
(1974) 03 CAL CK 0009
In the Calcutta High Court
Case No : Civil Rule No. 7999 (W) of 1972

Auckland Jute Company Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 06-03-1974

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1975) 2 ILR (Cal) 80

Hon'ble Judges : M.M. Dutt, J

Bench : Single Bench

Advocate : Nani Coomar Chakraborty, Chuni Lal Ganguli and Rathindra Nath Bhattacharjee, for the Appellant; A.K. Dutta and Sunit Krishna Dutta, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Dutt, J.—This Rule is directed against an order of the First Labour Court, West Bengal, dismissing the application of the Petitioner company u/s 33(2)(b) of the Industrial Disputes Act, 1947.

2. The Respondent No. 3 was a workman of the company. The company served a charged-sheet upon the Respondent No. 3 containing certain charges. The Respondent No. 3 submitted his explanation to the said charges. There was an enquiry held by the appointment of an enquiring officer by the company. The enquiring officer came to the finding that the Respondent No. 3 was guilty of charges levelled against him. Thereupon, the Manager of the company served an order dated August 4, 1970, upon the Respondent No. 3. By the said order dated August 4, 1970, the Respondent No. 3 was dismissed from service of the company with immediate effect. It had been further stated in the said order that in accordance with Section 33(2)(b) of the Act one month's wages had been remitted by postal money order. It was also stated that an application was being filed before the First Labour Court for approval of the action taken against him. The company made an application before the First Labour Court for approval of

the order of dismissal from service of the Respondent No. 3. The said application was opposed by the Respondent No. 3. It was inter alia alleged in the petition of objection of the Respondent No. 3 that the formalities as laid down in the Act had not been followed, that the enquiry was neither fair nor proper, that the charges, as stated in the charge-sheet, were false and baseless and that the Respondent No. 3 was not given a fair opportunity to defend himself in the said enquiry. Further, it was alleged that, as the Respondent No. 3 was an active member of the Bengal Chatkal Mazdoor Union, Jagatdal Branch, he incurred displeasure of the company for his trade union activities.

3. The Labour Court, after considering the evidence adduced on behalf of the parties, held that the domestic enquiry made by the company was properly done and that the finding arrived at by the enquiring officer holding the Respondent No. 3 guilty of charges framed against him, was also legal and valid. In spite of the said findings, the Labour Court took the view that the order of dismissal was not passed after considering the past record of service of the Respondent No. 3 as required to be done under Clause 14(g) of the standing order of the company. In that view of the matter, the Labour Court refused to grant approval to the order of dismissal of the Respondent No. 3.

4. Mr. N.C. Chakraborty, learned Advocate appearing on behalf of the Petitioner company, submits that in his petition of objection the Respondent No. 3 did not allege that the order of dismissal was not passed in accordance with Clause 14(g) of the standing orders and that he did not raise any plea to the effect that the Manager of the company did not consider the past record of service of the Respondent No. 3 while passing the order of dismissal. It is contended by him that it was beyond the jurisdiction of the Labour Court to consider the said question, namely, whether in dismissing the Respondent No. 3 the Manager of the company took into his account the past record of service of the Respondent No. 3. Mr. Chakraborty has further submitted that in considering the said question the Labour Court really made out a new case for the Respondent No. 3 which was not raised or pleaded by him in his pleading, namely, the petition of objection.

5. A copy of the petition of objection, which was filed by the Respondent No. 3 in the Labour Court, has been annexed to the writ petition and it is annEx. D to the same. It does not appear that the Respondent No. 3 has taken any point challenging the order of dismissal on the ground that it did not comply with the requirements of Clause 14(g). In his evidence also the Respondent No. 3 did not allege that his past record of service was not considered by the Manager of the company while passing the order of dismissal. No cross-examination on that point was made on his behalf of the witnesses who were examined on behalf of the company.

6. The question, therefore, is, when the point has not been raised either in the pleading or in the evidence, whether the Tribunal can out of its own consider the same. Now, I may refer first of all to the provisions of S. 33(2)(b) of the Act

which is as follows:

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, or where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman

(a)....

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

Provided that no such workman shall be discharged or dismissed, 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 the action taken by the employer.

The proviso to Section 33(2)(b) is to some extent important for our present purpose. Under the proviso two things have to be complied with by the company, namely, (i) that the workman has been paid wages for one month and (ii) that an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. Under Sub-section (2)(b) of Section 33 the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, discharge or punish him by dismissal or otherwise for any misconduct not connected with the dispute. The order of discharge or dismissal should, therefore, be based in accordance with the standing orders of the company where there are such standing orders. If the order of discharge or dismissal has been passed without complying with the requirements of the standing orders, in that case the Labour Court or Tribunal cannot grant approval to the action taken by the employer. In my opinion, in considering the application for approval of the action taken by the employer, it is the duty of the Tribunal concerned to see whether the company has acted in accordance with the standing orders where there are such standing orders and where there are no such standing orders, in that case, in accordance with the terms of the contract. It seems to me that this duty has been cast upon the Court or the Tribunal concerned by Section 33(2)(b). In the instant case, Clause 14(g) of the standing orders of the company is as follows :

In awarding punishment under this standing order the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. A copy of the order passed by the Manager shall be supplied to the workman concerned.

It thus appears that under Clause 14(g) the Manager has to consider the gravity of the misconduct, the previous record of the workman and any other extenuating or aggravating circumstances that may exist. Clause 14(g) is

mandatory and if one of these conditions is not complied with, in that case the order of discharge or dismissal will not be a valid order.

7. It is true that the Respondent No. 3 did not specifically raise the point before the Labour Court, but only at the time of argument the point was raised and it was submitted that the Manager not having considered the past record of service of the Respondent No. 3, the approval should not be granted. Normally, when a party to a proceeding does not raise a point, he will be debarred from agitating the same at the hearing unless he gets his pleading amended with leave of the authority before whom the proceeding is pending. The said principle will not, however, apply to a case where the authority is under a statutory obligation to consider certain conditions in exercise of its jurisdiction. In the instant case, the Labour Court, as has already been stated, was under a duty to consider whether the order of dismissal had been passed in accordance with the standing orders of the company. The Labour Court was, therefore, entitled to investigate whether the Manager of the company had applied his mind to the previous record of the workman. In these circumstances, I am unable to accept the contention of Mr. Chakraborty that the Labour Court had no jurisdiction to consider the point whether the Manager had taken into his account the previous record of service of the Respondent No. 3. At the same time, I am of the view that, while the Labour Court was under a duty to so consider in spite of the fact that the point was not raised by the Respondent No. 3, it did not consider the said point properly in accordance with the principles of natural justice. The company did not get any opportunity to prove that the Manager had considered the past record of service of the Respondent No. 3. In para. 11 of the writ petition it has been alleged as follows:

That the service record of the concerned workman, which would have revealed the following remarks by the Manager of the Mill who was the dismissing authority:

Since I am convinced about the gravity of the misconduct as proved in the enquiry, I cannot but take the decision of dismissing Jan Md. Mia, although no past misconduct appears from his record, hence dismissed.

The Labour Court assumed that the Manager did not so consider the service record and in that view of the matter, it refused to grant approval on that ground alone. In my opinion, the Labour Court ought to have given an opportunity to the company to prove that the service record of the Respondent No. 3 had been considered before the order of dismissal was passed.

8. Mr. Chakraborty has relied on two decisions of the Supreme Court, namely, (i) in the Strawboard Manufacturing Co. Vs. Gobind, and (ii) in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, . In my opinion, these two decisions do not militate against the view which I have taken. In the first of these two decisions it has been held that the proviso to Section 33(2)(b) contemplates three things mentioned therein, namely

- (i) dismissal or discharge,
- (ii) payment of wages, and
- (iii) making of an application for approval,

to be simultaneous and to be part of the same transaction, so that the employer when it takes action u/s 33(2) by dismissing or discharging an employee, should immediately pay him wages for one month and also make an application to the Tribunal for approval at the same time. It has been further held that the employer's conduct show that the three things mentioned in the proviso are parts of the same transaction. This decision has no bearing to the question with which we are concerned. In the other decision it has been ruled by the Supreme Court that the legal position is that where a proper enquiry has been held by the management, the Tribunal has to accept the finding arrived at in that enquiry unless it is perverse or unreasonable and permission must be given unless it has reasons to believe that the management is guilty of victimisation or has been guilty of unfair labour practice, or is acting mala fide. That decision also does not support the contention of Mr. Chakraborty that the Tribunal was not justified in considering whether the management had acted in accordance with Clause 14(g) of the standing orders. In an earlier decision of the Supreme Court in *The Lord Krishna Textile Mills Vs. Its Workmen*, , relied on by Mr. Dutta, learned Advocate appearing on behalf of the Respondent No. 3, it has been held that the approving authority has to consider only (a) whether the standing orders justify the order of dismissal, (b) whether an enquiry has been held as provided by the standing order, (c) whether the wages for the month have been paid as required by the proviso and (d) whether an application has been made as prescribed by the proviso. This decision, therefore, clearly lays down that the approving authority has to consider whether the management has complied with the provisions of the standing orders. Be that as it may, as it has been held by me that the Tribunal did not properly consider the question after giving the management an opportunity of being heard, I am of the view that the order of the Tribunal refusing to grant approval to the action by the company cannot be allowed to stand. It may be made clear that on the other points no challenge has been made to the finding-of the Tribunal.

9. For these reasons, I direct that a writ in the nature of certiorari to issue quashing the order No. 17 dated September 8, 1972, of the First Labour Court, West Bengal, refusing to grant approval to the order of dismissal of the Respondent No. 3. The matter will go back to the Tribunal and it is directed that the Tribunal will dispose of the application for approval of the order of dismissal after giving the parties an opportunity to produce such evidence as it may be advised on the question whether the Manager in passing the order of dismissal of the Respondent No. 3 had taken into his account the past service record of the Respondent No. 3. If the Tribunal comes to the finding, after considering the evidence, that the same had been considered by the Manager; in that case the Tribunal will allow the application for approval. On the other hand, if the Tribunal

comes to the finding that the same had not been considered by the Manager while passing the order of dismissal, in that case the Tribunal will refuse to grant approval to the order of dismissal of the Respondent No. 3. The Tribunal is further directed to dispose of the application within three months of the date of arrival of the records at the office of the Tribunal. Let a writ in the nature of mandamus also issue in the above terms.

10. The Rule is made absolute to the extent indicated above, but there will be no order as to costs.