

(1964) 08 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule No. 147 of 1963

Akhil Ranjan Das Gupta

APPELLANT

Vs

Management Assam Tribune and Others

RESPONDENT

Date of Decision : 06-08-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Employment (Standing Orders) Act, 1946 — Section 15, 3(2), 4, 6

Citation : (1964) 08 GAU CK 0001

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : P.K. Goswami and S.R. Khaund, for the Appellant; G.K. Talukdar, Jr. Govt. Advocate for Opposite Party No. 2, for the Respondent

Judgement

G. Mehrotra, C.J.—This is a petition by Akhil Ranjan Dasgupta, one of the employees of the Management of the Assam Tribune, Gauhati, for a writ of mandamus directing the Labour Commissioner not to give effect to the standing orders which have been certified by the Certifying Officer and. to modify them. A writ of certiorari has "also been prayed for quashing the order passed" by the Labour Commissioner and the Presiding Officer of the Labour Court, Gauhati.

2. The admitted facts are that "certain standing orders were framed by the management. They were sent to the Certifying Officer, who has been impleaded as Opposite Party No. 2 to this petition, "for certification u/s 4 of the Industrial Employment Standing Orders Act, 1946. Notices were issued. Objections were filed by the workman that certain provisions of the draft standing orders are not in conformity; with: the provisions. of the model standing orders and thus u/s 4 the Certifying Officer had no jurisdiction to certify them. u/s 6 of the Industrial Employment (Standing Orders) Act, 1946, hereinafter called. "the Act", an appeal is provided against the order of the Certifying Officer to the Labour Court. The Certifying Officer rejected the objections filed by the workman and certified the draft standing orders. An appeal was filed before the Labour Court. The

Labour Court affirmed the order of the Certifying Officer. . It is against this order of the Labour Court that the present petition has-been filed by one of the employees.

3. Mr. Goswami, who appears for the management, has taken a preliminary objection to the,(maintainability of the petition. His contention is that the present Petitioner has no locus standi, to come to this Court under Article 226 of the Constitution, and thus the petition on his behalf is not maintainable, The,, Industrial Employment (Standing Orders) Act, 1946, to which we have already referred, has nowhere provided that union is to be represented as such; nor does the Act provide that the right to challenge the draft standing order only vests in the union as such and not an Individual employee. Any person whose right has been affected by a particular order can come to this Court under Article 226 of the Constitution for the enforcement of his right by means, of any direction or writ, in the nature of" certiorari or mandamus. The Petitioner contends that jujus right- also has been affected by the draft standing orders and to that extent he is the person aggrieved end his interest has been affected and he can approach this Court under Article 226 of the Constitution for enforcement of his right by issue of a writ of mandamus or certiorari. We, therefore, do not find much substance in the preliminary objection raised by the opposite party.

4. On the merits of the case, the contention of the Petitioner is that as the model standing orders have provided for the maximum period of suspension to be four days, the Certifying Officer or the Labour Court cannot u/s 4 of the Act modify them and cannot give a draft which is not in conformity with the provisions of the model standing orders, particularly the provisions of the draft standing orders which deal with suspension pending enquiry and the right of the employee to get one-third of his pay by way of subsistence allowance during the pendency of the enquiry has been challenged. It is not necessary for us to deal with the eases which were decided by the Supreme Court or other High Courts prior to the amendment of Section 4 of the Act. Prior to the amendment the Certifying Officer was not competent to adjudicate about the fairness or otherwise of the draft standing orders. After the amendment such a power has been conferred both on the Certifying Officer as well as on the Labour Court when sitting in appeal. The cases prior to amendment have laid down that although Section 4 debars the Certifying Officer to adjudicate upon the fairness "or otherwise of the draft standing orders, there is no bar to the Certifying Officer to examine the question as to whether it will be practicable to adopt the model standing orders or to modify them according to circumstances of the case. Reading Section 3 (2), Section 4 and Section 15 of the Act together, it is clear that even before the amendment the Certifying Officer had power to modify the model standing orders if he found that it was not practicable to adopt wholly the model standing orders having regard to the circumstances of the concern. We are, however, in the present case not concerned with that, question. At this stage reference had been made to the case of Jiwan Mal and Co. Vs. Secretary, Kanpur Loha Mills Karamchari Union, Congress Labour Centre, Darshanpurwa, Kanpur and Others, ;

Commissioner of Labour Vs. Associated Cement Companies Ltd., and the The Associated Cement Co. Ltd. Vs. P.D. Vyas and Others,

The present case is, however, after the amendment of Section 4 of the Act. It is also not contended by the Petitioner that there is no power in the Certifying Officer to accept the draft standing orders if it provides for something which is not provided for specifically in the model standing orders. If it provides for something which is not to be found in the model standing orders, it is always open to the Certifying Officer and the appellate authority to examine the fairness or otherwise of that modification. But the main contention of the Petitioner is that in the model standing orders there is an express provision for suspension even pending the enquiry and the model standing orders have limited the period of such a suspension to four days. If that contention is accepted in that event if the period of suspension has been enlarged and extended for more than four days, it will be unfair on the very face of it. Therefore, the question which we have to decide is whether the model standing orders provided for the period of suspension during the pendency of the enquiry or not.

5. The clauses of the draft standing order which are challenged are 16(1)(f) and 16(3). Clause 16 of the draft standing orders provides for disciplinary "action against the employee and Clause (1)(f) provides for suspension not exceeding seven days. Sub-clause (3) (a) of Clause 16 provides as follows:

An employee may be suspended during the period of an enquiry against him which will be completed as expeditiously as possible and the payment of subsistence allowance not exceeding one-third the wages last drawn by him while on duty will be paid to him during the period of enquiry.

It is, therefore, clear that Sub-clause (3) provides for suspension pending the enquiry. So far as the suspension by way of punishment is concerned, no doubt the draft has raised the period from four days to seven days, but so far as Sub-clause (3) is concerned, it provides for the suspension during the pendency of the enquiry for which there is no clear provision in the model standing orders. As we have already indicated earlier, the contention of the Petitioner is that the model standing orders do provide for suspension for four days even pending the enquiry. Reliance is placed on Clause (2) of Rule 14 of the Act which reads as follows:

A workman may be suspended for a period not exceeding four days at a time, or dismissed without notice or any compensation in lieu of notice, if he is found to be guilty of misconduct.

The contention is that these two parts in Clause (2) should be read conjointly. There is a maximum period provided for suspension of an employee and the words "if he is found to be guilty of misconduct" only governed dismissal and not the suspension which occurs in the first part of Clause (2). In support of this contention further reliance is placed on Sub-clause (5) of Rule 14, which reads as follows:

An order of suspension shall be in writing and may take effect immediately on delivery to the workman such order shall set out in detail the alleged misconduct and the workman shall be given an opportunity of explaining the circumstances alleged against him. If on enquiry the order is confirmed, the workman shall be deemed to have been absent from duty for the period of suspension and shall not be entitled to any remuneration for such period. If, however, the order is rescinded, the workman shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended." . Clause (4) of Rule 14 provides as follows:

No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. The approval of the manager of the establishment or where there is no manager, of the employer is required in every case of dismissal and, when circumstances appear to warrant it, the manager or the employer may institute independent enquiries before dealing with charges against a workman: Heading Clauses (2), (4) and (5) of Rule 14 together will show that the scheme of the standing orders is that if a person is to be punished by dismissal, then previous enquiry is necessary. No order of dismissal can be passed without first giving an opportunity to the person concerned to substantiate his case. But in the case of punishment of suspension, the suspension is to take effect immediately and thereafter an opportunity is given to the employee to meet the charges. If ultimately in enquiry it is found that the misconduct has been proved, in that event the order of suspension will be affirmed otherwise it will be set aside. But these clauses clearly show that the suspension contemplated in Clause (2) is by way of punishment and not during the pendency of the enquiry. It is also clear that if Clause (2) had put the limit of four days for suspension during the pendency of the enquiry, would necessarily follow that the enquiry is to be completed within a period of four days. That could not have been contemplated by the framers of the model standing orders. In case of the four days suspension of a person by way of punishment if the enquiry reveals that the misconduct has not been proved against him, he will be entitled to his salary for those four days. In the event of the enquiry being against him, the order of suspension will be confirmed, that means that he will be out of employment for four days and will not be entitled to any wages for that period. This also shows that the suspension provided for under Clause (2) of Rule 14 is by way of punishment. It cannot be doubted that the employer has an inherent right to suspend a person from duty during the pendency of the enquiry. There is a good reason for that. If there is an enquiry going on against an employee, in order that the employee may not interfere with the working of the administration or in order that the enquiry should be conducted in a peaceful atmosphere, it is necessary that the employee should not be assigned any work during this period. The question is what amount is he entitled to get during the pendency of the enquiry. The amount is to be regulated either by rules or by conduct between the parties. In the absence of any contract to that effect, the

employee during the enquiry may be suspended from work, but he will be entitled to his full remuneration,, and it is In order to make the payment of subsistence allowance a part of the contract that this standing order has been amended and a provision has been made clearly, that the employee during the pendency of the enquiry will be entitled to one-third of his salary. The purpose of the standing order is to clarify the conditions of the service and they are in the nature of the contract on which openly the employee enters into the service, and thus any provision made for payment of the compensate allowance during the pendency of the enquiry is in the nature of the contract. The employee will thus be entitled to the contractual amount under the standing orders. It cannot, therefore, be said that the draft standing orders have provided anything which is not in conformity with the provisions of the model standing orders. If there is any deviation in the matters which are provided for in the model standing orders, in the draft proposals, in that event it may be open to the Certifying Officer o enquire into the reasonableness or otherwise of the proposed departure from the model rules. Hut: the draft standing orders provide for something "hitch is not in the model standing orders at all, cannot be said that the draft is not in confoility with the provisions of the model standing dears. The only point which can be raised in tat the period of four days provided for in e model standing orders by way of punishment has been creased to seven days.

The reasonableness of the change been considered by the Labour Court and the Certifying Officer and thus it cannot be said that on the face of It this is so unreasonable that this Court,, will interfere with the exercise of power by the Certifying Officer or the Labour Court on appeal. The main grievance of the Petitioner was that under the garb of providing for suspension during the pendency of the enquiry, the employer has assumed a larger power and there Is ample opportunity of victimizing an employee, he may drag on the enquiry for a pretty long time so as to deprive the employee of his wages for that period and thus the provisions in the draft standing orders for suspension during the pendency of the enquiry cannot be said to be-fair. Sub-clause (3) of Clause 16 of the draft standing orders has expressly provided that the enquiry will be completed expeditiously. If in any particular case the employer in order to victimize the employee adopts delaying tactics, it is always open to an employee to approach this Court for a proper remedy, but merely the supposition that in some cases this power will be abused is no ground for us to interfere with the order of the Certifying Officer. We, therefore, see no reason to interfere with the order complained against.

6. The petition Is accordingly rejected but we make no order as to costs.