
(1973) 07 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 874 of 1972

Borosil Glass Works Limited

APPELLANT

Vs

M.G. Chitale and Richard M. D'souza

RESPONDENT

Date of Decision : 09-07-1973

Acts Referred:

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

Citation : (1974) 2 LLJ 184 : (2001) 1 MhLj 643

Hon'ble Judges : G.N. Vaidya, J;C.L. Dudhia, J

Bench : Division Bench

Judgement

Dudhia, J.—This is a Special Civil Application under Arts. 226 and 227 of the Constitution of India, filed by the petitioners against the order of the 1st respondent, the Industrial Tribunal, dated 21st April, 1972. The petitioner-company is incorporated under the Companies Act, 1956 and has its registered office and factory at Andheri, Bombay. The 1st respondent is an Industrial Tribunal constituted by the Government of Maharashtra under the Industrial Disputes Act, 1947. Three disputes between the petitioner-company and the workmen employed under it relating to various demands of the workmen were pending before the 1st respondent being Reference (IT) Nos. 29 and 117 of 1963 and 282 of 1971. Respondent No. 2 is a workman employed by the petitioner company and was concerned in the said three references in dispute.

2. During the pendency of those proceedings it appears that the petitioner-company issued a charge-sheet dated 22nd October, 1971 to the second respondent alleging that he had committed misconduct under the Model Standing Order 24(d) which reads as under :

"24(d) : Theft, fraud, or dishonesty in connection with the employer's business or property or the theft of property of another workman within the premises of the establishment.

1. Commission of any act subversive of discipline or good behaviour on the

premises of the establishment."

The enquiry was also to be held in connection with the said charge-sheet. The misconduct alleged was that on or about October 20, 1971, at about 5 p.m. the second respondent Mr. D'Souza approached the canteen manager for coupons. The canteen manager asked for the identity card but Mr. D'Souza did not have the same. Then at about 6.30 p.m. Mr. D'Souza again approached the canteen manager with temporary identity slip belonging to one Mr. A. B. Pawar, employee No. 4336, grinding section of the petitioner-company. On producing the identity slip he collected coupons of Rs. 20 in the name of Mr. A. B. Pawar.

3. The second respondent the workman concerned, gave an explanation dated 25th October, 1971 stating inter alia, that on 21st October, 1971 he had forgotten to bring his identity card without which he could not get canteen coupons, that at the suggestion of the canteen manager, it was true that he wrote down some random number and name, which happened to be that of Mr. Pawar, that below that name of Mr. Pawar he had also put his signature, which clearly showed that he had no intention of cheating the management, and the management may please examine the record with open and judicious mind. He also promised to produce his identity card to the canteen manager next day and regularise the same to which arrangement the canteen manager consented. He also stated that no doubt, there was irregularity on his part as stated above but certainly it did not deserve the charge-sheet or the suspension meted out to him, and hence it was mala fide.

4. Thereafter, an enquiry was held by the petitioner against the second respondent. Witnesses were examined on behalf of the petitioner-company. The 2nd respondent was also examined in the said enquiry. After the enquiry was over the Enquiry Officer made a report dated 29th November, 1971 and he came to the conclusion that Mr. D'Souza the 2nd respondent was guilty of the charges levelled against him. He, however, made no recommendation regarding the punishment to be meted out to him. However, the manufacturing manager Mr. A. K. Rao by his order dated 7th December, 1971 looked into the proceedings of the enquiry and came to the conclusion that he entirely agreed with the conclusion arrived at by the Enquiry Officer and that it appeared from the evidence that Mr. D'Souza had intentionally cheated the company by knowingly impersonating as Mr. A. B. Pawar, that it was a very serious offence and he, therefore, felt that Mr. D'souza the 2nd respondent be discharged from the services of the company.

5. The petitioner-company thereafter made an application for approval of the action taken by the petitioner under S. 33(2)(b) of the Industrial Dispute Act before the 1st respondent since the proceedings in the Reference (IT) No, 282 of 1971 and Reference (IT) Nos. 117 of 1968, and 29 of 1968 were pending before the 1st respondent. In reply to the said application the written statement was filed by the 2nd respondent denying the various allegations made against him. Particularly that there was no evidence either documentary or oral to support the finding that the second respondent committed theft, etc., under Standing Order

24(d) and committed, any act subversive of discipline or good behaviour under Standing Order 24(i) as alleged, that the Enquiry Officer had relied on the alleged statement of the canteen manager and the officers of the company without examining A. B. Pawar, that the slip bearing the name of A. B. Pawar which is the basis for the enquiry has not been produced or identified as that belonging to A. B. Pawar as there is no evidence to that effect. The 2nd respondent further submitted that the charges levelled against him had not been proved and as such no misconduct had been committed by him, and that the enquiry and the findings were against principles of natural justice and bad in law. He further alleged that he was given no opportunity to examine any witness, that the charge or the alleged act did not amount to misconduct under the standing order and that the whole inquiry was bad in law, illegal and null and void. He also contended that the standing orders were mandatory and that the petitioner failed to adhere strictly to the provisions of the Standing Order 25(6) and consider while awarding punishment his previous record and any extenuating or aggravating circumstances that may exist and that, therefore, the enquiry and the order of discharge issued against the 2nd respondent to the petitioner stood vitiated and that he be reinstated with back wages and continuity of service.

6. Before the 1st respondent-Tribunal the enquiry papers were produced. No oral evidence was led before the 1st respondent in the said application for approval. Mr. Shetye, the learned advocate, who appeared for the 2nd respondent relied on Standing Order 25(6) and contended before the 1st respondent that there was nothing in the enquiry papers nor in the discharge order to indicate that the previous record of the employee Mr. D'Souza was taken into account while passing the discharge order. Mr. Shetye further pointed out that although the point was specifically taken in the written statement of the 2nd respondent (Para 2(viii) of the written statement), no evidence was led by the petitioner to show that previous record of Mr. D'Souza was taken into account while awarding punishment. The 1st respondent Tribunal observed in its order that Mr. Rele for the petitioner contended that there was no previous record as such of the employee concerned. It was, however, admitted that the employee had put in service for about four years. The 1st respondent also observed in his order that it was difficult to understand how it could be said that the had no previous record, and that when it was urged on behalf of the petitioner that there was no record it only meant that in the previous record there was nothing in particular to be mentioned against the workman concerned. The Tribunal observed that it was not disputed that the Model Standing Orders were binding on the parties and the Standing Order 25(6) undoubtedly made it obligatory on the petitioner to consider previous record while awarding punishment. The 1st respondent held that there was nothing to show that the previous record was taken into account by the petitioner. The 1st respondent, therefore, held that the order in question of discharging the 2nd respondent was passed without compliance with the provisions of the Standing Order 25(6) and refused approval under S. 33(2)(b) of the Industrial Disputes Act. The 1st respondent, however, held that he did not

find any substantial defect with the enquiry made against the employee Mr. D'Souza, that the enquiry seemed to have been properly made and the record of the inquiry showed that the finding arrived at by the Enquiry Officer was justified. The 1st respondent observed that he asked Mr. Shetye for the employee to make his submission with regard to merits, and Mr. Shetye, the learned advocate, stated that considering the view the 1st respondent was inclined to take of the Standing Order 25(6), he did not want to argue the case on merits. The 1st respondent held that the provisions of the Standing Order 25(6) were not complied with while passing the order of punishment and the said provisions were mandatory and, therefore, he could not grant approval, and the application on behalf of the petitioner was, therefore, rejected.

7. Mr. Damania, the learned advocate for the petitioners as contended before us that as in the instant case there was no previous record of a person against whom punishment was to be meted out, and the Standing Order No. 25(6) stated that the previous record, if any, was to be considered and since in this case there was no previous record, there was nothing that could be mentioned in the said order passed by the petitioner after looking to the report of the enquiry proceedings.

8. Before we deal with the contentions raised on behalf of the petitioner, we must refer to the relevant part of S. 33 of the Industrial Disputes Act, which reads as under :

"33(2). During the pendency of any 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) x x x (b) for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise, the workman; Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

9. In the present case there is no doubt that an application has been made and the payment as required had been offered. But the question that arises is as to whether the order of dismissal is in accordance with the standing orders. It is not disputed that Model Standing Orders are applicable to the facts of the present case.

10. Standing Order No. 25(1) of the Model Standing Orders is that the workman guilty of misconduct may be -

(a) warned or censured. or

(b) fined, subject to and in accordance with the provisions of the Payment of

Wages Act, 1936, or

(c) suspended by an order in writing signed by the manager for a period not exceeding four days, or

(d) dismissed without notice.

We may also refer to the Standing Order 25(6), which is relevant in awarding punishment and which reads as under :

"In awarding punishment under this Standing Order the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist."

11. In this connection Mr. Damania, the learned counsel on behalf of the petitioner has drawn our attention to the orders passed by the manufacturing manager dated December 7, 1971. We find from the said order that he has not taken into account very relevant and material factors which ought to have been considered under Standing Order 25(6) before awarding punishment to the 2nd respondent. So far as Standing Order 25(6) is concerned, it is a very important and relevant Standing Order which safeguards the interest of the workman concerned, who has been charged for misconduct and in respect of whom an enquiry has been held, more so in the context of the case where an application for approval has to be made under S. 33(2)(b), where the Industrial Tribunal cannot go into the details of the enquiry as a court of appeal nor on the question of quantum of punishment. Under S. 33(2)(b) of the Industrial Disputes Act, all that the Industrial Tribunal has to see is whether an enquiry has been made, rules of natural justice have been observed and prima facie case is made out. The Industrial Tribunal, therefore, has to give careful consideration on the findings on which the order of discharge or dismissal or any other punishment is meted out, and there should be sufficient material to show that the punishing authority has applied his mind to the various allegations and what kind of punishment can ultimately be meted out of him. He has to show under the Standing Order 25(6) whether he has considered the previous record, if any, what is the gravity of the misconduct on which he relies, and what are the extenuating or aggravating circumstances that he has to take into consideration before passing the final order. The Standing Order 25(6) has not to be observed merely as a routine or a matter of form but careful application of mind is required to each of the relevant factors mentioned therein before coming to the conclusion, and such an application of mind must be revealed in the order itself, and much more so when it is the question of dismissal of an employee.

12. Mr. Damania, the learned counsel for the petitioner has drawn our attention to the case reported in *Burn & Co. Ltd. v. Workman and another*, 1970 II L.L.J. 56. Therein that case the Supreme Court had observed that the Labour Court found no fault with the finding of the board of enquiry on the first charge which by itself, according to the standing order, might be visited with an order of

dismissal from service, and it was not for the Labour Court to sit in appeal over the board of enquiry with regard to the second charge, and even if the second charge had not been proved, the order of the dismissal was good on the basis of the first charge. The workman had been in employment of that company for a period of four months only and, therefore, there could be no question of the consideration of this past record. Nor were there any extenuating circumstances. We are bound by the observations made by the Supreme Court in this case. However, the facts in our case are quite different. In the present case, the workman had put in four years service, and admittedly there was nothing found against him in his previous service record of four years, and the misconduct that has been complained of was regarding the canteen coupons. It may also be noted that the workman in whose name the coupons were obtained was not examined in the enquiry nor had he made any complaint whatsoever regarding the coupons being taken by the second respondent. The money had already been recovered from the second respondent. We, therefore, cannot accept the contention of Mr. Damania on behalf of the petitioner in this connection, namely, that the Standing Order 25(6) has been in substance complied with.

13. Mr. Shetye, the learned advocate for the second respondent was drawn our attention to the case reported, namely, *The Workmen Employed in B and C Mills, Madras Vs. The Management of B and C Mills, Madras*, wherein the Supreme Court has held that the standing order certified under the Industrial Employment Standing Orders Act, 1948 became part of the statutory terms and conditions of service between industrial employer and employees and they will govern the relationship between the parties. We are of the opinion that the same holds good in respect of the model standing orders where there are no standing orders certified under the Industrial Employment Standing Order Act. Admittedly the Standing Order 25(6) will govern the parties in this case and the mandatory provisions of the said standing orders have to be complied with.

14. Mr. Shetye on behalf of the 2nd respondent, has also drawn our attention to the decision of the Division Bench of the Madras High Court in the case of *The Management of Mahalakshmi Textile Mills Vs. The Presiding Officer, Labour Court and Others*, wherein it has been held that -

"Where the Standing Order framed in respect of an industry specifically providing that, in awarding punishment for misconduct of a workman the management shall take into account the gravity of the misconduct, the previous record. If any, of the workman and any other extenuating or aggravating circumstances that may exist, having regard to the mandatory nature of the Standing Order, there is no option left to the management to neglect these relevant factors. When these factors have not been taken into consideration by the management while passing an order of dismissal of a workman, such order cannot be sustained."

15. These observations are clearly applicable to the facts of the present case. We may further observe that in the present case, it is patent on the fact of the report of the Enquiry Officer as well as the impugned order of punishment, that

the petitioner did not, in awarding the punishment, take any account of the past record of the respondent No. 2, which is imperatively required by Standing Order No. 25(6). Looking into the past record is required by the Standing Order while awarding punishment by the employer. There is no knowing that the petitioner would have awarded the extreme penalty of discharge had the past record been looked into. The omission to comply with Standing Order 25(6) was an independent ground upon which the Tribunal was entitled to reject the application for approval of discharge under S. 33(2)(b) of the Industrial Disputes Act, 1947.

16. We may, however, clearly mention that by our decision in this case we do not in any circumstances encourage any theft, fraud, dishonesty nor any indiscipline in the undertaking. In the facts of this case as we observed earlier, the workman has put in about four years of service and there was nothing to show his service record was bad, that the offence is of a minor nature, namely, that the second respondent has bought the coupons worth Rs. 20 in the name of another workman although the 2nd respondent himself has signed his own name and it is not signed in the name of the workman in whose name the coupon was issued, and these and some others could be some of the mitigating circumstances which would or could not have been taken into account while awarding the severe punishment of discharge under the standing orders if the punishing authority had applied his mind to the factors mentioned in the Standing Order 25(6). It is true that under S. 33(2)(b), we cannot sit in appeal over the quantum of punishment nor we can sit in appeal over the decision of the petitioner-company, but inasmuch as Standing Order 25(6) has been ignored it is open to the Tribunal to consider this aspect of it before either granting or refusing the approval. In this case, the 1st respondent has correctly applied his mind to the facts of this case and particularly Standing Order 25(6) and has refused approval under S. 33(2)(b) - We do not find that the 1st respondent has committed any error of law or has failed to apply his mind properly or there is any irregularity, much less material irregularity in passing the said order which calls for our interference in any way under Arts. 226 and 227 of the Constitution of India. We, therefore, refuse to interfere with the order passed by the first respondent under Arts. 226 and 227 of the Constitution.

17. Under the circumstances, the petition fails, Rule discharged. No orders as to costs. Respondent No. 2 is permitted to withdraw the money which is deposited by the petitioner in pursuance of the orders passed by this Court and appropriate the same towards his dues.