

(1960) 12 P&H CK 0016
In the Punjab And Haryana At Chandigarh

British Motor and Cycle Mart

APPELLANT

Vs

Babu Lal and Others

RESPONDENT

Date of Decision : 13-12-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 2, 25, 25F

Citation : (1961) 2 LLJ 611

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Judgement

Shamsheer Bahadur, J.—A notification of the Punjab Government, dated 13 September 1958, notified that an industrial dispute, existed between the management of British Motor and Cycle Mart, Ambala Cantonment, and their employee, Babu Lal, and accordingly referred it to the labour court for adjudication. The dispute was formulated in these terms:

Whether the dismissal of Babu Lal, workman is in order and justified and if not, to what relief is he entitled?

2. Briefly stated, the dispute turned round the termination of Babu Lal's services by the management on 15 May 1958. The management Contended that Babu Lal having left work of his own accord without applying for any leave, was chargesheeted the next morning. Subsequently, Babu Lal having tendered a resignation, the necessity of an enquiry was obviated. Babu Lal, on the other hand, contended that he took leave for Abe afternoon of 15 May 1958 from the proprietor of the British Motor and Cycle Mart and when he came next morning no work was assigned to him. He brought this to the notice of the labour inspector and continued to do so till he was served with a charge-sheet on 29 May 1958. Although he gave a reply to this charge-sheet, he did not hear anything from the management which asked him finally on 9 June 1958 to quit the factory premises. The labour court, presided over by Sri Sher Singh, accepted the version of the employee and found that his dismissal was not

justified. So far as this aspect of the dispute is concerned, it is not in issue now, being essentially a decision on a question of fact. It is only the relief granted by the, labour court which has been challenged by the petitioner, British Motor and Cycle Mart by way of a writ under Article 226 of the Constitution of India. The labour court granted the following five reliefs to the respondent Babu Lal:--

- (i) Retrenchment compensation u/s 25F of the Act;
- (ii) three months' pay as compensation for loss of employment;
- (iii) one month's pay in lieu of notice;
- (iv) full back wages for the period from 16 May 1958 to 10 January 1959; and
- (v) minus fine of one month's pay which is being inflicted as punishment for his absence on 15 May 1958, without leave or permission.

3. The award was made by the labour court on 10 January 1959.

4. Sri Sarin, the learned Counsel for the petitioner, contends that the award is vitiated in as much as the reliefs granted to Babu Lal are in contravention of the provisions of law. So far as the first relief of the retrenchment compensation is concerned, my attention has been invited to Clause (oo) of Section 2 of the Industrial Disputes Act, 1947, under which "retrenchment" means

the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include....

5. It has been contended that in spite of the amplitude of the definition, the termination of services of Babu Lal being the result of punishment "inflicted by way of disciplinary action" is definitely excluded from its purview. The finding of the Court is that Babu Lal was dismissed and his dismissal was not justified. According to the management, the services of Babu Lal were terminated as a disciplinary measure because he absented himself from the duty without applying for leave. Whatever view may be taken of this dismissal, it cannot be denied that the services of Babu Lal were terminated as a disciplinary measure. u/s 25F of the Industrial Disputes Act, the meaning of the word "retrenchment" has to be gathered from the context in which it is used in the Act. According to the dictionary meaning "retrenchment" implies the removal of a person with the object of cutting down expenses or to introduce economy in management. Section 25F of the Act, which lays down the conditions precedent to the retrenchment of a workman, also appears to have this conception of "retrenchment" in view. It is laid down under the section that:

No workman employed in any Industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing Indicating the

reasons for retrenchment and the period, of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government.

6. It seems that the legislature intended to give benefit to such workmen, who through no fault of their own, have been brought under retrenchment by the management. "Retrenchment" in my opinion, is a notion separate and distinct from dismissal which necessarily envisages an element of blemish, shortcoming or default of the workmen concerned. According to the finding of the labour court itself, the petitioner was dismissed and it seems to me that there is no legal warrant for the award of retrenchment benefit to Babu Lal. It was held by a Division Bench of the Bombay High Court (Sri Shah and Sri Gokhale, JJ.) in *Municipal Corporation of Greater Bombay and Others Vs. Labour Appellate Tribunal of India and Another*, that:-

Further termination of services for behaviour prejudicial to the interests of the concern could not be considered to amount to retrenchment within the meaning of Clause 2(oo) of the Industrial Disputes Act. The expression "retrenchment" means discharge of surplus labour or staff and does not mean termination of the contract of employment for other causes....

7. A similar view was expressed by the Supreme Court in *Hariparsad Shivshankar Shukla v. A.D. Divelkar* 1957 I L.L.J. 243, thus :--

The word "retrenchment" as destined in Section 2(oo) and the word "retrenched" in Section 25F of the Industrial Disputes Act, 1947, as amended by Act XLIII of 1953, have No. wider meaning than the ordinary accepted connotation of those words and mean the discharge of surplus labour or staff by the employer for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action, and do not include termination of services of all workmen on a bona fide closure of industry or on change of ownership or management thereof.

8. In *Divelkar case* 1957 I L.L.J. 243, their lordships were concerned with the closure of an establishment for economic reasons and it was held that retrenchment benefits were not available to the employees whose services had to be terminated because of a bona fide closure of an industry. At p. 247, Justice Sri S.K. Das observed that four conditions are necessary before a person could be said to be retrenched; the fourth being that the punishment has not been inflicted on him by way of disciplinary action.

9. Babu Lal, in my opinion, cannot derive any benefit of retrenchment for the plain reason that he was not retrenched but dismissed and the decision of the labour court constitutes a patent legal error in this respect.

10. As regards reliefs (ii), (iii) and (iv), it has been rightly contended by Sri Sarin that they overlap each other.

11. According to the finding of the Court, Babu Lal had absented himself without obtaining leave. The labour court, in its conclusion thus stated:

The contention of Babu Lal is that he applied for leave for the second half of 15 May 1958 and obtained oral sanction. The original application has not been called for from the management. His uncorroborated statement is not sufficient to prove that he absented on 15 May 1958 after obtaining leave.

12. Under Clause (v), the Court has even inflicted a punishment on Babu Lal by deduction of one month's pay from the dues which are otherwise payable to him under the award. In this background, it is impossible to concur with the learned Counsel for the respondent that reliefs (ii), (iii) and (iv) are separate and distinct from each other. Under the fourth relief, Babu Lal has been given back wages for a period of about eight months between 16 May 1958 and 10 January 1959. I fail to comprehend how in addition to this, three months' pay as "compensation for loss of employment" and one month's pay in lieu of notice can ever be justified. It is true that the award of compensation by a Court is always a matter of discretion but it has to be observed that an award must bear some proportion to the blame which is to be ascribed to the management. The labour court having held that Babu Lal himself was at fault in absenting himself without leave, there is no justification to grant him all the reliefs under Clauses (ii), (iii) and (iv). It would be a sufficient compensation if Babu Lal is awarded the most comprehensive of the three reliefs, which is under Clause (iv), namely; full back wages for the period from 16 May 1958 to 10 January 1959. The labour court was also justified in deducting one month's pay under Clause (v). The net result of this discussion is that the petitioner is entitled to the relief under Clause (iv) which would be subject to the deduction mentioned in Clause (v).

13. Before parting with this case, it is necessary to mention one other objection which has been raised by the counsel for the petitioner. It has been urged that the question in issue between the management and the employee does not constitute an Industrial dispute; being of an individual nature. Reliance is placed on *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, where it was held that

a dispute between an employer and a single workman does not fall within the definition of "industrial dispute" under the Uttar Pradesh Industrial Disputes Act, 1947.

14. This matter, however, was never raised before the labour court and cannot consequently be allowed to be agitated for the first time in these writ

proceedings. It is possible that if an issue had been joined in this respect, evidence of the dispute having been taken up by a union could have been led.

15. In the result, I would allow this petition holding that reliefs other than the one granted by Clause (iv), and subject to deduction mentioned in Clause (v) by the labour court will not be awarded to Babu Lal. The parties would be left to bear their own coats of these proceedings.