
(1965) 02 BOM CK 0012

In the Bombay High Court

Case No : Special Civil Application No. 1838 of 1963

Balkrishna Bhiva

APPELLANT

Vs

Industrial Tribunal (Syed Taki Bilgrami) and Another

RESPONDENT

Date of Decision : 11-02-1965

Acts Referred:

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

Citation : (1967) 1 LLJ 637

Hon'ble Judges : H.K. Chainani, C.J;H.L. Gokhale, J

Bench : Division Bench

Judgement

Chainani, C.J.—The petitioner was employed as a helper by respondent 2. On 19 April, 1963 he was dismissed from service on the charge of disobeying an order said to have been lawfully issued to him. As an industrial dispute was then pending before the industrial tribunal, an application was then made to the industrial tribunal for approval of the action taken against the petitioner under S. 33(2)(b) of the Industrial Disputes Act. This application was made on 29 April, 1963. The industrial tribunal granted the approval asked for by respondent 2. That order is being challenged in this petition.

2. The principal point, which has been raised before us, is that the industrial tribunal was wrong in granting its approval as the application to it was not made simultaneously or as part of the same transaction by which the petitioner was dismissed from service. In *Strawboard Manufacturing Co. Vs. Gobind*, , the Supreme Court has held that the proviso in Sub-section (2) of S. 33 contemplates three things mentioned therein, viz., dismissal or discharge payment of wages and making of an application for approval to be simultaneous and to be part of the same transaction, so that the employer when he takes action under S. 33(2) by dismissing or discharging an employee should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time. The employers' conduct should show that the three things contemplated by the proviso are parts

of the same transaction. The question whether the application was made as part of the same transaction or at the same time when the action was taken is a question of fact depending on the circumstances of each case. In the present case the order of dismissal was passed on 19 April, 1963. On the same day a memorandum was issued addressed to the petitioner, in which it was stated that he had been dismissed with immediate effect. This memorandum was served on the petitioner on 24 April, 1963. The application was, however, not made till 29 April, 1963. It has been urged by Sri Jani that the application can be said to have been made simultaneously because some days were required for serving the memorandum on the petitioner. He could not be served till 24 April, 25 and 28 April were holidays and thereafter some time was required for preparing the application and presenting it, before the tribunal. The dismissal order was, however, passed on 19 April. The application could, therefore, have been prepared and made to the tribunal at or about the same time. It was not necessary to wait until the petitioner had been served. Even after the petitioner was served, there was five days' further delay in making the application or if the holidays are excluded at least three days' delay, which has not been satisfactorily explained. On the facts of this case, we do not think that it can be said that the making of the application was part of the same transaction, by which the petitioner was dismissed from service.

3. We, therefore, set aside the order passed by the industrial tribunal granting its approval to the action taken against the petitioner.

4. The petitioner should get his costs from respondent 2.