
(1960) 01 MP CK 0039
In the Madhya Pradesh High Court
Case No : M.P. No. 71 of 1959

Burhanpur Tapti Mills Ltd. APPELLANT

Vs

State RESPONDENT

Date of Decision : 07-01-1960

Acts Referred:

Central Provinces and Berar Industrial Disputes Settlement Act, 1947 — Section 16(2), 16(3)
Penal Code, 1860 (IPC) — Section 323, 504

Citation : (1961) JLJ 1038

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : R.S. Dabir, for the Appellant; H.L. Khaskalam and Y.S. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

K.L. Pandey, J.—This petition under Articles 226 and 227 of the Constitution is directed against two orders under the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 (hereinafter called the Act), one passed by the Assistant Labour Commissioner (respondent 2) on 30 June 1958 whereby Ganpatdas (respondent 3) was directed to be reinstated and another passed by the State Industrial Court (respondent 1) on 12 March 1959 by which the petitioner's revision against the order of reinstatement was dismissed.

2. The petitioner is a public limited company which carries on the business of spinning, weaving and processing of cloth in a textile mill situate at Burhanpur. The petitioner had employed the respondent 3 as a weaver. On 18 November 1957, a charge sheet (Annexure A) was served on the petitioner accusing him of a misconduct within the meaning of the relevant Standing Order 25 (t), that is, of abusing and assaulting his official superior on the same day. In accordance with Standing Order 26 (2), he was also called upon to show cause why he should not be dismissed for the said misconduct. As required, he submitted on

20 November 1957 his written explanation wherein he requested that the presence of the Government Labour Officer be secured on the date of the enquiry. On 28 November 1957, evidence was recorded in the presence of the respondent 3, who however neither cross-examined the witnesses nor led any evidence in defence for the ostensible reason that the Labour Officer was not present. Since the charge was found duly established, the respondent 3 was dismissed from service. 3. It appears that the respondent. 3 did not appeal against his dismissal to the proprietors or the Agents. He however filed a criminal complaint under sections 323 and 504 Indian Penal Code against the Weaving Master Weaving Supervisor and a spare jobber but it was dismissed. Thereupon the respondent 3 made to the Labour Commissioner an application u/s 16 (2) of the Act.

4. In the enquiry made by the Assistant Labour Commissioner (who exercised the powers of the Labour Commissioner) u/s 16 (3) of the Act, he found that the respondent 3 was provoked by the foul tongue of the Weaving Master, that it was not conclusively proved that the respondent 3 assaulted his superior officials and that therefore dismissal was a punishment too harsh in the circumstances of the case. Accordingly, the respondent 3 was directed to be reinstated without back wages but also without any break in service.

5. In revision, the State Industrial Court held that there was a contravention of Standing Order 26 (2) in that the enquiry officer failed to pass a reasonable order regarding the request of the respondent 3 for securing the presence of the Government Labour Officer. That Court further found that since there was no mention in the order of dismissal that the previous record of the respondent 3 was taken into account, Standing Order 26 (4) was also contravened. On the question of jurisdiction, the Court that the Assistant Labour Commissioner had found that there was a contravention of Standing Orders and therefore acquired jurisdiction to examine the correctness of the findings of fact reached in the domestic enquiry. The findings of fact recorded by the Assistant Labour Commissioner, including the one relating to provocation which was not specifically raised by the respondent 3 in his application, were affirmed for the reason that they were not unreasonable or perverse. The interference with the punishment awarded in the domestic enquiry was also justified on the ground that there was want of good faith on the part of the management and the principles of natural justice were violated in the conduct of the enquiry. In this view of the matter the revision was dismissed.

6. The petitioner's counsel has vigorously, and in our opinion justifiably, attacked the manner in which the tribunals constituted under the Act dealt with the matters in dispute here and the conclusions they reached. In *Burhanpur Tapti Mills Ltd. vs. State Industrial Court* 1959 J.L.J. 301, a Division Bench of this Court considered the scope of enquiry under sub-section (3) of Section 16 of the Act and observed:

"The scope of the enquiry by Section 16 (3) and prescribed by rule 18 (1) is to

find out whether the dismissal, discharge, removal or suspension was in contravention of any of the provisions of the Act or in contravention of the Standing Orders made or sanctioned under the Act or was for a fault or misconduct committed by the employee more than 6 months prior to the date of such dismissal, discharge, removal or suspension. The enquiry cannot be held for any other purpose except for the object mentioned in the said sub-section. The findings given by the manager under clause 29 of the Standing Orders are subject to the appellate findings of the Agents or Proprietors and are not open to challenge in the enquiry before the Labour Commissioner, unless there has been a contravention of the Act or the Standing Orders. Neither the Labour Commissioner nor the State Industrial Court have been conferred a jurisdiction to examine the findings as an appellate authority and to come to a contrary conclusion on the same evidence. The only jurisdiction that the tribunals can exercise u/s 16 of the Act is to examine the findings incidentally for the collateral purpose of deciding whether the dismissal, discharge, removal or suspension was in contravention of the Act or the Standing Orders or was for a fault or misconduct before the period of 6 months. In the present case the tribunals acted in excess of jurisdiction in purporting to examine the correctness of the findings of the enquiry held by the management as an appellate authority."

This was also the view taken in Messers Bengal Nagpur Cotton Mills Ltd. vs. Bihari and others MP No. 242 of 1957 dated 3 April 1959, to which one of us (Pandey J,) was a party. In that case, the observations were:-

"Section 16 of the C.P. and Berar Industrial Disputes Settlement Act deals with the power of the Labour Commissioner to interfere with the dismissal, discharge, removal or suspension of an employee. The scope of that power was considered by this Court in Burhanpur Tapti: Mills vs. Suleman Khan (1958) 2 J.L.J. 590, where it was held that he could interfere only in cases where the action taken was (i) in contravention of any of the provisions of the Act or (ii) in contravention of a standing order made or sanctioned under the Act, or (iii) where the fault or misconduct was committed by the employee more than six months prior to the date of the action taken against him. It, therefore, follows that the facts as regards the alleged fault or misconduct of the employee, which are found by an employer after due enquiry, are not open to review by the Labour Commissioner."

The same view was again expressed by a Division Bench in The Jubbulpore Electric Supply Company Ltd. vs. Shambhoo Prasad Shrivastava MP No. 301 of 1958 dated 15 May 1959, to which one of us (Pandey J.) was a party. The observations were: -

"Numerous authorities were cited at the Bar to show how similar matters should be dealt with under other like enactments. We do not think it necessary to refer to them for the reason that here we have to consider the scope of the powers conferred on the Labour Commissioner u/s 16 of the Act. In our opinion, the enquiry under sub-section (3) of Section 16 of the Act cannot be held for any purpose other than those mentioned therein, it is, therefore, not open to the

Labour Commissions to re-examine the evidence led in the domestic enquiry and come to a different conclusion on the same evidence in regard to the commission of a fault or misconduct. Similarly, the Labour Commissioner has no power to interfere with the punishment awarded to the delinquent employee in the domestic enquiry. His jurisdiction is restricted to the purposes mentioned in sub-section (3) and he may, for those purposes only, examine the findings recorded in the domestic enquiry."

The view taken in the *Burhanpur Tapti Mills Ltd. case* (cit. sup) was also followed by Bhutt C. J. and Shrivastava J. in deciding *Hiralal vs. The State Industrial Court, Madhya Pradesh MP No. 374 of 1958 dated 14 Sept. 1959*. In view of the *cursus* of opinion of this Court, there can be no doubt that the jurisdiction of the tribunals acting u/s of the Act is restricted to ascertaining and deciding whether the dismissal, discharge, removal or suspension of the employee was in contravention of the Act or the Standing Orders or was for a fault or misconduct committed before the period of six months. The tribunals may no doubt incidentally consider the findings of fact recorded in the domestic enquiry but they can do so only for the collateral purpose of finding out whether the provisions of the Act or the Standing Orders were contravened. It is not open to them to examine the correctness of the findings of the domestic enquiry or to come to contrary conclusions. Similarly, they have no jurisdiction to consider whether the punishment meted out to the employee is harsh or excessive. The measure of punishment is in the sole discretion of the employer who is to judge for himself what punishment is commensurate with the fault or misconduct proved against the employee.

7. So far as the revisional jurisdiction of the State Industrial Court is concerned, its scope was authoritatively declared by the Supreme Court in *Mill Manager, Model Mills Nagpur Ltd. Vs. Dharam Das, Etc.,* , to be as follows:-

"Under Section 16 (5) of the Act, an appeal against an order passed by the Labour Commissioner u/s 16 is expressly prohibited, although revisional jurisdiction is conferred by the section upon the State Industrial Court against any such order of the Labour Commissioner. It follows from this that the power of revision should be exercised by the State Industrial Court on a point of law and not merely because the State Industrial Court takes a different view to that of the Labour Commissioner on questions of fact; otherwise there would be no distinction between a revision and an appeal and the State Industrial Court, in purporting to act in the exercise of its revisional jurisdiction, would in effect be hearing the matter as an appeal, which is specifically prohibited."

In view of the decision of the Supreme Court, we are of opinion that the power of revision can be exercised only if a question of jurisdiction or any other question of law arises out of the proceedings before the Labour Commissioner which, apart from the question of limitation, must, as shown, be restricted to ascertaining whether, in the method or process adopted in the domestic enquiry for determining the fault or misconduct of the employee, any provision of the Act

or the Standing Orders was contravened.

8. Although the respondent 3 himself did not specifically raise in his application the plea that he acted under provocation, the Assistant Labour Commissioner held that he was abused and provoked by the Weaving Master and the State Industrial Court slurred over the finding as a mere irregularity without pausing to consider whether it was fair to determine a question of fact of which the employer had no previous notice. Then, inspite of the finding that the respondent 3 acted under provocation, the Assistant Labour Commissioner held it not proved that he assaulted his superior officials and the State Industrial Court regarded the finding as not "unreasonable or perverse". In our opinion in dealing with these questions of fact, the tribunals clearly acted in excess of their jurisdiction.

9. The State Industrial Court was in error in misreading the order of the Assistant Labour Commissioner to hold that he had found that there was a contravention of the Standing Orders and was further in error in taking the view that, because of that finding, the Assistant Labour Commissioner acquired jurisdiction to examine the correctness of the findings recorded in the domestic enquiry. The Assistant Labour Commissioner did not apply his mind at all to the question of contravention of Standing Orders. Further, he had no jurisdiction to examine the correctness of the findings reached in the domestic enquiry even if there were a contravention of the Standing Orders. We may also point out that once it is found that there was a contravention of the Standing Orders, it is not necessary to examine the correctness of the findings of fact recorded in the domestic enquiry before proceeding under any of the two clauses of subsection (3) of Section 16 of the Act.

10. The counsel for the respondent 3, Shri Dharmadhikari, made the point that the impugned orders should be regarded as supportable because, as found by the State Industrial Court, the Standing Orders were in fact contravened. We have already indicated in what circumstances the power of revision can be exercised. Even otherwise, we consider the State Industrial Court was not justified in stretching a point to lend support to the unsupportable order of the Assistant Labour Commissioner. The State Industrial Court has referred to a contravention of the Standing Orders 26 (2) which reads as follows:-

"No order of dismissal or suspension shall be made on any operative unless he is informed in writing of the alleged misconduct and is given an opportunity to explain the misconduct alleged against him."

According to the Court, since the respondent 3 had, in his explanation, requested the management to keep the Government Labour Officer present on the date of enquiry, the enquiry officer should have either given suitable reply to the request or adjourned the enquiry after telling the respondent 3 that it was for him to secure the presence of the Government Labour Officer. It is conceded before us that it was not the duty of the management to secure the presence of the Government Labour Officer who was expected to help the respondent 3 in the

enquiry. That being so, the enquiry officer cannot be blamed if he disregarded that request. There is no suggestion here that the respondent 3 was misled because, in other cases, the management had accepted and acted upon such requests. In the circumstances, it was for the respondent 3 to act in the matter and secure the presence of the Government Labour Officer. If he failed so to do or even to ask for an adjournment to enable him to do so, it cannot be said that he was denied an opportunity to cross-examine witnesses or to lead evidence in support of his defence. Rules of natural justice require that the evidence against a delinquent employee should be taken in his presence, that he should be given an opportunity to cross-examine witnesses examined against him, that he should have the opportunity of adducing all relevant evidence on which he relies for his defence and that no material should be relied on against him unless he is given an opportunity of explaining them. In the instant case, in our opinion, the domestic enquiry against the respondent 3 not only paid due deference to the rules of natural justice but also conformed to the provisions of the Standing Order 26 (2).

11. Since the order of dismissal of the respondent 3 did not mention that his previous record was taken into account in awarding to him that punishment, the State Industrial Court went on to hold that there was a contravention of the Standing Order 26 (4) also. The domestic tribunal is not a Court of Record and the mere fact that it was not expressly mentioned in the order of dismissal that the previous record of the respondent 3 was taken into account does not necessarily indicate that it was not duly considered. We are also inclined to think that, in view of the gravity of the misconduct, that record was hardly likely to make any difference in the measure of punishment.

12. In our opinion, in the instant case, the entire approach of the Assistant Labour Commissioner to the question which he had to consider was wrong and contrary to the provisions of the Act. Since that tribunal did not find any of the jurisdictional facts mentioned in Section 16 (3) of the Act as established, the State Industrial Court ought to have set aside the order of reinstatement. The orders passed by the two tribunals, which are clearly in excess of their jurisdiction must be quashed.

13. We also find in the instant case that, on the relevant date, the respondent 3 was late and in the meantime a badli worker had been employed to work in his place. The respondent 3 requested that he should be allowed to work on his post. The Weaving Master expressed his inability so to do. Even so, the respondent 3 insisted on working on the post and pestered the Weaving Master for being allowed to do so. Thereupon the Weaving Master directed that the respondent 3 should be physically removed from the place. Accordingly, when the Weaving Supervisor and a spare jobber endeavoured to carry out the direction, the respondent 3 subjected his official superior to the indignity of shoe-beating in the presence of all the operatives of the weaving section. We think that the respondent 3 was in the wrong throughout and his behaviour on the occasion

culminating in shoe-beating his official superior was indefensible. In the circumstances, the punishment meted out to the respondent 3 was not unmerited. In any case the management acted within its jurisdiction and in conformity, with the Standing Orders and there could be no interference with the action taken by it in the matter.

14. Before parting with this case, we are constrained to observe that the manner in which the State Industrial Court dealt with the matter does not show a grasp of the fundamentals or an understanding of the various decisions of this Court in the cases referred to earlier. We take it that as those decisions were given in other miscellaneous petitions directed against the decisions of the State Industrial Court itself, they must have been brought to the notice of that Court and read by the Presiding Judge. We desire it to be understood that we deprecate and strongly disapprove of any subordinate Court or tribunal deciding cases in utter disregard of the decisions of this Court which have been brought to its notice. Such contumacious disregard, if it does not cease forthwith, will have to be dealt with suitably in future.

15. The petition succeeds and is allowed. The order of the Assistant Labour Commissioner dated 30 June 1958 and the order of the State Industrial Court dated 12 March 1959 are quashed. The respondent 3 shall bear his own costs and pay those of the petitioner. Counsel's fee here Rs. 50. The outstanding amount of security shall be refunded to the petitioner.