
(1973) 07 CAL CK 0013
In the Calcutta High Court
Case No : C.R. No. 2051 (W) of 1969

Bata Shoe Co. Pr. Ltd.

APPELLANT

Vs

Third Industrial Tribunal and Others

RESPONDENT

Date of Decision : 13-07-1973

Acts Referred:

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

Citation : 77 CWN 906

Hon'ble Judges : Debiprosad Pal, J

Bench : Single Bench

Advocate : N.C. Chakraborty and Sailendra Sen Gupta, for the Appellant; A.K. Sen Gupta, for the Respondent

Judgement

Debiprosad Pal, J.—The petitioner is a Company registered under the Companies Act and owns a factory situated at Batanagar, 24-Parganas. The respondent No. 2, Sri Mrinal Shankar Das Gupta was working as a piece rated workman in the Leather Department of the petitioner's factory at Batanagar. The respondent No. 2 is alleged to have remained absent from 6.2.1967 on different grounds. He was declared fit by the Medical Officer of the Bata Workers Sickness Benefit Society on the 30th March, 1967. According to the petitioner, the respondent No. 2 acted contrary to the advice of such Medical Officer, did not resume duty and remained out of work since then. It appears that the respondent No. 2 reported for duty on 5.4.1967 with a certificate from one Homoeopathic doctor to the effect that he was suffering from fever and bacillary dysentery upto 4.4.1967. The Company however disbelieved the said medical certificate and issued a chargesheet on 5.4.67 calling upon the respondent No. 2 to show cause why disciplinary action under Clause 22 (b) of the Standing Orders and Rules of the Company should not be taken against him for such habitual irregularities. The respondent No. 2 showed cause and a departmental enquiry was held. In the said departmental enquiry, the respondent No. 2 was given full opportunity to defend his case and to produce documents as well as witnesses on his behalf and to cross-examine the witnesses who were produced on behalf of the management. After the

proceedings were concluded, the Enquiry Officer sent a report wherein he found the charges to have been proved. The petitioner-Company thereafter terminated the service of the respondent No. 2 in accordance with the provisions of the Standing Orders and Rules of the Company and informed the respondent No. 2 that he would be paid 14 days wage's in pursuance of Clause 22 of the Standing Orders, It was also stated in the letter dated 6th July, 1967, being annexure "D" to the petition that the petitioner had been remitting on that day per money order one month's wages to the respondent No. 2 and that the petitioner had been taking steps for filing petition under Sec. 33 (2) (b) of the Industrial Dispute Act (hereinafter referred to as the Act). Thereafter an application was filed under Sec. 33(2) (b) of the Act seeking the approval of the action taken by the petitioner in view of the pendency of the dispute before the said Tribunal. In the said application it is alleged that the respondent No. 2 from 6.2.1967 was out of work often on different grounds. Lastly, he was declared fit by the Medical Officer of the Bata Workers' Sickness Benefit Society on 30.3.1967 but he defined his advice and did not resume duties and remained out of work since then. It is alleged in the said application that out of 41 working days, i.e. from 6.2.1967 to 4.4.1967 he worked only for 8 days though he was declared medically fit by the Medical Officer. The Third Industrial Tribunal dismissed the said application by its order dated 31st December, 1968. The Tribunal was of the view that there was no violation of the principles of natural justice in holding the enquiry. But according to the Tribunal the instant case does not come within the purview of Clause 22 (b) of the Standing Orders. The Tribunal took the view that it is true that since 6.2.67 and prior to the date of the chargesheet, the respondent No. 2 worked only for 8 days. According to the Tribunal these circumstances could be no reason for the Company's taking action against the respondent No. 2 in terms of Clause 22 (b), when his absence on all the other working days prior to the date of the chargesheet was with the sanction of the Company. The Tribunal relied upon the report of the Enquiring Officer which showed that the absence of the respondent No. 2 on the other days was authorised absence as he was on sanctioned leave, ordinary or sick. The Tribunal, therefore, was of the view that only for his absence from 31.3.67 to 4.4.1967, and not for any other absence, the Company could have taken disciplinary action against the respondent No. 2. According to the Tribunal therefore absence for only five days amounted to "temporary absenteeism" mentioned as a minor offence in Clause 21 (b) of the Standing Orders. Proceeding on that view the Tribunal held that the Company had no justification to terminate the employment of the Respondent No. 2 in accordance with Clause 22(b) of its Standing Orders

2. Aggrieved by the said order of the Tribunal the petitioner moved this Court and obtained a rule nisi. The Learned Counsel for the petitioner contended that where a dismissal of a worker cannot be attributed either to any malafide or to any unfair labour practice on the part of the employer, the Tribunal has no competence and/or jurisdiction to withhold the permission on the ground that in

its view the action taken was not justified. Reliance was placed in support of the above contention upon the decision of the Supreme Court in the case of (1) Central India Coal Field Ltd. v. Rambilash Shognath AIR (1961) S.C 1189.

3. It is necessary at this stage to refer to relevant provisions of the Standing Orders on which reliance has been placed by the Tribunal in its order. Under Clause 21(B) of the Standing Orders and Rules of the Company minor offences are deemed to include negligence or neglect of work, in efficiency, temporary absenteeism, lateness and or omission for which a fine may be imposed under the Payment of Wages Act. Each such act or omission shall, unless otherwise provided constitute an offence and the company reserves the right to impose the penalty specified in the said Clause. Clause 22(b) authorises the Company to terminate the service of any workman for any other good and sufficient cause not specifically provided for, by giving 14 days basic wages and dearness allowance in lieu of notice. It appears therefore that whether a particular offence is to constitute a minor offence within the meaning of Clause 21 (B) of the Standing Orders or may come under Clause 22(b) of the said Orders which may involve termination of the service of the workman has to be considered in determining the question as to whether the termination of the service of the respondent No. 2 has been made in accordance with such Standing Orders and Rules. The Tribunal found on the basis of the report of the Enquiring Officer that excepting the absence of the respondent No. 2 from 31.3.1967 to 4.4.1967, the absence of all other days was authorised absence as he was on sanctioned leave, ordinary or sick. The Tribunal therefore found that the absence for five days may amount to temporary "absenteeism" which is a minor offence in Clause 21(B) of the Standing Orders, and does not warrant the application of Clause 22 (b) of the said standing Orders. In other words the Tribunal on the materials found that the dismissal of the workman was not in accordance with the Standing Orders and the Rules.

4. It is now well settled as a result of several decisions of the Supreme Court that in an application made by the employer for the requisite permission u/s 33(2) of the Act, the jurisdiction exercised by the Tribunal in dealing with such an application is, a limited one. It has to consider whether a prima facie case has been made out by the employer for the dismissal of the employee in question. 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 the Tribunal should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair labour practice or is acting malafide. ((2) Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh,). Where a domestic enquiry has been held properly, and the principles of natural justice have not been violated, the Tribunal does not sit in appeal on the finding of the domestic tribunal and it can only interfere with the punishment inflicted as a result of the domestic enquiry, where there is want of good faith or basic error or violation of the principles of natural justice or where the findings are perverse or baseless or the case is one of victimisation or unfair

labour practice ((3) Bengal Bhatdee Coal Co. v. Ram Probesh Singh, AIR (1964) S.C. 486). The test of perversity of a finding recorded by an Enquiring Officer or a domestic tribunal will be that the said finding is not supported by any legal evidence at all or is one which no reasonable person could have arrived at on the basis of the materials before such domestic tribunal. ((4) Central Bank of India Ltd. Vs. Prakash Chand Jain,). In every case the Tribunal has to consider whether on the evidence taken in the enquiry a prima facie case has been made out and the management was acting bonafide. 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 has been led in support of the same were believed. ((5) The Management of the Bangalore Woollen Cotton and Silk Mills Co. Ltd. Vs. B. Dasappa, M. T. represented by the Binny Mills Labour Association,). While determining whether a prima facie case has been made 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 should be arrived at on that evidence. It may be that the Tribunal on a consideration of the evidence might itself have arrived at a different conclusion but it cannot in a proceeding under Sec. 33 (2) (b) substitute its own judgment for that arrived at by the domestic tribunal. All that the Tribunal has to consider is whether the view taken is a possible view on the evidence on record. ((6) Martin Burn Ltd. Vs. R.N. Banerjee,).

5. Bearing this test in mind it has to be seen whether the Industrial Tribunal, when it did not give permission asked for by the petitioner has in any manner acted contrary to the principles set out above. The Tribunal in the present case has not depreciated the evidence. The Tribunal has proceeded on the basis of the facts stated in the report of the Enquiring Officer. The Tribunal pointed out that on these facts the termination of service is not in accordance with Clause 22(b) of the Standing Orders as it has found on the admitted facts that excepting the absence of five days from 31.3.67 to 4.4.67, absence of all other days was sanctioned leave. Whether on the facts admitted or proved in the proceedings for enquiry a particular action is in accordance with law or with the Standing Orders cannot be considered to be an enquiry which is not within the competence or jurisdiction of the Tribunal while considering the application under Sec. 33 (2) (b) of the Act. If it is found that on the proved or admitted facts a particular conduct of an employee does not amount to an offence which is alleged to have been committed, it may be a case of basic error. In such a case it can also be contended that the conclusion reached by the domestic tribunal on the basis of the facts proved or admitted is a perverse one in the sense that no reasonable man could have arrived at that conclusion on the basis of the materials before it and in these circumstances the Tribunal is well within its competence and jurisdiction to withhold the approval under Sec. 33(2) (b) of the Act as in its opinion the action is not warranted under the law. In my view the Tribunal did not exceed its jurisdiction in holding on the admitted facts that the termination of the employment of the respondent No. 2 was not in accordance with Clause

22(b) of the Standing Orders.

In the result this rule is discharged. Interim order, if any, stands vacated. There will be no order as to costs.