
(1957) 02 MAD CK 0033
In the Madras High Court

Ambi's Cafe

APPELLANT

Vs

Thangavelu and Another

RESPONDENT

Date of Decision : 07-02-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1957) 02 MAD CK 0033

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajagopalan, J.—The first respondent Thangavelu and one Venkatachalam were employees of the petitioner, a proprietary concern, running a hotel with boarding and lodging facilities. The first respondent was one of the permanent employees. On 10 October 1953 there was a quarrel between these two employees when from words they passed to blows. The management no doubt came to know about it the same day, and there was even an attempt made to get the police to intervene to stop the fight. On 11 October 1953, two of the guests of the hotel complained to the management about the inconvenience caused to them by the unedifying quarrel between the first respondent and Venkatachalam. The management called upon both the workmen to explain their conduct, and pending an enquiry into the charges, both were placed under suspension the same day. It was common ground that at that time an appeal was pending before the Labour Appellate Tribunal, preferred against the award of the industrial tribunal in an industrial dispute between the management and the workers. Therefore, the management applied to the Appellate Tribunal u/s 22 of the Industrial Disputes (Appellate Tribunal) Act (Act XLVIII of 1950), for permission to dismiss or discharge the two employees Thangavelu and Venkatachalam. The date of that application was given as 26 October 1953, in the order of the Chairman of the Central Government Industrial Tribunal, to whom that application was transferred for disposal. Thangavelu in his, turn preferred an application on 3 November 1953, u/s 23 of Act XLVIII of 1950,

complaining that he had been dismissed from the service of the management in contravention of Section 22 of the Act.

2. Both the petitions were heard together. The Chairman, the second respondent in these proceedings, dismissed the application preferred by the management u/s 22 of the Act. He allowed the application preferred by Thangavelu u/s 23 of the Act and directed his reinstatement and the payment to him of what the Chairman called a nominal compensation of Rs. 250.

3. The petitioner applied under Article 226 of the Constitution for the issue of a writ of certiorari to set aside the orders of the second respondent dated 14 February 1956.

4. The validity of the order of the second respondent was attacked on the following grounds:

(1) The tribunal had no jurisdiction to enquire into the application presented by Thangavelu u/s 23 of the Act. There was no contravention of Section 22. The interim suspension ordered by the management on 11 October 1953 did not fall within the scope of the acts prohibited by Section 22.

(2) The tribunal had no jurisdiction to order the reinstatement of Thangavelu and it had no jurisdiction either to order the payment of any compensation to Thangavelu.

(3) The tribunal erred in the exercise of its jurisdiction in dismissing the application preferred to it by the management u/s 22 of the Act.

5. The first of the contentions of the learned Counsel for the petitioner, that in the absence of an established violation of the provisions of Section 22 of the Act, the Tribunal had no jurisdiction to proceed with an enquiry on an application purported to be presented u/s 23 of the Act, is well founded in the circumstances of this case and should prevail. That there was a quarrel between Thangavelu and Venkatachalam, two employees of the petitioner, on 10 October 1953, was common ground. All that the management did on 11 October 1953 was to start disciplinary proceedings against the two employees by issuing a notice to them to show cause why they should not be punished. Pending that enquiry they were placed under immediate suspension. The Tribunal itself recorded in Para. 8 of its order:

Thus I am convinced from the evidence and the arguments of the representatives that the exchange of blows between the workers had caused some annoyance to the inmates of the hotel.

Despite the fact that the charge against Thangavelu that he had participated in a quarrel with Venkatachalam on 10 October 1953, had been established, the management could not punish Thangavelu except with the permission of the Appellate Tribunal obtained in conformity with the requirements of Section 22 of the Act. The management preferred that application without any unreasonable

delay. The application was dated 18 October 1953, though, as I pointed out earlier, the Tribunal treated the application as having been preferred on 26 October 1953. The contention of the learned Counsel for the petitioner that the suspension of Thangavelu ordered by the management did not, in the circumstances of this case, constitute a contravention of the provisions of Section 22, is well founded. In *Lakshmi Devi Sugar Mills, Ltd. v. Pandit Ram Sarup and Ors.* 1957 I L.J. 17, in the Supreme Court, Bhagwati, J., restated the principles laid down by the Tribunals in the earlier cases, *Champadany Jute Mills v. certain workmen* 1952 I.L.J. 554, *Joint Steamer Cos. v. their workmen* 1954 I.L.J. 221, *Assam Oil Co., Ltd. v. Appalaswami* 1954 I.L.J. 328 and *Standard Vacuum Oil Co. v. Gunaseelan, M.G., and Ors.* 1954 I.L.J. 656. Bhagwati, J., observed:

It has been rightly held...that suspension without pay pending an enquiry as also pending permission of the Tribunal under the relevant section could not be considered a punishment as such suspension without payment would only be an interim measure and would last till the application for permission to punish the workman was made and the Tribunal passed orders thereupon.

The learned Judge observed further:

Suspension under such circumstances, therefore, could not be a punishment even though it may be of an indefinite duration and would not attract the operation of Section 22 of the Act. It could not be contended, therefore, that suspension without pay even for an indefinite period pending enquiry or pending the permission of the appropriate tribunal to dismiss the workman would be a punishment which would require permission u/s 22 of the Act before the same could be meted out to the workman.

It is only contravention of Section 22 that gives the workman a right to apply to the Tribunal u/s 23 of the Act. When there was no contravention of Section 22 in this case the suspension ordered by the management on 11 October 1953 did not constitute a contravention of Section 22 and the Tribunal had no jurisdiction to proceed with the enquiry into the application preferred u/s 23 of the Act.

6. The view taken by the Tribunal that the suspension of Thangavelu constituted a termination of his services, and that constituted a contravention of Section 22, is wrong. As pointed out by the Supreme Court, suspension did not amount to a termination of the services. It is not every break in the continuity of the service of a workman that comes within the scope of Section 22 of the Act.

7. The order of the Tribunal passed on the application preferred u/s 23 of the Act, directing the reinstatement of Thangavelu and directing further the payment of compensation to him, was without jurisdiction and is therefore liable to be set aside.

8. In view of what I have recorded earlier, it is not necessary to deal with the second of the contentions of the learned Counsel for the petitioner, that even on an application maintainable in law u/s 23 of the Act, the Tribunal had no

jurisdiction to order either the reinstatement of the worker or the payment of compensation to him. The learned Counsel no doubt referred to J.K. Joshiery Factory v. Labour Appellate Tribunal 1956 I.L.J. 4 where the learned Judge held that u/s 23 the Tribunal had no power to award compensation for the infringement of the provisions of Section 22. It may not be necessary for the disposal of the case before me to go into the soundness or otherwise of the proposition laid down by the learned Judge.

9. There remains the rejection of this application preferred by the management u/s 22 of the Act, the validity of which also the petitioner challenged.

10. The scope of the power of the Tribunal u/s 22 of the Act to accord the sanction sought by an employer or to withhold it was defined by the Supreme Court in Automobile products of India, Ltd. v. Rukmaji Bala and Ors. 1955 I.L.J. 346, and was restated by Bhagwati, J., in Lakshmi Devi Sugar Mills, Ltd. v. Pandit Ram Sarup and Ors. 1957 I.L.J. 17 to which I have already referred. In Automobile Products of India, Ltd. v. Rukmaji Bala and Ors. 1955 I.L.J. 346 Das, J. referred to an earlier decision of the Supreme Court in Atherton West & Co., Ltd. v. Suti Mills Mazdoor Union and Ors. 1953 I.L.J. 321. In Lakshmi Devi Sugar Mills, Ltd. v. Pandit Ram Sarup and Ors. 1957 I.L.J. 17, Bhagwati, J., pointed out:

The tribunal before whom an application is made under that section has not to adjudicate upon any industrial dispute arising between the employer and the workman but has only got to consider whether the ban which, is imposed on the employer in the matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be lifted. A prima facie case has to be made out by the employer for the lifting of such ban and the only jurisdiction which the tribunal " has is either to give such permission or to refuse it provided the employer is not acting mala fide or is not resorting to any unfair practice or victimization. It cannot impose any conditions on the employer before such permission is granted, nor can it substitute another prayer for the one which the employer has set out in his application. If the permission is granted, the ban would be lifted and the employer would be at liberty, if he chooses thereafter, to deal out the punishment to the workman. On such action being taken by the employer the workman would be entitled to raise as industrial dispute which would have to be referred to the appropriate tribunal for adjudication by the Government on proper steps being taken in that behalf.

The learned Judge observed further:

The tribunal before whom such an application for permission is made u/s 22 of the Act would not be entitled to sit in judgment on the action of the employer if once it came to the conclusion that a prima facie case had been made out for dealing out the punishment to the workman. It would not be concerned with the measure of the punishment nor with the harshness or otherwise of the action

proposed to be taken by the employer except perhaps to the extent that it might bear on the question whether the action of the management was bona fides or was actuated by the motive of victimization.... If the punishment was harsh or excessive or was not such as should be dealt out by the employer having regard to all the circumstances of the case, the dealing out of such punishment by the employer to the workman after such permission was granted would be the subject-matter of an industrial dispute to be raised by the workman and to be, dealt with as aforesaid. The tribunal, however, would have no jurisdiction to go into that question and the only function of the tribunal u/s 22 of the Act was to either grant the permission or to refuse it.

11. It is on an application of this principle that I have to decide the issue whether the Tribunal erred in the exercise of its jurisdiction by refusing the permission sought by the petitioner-management in this case.

12. I have already pointed out that the fact that Thangavelu and Venkatachalam had a quarrel within the premises of the hotel on 10 October 1953, was never in dispute. In Para. 8 of its order, the Tribunal recorded:

...I believe that it is true that both the workers began exchange of words resulting in exchange of blows which naturally might have caused annoyance to the two boarders who were staying in the room of the cafe close by.

13. After pointing out that the Tribunal did not doubt the bona fides of the residents of the hotel when they preferred a complaint to the management the Tribunal recorded:

Thus I am convinced from the evidence and arguments of the representatives that the exchange of blows between the workers had caused some annoyance to the inmates of the hotel.

Having reached that conclusion, the Tribunal had to consider whether that constituted a prima facie case for the management to punish Thangavelu. It was certainly not for the Tribunal to consider whether a dismissal was an appropriate punishment in the circumstances of the case. The Tribunal certainly went wrong when it observed in Para. 9 of its order:

The only question with which I am concerned at present is whether the circumstances of the case and the part played by Sri Thangavelu in the incident merit the punishment of dismissal.

No doubt the Tribunal also observed:

I have absolutely no hesitation in arriving at the conclusion that the management has not established a prima facie case for permission to dismiss the workman.

But obviously it is with reference to the quantum of punishment that this observation was made, that a prima facie case had not been made out. The quantum of punishment proposed to be meted out by the management was not a relevant factor at all.

14. The Tribunal appears to have been obsessed with the suspension ordered by the management, a suspension pending enquiry and pending disposal of the application the management intended to prefer u/s 22 of the Act to the Tribunal. I have already dealt with the erroneous view taken by the Tribunal, that the suspension was a punishment which constituted a termination of Thangavelu's services in contravention of Section 22. The Tribunal was also of the view that the suspension ordered by the management violated the principles of natural justice. It is a little difficult to sustain that finding. The Tribunal obviously overlooked the fact that the suspension ordered by the management did not constitute a punishment at all. It was a wrong viewpoint the Tribunal took, that suspension was a punishment and that the punishment was inflicted violating the principles of natural justice. That led to the conclusion that the management did not act bona fide in applying to the Tribunal u/s 22 of the Act. In Para. 11 the Tribunal recorded:

I do not for a moment discredit the management for respecting the sentiments of the customers who raised certain complaints against two workmen but I do not approve the "indecent haste" with which action was taken against the worker Thangavelu which resulted in effect in the termination of the services of the worker depriving him of the human needs of food and shelter.

15. Once again I have to point out that the interim suspension ordered by the management in the circumstances of this case could not be a relevant factor at all in deciding whether the permission sought by the management should be accorded or withheld. There was no real finding of the Tribunal that the proposed dismissal amounted to victimization or amounted to any unfair labour practice. There was really no basis for what the Tribunal observed in Para. 11:

I must feel that the management was actuated with ulterior motives...and this incident was only a cloak under which action was taken.

The earlier findings of the Tribunal about the truth of the incident and about the part played by Thangavelu certainly did not warrant this conclusion. The conclusion the Tribunal recorded in Para. 12 of its order, "I hold that the management has not established a prima facie case and there was no bona fides" as the basis on which permission was refused, was not really supported by the evidence on record and was even inconsistent with the other, findings recorded by the Tribunal itself. Equally inconsistent with the conclusion recorded in Para. 12 was the observation in Para. 14 of its order:

Further it is absolutely necessary for the management to enforce discipline and maintain the goodwill of the customers to ensure the prosperity of the concern.

That fact, however, was taken into account by the Tribunal only to refuse back pay to the worker.

16. I uphold the contention of the learned Counsel for the petitioner, that in the circumstances of this case the Tribunal erred" in the exercise of the jurisdiction

vested in it by Section 22 of the Act by failing to keep in view the real scope of its jurisdiction and also by taking into account irrelevant factors. The order passed by the Tribunal u/s 22 of the Act is also liable to be set aside.

17. This petition is allowed. The rule is made absolute. No order as to costs.