

(2008) 09 KAR CK 0072
In the Karnataka High Court
Case No : Writ Petition No. 7906 of 2008

Bata India Limited

APPELLANT

Vs

Kanikraj

RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 33 (1) (b), 33 (2) (b)

Citation : (2010) ILR (Kar) 1404

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : B.C. Prabhakar, for the Appellant; K.S. Subrahmanya, for the Respondent

Judgement

Ram Mohan Reddy, J.—The petitioner carries on the business of manufacture of footwear engaging several workmen at its factory premises in Peenya industry area, Bangalore, amongst others. The respondent-workman was issued with a charge-sheet-cum-show cause notice dt. 2.5.2000 Annexure-E, alleging commission of acts of misconduct, at 2 p.m. on 7.3.2000 after the closure of the first shift by instigating other coworkers to squat inside the main gate blocking the movement of the Officers and refusal to leave the factory premises though the management directed the workers to do so, amongst other charges. Disciplinary proceedings followed culminating in the order dt 3.5/2002 Annexure-F dismissing the respondent from the services and simultaneously filing the serial application No. 22/2002 before the Industrial Tribunal, Bangalore, invoking Section 33(2)(b) of the Industrial Disputes Act 1947, for short Act, seeking approval of the order of dismissal dt. 3.5.2002.

2. The State Government by order dt. 16.11.2000 Annexure-A referred the points of dispute between the petitioner and its workmen relating to Lockout, due to gherao and go-slow, and legality of the strike and claim for full wages, for adjudication by the Industrial Tribunal, Bangalore, which was numbered as ID 138/2000. The order of reference when called in question in W.P. 37965/2000, by

the Union of workmen, this Court having clubbed two other writ petitions, by a common order dt. 2.9.2005 Annexure-K, dismissed the writ petition reserving liberty to the parties to make additional pleadings and lead additional evidence both oral and documentary.

3. Before the Industrial Tribunal, the serial Application No. 22/02 in ID 138/2000 was resisted by filing statement of objections of the respondent inter alia contending that the petitioner did not apply for and secure written permission of the Tribunal u/s 33(1)(b) of the Act to dismiss the respondent for acts of misconduct connected with the dispute and the application for post facto approval u/s 33(2)(b) of the Act is not maintainable. The Tribunal in the premise of pleadings of the parties, framed an additional issue over the fairness of the domestic enquiry and after recording the depositions of the witness for the parties, and marking documents, by order dt. 10.8.2005 Annexure-J, held the domestic enquiry fair and proper. Thereafter, by order dt. 28.3.2008 Annexure-N, dismissed the application u/s 33(2)(b) of the Act. Hence this writ petition.

4. Learned Counsel for the petitioner points out to the imputation of misconduct Annexure-E to contend that the misconduct alleged against the respondent not being connected with the dispute referred to by the State Government in ID 138/2000 it was unnecessary to invoke Section 33(1)(b) of the Act for permission to dismiss the respondent from service. Learned Counsel submits that the Industrial Tribunal was not justified in dismissing the application u/s 33(2)(b) of the Act.

5. Per contra, learned Counsel for the respondent contends that the misconduct of gherao and go-slow was connected with the first point of dispute in ID 138/2000. According to the learned Counsel, the first point of reference in ID 138/2000 required the petitioner to justify lockout on 8.3.2000 said to have preceded the alleged misconduct of go-slow and gherao. Learned Counsel points out to the statement of imputations, Annexure-E, to contend that the respondent is alleged to have instigated the first shift workers to squat inside the main gate blocking the movement of the Officers and thereafter, on completion of the general shift at 5 p.m. continued to squat, refusing to leave the premises, preventing Officers from going out of the premises. The learned Counsel submits that the foundation for the dismissal being a misconduct of gherao and go-slow, connected with the dispute in ID 138/2000, ought to be preceded by a written permission, of the Tribunal, by filing a serial application invoking Section 33(1)(b) of the Act. Learned Counsel points out to the contents of the notice of lockout dt. 8.3.2000 marked as Ex.M10 in ID 138/2000 to contend that the petitioner specifically averred that the first shift workmen did not go out of the factory at 2 p.m., squatted inside the main gate and blocked the exit of Officers, to contend that they are the very same imputations of misconduct alleged against the respondent.

6. Having heard the learned Counsel for the parties, perused the pleadings and examined the order impugned, it is useful to extract Section 33 of the Act, which

reads thus:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings: (1) During the pendency of any conciliation proceedings before a conciliation officer or a Board or any proceeding before an arbitrator or a Labour Court or a Tribunal or National Tribunal in respect of an industrial dispute, no employer shall--

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workman concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending.

(2) 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) 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, 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 proceedings is pending for approval of the action taken by the employer.

(3) xxxxxx

(4) xxxxxx

(5) xxxxxxxx

7. A bare perusal of the aforesaid provision discloses that for the purpose of Section 33, the workmen should not only be a workman u/s 2(s) but a workman concerned in the dispute pending before the Tribunal. The question as to whether the workman is concerned in the dispute under adjudication is a mixed question of fact and law, so also, in order to attract Section 33(1)(b) of the Act, the question as to whether the dismissal of the workman is for a misconduct connected with the dispute is one of fact. Thus, if the employer proposes to dismiss the workman for any misconduct connected with the dispute, undoubtedly the employer is required to seek the prior permission, in writing, of

the Tribunal before whom the dispute is pending. Section 33(2)(b) of the Act provides that in case of dismissal of the workman for any misconduct not connected with the dispute pending before the Tribunal, the employer is required to seek post/ado approval for such dismissal.

8. In the instant case while it is the claim of the petitioner that the acts of misconduct alleged against the respondent leading to his dismissal from service, were not connected with the dispute in I.D. 138/2000 and hence, the petitioner was entitled to maintain the serial application u/s 33(2)(b) of the Act, for approval of the dismissal, it is the case of the respondent that the acts of misconduct alleged against the respondent are connected with the dispute referred for adjudication in ID 138/2000 and mandates the filing of an application u/s 33(1)(b) of the Act for permission in writing of the Tribunal to dismiss the respondent from service.

9. The points of dispute between the petitioner and its workmen as referred to in the order of reference dt. 16.11.2000 Annexure-A (marked as Anx-A38) are as follows:

i) Whether the Management was justified in declaring lock out w.e.f. 8.3.2000 after the incident of gherao and go slow?

ii) Is the strike by the workmen from 3.7.2000 is justified? Was it proper on the part of the workmen to refuse to execute the undertaking in favour of the Management as insisted by the Management at the time of lifting the lock out?

iii) Is it proper on the part of the workers' Union to claim full wages for the months of February and March, 2000 during which period the workers worked slowly?

iv) If not, to what reliefs the workmen are entitled to?

10. Though the learned Counsel for the petitioner contends that the terms of reference were questioned by the Union representing the workmen in a Writ Petition, nevertheless that writ petition having been dismissed, as admitted by the learned Counsel, no useful purpose will be served by making reference to the pleadings in the writ petition or order dismissing the petition.

11. The Lock out notice dt. 8.3.2000 marked as Ex.M10, in ID 138/2000 though not an annexure to the writ petition, not objected to by the learned Counsel for the petitioner, discloses that the lock out was a direct result of the acts of the workmen in not going out of the factory at 2 p.m. and squatting inside the main gate blocking the exit of Officers and indulging in go-slow along with the general shift workmen. It is further stated that at about 7 p.m., all the workman who were squatting rushed towards the new Administrative block where most of the Officers including Vice President-(Manufacturing), were present, gheraoed them and confined them in the new block. In addition it is stated that the workmen did not allow the Officers to even answer nature call and prevented them from taking food and water while using filthy and abusive words, that cannot be printed.

12. In the backdrop of points of dispute referred to by the State Government and the foundation for the lock out as disclosed in the lock out notice Ex.M10, an examination of the imputations of misconduct against the respondent in the charge sheet-cum-show cause notice Annexure-E, discloses allegations of gherao, by preventing the Officers from leaving the factory premises, on 7.3.2000 after completion of the first shift.

13. Though the learned Counsel for the petitioner contends that the factum of gherao and go-slow were established in the light of the point of dispute No. 2 referred to by the State Government and therefore, it was not open for the respondent to contend that there was no gherao or go-slow, a circumstance in favour of the petitioner, I am not inclined to accept that plea. The question is not as to whether the respondent was or not instrumental to the gherao or go-slow tactic, but whether the dismissal was for a misconduct connected with the dispute pending before the Tribunal, requiring the petitioner to invoke the jurisdiction u/s 33(1)(b).

14. An examination of the order impugned discloses that the Tribunal considered the material on record, and having noticed the first point of dispute referred for adjudication by the State Government in ID 138/2000 was the justification for the lockout, on account of gherao and go-slow, being, the very same acts of misconduct for which the respondent was dismissed from service, it cannot be said that the Tribunal was not justified in dismissing the application filed u/s 33(2) (b) of the Act for post facto approval of the order of dismissal. The petitioner having failed to invoke Section 33(1)(b) of the Act prior for permission, in writing, of the Tribunal to dismiss the services of the respondent, for acts of misconduct connected with the dispute in I.D. No. 138/2000, the Tribunal was fully justified in dismissing the serial Application filed by the petitioner u/s 33(2) (b) of the Act.

The writ petition is without merit and is, accordingly rejected.