
(1963) 09 GAU CK 0005
In the Gauhati High Court

Arcuttipore Tea Estate

APPELLANT

Vs

Its workmen and Others

RESPONDENT

Date of Decision : 05-09-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33

Citation : AIR 1964 Guw 72 : (1966) 1 LLJ 107

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

Bench : Division Bench

Judgement

G. Mehrotra, C.J.—This rule arises out of a petition under Article 226 of the Constitution by which the award given by the presiding officer, labour court, Assam, is assailed.

2. The facts are that two persons, Rampabitra Robidas and Bhukla Rikiason, were employed in the Arcuttipore Tea Estate owned and possessed by Arcuttipore Tea Company, Ltd., of Cossipore, District Cachar. On 23 March 1957 some workers were involved in a riot and it is alleged that the manager was assaulted by these persons. On the basis of the conduct of these workers on 23 March 1957 the two workers who have been named above along with some others were dismissed by the management. A criminal case was started against these persons and the two persons, Rampabitra Robidas and Bhukla Rikiason, were acquitted. The union took up the case of these two persons and reference was made to the labour court for adjudication on the following points:

(1) Whether the management of Arcuttipore Tea Estate are justified in dismissing Rampabitra Robidas and Bhukla Rikiason?

(2) If not, are they entitled to reinstatement or any other relief in lieu thereof?

The labour court came to the conclusion that the dismissal was not justified as no inquiry was made and no opportunity was given to the two workmen to explain their conduct. On this finding the order of dismissal was set aside and in view of

the relationship between the employer and the employees the labour court ordered that the two workmen be paid all their wages from the date of dismissal to the date of the award instead of awarding the reinstatement.

3. The award of the labour court is challenged mainly on the ground that having regard to the circumstances of the case no inquiry was necessary in the present case. It is contended by Sri Ohoudhuri for the petitioner that as the manager himself was assaulted and the whole incident took place in his own presence, no useful purpose could be served by any Inquiry. Under these circumstances, no enquiry was necessary in the present case and the order of dismissal cannot be said to be unjustified as no Inquiry was held.

4. The first contention of Sri Choudhuri is that the action was taken by the management not under Rule 9(c) of the standing orders but under Rule 9(a). The relevant portion of Rule 9 of the standing orders is as follows:

Notice of termination of employment, whether the manager or by worker, shall be given equal to the wage-period of the worker concerned:

Provided that--

(c) The manager may dismiss without notice a worker who is guilty of gross misconduct, but such worker must be given an opportunity to explain the circumstances alleged against him.

If the dismissal is one for gross misconduct, even then Rule 9(c) requires that an opportunity is to be given to the worker to explain the circumstances of the alleged misconduct. It is not a case, on the face of it, of the termination simpliciter and thus even on the terms of the standing orders the workmen were entitled to be given an opportunity to explain their conduct. In the case of *Indian Iron and Steel Company, Ltd. v. their workmen* 1958-I L.L.J. 260 at 269-270 it was held by their lordships of the Supreme Court as follows:

Undoubtedly, the management of a concern has power to direct its own internal administration and discipline, but the power is not unlimited and when a dispute arises, industrial tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere

(i) when there is a want of good faith,

(ii) when there is victimization or unfair labour practice,

(iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and

(iv) when on the materials, the finding is completely baseless or perverse.

In the present case no inquiry was held at all. The fundamental principle of

natural justice was violated in ordering the dismissal of the two workmen inasmuch as no opportunity was given to them to explain their conduct and thus this case comes under rule (iii) of the rules laid down by their lordships of the Supreme Court for interference by the labour court against the order of dismissal passed by the management.

5. The contention of Sri Choudhuri is that in case where the manager himself has been assaulted, no question of inquiry arises. He has tried to support his contention by relying upon a number of cases. Reference is made to the case of *Burn and Co., Calcutta Vs. Their Employees*, Particular reference is made to the following observations of their lordships made in dealing with the case of *A. Banerjee* at p. 234 of the report:

We are unable to agree with this decision. The ground of discharge is the continued absence of the employee, and his inability to do work, and it is difficult to see what purpose would be served by a formal charge being delivered to him and what conceivable answer he could give thereto. The order of the Appellate Tribunal is manifestly erroneous and must be set aside.

At p. 234 it was observed as follows:

It is true that no chargesheet was formally drawn up against him, but that would not vitiate the order of dismissal if he knew what the charge against him was and had an opportunity of giving his explanation. It appears from the order of the tribunal that subsequent to the order of dismissal by the company, there were conciliation proceedings and an enquiry by the Labour Minister, as a result of which he recommended the reinstatement of seven out of the fourteen who had been dismissed, leaving the order in operation as regards the other seven, of whom Joydeb Banerjee was one.

The case of the employee was that his services were terminated on the ground that he was absent and could not be present on duty as he has been detained by the West Bengal Government under the West Bengal Security Act. The Supreme Court held that under those circumstances he could not have given any explanation, except the one that he could not attend to his duty as he was under detention under orders of the West Bengal Government. That was a case where a person's services were terminated on the ground of being absent from duty and it was not a case of dismissal on the ground of misconduct. In dealing with the question of dismissal on the ground of misconduct the observation at p. 234 clearly shows that the only objection taken was that no formal charge was given to this employee although he had been given an opportunity to explain his conduct. If a person gets an opportunity to explain his conduct, it may be said that the provisions of law have been complied with. But in cases where no inquiry is held at all, no opportunity is given to the employee, the matter may be different. This case, in our opinion, does not lay down the broad proposition contended for by Sri Choudhuri that in cases where the assault is made on the manager himself, no inquiry is needed and an employee if he is dismissed

straightway by the manager for the misconduct, is not entitled to get any opportunity to explain his conduct, as in the circumstances it was not possible for him to dislodge the evidence of the manager himself who was the victim of the assault. This case, as I have already pointed out, does not lay down that broad proposition of law.

6. The next case is *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, which is already referred to above. Sri Choudhuri has relied upon the dictum of the Supreme Court wherein they have reiterated the law laid down in *Burn and Co. v. their employees* 1957-I L.L.J. 226 to which I have already referred to. This was also the case where a person was dismissed for being absent continuously from duty for fourteen consecutive days. The provisions of a standing order provided that in such circumstances an employee can be dismissed forthwith. Relying upon that provision of the standing order he was dismissed. The point taken by the employee was that as he was under detention and had applied for leave, leave should have been granted and the management was not right in acting under standing order 9. This contention was repelled, It was said that no doubt the petitioner was unfortunately unable to join his duties due to his detention. But that is no ground for the management to retain him in service and necessarily grant him leave. The management may consider it proper to replace the workman as otherwise work is likely to suffer. In these circumstances, even though the employee may be under detention the management may think it proper not to grant him leave and filing of the application for leave does not fail to attract the provisions of the standing order. In fact in this case their lordships went to the extent of saying that in cases where at the instance of the management an employee is detained, it may be a case of victimization and different considerations may arise. These observations thus do not support the contention of the petitioner.

7. The next case is *Orissa Cement, Ltd. v. Adikanda Sahu* 1961 I L.L.J. 518. This was again a case where the employee used abusive language and he was charged with misconduct. An inquiry was held. He was given an opportunity to give explanation. Thereafter the management did not accept his explanation and thought that it was a case where the employee should be dismissed. As the matter was pending before the industrial court an application was made u/s 33 of the Industrial Disputes Act for permission to dismiss him. Both the industrial courts came to the conclusion that the conduct of the employee amounted to misconduct and the management could have justifiably thought of terminating his services in the circumstances but as the employee was a young man and tendered an apology, the tribunal thought that such a drastic step was not needed and refused permission. The Supreme Court held in the first place that that was not the function of the tribunal to decide what punishment should be awarded u/s 33 and thus on the finding that there was a misconduct, the employer was Justified in asking for permission to dismiss the employee and the permission could not be refused on the ground that he had tendered an unqualified apology. On the facts also the Supreme Court held that the apology

was not unconditional. This case gives no support to the proposition contended for by the counsel for the petitioner.

8. The next case is *The Chartered Bank, Bombay Vs. The Chartered Bank Employees' Union*, That was a case where the order was one terminating the services. The contention raised by the employee was that it is not the language of the order which will determine the nature of the action taken by the employer. It may be that though the order is couched in the garb of a termination it may in effect be dismissal based on misconduct. In that case the order of termination will be set aside on the ground that it was a colourable exercise of the power under Clause (a) of the standing order 9. But on the facts of that case their lordships found that it was not a colourable exercise. In effect the order was termination simpliciter and not an order of dismissal based on misconduct. In this case their lordships on the contrary laid down that it is open to the employee to show from the surrounding circumstances that the order though purporting to be one of termination, was in effect an order of dismissal based on misconduct and if the employee succeeds in showing that it is an order of dismissal based on misconduct, the requirement of inquiry and reasonable opportunity becomes mandatory. That case to our mind, does not support the contention of the petitioner.

9. The order of the labour court thus, in our opinion, is perfectly valid and the labour court was justified in holding that the order of dismissal was not Justified in view of the failure of the management to give any opportunity to the employees to explain their conduct and to hold an inquiry in the matter. We, therefore, dismiss this petition with cost, which we assess at Rs. 50.