

(1962) 05 CAL CK 0004
In the Calcutta High Court

Anjuman Tea Co. Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-05-1962

Acts Referred:

Citation : (1963) CriLJ 445

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—The petitioner company carries on business as planter and as manufacturer and seller of tea and is the owner of a tea estate, known as the Mujnai Tea Garden.

2. One Manindra Bhusan Roy was employed under the petitioner company as a skilled labourer in the aforementioned tea garden. The service conditions of the workmen employed in the petitioner's tea garden are governed by certain standing orders, certified under the Industrial Employment (Standing Orders) Act 1946. The service conditions of Manindra Bhusan Roy were also governed by the said standing orders.

3. It is not disputed that the conduct of Manindra Bhusan Roy, while serving the petitioner company, was unsatisfactory. It is said that he has quarrelsome habits and often starts unsuccessful criminal cases against other employees of the petitioner company. It is not also disputed that he was warned several times in the past for this sort of conduct. Over and above all that, he was involved in a criminal affair with a female worker in the petitioner's tea estate and was convicted and sentenced therefore by a criminal court.

4. On August 16, 1958, the said Manindra Bhusan Roy became involved in a quarrel with a co-worker of his, named Harendra Kumar Guha, inside the petitioner's company's tea estate and in course of the quarrel, assaulted the said Harendra Kumar Guha, causing bleeding injuries to his person. This was treated as a misconduct by the petitioner company, and the said Manindra

Bhusan Roy was charged with the following misconduct:

1. You have beaten Sree Harendra Kumar Guha (skilled labour) on the 18th August 1957 within the jurisdiction of the Tea Estate till bleeding, taking law in your own hand.
2. Your activity is subversive of discipline of the Estate causing damages to domestic peace of the law abiding parsons of the locality

The said Manindra Bhusan Roy was called upon to show cause to the charges. Manindra replied to the charges in writing and in substance denied the same. Since the explanation submitted by Manindra, the delinquent, was found unsatisfactory, there was an enquiry held on the charges aforementioned, with full opportunity to the delinquent to defend himself. As a result of the enquiry, the delinquent was found guilty of all the charges and was ordered to be dismissed, with effect from August 31, 1958.

5. Respondent No. 3, a trade Union known as the Dooars Tea Garden Indian Employees' Association, took up the cause of Manindra Kumar Roy and raised an industrial dispute over his dismissal. The Respondent State Government referred the dispute to the Second Labour Court, West Bengal, for adjudication. The issue that was referred to the Labour Court is hereinbelow set out:

Whether the dismissal of Shree Manindra Bhusan Roy is justified? To what relief is he entitled?

6. Before the Labour Court, written statements were filed and witnesses were examined both by the petitioner company and the respondent Union. On consideration of the evidence, the Labour Court came to the following conclusion:

- (a) That the allegations made in the charge sheet were proved to be true;
- (b) That the incident took place inside the tea garden calling for departmental action against the delinquent by the petitioner company;
- (c) That in course of the enquiry, the delinquent was neither victimised, nor exploited nor discriminated against; and
- (d) That the delinquent was in the habit of indulging in quarrels with his co-workers and of starting unsuccessful criminal cases against them, and that complaints of this nature were frequently reaching the manager of the petitioner's tea estate.

7. Although of that opinion, the Labour Court found itself unable to uphold the order of dismissal, on the ground that such an order could not be made, regard being had to the nature of the charge and the provisions of standing orders of the petitioner company.

8. I set out below the relevant extract from the award of the Labour Court:

But in this case the punishment of dismissal is not authorised by the relevant

clauses of the standing orders under which Shri Manindra Bhusan Roy has been dismissed, Another decision to which reference has been made on behalf of the company is the decision of the Supreme Court in the case of G. McKenzie and Co. Ltd. reported at page 285 LLJ 1959 Volume I. Therein it has been held by their Lordships of the Supreme Court that it is for the management to determine what constitutes the major misconduct within its standing Orders sufficient to merit dismissal of a workman. The lawyers appearing for the company have not been able to show that the converse of the above is not true. In that decision it has been held that if a management considers a particular misconduct to be major within its standing orders and dismisses a workman for that misconduct, a Tribunal should not interfere with that punishment, that is to say, the Tribunal should not make its own interpretation as to whether that conduct falls under the major misconduct. If that is so, I do not see why in the present case I should take upon myself the responsibility of determining under what clause or clauses of the standing orders the charges mentioned in the charge sheet issued to Shri Manindra Bhusan Roy fall, unless I am of the opinion that the clauses mentioned by O. P. W. 1 are due to mistake or are irrelevant. Sub-clauses viii and ix mentioned by O. P. W. 1 read as follows:

(viii) Acts or conducts which directly or indirectly cause disturbance among workers in the estate or are prejudicial to maintenance or order and discipline.

(ix) Violent conduct.

Obviously the allegations made against Shri Manindra, Bhusan Roy in the charge-sheet fall under those two clauses. Shri N. R. Ghosh, Advocate, appearing for the company, has urged that those allegations rather fall under sub-clauses v and xi of the cl. 1 of part 9 of the Standing Orders. I concede that it may be possible to bring those misconducts under those two sub-clauses. But the management has not done so. To repeat, I do not find any reason why I should step in the shoes of the management and take an action which the management might have taken. If it were a question of mistake on the part of O. P. W. j I might have corrected the mistake. But this is not a question Of mistake. Once it is held that this is not a question of mistake, there is one reason for which I should not try to project my interpretation of the standing orders in coming to a finding as to whether the dismissal is legal. It has been urged by Shri D. L. Sen Gupta, advocate for the Union, that for misconducts of the nature committed by Shri Manindra Bhusan Roy, O. P. W. 1 would have fined other employees, but he has dismissed Shri Manindra Bhushan, Roy as he was angry with him. It appears, from the trend of correspondence between Shri Manindra Bhusan Roy and O. P. W. 1 that there was no love lost between them. So this argument of Shri D, L. Sen Gupta cannot be brushed aside. In view of the above considerations I hold that Shri Manindra Bhusan Roy was dismissed for misconduct for which the proper punishment according to the standing orders is fine. Hence I hold that the punishment of dismissal of Shri Manindra Bhusan Roy is illegal

9. In order to understand the reasons which weighed with the Labour Court, I

have to consider a relevant extract from the Standing Orders of the petitioner company:

Section (I) Suspension or Dismissal, and Acts or omission which constitutes misconduct

(1) The manager shall have the right to suspend for a temporary period, or terminate the employment of, any worker found guilty of gross misconduct without notice, and without any compensation in lieu thereof, and for purposes of orders issued by the Manager for such suspension or dismissal, the following acts shall be construed as acts of gross misconduct;

1. * * *

(ii)

(iii) * * * *

(iv) * * *

(v) Violent or riotous acts or conducts, and acts which directly or indirectly aid, abet or incite others to violence.

(vi) * * * *

(vii) * * * *

(viii) * * * *

(ix) * * * *

(x) * *

(xi) Any offence or violation of any provisions, punishable with fine or imprisonment, either under the Indian Penal Code or any other special or local law for the time being in force in the locality wherein the Estate is situated.

Provided that no punishment shall ordinarily be given except upon an enquiry and unless the workman is informed of the charge and given an opportunity to explain the circumstances alleged against him.

2. For the following offences, which shall be regarded as fineable offences, the Manager, at his discretion, is empowered to impose fines or suspend the offending worker or workers provided that the amount of such fines shall not, in any case, exceed the extent allowed by the Payment of Wages Act.

(i) * * * *

(ii) * * * *

(iii) * * * *

(iv) * * * *

(v) * * * *

(vi) * * * *

(vii) * * * *

(viii) Acts or conducts which directly or indirectly cause disturbance among workers in the estate or are prejudicial to maintenance of order and discipline.

(ix) Violent conduct.

(x)

(xi) * * * *

(xii) * * * *

10. The reason why the Labour Court thought that the misconduct with which the petitioner was charged did not merit dismissal is to be found on the emphasis it laid on the evidence, given before the Labour Court, by the Manager of the petitioner's tea estate (O. P. W. I) a relevant extract from which I set out below:

I did not consider it necessary to mention any specific provision of the Standing Orders in the charge sheet in the letter of dismissal. It is not a fact that I did not mention any specific provision of the Standing Orders, as the charge mentioned in the charge sheet merits at the worst line. I consider that the charge against Shri Manindra Bhusan Roy comes under sub-clause viii and ix of cl. 2 under Heading I of the Standing Orders (Ex. G)

11. In my opinion, the Labour Court did really over-emphasize the evidence given by the Manager (O. P. W. I). Section I sub-cl. (v) of Clause (I) of the Standing Orders provides for dismissal for violent or riotous acts and conduct and acts which, directly or indirectly, aid, abet or incite others to violence. Sub-cl. (xi) of the said clause also provides for dismissal for "any offence or violation of any provisions, punishable with fine or imprisonment, either under the Indian Penal Code or any other special or local law for the time being in force in the locality where in the Estate is situated

12. Clause (2) of S. I deals with "fineable offences" and sub-cl. (viii) of the said clause deals with acts and conduct which, directly or indirectly, cause disturbance amongst workers in the Estate or area prejudicial to the maintenance of order and discipline. Sub-clause (ix) of cl. 2 deals with violent conduct.

13. The Kumar Guha, and thus had taken the law in his own hands. His conduct was characterised as subversive to the discipline of the tea estate and destructive of domestic peace in, the charge against the petitioner was that he had caused bleeding injuries to Harendra e locality. A conduct which causes bleeding injuries to a person in course of a quarrel is certainly both violent and riotous conduct and the act is such that it amounts to a crime punishable under the Indian Penal Code. Therefore, on the facts proved in the case, the misconduct of the petitioner directly comes under both sub-clause (v) and sub-

clause (xi) of clause 1 of S. I of the Standing Orders. The Labour Court also was not of a different view. The Manager (O. P. W. 1) no doubt thought that such conduct should appropriately come under sub-clauses (viii) and (ix) of cl. 2 of S. I of the Standing Orders. That was his reading of the Standing Orders and, in my opinion, a not very correct reading. In fact, however, the management did not consider the misconduct of the petitioner as minor misconduct but treated it as major or gross misconduct and dismissed the workman. There is also no indication in the charge sheet that the petitioner was going to be dealt with under the minor misconduct provisions of the Standing Orders.

14. Since I am convinced on the facts proved in the case and on the findings arrived at by the Labour Court, that the conduct of the delinquent appropriately comes under sub-clauses (v) and (xi) of cl. 1 of S. I of the Standing Orders,

I hold that the Labour Court was wrong in overemphasizing on the reading of the Standing Orders by the Manager (O. P. W. 1) and in so doing committed an error apparent on the face of the records.

15. Since I hold that for the misconduct with which the petitioner was charged he was punishable with dismissal on proof of the same, and since I further find that the charges were proved against him. I am of the opinion that the Labour Court should not have interfered with the penalty imposed on the petitioner by the Managerial enquiry. It is now well established that an Industrial Court must not interfere with an order passed by the Managerial Enquiry unless convinced (i) that there was want of good faith, (ii) that there was victimisation and unfair labour practice, (iii) that the management was guilty of basic error or violation of principles of natural justice and (iv) that, on the materials, the finding was completely baseless or perverse. The finding arrived at by the Labour Court do not make out any of the aforesaid four grounds of interference by the Labour Court. If the charges were proved and if the Standing Orders sanctioned the penalty imposed on the delinquent on the said charges, it was not open to the Labour Court to interfere with the penalty imposed by the Management. The measure of punishment to be meted out to a delinquent workman is in the sole discretion of the employer, who has to judge for himself what punishment is commensurate with the offence proved against the workman or what punishment he is entitled to impose under the Standing Orders. In this view, I am supported by a judgment of the Supreme Court, reported in *Caltex (India) Ltd. Vs. E. Fernandes and Another*, . In the instant case, regard being had to the nature of the misconduct proved against the delinquent, I do not think that the management was wrong in dismissing him. Also, I find that there is nothing in the Standing Orders preventing the petitioner company from so doing. The case reported in *Mckenzie and Co. Ltd. Vs. Its Workmen and Others*, on which the Labour Court relied is distinguishable. If the management had treated the misconduct of the workmen as a minor misconduct from the beginning, then a Labour Court or Tribunal could not take a different view, even if the misconduct constituted a major misconduct. In the instant case, however, the management

did not so treat the misconduct, when penalising the workman. Thereafter to lay emphasis on the reading of the Standing Order by the O. P. W. I. -Manager, and, on his admission that misconduct came under the "minor or fineable" misconduct heading was not proper. In the language of the Standing Order the misconduct of the petitioner more properly came under the gross misconduct heading. The O. P. W. I, Manager, was confused by the somewhat complicated language of the standing order and gave an answer, which was not consistent with how the management treated the misconduct of the delinquent workman.

16. For the reasons aforesaid, I quash the order of the Labour Court directing reinstatement of the delinquent with all emoluments due to him from the date of his dismissal. Let a writ of certiorari issue, accordingly. This rule is made absolute.

17. I make no order as to costs.