
(1957) 12 MAD CK 0025
In the Madras High Court

Asher Textiles Ltd.

APPELLANT

Vs

The Industrial Tribunal and Another

RESPONDENT

Date of Decision : 04-12-1957

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(b)

Citation : (1958) 71 LW 176 : (1958) 2 MLJ 102

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Division Bench

Judgement

Rajagopala Ayyangar, J.—The controversy between the parties which calls for decision is as regards the legality of an order of the Industrial Tribunal, Coimbatore, in petition No. 64 of 1955 on its file.

2. The petitioners are Messrs. Asher Textiles Ltd. They were parties to an industrial dispute between themselves and their workers which had been referred for adjudication to the Industrial Tribunal, Coimbatore, I.D. No. 13 of 1952. This writ petition is concerned with matters that transpired between the petitioners and one of their workmen, Subbaraman (2nd respondent) here who will hereafter be referred to as the respondent. Subbaraman was originally employed as a blow-room, clerk and while so the management transferred him to the post of a clerk in the despatch and filing Section. It was a common case that this transfer did not injuriously affect the grade, pay or future prospects of this employee. The respondent, however, refused to accept the transfer on the ground that it was an act of humiliation and that it was beneath his dignity to work as a clerk in the despatch and filing Section. The management thereafter issued notices to the respondent to explain his wilful disobedience of lawful orders and his act of insubordination. The respondent repeated what he stated earlier and this was not found to be satisfactory. The management applied to the Tribunal for permission to dismiss the workman for misconduct u/s 33(b) of the Industrial Disputes Act which was numbered as Petition No. 64 of 1955 and pending the disposal of this application, they passed an order of suspension of

the employee. The respondent in his turn filed 13 (A-71)/ 52 to the Tribunal being a petition u/s 33-A of the Act complaining that the employer had contravened the provisions of Section 33 by punishing him by way of suspension and sought reinstatement and wages for the period of suspension. By consent of parties, the two applications were dealt with together, the evidence recorded in Petition No. 64 of 1955 being treated as evidence in the complaint by the respondent. As a result of this enquiry, the Tribunal passed an order refusing permission sought in Petition No. 64 of 1955 and it is the legality of this order that is challenged in this petition.

3. In order to appreciate the contentions raised on behalf of the petitioners it is necessary to set out the finding recorded by the Tribunal. After setting out the facts which were not in dispute or were proved before the Tribunal, it recorded:

On an analysis of both the oral and documentary evidence, I have no hesitation in coming to the conclusion that the management is well founded in contending that Subbaraman is guilty of misconduct ... in my opinion Subbaraman's transfer from a blow-room clerk to the despatching Section is a legitimate and valid one; therefore it necessarily follows that his refusal to accept the transfer and join duty as despatching and filing clerk tantamounts to disobedience of a lawful order

4. The learned Tribunal then proceeded to discuss the justification which the respondent put forward before it for sustaining his attitude and after disposing of it in favour of the management concluded:

Thus the stand taken by him cannot be upheld. It necessarily follows that his refusal to join as clerk in the despatch and filing Section on a transfer by the management is inexcusable, irrespective of the question as to what punishment that should be imposed upon him. The worst of it is that he has attributed mala fides on the part of the management on the basis of his own erroneous idea or misconception about his status when he was attending to the duties of a typist. The management is well founded in their contention that even this letter only goes to show that he does not want to accept the transfer as despatching and filing clerk but only wants to be a blow-room clerk at least, even though he may be asked to do the work of a despatching and filing clerk.

5. The Tribunal then went on:

In view of these converging considerations detailed above, I am constrained to come to the^ conclusion as pointed at the outset that he is guilty of wilful disobedience or insubordination which, is clear misconduct.

6. The Tribunal next dealt with the contention that the respondent was given no opportunity by the management to meet the charges levelled against him. It decided this point also in favour of the management saying:

Even before me no particular evidence had been let in to show that the management's decision is vitiated for want of a proper enquiry. Practically

Subbaraman has repeated whatever he has conveyed in his letters. Thus the only point which remains to be considered is whether on the facts proved in this case permission to dismiss this Subbaraman should be granted.

7. The Tribunal also impliedly in the course of its order negated the plea of victimisation and mala fides with which the respondent had charged the management. Indeed it looks that during the course of the enquiry before the Tribunal this charge of mala fides was not persisted in by the respondent.

8. The question next to be considered is as regards the order that the Tribunal was bound to pass on the findings thus recorded. The Tribunal in the present case proceeded to consider this matter in paragraph 10 and decided to dismiss the application of the management on grounds which appear to me not very intelligible. It extracted the terms of Section 33(b) which enacted:

33. During the pendency of any proceedings before a Tribunal in respect of any industrial dispute, no employer shall

* * * * (b) discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute save with the express permission in writing of ... the Tribunal.

and then continued:

It is significant to note that the permission that is sought for under this clause is to "punish" a delinquent workman irrespective of the kind of punishment. Therefore if a Tribunal is satisfied that a particular workman deserves to be punished, it can grant permission. All that the management has to ask for from this Tribunal is permission to punish the worker. On the other hand, permission asked for is not for mere punishment but for punishing in a particular manner, i.e., for dismissal. This Tribunal is called upon to consider whether permission should be given for punishing in that manner. It is common ground that this Tribunal has no jurisdiction to substitute or suggest another kind of punishment, i.e., indicate what kind of punishment should be awarded. In this case, the management did not amend this petition asking for permission merely to punish, leaving it to the management to punish in their own manner and leaving it to the workman to take such appropriate steps against that order of punishment if any available. In this case I am of opinion the nature of punishment which is sought to be imposed upon this employee is so severe that I don't see any way to grant that request it is not for the Tribunal to suggest the punishment. In the result the petition asking specifically to grant permission for dismissal has to be dismissed and I accordingly do so

9. The Tribunal is no doubt right in its view that under the terms of Section 33 it had no jurisdiction to impose conditions as a pre-requisite for granting to the employer the permission he sought. It had no jurisdiction to substitute a punishment which it considered appropriate for the misconduct which on its finding had been committed by the workman. The question that remains is as to

whether an application by the employer u/s 33 is liable to be rejected because it specified the punishment which the employer intends to inflict. This can be answered only in one way, in the negative. The language employed in Section 33 does not support the construction which the Tribunal adopted of this provision. On the other hand, it appears to me that the Section itself contemplated, that the management should state the action which they proposed to take against the workman, the permission referred to in the Section being in regard to that action.

10. Apart from the language of the Section, more than one consideration ought to lead one to the conclusion that it is essential for the employer to specify the punishment he seeks to impose when he seeks the permission of the Tribunal. The first is founded upon the place of Section 33 in the scheme of the Industrial Disputes Act. It is a provision designed to preserve the status quo pending the adjudication of an industrial dispute. Its aim and purpose is therefore to keep the ring clear for the contestants to fight their case before the Tribunal. During the pendency of these proceedings, the Section enjoins that neither party shall so to speak queer the pitch. Section 23 enjoins on workmen and employers not to resort to strike and locks-out during the pendency of the proceedings before the Industrial Tribunal. Section 33 is another provision on the same lines and is designed to prevent action by the employer to prejudice the conduct of the proceedings before the Tribunal. This is achieved by two prohibitions : (1) in regard to alterations of the conditions of service of the employees to their prejudice and (2) the punishment of employees for misconduct. The aim of both these is the same, namely, that undue and improper pressure shall not be brought to bear on the workman to coerce them, in regard to the conduct of their case before the Tribunal. It is this factor that is referred to in the several decisions of Industrial Tribunals and Appellate Tribunals when they speak "to the necessity of the bonafides of the employer or absence of victimisation on his part. In this context want of bonafides and victimisation are merely two aspects or forms of the same concept. The matter which is considered in this connection is, was the action of the employer motivated by a desire to hinder the fair adjudication of the dispute before the Tribunal? Was it motivated by a desire to wreak vengeance on or to punish those who raised the dispute under adjudication and sought redress from the Labour Tribunal? "Was that directed against workmen who took a prominent part in that dispute and who if coerced would facilitate the employer gaining an unfair advantage in the conduct of the proceedings before the Tribunal? If these were answered in favour of the employer and the Tribunal found that the misconduct alleged did in fact exist, the law requires that the Tribunal should grant the permission asked for (vide *Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup*, . It would be apparent that for considering this matter about the bonafides of the employer or as to whether the step taken was one intended to victimise any workman or a group of workmen the severity of the punishment would not be an irrelevant factor. For instance, if for a very trifle or venial breach of duty the employer proposes to dismiss him the Tribunal may well consider whether the motive of the employer in imposing a

punishment, which was out of all proportion to the misconduct of which the workman was guilty, was not motivated by other factors than the maintenance of discipline and the just protection of the employer. This, however, does not mean that the Tribunal sits in judgment on the employer as regards the exact punishment to be meted out and that if it found the particular punishment intended to be a little more severe than what it would itself impose if it were the employer, it draws the conclusion that the motive of the employer was victimisation. Such an inference of mala fides would be possible from the severity of the punishment, only if there were other factors present and if no reasonable person could, taking into account the previous conduct of the workman, the situation of the business and other relevant material, impose that punishment for the misconduct proved. It is for these reasons that I consider that it was not only not improper but it was necessary for the employer to have informed the Tribunal of the punishment it proposed to inflict, while seeking permission of the Tribunal u/s 33.

11. This apart, take the other matter specified in the Section in its first sub-clause, namely, prejudicial alterations in the conditions of the service of workman. It could not be contended that in cases covered by this Sub-section, the employer was to approach the Tribunal with a request for permission to alter the conditions of the service of the employees without specifying what the alteration proposed was. The matter does not require any elaboration and it is sufficient to say that the two sub-clauses (a) and (b) would stand on the same footing in regard to the contents of the petition, the approach of the Tribunal and the basis upon which the permission asked should be granted or refused.

12. In the present case the Tribunal has found (1) that the misconduct was proved and (b) that the employer was not actuated by improper motives in seeking to dismiss the workman guilty of misconduct. The Tribunal no doubt recorded a finding that the punishment was more severe than what it would have inflicted if it were the employer. But this in my opinion was a wholly irrelevant finding which had no bearing upon the decision of the matter u/s 33. I therefore disregard that finding.

13. The net result is that on the other findings recorded by the Tribunal it follows that the permission asked for should have been granted and there will be an order accordingly. Taking into account the conclusion I have reached I thought this, was a simpler course to adopt, than merely to set aside the order of the Tribunal and asking it to pass the appropriate order in the light of this judgment which would have only meant a little more delay in these proceedings.

14. The petition is allowed and the Rule nisi is made absolute.. The order of the Tribunal is set aside and in its place there will be an order that the permission asked for in Petition No. 64 of 1955 is granted. There will be no order as to costs.