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A STUDY OF THE PRINCIPLE OF "LAST COME, FIRST GO" IN MATTERS OF RETRENCHMENT AND THE RIGHT TO RE-EMPLOYMENT IN THE LIGHT OF SUPREME COURT'S DECISION IN HARJINDER SINGH'S CASE*

By

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The concept of social justice to workers has elaborately been explored in Harjinder Singh's Case¹. Social welfare legislation like Industrial Dispute Act required to be interpreted, keeping in view the goals set out in the preamble of the Constitution and Part IV of the Constitution providing for the Directive Principles of State Policy.² In short, it may be stated that the state is under a duty to secure a social order for the promotion of the welfare state. Primarily, this postulates that the State should ensure equality between man and women and equitable distribution of material resources of the community to subserve the common good. Additionally to ensure that the workers get their dues.

Gajendragadkar, J observed that the concept of social justice is a living concept of revolutionary impact, which gives sustenance to rule of law and ideal of welfare state.³ There is no denial of the fact, that the Directive Principles of State policy provides a strong foundation of social structure to secure to workmen what is legitimately due to them. This point gets ample support from the fact that the workmen contribute to the natural economic prosperity. This is made possible only when the workmen get social justice, which is a specie of the genus of justice. It has been held that for a welfare state, it would remain in oblivion, unless social justice is dispensed.⁴

In disciplinary cases, where the workmen is not proved to be guilty or exonerated, there can be no justification for depriving him of what he is entitled to. If such deprivation takes place, despite workmen is held not guilty it would amount to misconduct on the part of the employer and he cannot be permitted to do this. Attempts were made to deny re-employment opportunities to retrenched workmen by paying compensation. Justice Mathew had no difficulty to state 'that damages will be poor substitute for reimbursement.'⁵ Stating that the State should act for the common good of all, Vivian Bose, J asserted that Constitution existed for the common man, for

* Harjinder Singh v. Punjab State Warehousing Corporation AIR 2010 SC P 1116/

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¹ AIR 2010 SC P 1116

² Refer to Art 38, 39 (a) to (c), 43 and 43A of the Directive Principles of State Policy

³ State of Mysore v. Workman of Gold Mines AIR 1958 SC 923

⁴ Ramon Services (P) Ltd v. Subhas Kapoor (2001) 1 SCC P118

⁵ Justice Mathew in "Democracy, Equality and Freedom"

the poor and humble.⁶ Equally and vehemently asserted by a noted jurist Palkivala in these terms; "Our⁷ Constitution is primarily shaped and moulded for the common man" Viewed in this context, not offering re-employment to retrenched workmen and by merely paying damages, would be a gross violation of natural justice. Judicial process is a State action and 'State' includes judiciary.⁸ Logically it follows that judiciary is equally under a duty to give effect to the promotion and welfare of the people by interpreting extensively the provision of the Directive Principles relating to social justice.

In Harjinder Singh's Case,⁹ the question of employer retrenching a workman in breach of the rule of "last come, first go" came up for consideration. Ordinarily the employer is expected to adhere to this principle. Supplementing the provision relating to the opportunity to be given for re-employment of such retrenched employee has been viewed as a measure of social justice. A deviation of the rule of 'Last come, first go' can be done by the employer in cases of lack of efficiency or loss of confidence and the burden is on the employer to justify the deviation.¹⁰ Award of reinstatement substituted by compensation deprives retrenched workmen of the only source of his own sustenance and that of his family and this result in a serious violation of social justice. Violation of social justice occurs at two stages:-

- I. Firstly- Not sticking to the principle of 'last come, first go' i.e. the junior most person in the cadre shall be retrenched and the rule of seniority to be followed, which would be applicable even to daily wage workers.
- II. Secondly, not providing opportunity for re-employment of such retrenched workman, who has a preferential right of re-employment.

Sec 25H of the Industrial Disputes Act provides for re-employment of retrenched workmen. It requires an opportunity to be given to the retrenched workmen to offer themselves for re-employment and that they shall have preference over others. Rule 77 of Industrial Disputes (Central) Rules, 1957, prescribing the mode of re-employment provides:-

- I. Maintenance of seniority list of all workmen in a particular category for which retrenchment is contemplated, according to their service in that category;
- II. The publication of that list.

Rule 78 additionally, dealing with the mode of re-employment requires, that notice be given to everyone of all the retrenched workman eligible to be considered for re-employment.

Preparation of the seniority list and publication thereof does not entail any difficulty. It may be easier to do so, as all the relevant data is available with the employer. Those with lesser service will be placed lower in the list and workmen with

⁶Per Vivin Bose, J in Bidi Supply Co.v. Union of India AIR 1956 SC P479 at Para 23

⁷ Palkivala in "Our Constitution, defaced and defiled (1974) P.29

⁸ In Re Kesavananda AIR 1973 SC P 1461

⁹ Supra 1

¹⁰ Samshita Dubey v. City Board Etaway (1999) AIR SCW P694.

longer period of service will be placed higher in the list. The position of those lower in the list will be considered for re-employment, if the eligible workman above him is not available. Sec 25 F of the Industrial Dispute Act which provides for re-employment of retrenched workmen while adopting the above stated methods requires that the workmen should have been in continuous service for not less than one year. Obviously, Sec 25 F does not apply to those less than one year of service. In other words, Sec 25 F of the Industrial Dispute Act confines only to the mode of re-employment of retrenched workmen in continuous service for not less than one year. Sec 25 G of the Industrial Dispute Act, which prescribes the principle of 'last come, first go' does not confine to workmen who have been in continuous service for not less than one year.

The ration in Jaipur Development authority's case, states that the workmen covered by Sec 25 F of Industrial Disputes Act has to prove that he was in continuous service for 240 days during 12 months preceding the order of retrenchment, while under Sec 25 G of Industrial Dispute Act there is not need to establish it. Thus, the relief by way of re-employment is made available for those workmen, who have less than one year (240 days) of service. Re-employment protects the right of livelihood, as against compensation which denies such a right. Compensation cannot provide sustenance to workman and his family for a longer period and the amount given as compensation may be exhausted within a shorter period taking into consideration, the cost of living index which has risen to unbearable limits. The Supreme Court's decision in Harjinder Singh's Case¹¹ may be viewed as a substantial contribution to social justice, which makes a workman to get what is due to him and thus, gives effect to the Constitutional right to life and means of livelihood guaranteed under Article 21 of the Constitution.

¹¹ Supra Note 1