

(2011) 07 KAR CK 0223

In the Karnataka High Court

Case No : Writ Petition No's. 10953-54 of 2009 (L-TER)

Bata India Ltd.

APPELLANT

Vs

K.K. Leena and Another

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33 (2) (b)

Citation : (2012) 1 LLJ 807

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Petitioner-Management initiated disciplinary proceedings by issuing a charge sheet, alleging that its employees-respondents on April 28, 2000, when the factory was under lock-out, joined 40 other agitating employees, shouting slogans in front of the main gate, called Mr. V.G. Menon over to the small gate and said that they will obstruct the movement of vehicles going inside or outside the factory as some material is loaded in the ambulance van and that at 9.50 a.m., obstructed the factory car bearing registration No. CAK 1500 at the gate and verbally abused the security staff. Following a domestic enquiry extending reasonable opportunity of hearing to the parties and an enquiry report holding the charges proved, the disciplinary authority on an independent assessment of the facts, circumstances and evidence on record held the respondents guilty of the charges and proposed their dismissal from service. In view of the pendency of I.D. 138/2000 petitioner filed two separate serial applications No. 24 and 25/2002, respectively, before the Industrial Tribunal, Bangalore, invoking Section 33(2)(b) of the Industrial Disputes Act, 1947, for short "I.D. Act" seeking approval of the proposal of dismissal. Those applications were opposed by filing counter statements denying the allegations as well as the

validity of the domestic enquiry. The Industrial Tribunal in the premise of pleadings of the parties framed issues, one of which was over the validity of the domestic enquiry. Parties having let in evidence, the Tribunal by order dated August 5, 2005 answered the issue in the negative holding the domestic enquiry as not fair and proper and permitted the petitioner to adduce evidence afresh over proof of the charges, whence one Harishkumar, another Mallanna and yet another B.S. Raghu were examined as A.Ws. 2 to 5, while respondents were examined as OWS-1 respectively in the applications and two other witnesses by name Chikkagowda and Devendra Belageri as O.Ws.2 and 3 respectively. The Tribunal framed the following points for consideration: 1. Has the applicant management prima facie shown that the opposite party workmen in SI. A.24 and 25/2002 have committed misconduct as alleged in the charge sheets?

2. Is the passing of dismissal order against the opposite party workmen by the applicant on May 23, 2002 bona fide ?

3. Are the said dismissal orders passed by the management against the opposite party workmen by way of victimization?

4. What order?

and answered the said points thus:

Point No. 1: Partly affirmative

Point No. 2: Negative

Point No. 3: Affirmative

Point No. 4: As per order

The Tribunal by order dated September 18, 2008 dismissed the applications with costs. Hence these petitions. Learned counsel for the petitioner contends that the oral testimony of A.Ws. 3 to 5 coupled with the complaint filed by N.D. Devaiah the Manager-Personnel on April 28, 2000 though in the direction of establishing the charges, the Industrial Tribunal applying a perverse approach recorded a finding that the charges except to the extent of slogan shouting were not proved. Learned counsel further contends that the respondents having taken an active part in the agitation and verbally abused and threatened the Security Officer by name Mr. Menon was testified by A.Ws. 3 to 5, there was no question of victimizing the respondents and therefore, the Tribunal recorded a perverse finding on victimization.

According to the learned counsel maintaining discipline is a built-in requirement of the employees of the petitioner's establishment, and the act of obstructing the passage of motor vehicles from and to the factory premises, a grave act of indiscipline, was required to be dealt with iron hands. The charges having been established, no leniency much less sympathy or benevolence could play a role so as to reduce the punishment. Learned counsel adds that strict rules of evidence to prove the charge is unavailable since in an industrial adjudication the degree

of proof is one of preponderance of probabilities and the petitioner having made out a probable case, the Industrial Tribunal ought to have accorded approval for dismissal of the respondents from service.

2. Per contra Sri K.S. Subramanya, learned counsel for the respondent-workman submits that an adjudication in a proceeding u/s 33(2)(b) of the I.D. Act in hers in the Industrial Tribunal to interfere with the proposed punishment, when (i) there is want of good faith; (ii) there is victimization or unfair labour practice; (iii) the management is guilty of basic error or violation of a principle of natural justice; (iv) on the material the finding is completely baseless or perverse. Learned counsel hastens to add that if the domestic enquiry is held not fair and proper and the Industrial Tribunal permits the Management to lead evidence afresh in support of the charges, the Tribunal's jurisdiction is extended to assessing the evidence on record to draw conclusions over proof of charges and even if the charge is proved, nevertheless could record a finding whether the management is guilty of victimization or unfair labour practice, so as to record or deny approval for dismissal of the workman from service. Learned counsel places reliance upon the decision of the Apex Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*,

3. Learned counsel seeks to sustain the order impugned, as being well-merited, fully justified and not calling for interference. In addition, learned counsel contends that the finding of the Labour Court on point No. 2 that respondents were guilty of slogan shouting per se is not a misconduct under the standing - orders of the petitioner and even otherwise does not call for a punishment of dismissal from service.

4. Having heard the learned counsel for the parties, perused the pleadings and examined the order impugned. The question for decision making is "Whether in the facts and circumstances, the common order impugned of the industrial Tribunal is just, legal and proper"?

5. The scope of enquiry in a proceedings u/s 33(2)(b) of the I.D. Act when considered by the Apex Court in *Cholan Roadways Limited Vs. G. Thirugnanasambandam*, it was observed thus at pp. 573 and 574 of LLJ:

The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in *Martin Burn Ltd. v. R.N. Banerjee*. While exercising jurisdiction u/s 33(2)(b) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regards the validity or otherwise of the domestic enquiry held against the delinquent, keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriated proceeding before the Industrial Tribunal in terms of the provision of the *Martin Burn Ltd. Vs. R.N. Banerjee*, this Court stated thus:

A prima facie case does not mean a case proved to the hilt but a case which can

be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion, which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See *Buckingham and Carnatic Co. Ltd. v. Workers of the Company*)".

6. Undoubtedly the disciplinary action over the allegation of misconduct when enquired into in a domestic enquiry conducted by the petitioner-Management was held to be in violation of the principles of natural justice and hence, not fair and proper by order dated August 5, 2005 of the Industrial Tribunal. That order is not called in question and has attained finality. Therefore, the scope of enquiry before the Industrial Tribunal u/s 33(2)(b) of the Act, though akin to Section 10 of the Act nevertheless requires the appreciation of the evidence marshalled before it for by the petitioner over proof of the charges and whether the proposed action of dismissal for which approval was sought, was, fraught by victimization so as to decline approval, as-observed by the Apex Court in *Workmen of Firestone Tyre & Rubber Co. v. Management* (supra).

7. The Industrial Tribunal having regard to -the material on record more appropriately the oral testimony of A.Ws. 3 to 5 and the complaint lodged by the Managerial Personnel by name N.A. Devaiah, inter alia naming 19 employees, though indicative of a gathering of large number of employees shouting slogans was not determinative of proof of charges i.e., of threat, obstruction of movement of vehicles and verbal abuse by the respondents. Therefore, the Labour Court recorded a finding that the evidence both oral and documentary did not establish, conclusively, either the use of impertinent language or alleged indecent behaviour much less obstruction to movement of vehicles, except to the extent of slogans, shouting and accordingly answered point no. 1.

8. The respondents, asserted in their depositions that the petitioner adopted a pick and choose method initiating disciplinary proceeding by issuing charge sheets to them and not against 12 other employees, who too had gathered and shouted slogans, on the day in question which when not contradicted by the petitioner coupled with the naming of 19 employees in the complaint of N. Devaiah, Security Officer of whom 11 were kept under suspension, while no action was taken against the remaining 9 workmen, led to the conclusion that respondents were victimized by way of discrimination and following the principles laid down in *Aditya Mills Ltd. v. Ram Dayal and Others* 1974 LIC 25 : 1973 I LLJ 538 (Raj) accordingly answered point Nos. 2 and 3.

9. The Industrial Tribunal extracted the observations of the Calcutta High Court in *National Tobacco Co. of India Ltd. and Others Vs. Fourth Industrial Tribunal and Others*, thus (Head note of LLJ): Victimization means one of two thing: The first

is where the workman concerned is innocent and yet he is being punished because he has in some way displeased the employer, for example by being an active member of an Union of Workmen, who were acting prejudicially to the employer's interest. The second case is where an employee has committed an offence but he is given a punishment quite out of proportion to the gravity of the offence, simply because he has incurred the displeasure of the employer in a similar manner as mentioned, above. But where it is found that the employer is guilty of gross misconduct then there cannot be any question of victimization because it merits dismissal by itself.

Applying the aforesaid principles to the facts of this case and on a fair consideration of the material on record, the common order impugned by the Industrial Tribunal is well-merited, fully justified on the materials available on record and they are neither shown to suffer on account of infirmity in law nor substantiated to be based on no evidence or violated on account of perversity of approach to call for a different conclusion and interfere with the verdict. Writ petitions devoid of merit are rejected.