
(1961) 08 CAL CK 0004
In the Calcutta High Court

Brooke Bond India Private Ltd.

APPELLANT

Vs

Sudhir Ranjan Ghosh and Others

RESPONDENT

Date of Decision : 22-08-1961

Acts Referred:

Citation : (1962) 1 LLJ 64

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—The petitioner company has a factory at Hide Road, Kidderpore, Calcutta. Until Ms dismissal, respondent 3, Sheikh Sahid, was a workman under the petitioner, at the said factory.

2. The respondent 2, Brooke Bond Mazdoor Union, is a registered trade union and respondent 3 belongs to that union.

3. The condition of service of respondent 3, under the petitioner company, was governed by the standing orders of the company, duly framed under the Industrial Employment (Standing Orders) Act, 1946. For the purposes of this rule, I need refer to the following clauses of the said standing order, namely:

1 (f) "Absent" means absence without leave.

18. Absence from work.--When a worker is absent he will not receive pay for the period he is absent. He will be liable, moreover, to disciplinary action at the discretion of the factory manager. Absence without notice exceeding fourteen consecutive days will incur automatic dismissal.

23. Any worker desiring an extension of leave must first of all obtain the factory manager's sanction by any means of communication available. Otherwise any over-stayal of leave will be treated as absence.

4. The respondent 3 obtained from the company leave of absence from 15 April 1957 to 28 April 1957. Although required to resume his duties, after the expiry

of the leave, on 29 April 1957, respondent 3 did not do so. It appears, however, that on 27 April 1957, respondent 3 sent a telegram to the factory manager of the petitioner company asking for extension of leave by three more weeks. The aforesaid telegram was somehow misled or mislaid and did not reach the addressee. Since respondent 3 failed to rejoin after the expiry of his leave, and for over fourteen days thereafter the petitioner company took steps against respondent 3 under Clause 18 read with Clause 23 of the standing orders and dismissed him from service on 13 May 1957.

5. This raised an industrial dispute between the petitioner and respondent 2, trade union, which took up the cause of respondent 3 and the State Government referred the dispute to the third industrial tribunal, presided over by respondent 1.

6. By its award, dated 24 June 1959, the tribunal directed reinstatement of respondent 3 on the following ground:

In the instant case, Sheikh Sahid did send a telegram and thus took reasonable steps to obtain the factory manager's sanction by the prompt means of communication available. Technically of course, the letter of the rule contained in this clause was not complied with. But the Court of equity will not look to the form merely but to the Intent. The circumstances of the resent case reveal that there was an honest attempt on the part of the workman Sheik Sahid to get approval of his extension of leave. But in any case his telegram did not reach the company. Company was, therefore, entitled to dismiss the workman by merely following the letter of the rule contained in Clause 13 of the standing orders. But the tribunal has got power to see whether the dismissal of the workman was justified in view of the circumstances of the case. There is, of course, no mala fides on the part of the company and similarly there was no want of diligence on the part of the workman too. It is an admitted fact that Sheikh Sahid was not given any opportunity of explaining absence without notice (according to the company) before he was actually dismissed. D. W. 1 has said in his evidence that when Sheikh Sahid came to the company's office after expiry of his alleged extension of his leave, he was sent for and he was given a hearing. But already he was dismissed from service with effect from 13 May 1957. So he was not given opportunity for explaining his absence before he was dismissed. It is not disputed that Shaik Sahid was dismissed without notice and any enquiry; and that he had put in 12 years of spotless service in the company. Substantially, therefore, Sheikh Sahid complied with the provision of Clause 23 of the standing orders and his over stayal of leave, if any, can be treated only as absence without notice which incurs automatic dismissal under 01. 18 of the standing orders. Extreme punishment meted out to Sheikh Sahid under these circumstances, is clearly in violation of the principles of natural justice. Under Clause 13 of the same standing orders, a workman is entitled to an opportunity of explaining the circumstances alleged against him, in case of major misdemeanors, before order of dismissal is passed. It is curious that for mere

absence without notice there would be automatic dismissal from service of a workman. Be that as it may in the context of the facts and circumstances of this case, I find that by dismissing the workman Sheikh Sahid, without any notice, the company has acted with extreme harshness and in violation of principles of natural justice. Therefore, in my opinion, Sheikh Sahid is entitled to be reinstated to service and the company is directed to reinstate him within one month from the date of publication of the award.

7. The petitioner company moved against the award and obtained the rule.

8. Sri A.C. Mitter, learned Counsel for the petitioner, contended that the standing orders constituted the contract of service between the petitioner company and respondent 3 and if the latter was dismissed under the provisions of the standing orders of the petitioner company, nothing farther can be said or done about it. He contended further that the tribunal was wrong in importing considerations of harshness or of violation of the principles of natural justice, in the instant case, even though it was satisfied that there was no mala fides on the part of the petitioner company in dismissing respondent 3 and that the petitioner company was entitled to do so on a literal interpretation of Clause 18 of the standing orders. In support of his contention, Sri Mitter strongly relied on a decision of the Supreme Court in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, and on another decision by the Madras High Court in *Mettur Industries, Ltd. v. Varma (A.R.) and Ors.* 1959 II L.L.J. 326.

9. In the *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, , the relevant standing order was to the following effect:

Workers absent without leave will be subject to disciplinary action. Overstaying leave will be considered as absence without leave. Any worker who is absent for fourteen consecutive days during any period of twelve months will be liable to discharge.

10. What happened in that case was that several workmen of the company were taken in custody by the police and remained in custody for sometime; they applied for leave when in custody but leave was refused and their services were terminated. The industrial tribunal took the view that the standing order was not an inflexible rule and a mere application for leave was sufficient to arrest the operation of the standing order. The tribunal, therefore, directed their reinstatement. The award of the tribunal was affirmed in appeal. Reversing the order of reinstatement, the Supreme Court observed as follows:

It is true that the arrested men were not in a position to come to their work, because they had been arrested by the police. This may be unfortunate for them; but it would be unjust; to hold that in such circumstances the company must always give leave when an application for leave is made. If a large number of workmen are arrested by the authorities in charge of law and order by reason of their questionable activities in connexion with a labour dispute, as in this case, the work of the company will be paralysed if the company is forced to give leave

to all of them for a more or less indefinite period. Such a principle will not be just; nor will it restore harmony between labour and capital or ensure normal flow of production. It is immaterial whether the charges on which the workmen are arrested by the police are ultimately proved or not in a Court of law. The company must carry on its work and may find it impossible to do so if a large number of workmen are absent. Whether in such circumstances leave should be granted or not must be left to the discretion of the employer. It may be readily accepted that if the workmen are arrested at the instance of the company for the purpose of victimization and in order to get rid of them on the ostensible pretext of continued absence, the position will be different. It will then be a colourable or mala fide exercise of power under the relevant standing order; that, however, is not the case here. We are of the view that the two tribunals below have misdirected themselves as to the true scope and effect of the standing order in question, and their decision with regard to the seven workmen mentioned above cannot be supported.

11. The decision no doubt supports the contention that if an employer bona fide dismisses a workman for absenteeism, in terms of the provisions of the standing orders, nothing can be done against such an order.

12. The other case relied upon by Sri Mitter, namely, the case of Mettur Industries, Ltd. v. Varma (A.R.) and Ors. 1959 II L.L.J. 326 (supra) also supports his contention. But that case need not be considered because the judgment was reversed in appeal by the same High Court and the appellate judgment is in A.R. Varma and Another Vs. Mettur Industries Ltd. and Another, .

13. Sri Pritimoy Dutt, learned Advocate for respondent 2, however, relied on two later decisions of the Supreme Court and strongly contended that even though a workman has been bona fide dismissed in terms of the standing orders, industrial tribunals have still their jurisdiction to examine the matter and to give relief to the workmen, if the principles of natural justice were violated in ordering such dismissal. The cases relied on by Sri Dutt are The Chartered Bank, Bombay Vs. The Chartered Bank Employees' Union, and Assam Oil Company Vs. Its Workmen, .

14. The aforementioned two decisions, however, do not support the extreme contention of Sri Dutt. The case of The Chartered Bank, Bombay Vs. The Chartered Bank Employees' Union, was one of termination of service of a bank employee in terms of a bank award. All that; the Supreme Court observed was:

There is no doubt that an employer cannot dispense with the services of a permanent employee by mere notice and claim that the industrial tribunal has no jurisdiction to inquire into the circumstances in which such termination of service simpliciter took place. Many standing orders have provisions similar to Para. 522(1) of the Bank Award, and the scope of the power of the employer to act under such provisions has come up for consideration before the labour tribunals many a time. In Buckingham and Carnatic Co., Ltd. v. Workers of co. 1951 II

L.L.J, 314, the Labour Appellate Tribunal had occasion to consider this matter relating to discharge by notice or in lieu thereof by payment of wages for a certain period without assigning any reason. It was of opinion that even in a case of this kind the requirement of bona fides is essential and If the termination of service is a colourable exercise of the power or as a result of victimization or unfair labour practice the Industrial tribunal would have the jurisdiction to intervene and set aside such termination. Further, it held that where the termination of service is capricious, arbitrary or unnecessarily harsh on the part of the employer judged by normal standards of a reasonable man, that may be cogent evidence of victimization or unfair labour practice. We are of opinion that this correctly lays down the scope of the power of the tribunal to interfere where service is terminated simpliciter under the provisions of a contract or of standing orders or of some award like the Bank Award. In order to judge this, the tribunal will have to go into all the circumstances which led to the termination simpliciter and an employer cannot say that it is not bound to disclose the circumstances before the tribunal. The form of the order of termination is not conclusive of the true nature of the order, for it is possible that the form may be merely a camouflage for an order of dismissal for misconduct. It is therefore always open to the tribunal to go behind the form and look at the substance; and if it comes to the conclusion, for example, that though in form the order amounts to termination simpliciter, it in reality cloaks a dismissal for misconduct, it will be open to it to set aside as a colourable exercise of the power.

15. The case of Assam Oil Company Vs. Its Workmen, involved a question of termination of service of a workman under the terms of contract of service. All that the Supreme Court observed in that case was:

If the discharge has been ordered by the employer in bona fide exercise of his power, then the industrial tribunal may not interfere with it; but the words used in the order of discharge and the form which it may have taken are not conclusive in the matter and the industrial tribunal would be entitled to go behind the words and the form and decide whether the discharge is a discharge simpliciter or not. If it appears that the purported exercise of the power to terminate the services of the employee was in fact, the result of the misconduct alleged against him, then the tribunal will be justified in dealing with the dispute on the basis that despite its appearance to the contrary, the order of discharge is in effect an order of dismissal. The exercise of the power in question to be valid must always be bona fide. If the bona fides of the said exercise of power are successfully challenged, then the industrial tribunal would be entitled to interfere with the order in question. It is in this context that the industrial tribunal must consider whether the discharge is mala fide or whether it amounts to victimization or an unfair labour practice, or is so capricious or unreasonable as would lead to the inference that it has been passed for ulterior motives and not in bona fide exercise of the power conferred by the contract. In some cases the employer may disapprove of the trade union activities of his employee and may purport to discharge his services under the terms of the contract. In such cases,

if it appears that the real reason and motive for discharge is the trade union activities of the employee, that would be a case where the industrial tribunal can justly hold that the discharge is unjustified and has been mala fide. It may also appear in some cases that though the order of discharge is couched in words which do not impute any misconduct to the employee, in substance it is based on misconduct of which, according to the employer, the employee has been guilty; and that would make the impugned discharge a punitive dismissal. In such a case fair play and justice require that the employee should be given a chance to explain the allegation weighing in the mind of the employer and that would necessitate a proper enquiry. Whether or not the termination of services in a given case is the result of the bona fide exercise of the power conferred on the employer by the contract or whether in substance it is a punishment for alleged misconduct would always depend upon the facts and circumstance of each case. In this connexion it is important to remember that just as the employer's right to exercise his option in terms of the contract has to be recognized, so is the employee's right to expect security of tenure to be taken into account. These principles have been consistently followed by industrial tribunals and we think rightly [Vide Buckingham and Carnatic Co., Ltd. v. Workers of the co. 1951 II L.L.J. 314 (supra)]. Therefore, we are not prepared to accede to the argument urged before us by the learned Additional Solicitor-General that whenever the employer purports to terminate the services of his employee by virtue of the power conferred on him by the terms of contract, industrial tribunals cannot question its validity, propriety or legality.

None of the two decisions support the extreme proposition of Sri Dutt, namely, that even though the petitioner company may have bona fide exercised the power, under the standing order, even then the industrial tribunal can set aside the order on the ground that respondent 3 was summarily dismissed, without any opportunity to show cause as to why he should not be dismissed.

16. In the instant case, the industrial tribunal found two things in favour of the petitioner company, namely,--

- (i) that the petitioner company was entitled to dismiss the workman by following the letter of the relevant clause in the standing order;
- (ii) that there was no mala fides on the part of the petitioner company in dismissing the workman.

Nevertheless, it imported consideration of harshness and violation of the principles of natural justice in setting aside the order of dismissal. This the tribunal was not entitled to do.

17. In the result, I set aside the order of reinstatement of respondent 3 made by the tribunal. Let a writ of certiorari issue accordingly. There will be no order as to costs in this rule.