Provident Fund Commissioner, Gujarat State, Ahmedabad.

DATE : 29-01-1985

EQUIVALENT CITATION(S) :

1985-(001)-LLJ -0263 -GUJ

JUDGE(S) :

I C Bhatt
P Subramanian Poti

TEXT :

D. S. VASAVADA, TEXTILE LABOUR ASSOCIATION, AHMEDABAD v. REGIONAL PROVIDENT FUND COMMISSIONER, GUJARAT STATE, AHMEDABAD.

Special Civil Application No. 5663 of 1984, dated January 29, 1985.

JUDGMENT

Per P. S. Poti, C.J. : There are many enactments in this country intended to serve the purpose of extending welfare measures to the working class. Merely enacting laws would not be an adequate protection or extension of a necessary benefit. Such laws have to be implemented with a sense of commitment. That largely depends on who apply the law and how they handle it. That also depends, quite often, on the degree of efficiency of the persons administering the law and the capacity to take decisions one way or the other expeditiously. Time is of the essence and delay will destroy the advantages conceived by extension of the benefits of such welfare measures.

2. We are tempted to preface this judgment with these remarks because of the stand taken by the Regional Provident Fund Commissioner of the Gujarat State in regard to meeting the claims of the dependents of 129 deceased workmen who were working in the textile mills at Ahmedabad. Whatever might have been the stand taken by the respondent earlier, at least, after issue of notice, a different stand if taken, could have been appreciated but the respondent has chosen to contest the petition.

3. The point for our determination is quite simple. These 129 workmen represented by the Textile Labour Association of Ahmedabad were admittedly employees in mills closed down during the period from 8th March 1982 to 14th June 1984. the

Parliament has amended the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, in the year 1976 by introducing a welfare plea of legislation in the form of Employees' Deposit-linked Insurance Scheme. S. 6C of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, empowers the framing of such scheme. The scheme is to be administered by the Central Board constituted under S. 5A of the Act. The power of the Central Board could be delegated to the commissioner. Contribution is payable by an employer as well as by Central Government calculated on the basis of the basic wages, dearness allowance and retaining allowance of the employee. No employee's contribution is to be deducted from the wages. The amount received as the employer's contribution as also the Central Government's contribution to the Insurance Fund is credited to the "Deposit-linked Insurance Fund Account". The Fund is intended for payment of benefits in accordance with the provisions of the scheme. On the death of an employee who is a member of the Fund, the persons entitled to receive the Provident Fund accumulations of the deceased are entitled, in addition to such accumulations, during the preceding three years or during a period of his membership, to receive an amount not exceeding Rs.10,000/-. So the maximum limit of insurance payable in respect of a workman who is a member of the Fund is the amount of Rs.10,000/-.

4. The 129 persons mentioned in Annexure "A" were admittedly members of the Fund, they being employees of various mills covered by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. This is not disputed. That they died is also not disputed. But it is said that since on the respective dates of their deaths, the mills had been under closure, their services must have been taken as terminated and, therefore, on the date of their death, they were not members of the Fund. If so, their legal representatives would not be entitled to the benefit of the insurance. This, in short, is the stand by the respondent.

5. There is no dispute that all the 14 mills have factually closed. In fact, many more mills have been closed in Ahmedabad in this period of crisis for the textile industry in the State. Some of them have closed expressly declaring that they would re-open in due course and keeping the employees in service in the meanwhile. Others have closed without expressing whether they are closing temporarily or permanently. The case of the petitioner is that there has been no termination of services of any of the 129 employees on the date of their death and the mere closure of the mills cannot be taken to amount to termination of their service. This and this only is the question for our decision.

6. Any person employed continues to be employed until the services are validly terminated by the employer or by mutual agreement the services come to be terminated or the employee resigns from such service. The cessation of work by an employer by closing his mill may not by itself terminate the services of the employees. An employer may close his mill for many reasons, such as non-availability of raw material, non-availability of requisite power, temporary financial difficulties or such other situations. Merely because he stops working the factory, it need not be that the services of the employees stand automatically terminated; they continue in service. The requirement of a valid closure which alone will put an end to the services of the employees are to be found within the provisions of the Industrial Disputes Act. We are referring to this because the learned counsel for the respondent submitted that this is a matter of contract. It is certainly not so. The provision in S. 25 FFA of the Industrial Disputes Act, 1947, prescribes 60 days' notice to be given of intention to close down any undertaking and the notice is required to state clearly

the reasons for the intended closure of the undertaking. The proviso is admittedly not relevant to the present case and, therefore, that is not referred to S. 25 FFF(1) stipulates the need for a notice and payment of compensation in accordance with the provisions of S. 25 F as if the workmen are retrenched when the undertaking is closed. These provisions make it clear that closure, which may be for any reason and which only amounts to the employer drawing the shutters need not necessarily result in termination of the services of the workmen. It is one thing to say that a man has closed his business, another to say that he has retrenched his employees. He may close his business and may not choose to send away his employees as actually has been done in regard to some mills before us or he may not advert to it at all nor apply the mind to it. It is only when closure in accordance with the enactment is effected that there would be termination of service.

7. We are aware that the case being one of employment in Textile Mills, the Bombay Industrial Relations Act, 1946, applies S. 35 of that Act provides for Standing Orders in regard to matters mentioned in Schedule I. Entry 4 in Schedule I relates to closure or re-opening of a department or a section of a department or the whole of the undertaking. We are also aware that Standing Orders as finally settled for operatives in cotton textile mills at Ahmedabad are in force and Standing Order No. 9 A specifically deals with the closure of any department after giving two months' notice to the operative concerned. We have noticed that S. 120A of the Bombay Industrial Relations Act, 1946 provides that nothing in that Act shall affect any of the provisions of the Industrial Disputes Act, 1947. The Standing Orders prescribe only the procedure for closure and the consequence by way of termination of services by reason of the closure is to be found in the provisions of S. 25 FFA read with S. 25FFF of the Industrial Disputes Act, 1947. In other words, there would be termination of the services by reason of closure only if there is compliance with Ss. 25 FFA and 25 FFF. That there is no such compliance is a matter beyond controversy.

8. The 129 employees who had died during closure are employees of 14 different mills whose names are shown in para 3 of the affidavit-in-reply filed by the respondent. We notice from the averments in the rejoinder filed by the petitioner association, averments which are not disputed, that out of the 14 so named, Mills Nos. 2, 3, 5, 11, 12 and 13 are mills which have closed without giving any notice whatsoever, Mills Nos. 1, 7, 9, 10 and 14 have closed on the same day of the notice, Mills Nos. 4 and 8 have treated the workers specifically on duty despite the closure and Mill No. 6 has though given notice with the specified period, failed to pay the retrenchment compensation which, according to S. 25 FFF, has to be paid.

The question whether the mere closure of a mill will result in termination of service of workmen was examined by a Division Bench of this Court in the case of Imambhai Gulmhusein Shaikh v. Regional Provident Fund Commissioner, 23(1) G.L.R. 581. Chief Justice M. P. Thakkar speaking for the Bench noticed that closure by itself does not effect termination. We see no reason to justify the attempt made to distinguish that decision on the facts of this case.

9. It is well to remind the authorities under the Act of what the Division Bench has said earlier in the decision adverted to. An approach different from a technical or a pedantic one is called for in dealing with welfare legislations and that would be possible only if the person administering the enactment feels a sense of dedication to the cause. In case there is an honest doubt, as observed by the learned Judges of the Division Bench, even legal advice could be taken. But the essence of any such

procedure is speed, for the widow of a deceased workman is entitled to the benefit of insurance in reasonable time and she is not expected to be waiting for long to receive benefits, which, in terms of today's economy, could be said to be meager or to come to a Court complaining of the failure to get such benefit in spite of repeated approaches. Fortunately for the dependents of the deceased whose cases have come up in this petition, there is a well organised institution to sponsor their cause. Even so, considerable time has been taken to obtain redress.

10. As we have already said, mere closure without notice or closure simultaneously with putting up a notice would not satisfy the requirement of S. 25 FFA. Closure, specifically keeping employees in service, would negative the very concept of termination of service. Even the closure in regard to one of the Mills, viz. No. 6, would not operate to terminate their services, for S. 25 FFF requires notice and compensation as if in a retrenchment.

11. For the reasons stated above, the 129 persons whose cases are sponsored by the Textile Labour Association are to be found to have been members of the fund on the date of their death which would mean that they are entitled to the insurance benefit claimed.

12. The petition succeeds. Rule is made absolute. The respondent is directed to pay the insurance benefits within two months from to-day. There is no reason why they should not get interest on their own money. The amount of insurance should be paid with interest at 12% per annum for the period after three months of the date of death in the respective cases. We direct the parties to suffer costs.

ACTS & SECTIONS REFERENCE :

INDUSTRIAL DISPUTES ACT, 1947
- Section 25
- Section 25FFA
- Section 25FFF
- Section 25FFF(1)