
(1959) 08 BOM CK 0014

In the Bombay High Court

Case No : Award in Reference (I.T.) No. 266 of 1958

Atmasing Pagsing

APPELLANT

Vs

Anil Starch Products Ltd., Ahmedabad

RESPONDENT

Date of Decision : 05-08-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33(2)

Citation : (1960) 1 LLJ 77

Hon'ble Judges : Syed Taki Bilgrami, J

Bench : Single Bench

Judgement

1. The complainant, Atmasing Pagsing, was a watchman, in the opponent company, On 17 November, 1958, he was suspended on the charge of neglect of duty pending inquiry. After an inquiry the company discharged him stating that they had lost confidence in the complainant on 20 November, 1958.

2. The complainant says that this was in contravention of S. 33(2) of the Industrial Disputes Act, as a dispute was pending before this tribunal and no approval was taken. According to the company it was merely an order of discharge not passed as a punishment and therefore it is not necessary to obtain approval under S. 33. It also denies that the discharge was without inquiry or without giving an opportunity to the complainant to explain and defend himself.

3. The legal point as to whether approval was necessary in this case or not must be decided first. It is clear from the wording of S. 33(2) that only when the discharge or dismissal is for misconduct and passed as a punishment that an approval is necessary. The section runs thus :

"During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute -

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of

such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, the workman :

Provided that not no such workman shall be discharged or dismissal, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of action taken by the employer."

On behalf of the complainant it is argued that the complainant was charged with neglect of his duty and asked to submit his explanation. After a regular inquiry he was discharged. The order of discharge was, therefore, clearly intended as a punishment. I think that merely because an inquiry was held, or a worker was charged with any misconduct, it cannot be concluded that the final order of discharge, which expressly says that it was passed because the employer lost confidence in the complainant, was passed as a punishment, as the High Court has recently held in *Municipal Corporation of Greater Bombay and Others Vs. Labour Appellate Tribunal of India and Another*, . The facts of that case were briefly as follows :- The workman concerned was charged with attempting to throw stones at the employer-undertaking's bus, and an inquiry took place where the charge was held to be proved. Ultimately the general manager decided to terminate the services of the workman on account of "behaviour prejudicial to the undertaking." The labour court and in appeal the industrial court held that the action taken against the workman was justified. The Labour Appellate Tribunal in appeal took the view that the inquiry held was not proper and the punishment was being imposed for misconduct and the management could not be permitted to avoid the necessity of an inquiry under standing order 23 by purporting to act under standing order 26, which allows a discharge order to be made without inquiry. The High Court held in a writ application filed by the undertaking that when both the courts below had concurrently found that the action of the company was bona fide under standing order 26 the Labour Appellate Tribunal was bound by this concurrent finding, and if the action was bona fide, then no inquiry was necessary and the order of the management could not be criticised on that ground. Their lordships, however, expressed the view that the form of the order is not always decisive of its true nature. If an order terminating the service is passed merely to camouflage an order of dismissal, or discharge for misconduct, the court is entitled to question the validity of the order for want of proper inquiry. It must be remembered that in the above case also the workman was charged with misconduct, and after inquiry the management chose to pass an order terminating the service for behaviour prejudicial to the interest of the undertaking. Holding an inquiry for misconduct prior to the order of termination of services was not considered sufficient for concluding that the real intention of the employer undertaking was to punish and the order of termination was only a camouflage to obviate the necessity of a proper inquiry. In the present case also, as there is no other reason for holding

that the management acted in bad faith in discharging the complainant for loss of confidence and the real intention was to punish him for misconduct. I am not prepared to conclude that the action was taken as a punishment. In the abovementioned case of Bombay High Court, at p. 42, col. I, their lordships considered how far the order terminating the services in similar circumstances as the present one should be considered as punishment and observed as follows :-

"Evidently the management of the undertaking did not purport to impose any punishment upon the second respondent. They purported to pass an order determining the employment under standing order 26 and the labour court and the industrial court held that by the order the contract or employment of the second respondent was determined, and no punishment was imposed."

In another more recent case of the Provincial Transport Services v. Assistant Labour Commissioner, Nagpur and others 1958 I L.L.J. 758 the High Court in connexion with a case under S. 16 of the Central Provinces and Berar industrial Disputes Settlement Act had occasion to consider the same question, viz., as to whether an order of simple discharge passed after an inquiry in which misconduct was held as proved, amounts to punishment. They held that it did not, as will appear from the following observations :

"In our opinion, what is really material is not the antecedent enquiry made by the employer for satisfying himself whether he should continue in service an employee or not, but what is the actual action taken by him in pursuance of the opinion formed by him."

4. Reliance was placed by the Court on a decision of the Supreme Court in Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), where it was held that where an imputation of charge is not in terms made a condition of compulsory retirement, the action taken cannot be regarded as punitive, though inquiry was held regarding some allegations made against the employee before the order of compulsory retirement. In view of these decisions, I hold that the action taken in this case was not as a punishment.

5. It cannot also be said that because the reason given for discharge was "loss of confidence" in the worker, the action amounted to punishment, as in the first High Court case cited above reason assigned was also of a similar nature, i.e., for "behavior pre-judicial to the undertaking." For the aforesaid reason I hold that the action complained of was not taken as a punishment and, therefore, no approval under S. 33(2) was necessary.

6. In the result, the complaint is dismissed.