

(1966) 02 P&H CK 0025
In the Punjab And Haryana At Chandigarh

Birla Cotton Spinning and Weaving Mills Ltd.	APPELLANT
Vs	
Labour Court and Another	RESPONDENT

Date of Decision : 15-02-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33

Citation : (1967) 2 LLJ 215

Hon'ble Judges : H.R. Khanna, J

Bench : Single Bench

Judgement

H.R. Khanna, J.—The Birla Cotton Spinning and Weaving Mills, Ltd., Delhi, by means of this petition under Article 226 of the Constitution of India, has challenged orders dated 29 June 1964 and 15 March 1965 of labour court, Delhi, respondent 1.

2. The brief facts of the case are that Raman Lal, respondent 2, was a head-jobber of the petitioner-company. On 25 October 1963, a complaint was made against Raman Lal that he had demanded bribe from Teni Prasad, a temporary worker. A trap was, accordingly Laid and Teni Prasad, it is stated, gave two marked currency notes of Rs. 10 each to Raman Lal. Raman Lal was thereafter searched and the two currency notes in question were recovered from the top of a shelf of an open almirah which was behind Raman Lal. A preliminary investigation was made by B.R. Ghaiye who recorded the statements of Raman Lal and Teni Prasad. Sri Ram, who was the acting secretary of the branch of the Kapra Mazdoor Ekta Union, also handed over his own statement to Ghaiye. The aforesaid statements were handed over by Ghaiye to the production manager. A chargesheet was thereafter issued to Raman Lal the same day, i.e., 25 October 1963, to the effect that he had on that day taken Rs. 20 as bribe from Teni Prasad, a temporary worker, and that the amount had been recovered from him (Raman Lal). Raman Lal was, accordingly, asked to show cause as to why he should not be dismissed for the above misconduct. Enquiry was thereafter held by B.R. Ghaiye who was appointed the enquiry officer. As a result of the enquiry,

Raman Lal was dismissed from service. As an Industrial dispute was pending at the time the order for dismissal was made, an application was filed before the industrial tribunal, Delhi, u/s 33(2)(b) of the Industrial Disputes Act for the approval of the action taken by the petitioner-company. This application was subsequently transferred for decision to the labour court. Before the labour court, the question arose as to whether B.R. Ghaiye, being the investigating officer, could also be the enquiry officer. The labour court decided that there was nothing wrong in the enquiry officer and the investigating officer being the same person. The labour court, as per order dated 29 June 1964, however, came to the conclusion that there had been no proper enquiry, and approval of management's action on the basis of such an enquiry could not be granted. The management at that time applied that in case the Court found the enquiry to be not proper it should give the management an opportunity to prove the charge by leading entire evidence in support thereof before the labour court. The labour court accepted this prayer of the management and directed the parties to adduce evidence before it in respect of the charge. After recording the entire evidence, the labour court, as per order dated 15 March 1965, came to the conclusion that the charge against Raman Lal had not been substantiated. The application of the management for approval with regard to the dismissal of Raman Lal from service, it was, accordingly held, could not be granted, and the same was, consequently dismissed.

3. The main target of attack of the learned Counsel for the petitioner at the hearing of the petition in the order of the labour court dated 29 June 1964, and it has been argued that the labour court was wholly unjustified in holding that there had been no proper enquiry by B.R. Ghaiye into the charge of misconduct against Raman Lal. As against that, the stand taken on behalf of Raman Lal, respondent 2, is that the enquiry into the charge of misconduct held by B.R. Ghaiye was not a proper enquiry as the procedure adopted by the enquiry officer was violative of the principles of natural justice. The question as to what is the scope of interference by an industrial tribunal with an order of dismissal made by the management against its employee on a charge of misconduct was considered by their lordships of the Supreme Court in the case of *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, and it was observed at pp. 269-270:

Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, industrial tribunals have been given the power to see whether the termination of service of a workman is Justified and to give appropriate relief. In case of dismissal on misconduct, the tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere

- (i) when there is a want of good faith,
- (ii) when there is victimization or unfair labour practice,

(iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and

(iv) when on the materials, the finding is completely baseless or perverse.

4. It is not disputed that the above principles would hold good when the order of dismissal comes up for scrutiny before a labour court and not only before an industrial tribunal. According to Sri Jain, who has argued the case on behalf of respondent 2, the order of dismissal of Raman Lal was covered by the third proposition Laid down in the above dictum, as the enquiry culminating in the order of dismissal was not proper being violative of the principles of natural justice. This also appears to have been the view of the labour court. In arriving at this conclusion, the labour court, broadly speaking, took into account four circumstances. It was observed that the enquiry officer did not make use of the statements recorded during investigation and did not supply copies of those statements to Raman Lal for cross-examination of the-witnesses produced at the enquiry. The second circumstance, which was taken into account, was that Sri Ram, who was an important witness and was Instrumental in getting Raman Lal Involved in the case, had made different statements during investigation and yet the enquiry officer did not put any question to Sri Ram with regard to his earlier statement made during investigation. It was further observed that the enquiry officer, by not confronting witnesses with their previous statements, had not performed his duty fairly and impartially, more so when the worker was not helped by any legal and experienced man. The third circumstance, which weighed with the labour court, was that Raman Lal was not supplied with the copy of his earlier statement in spite of his having asked for the same. The fourth circumstance, which was taken Into account by the labour court, was that Raman Lal was not told of an application dated 30 October 1963 which had been made by Teni Prasad to the management and wherein the version of Teni Prasad was that he had put the two currency notes in an almirah at the instance of Sri Ram and that ha had given a wrong statement before the enquiry officer.

5. I have given the matter my consideration and am of the view that none of the grounds mentioned by the labour court would go to show that the procedure adopted by the enquiry officer, Ghaiye, was violative of the principles of natural justice. So far as the non-supply of the copies of statements of witnesses recorded during investigation is concerned, I find that no specific ground was admittedly taken in the reply dated 7 January 1964 (annexure E) filed on behalf of respondent 2 before the labour court that he had asked for those copies and that he had been prejudiced in his defence because of the non-supply of those copies. The finding of the enquiry officer was to be based upon the evidence actually adduced before him during the course of the enquiry and not by what a particular witness had stated in preliminary investigation. As such, the non-supply of copies of statements recorded during preliminary investigation cannot be held to have vitiated the enquiry, more so, when no pi en was taken before the labour court that such copies were not supplied despite demand and their

non-supply had resulted in prejudice to respondent 2. I may also in this connexion refer to the case of *New Victoria Mills Co. Ltd., Kanpur v. Jagannath and Ors.* 1961 I L.L.J. 110, wherein it was observed:

A fair hearing includes the giving of a chargesheet to the charged employees containing necessary particulars of the charge. It does not, in my opinion, include the giving of the statements recorded in the preliminary enquiry. The employer may give those statements to the charged employees, if he so decides; but if he does not give those statements to the charged employees along with the chargesheet, it cannot be said that the principles of natural justice have been violated.

6. As regards the ground that the enquiry officer did not confront Sri Him, who was a witness in the enquiry, with his previous statement made during preliminary investigation, I am at the view that there is no imperative duty cast upon an enquiry officer to confront a witness with his previous statement made during preliminary investigation. It may be that the enquiry officer in some cases may confront a witness with his previous statement but the mere fact that he does not do so would not go to show that the enquiry held by him is violative of the principle of natural justice. Cases can also always arise that variation in the two statements of the witness is such as might not be considered by the enquiry officer to be of so material a character as to justify confronting a witness with his statement made in preliminary investigation. The necessity for confronting a witness with his previous statement may, with some plausibility, be felt, for example, if the enquiry officer forms the impression that the statement made by the witness during the enquiry is not correct; that he is deliberately departing from his previous statement to suppress the truth. If, however, the enquiry officer does not form that impression or does not otherwise feel the necessity of confronting a witness with his previous statement, it would not follow that he is prejudiced against the person in respect of whom he is holding the enquiry. It is to be remembered that the person concerned has primarily the right of cross-examining the witnesses and the omission of the enquiry officer to put questions, which might well have been asked in cross-examination, would not lead to the inference that the enquiry was in violation of the principles of natural justice. The management in the present case got a domestic enquiry made from Ghaiye, in order to satisfy itself about the truth of the charge against respondent 2, and it would not be proper to expect the standard and procedure of a Court of law in such a domestic inquiry.

7. The ground that respondent 2 was not supplied with a copy of his own statement, made during preliminary investigation, hardly shows any violations of the principles of natural justice. Respondent 2 was to be proceeded against on the basis of statements of other witnesses. His statement made during enquiry could certainly be taken into account in order to decide that matter. It is, however, not clear as to how the non-supply of the copy of his own statement made during preliminary investigation to respondent 2 can be deemed to have operated to his

prejudice. Respondent 2 could not have been unaware of the statement made by him during preliminary investigation and it is nobody's case that the aforesaid statement was used against respondent 2 at the enquiry in order to arrive at a finding that the charge had been substantiated against him.

8. As regards the ground that respondent 2 was not told of the application of Teni Prasad made to the management on 30 October 1963 that he had put the two notes in the almirah at the instance of Sri Ram, I find that the respondent in his reply (annexure B) before the labour court admitted that a copy of that application was supplied to him. It, therefore, cannot be said that respondent 2 remained unaware about the making of the aforesaid application by Teni Pradesh.

9. I would, therefore, hold that the labour court was not justified in holding that the domestic enquiry held by Ghalye was not a proper enquiry and was violative of the principles of natural Justice. I may state that there is nothing to show that respondent 2 was an active trade union worker, whose activities had become an anathema to the management and for that reason the management had some animus to get rid of him or to resort to victimization or other improper practice. As such, I fail to understand as to why the management should have recourse to an unfair enquiry to terminate the services of respondent 2 on the basis of a charge which was not true to the satisfaction of the management.

10. It has to be borne in mind that the jurisdiction of the labour court, when it is moved under Section 53(2) of the Industrial Disputes Act, is of a very limited nature. It is only concerned with the prima facie aspect of the matter and it cannot import the standard of proof required to substantiate the charge in a criminal Court. Likewise, it cannot act as a Court of appeal with the object of reappraising the evidence in order to come to a finding as to whether the charge has been proved. As has been observed by their lordships of the Supreme Court in another case relating to this very petitioner—*Sir/a Cotton Spinning and Weaving Mill, Ltd. v. V. Narsinhdeo Jamadar* Civil Appeal No. 180 of 1960, decided on 6 December 1980:

It is well-established that the jurisdiction u/s 33 is very limited and we needed no argument from Sri Anand to satisfy us that in this case the said limited jurisdiction has been manifestly exceeded. It was not within the scope of the enquiry before the tribunal u/s 33 to find out whether the evidence was satisfactory and whether probabilities supported the charge; these considerations would have been relevant if the tribunal had been authorized to deal with the report of the enquiry as a Court of appeal on facts.

In the case of *Martin Burn Ltd. Vs. R.N. Banerjee*, their lordships were dealing with a case u/s 22 of the Industrial Disputes (Appellate Tribunal) Act of 1950. The provisions of that section are analogous to those of Section 33 of the Industrial Disputes Act. Headnote in that case, which is based upon the observations in the body of the judgment, reads as under in *Martin Burn Ltd. Vs. R.N. Banerjee*, :

The tribunal before whom an application is made u/s 22 has not to adjudicate upon any industrial dispute arising between the employer and the workman but has only got to consider whether the ban which is imposed on the employer in the matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be lifted, A prima facie case has to be made out by the employer for the lifting of such ban. When the employer does not hold any formal enquiry and does not afford to the workman an opportunity to have his say in the matter of the charges levelled against him, the Labour Appellate Tribunal can rightly take upon itself the burden of determining whether on the material submitted before it by the employer a prima facie case for the termination of the workmen's service was made out by the employer. 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 case 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.

In the present case, a prima facie case had been made against respondent 2 and even if the labour court differed with the view taken by Ghaiye and the management on the point as to whether charge had been proved against respondent 2, the labour court should not have refused to grant the necessary approval u/s 33(2) of the Act. As observed by their lordships of the Supreme Court, the labour court had not to substitute its own judgment for the judgment of the domestic enquiry officer and the management but only to consider whether the view taken by the domestic enquiry officer and the management was a possible view of the matter.

11. As the order dated 29 June 1964 of the labour court is liable to be quashed, the subsequent order dated 15 March 1965 of the labour court, which is a consequential order and follows the earlier order, must share the fate of the earlier order and, as such, would be liable to be quashed.

12. Objection has been raised that the petitioner-company by agreeing to adduce the entire evidence before the labour court about the misconduct of respondent 2, after the labour court had given its finding that there had been held no proper enquiry by the management against respondent 2, is now estopped from assailing the order dated 29 June 1964. In my opinion, this contention is not well-founded. After the labour court had given the finding that there had been no proper enquiry against respondent 2, the petitioner-company could have made a prayer to the labour court to decide the matter afresh but it would not follow

therefrom that the petitioner-company waived its right of questioning the correctness of the order of the labour court that no proper enquiry had been made by the management. A somewhat similar matter arose in the case between The River Steam Navigation Co. Ltd. Vs. Shyam Sundar Tea Co. Ltd., . In that case it was held that where the tribunal, while dealing with a dispute relating to the dismissal of an industrial employee, is satisfied that no enquiry has been held or that the enquiry which has been held is not proper or fair or that the findings recorded by the enquiry officer are perverse, the whole issue is at large before the tribunal. The tribunal in such an event would be entitled to deal with the merits of the dispute, as to the dismissal of the employee, for itself. In such a case, it would be open to the employer to adduce additional evidence and satisfy the tribunal that the dismissal of the employee concerned is justified. An opportunity in such an event would also be given to the employee to meet that evidence and deal with the dispute between the parties in the light of the whole of the evidence thus adduced before it. It was further observed by Gajendragadkar, J. (as he then was), who spoke for the Court at p. 502:

Logically, it is only where the tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the findings recorded at such an enquiry are perverse, that the tribunal derives jurisdiction to deal with the merits of the dispute. It is quite conceivable, and in fact it happens in many cases, that the employer may rely on the enquiry in the first instance and alternatively and without prejudice to his plea that the enquiry is proper and binding, may seek to lead additional evidence. It would, we think, be unfair to hold that "merely by adopting such a course, the employer gives up his plea that the enquiry was proper and that the tribunal should not go into the merits of the dispute for itself.

13. The above observations have a bearing on the present case and it would not be correct, in my view, to say that merely because the management agreed to adduce evidence before the labour court about the charge of misconduct against respondent 2 it gave up its plea that the domestic enquiry was proper and that the tribunal should not go into the merits of the dispute for itself.

14. It has next been argued on behalf of respondent 2 that the present petition is liable to be dismissed in so far as it seeks to assail the order dated 29 June 1964, as it has been filed, more than ten months after that order, on 30 May 1965. This contention too is devoid of force. The petitioner had filed an application u/s 33(2)(b) of the Industrial Disputes Act seeking approval of the labour court for the action taken by the petitioner-company in dismissing respondent 2. When the labour court made the order dated 29 June 1964, it did not dispose of the application but only passed an interlocutory order to the effect that there had been no proper enquiry in the matter. As the application u/s 33(2)(b) was still pending and not finally disposed of, the petitioner-company, in my opinion, could approach this Court after the matter was finally disposed of on 15 March 1965. The petitioner-company, in this petition, can also challenge the

interlocutory order dated 29 June 1964, made during the pendency of the application before the labour court. The petition, consequently, is not liable to be dismissed on the ground of alleged laches.

15. Submission has also been made on behalf of respondent 2 that the petitioner has filed a fresh application u/s 33(2) of the Industrial Disputes Act before the industrial tribunal on 22 June 1965, during the pendency of the present petition. It is contended that the present petition has consequently become infructuous. It has, however, been pointed out on behalf of the petitioner-company that the aforesaid application before the industrial tribunal has since been withdrawn. As such, the filing of the aforesaid application before the Industrial tribunal during the pendency of the present petition can have no effect upon this petition.

16. I, therefore, accept the petition, quash the Impugned orders dated 29 June 1964 and 15 March 1965 of the labour court and hold that approval of the action of the management in dismissing respondent 2 should have been granted. I order accordingly. The parties, in the circumstances of the case, are left to bear their own costs.