
(1969) 06 KL CK 0005
In the High Court Of Kerala

C. Kunhikutty

APPELLANT

Vs

Workmen of the Malabar Roadways Service

RESPONDENT

Date of Decision : 24-06-1969

Acts Referred:

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

Citation : (1970) 2 LLJ 478

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Judgement

K.K. Mathew, J.—This is an application to quash an award passed by the Labour Court, Quilon, by the issue of an appropriate writ or order. The dispute referred to the court for adjudication concerned the dismissal of driver P. Velayudhan by the petitioner.

2. The charge against Velayudhan was that on June 16, 1965 he picked up a quarrel with a stranger while he was on duty after getting himself drunk. On that day, Velayudhan drove bus K.L.D. 2427 plying between Calicut and Kuttiadi. The bus started from Calicut at about 2.00 p.m. and reached Kuttiadi at 5.15 p.m. Since the service had to be resumed only the next morning from Kuttiadi to Calicut, the driver and conductor were halting for the night in a room on the second floor of a building in Kuttiadi. At about 9.00 p.m. Velayudhan came to the room and found a person described as a "cooly painter" sleeping in the verandah attached to the first floor of the building. Velayudhan, who is alleged to have been drunk at the time, picked up a quarrel with the stranger. A crowd gathered at the spot and in spite of Velayudhan being forcibly removed and put in his room, he came out of the room and again quarrelled with the stranger. A report regarding the incident was submitted by the conductor of the bus, K. Sankaran and the Checking Inspector, Ibrahim. Thereafter a charge-sheet was delivered to Velayudhan and he submitted his explanation. A domestic enquiry was conducted and in the enquiry it was found that Velayudhan was guilty of the charge, and he was dismissed from service by the writ petitioner. The cause of Velayudhan was

espoused by the 1st respondent.

3. The finding of the Labour Court was that Velayudhan was not on duty at the time when the quarrel took place and that his conduct in picking up the quarrel with the stranger unconnected with the employment cannot reasonably be regarded as misconduct by the employer, in the absence of standing orders. The Court also found that there is no evidence to show that Velayudhan was drunk at the time. The court observed that "altercation or misbehaving in a disorderly manner with a stranger for reasons not connected with the employment, and that too on provocation offered by the stranger" will not constitute misconduct which could be taken cognizance of by the management. The court was of the opinion that the evidence that the driver was smelling alcohol on that night would not mean that he was drunk.

4. It was contended on behalf of the management that a worker need not be on duty at the time he commits the misconduct in order that the management may take cognizance of it and impose a punishment, and that, even in the absence of standing orders, an employer can take disciplinary proceedings as regards the conduct of an employee, which the employer regards as subversive of discipline, or which may reflect discredit upon his business or may tender the employee unworthy of being employed.

5. In *Agnani v. Badri Das and Ors.* 1963 I L.L.J 684, a person employed as a subeditor of a newspaper took the side of another employee and had a quarrel with the lessee of the provisions store run for the benefit of the employees of (he same employer. The other employees demanded return of his articles pawned with the shopkeeper which he refused to do unless he was paid his dues. The incident took place at the shop in the staff colony constructed by the employer. On a complaint from certain residents of the staff colony the management passed a resolution suborning an enquiry committee to conduct an enquiry against the concerned employee. The enquiry committee framed nine charges, and one of the charges was in regard to the quarrel with the shopkeeper. The concerned employee was found guilty in seven out of nine charges and was ultimately dismissed from service; the Industrial Tribunal directed reinstatement of the employee. The High Court quashed the order of the Industrial Tribunal. But the Supreme Court restored the order of the Tribunal. The Court in the course of the judgment said:

Acts which are subversive of discipline amongst the employees would constitute misconduct, rowdy conduct in the course of working hours would constitute misconduct; misbehaviour committed even outside working hours but within the precincts of the concern and directed towards the employees of the said concern may, in some cases, constitute misconduct; if the conduct proved against the employee is of such a character that he would not be regarded as worthy of employment it may, in certain circumstances, be liable to be called misconduct. What is misconduct will naturally depend upon the circumstances of each case. It may, however, be relevant to observe that it would be imprudent and

unreasonable on the part of the employer to attempt to improve the moral or ethical tone of his employees" conduct in relation to strangers not employed in his concern by the use of the coercive process of disciplinary jurisdiction

7. In *Central India Coalfields v. Ram Bilas* 1961 I L.L.J. 546, a complaint was received against the respondent before the Supreme Court from the appellant colliery that the respondent was guilty of rowdy and indecent behaviour on the night of June 5, 1957. He went to the quarters of his co-workmen drunk and in a state of heady intoxication. First he knocked violently at the door of Sarkar Babu, then at the door of Srivastava Babu and used dirty and filthy language of abuse. Then he moved to the door of Madhu Babu and began to (ear down the screens and abused Madhu Babu. He then knocked at the door of tushi Babu who thought that there might be some accident and so left his dinner and opened the door. The respondent then entered the room using filthy language and threw the articles in the room hither and thither. The neighbors then collected on the scene and with great difficulty took out the respondent from Tushi Babu's room. At this time Rim Anjeri Muushi was moving with the respondent. The complaint further alleged that the respondent was a drunkard and was in the habit of causing nuisance to his neighbors. Complaints had been made against him on several occasions in the past but no serious action had been taken against him. The complaint ended with the statement that if no serious action was taken against the respondent then the residents of the quarters would find it difficult to tolerate his indecent behaviour.

8. The Supreme Court found that the management was right in dismissing the respondent. The Court said:

It is common ground that quarters are provided by the appellant to its employees and they are situated on the coal-bearing area at a distance of about 200 feet from the pitmouth according to the appellant and at a distance of 2000 ft. according to the respondent. Standing Order No. 29(5) provides that drunkenness, fighting, riotous or disorderly or indecent behaviour constitutes misconduct which entails dismissal. Normally this standing order applies to the behaviour on the premises where the workmen discharge their duties and during the hours of their work. It may also be conceded that if a quarrel takes place between workmen outside working hours and away from the coal premises that would be a private matter which may not fall within the Standing Order No. 29(5); but in the special circumstances of this case it is clear that the incident took place in the quarters at a short distance from the coal-bearing area and the conduct of the respondent which is proved clearly amounts both to drunkenness as well as riotous, disorderly and indecent behaviour. In fact as the enquiry officer in substance has found, unless the appellant took some action against the respondent, breach of peace was threatened and that is not a matter which the appellant could consider with complacency. Besides, if the Tribunal thought as it appears to have done that since the incident happened in the company's quarters the management could take action provided the respondent's case fell

under Standing Order No. 32 read with Standing Order No. 37 it need not have allowed considerations of this character to influence its final decision, particularly when the extent of its jurisdiction u/s 33(2)(b) was very limited. This is not a case where any mala fides can be attributed to the appellant or it can be said that the dismissal amounts to unfair labour practice. In the circumstances of this case the order of dismissal passed by the appellant against the respondent appears to be a straightforward matter and the Tribunal may well have resisted the temptation of examining the validity of the said order in such a technical way. Besides as we have already indicated, having regard to the special circumstances of this case we are not satisfied that the tribunal was right in holding that Standing Order No. 19(5) was inapplicable.

9. The question whether disciplinary proceedings can be taken against the employee in respect of his conduct outside the working hours came up for consideration in *Tamlinson v. L.M.S. Ry. Co.* (1944) 1 All E.R. 537. There the appellant was under a contract of service with the respondent company, which incorporated the machinery of negotiation for railway staff agreed to between the company and the appellant's trade union. A meeting of a canteen committee was held outside the employee's usual hours of duty. At this meeting, at which the appellant was irregularly presiding as chairman, a dispute arose, and the appellant assaulted a fellow employee, and was disrespectful, to a superior officer. As a result of his behaviour at this meeting the appellant was summarily dismissed from the company's service. The appellant claimed that his contract of service had not been validly terminated. It was contended on his behalf (i) that the conduct at the meeting was not misconduct within the meaning of the machinery of negotiation for railway staff, and (ii) alternatively that it was not exceptionally grave misconduct, which entitled the company to dismiss him summarily under Clause 8 and 9 of the machinery. The main argument which was put before the court was that no conduct outside working hours can be misconduct within the meaning of the rule, or at any rate his particular conduct outside working hours could not be misconduct within the meaning of the rule. Lord Greene M.R. said:

It was said that there were men who in their leisure time, do something which it was no part of their duty to do. I agree, but just let us see what they were doing. The company in a matter concerning the welfare of its employees which it was anxious to foster and encourage sets up the machinery of a committee to deal with that particular welfare organization. The proper setting up and organization of this canteen was a matter of very great interest to the company, and of very great interest to the employees themselves. It was intimately linked with the general relationship of employers and men and the contentment and comfort of the men in their work. That being the object and a committee being set up for that purpose, this appellant proceeds to act in such a way as not only to interfere with the proper and smooth working of that machinery, but to make it impossible carry it on smoothly any further if conduct of that kind was going to become the rule. Annoyed because a fellow number hid pointed out that he had no right to

be in the chair, and pointed out no doubt with some emphasis, he rushed at that employee and violently assaulted him, with the result that he had to go to hospital. Moreover, it does not stop there, because not only did he assault him in that way, but he threatened him that, if he opposed him or aggravated him, as he put it, again he would be treated in a similar manner, Conduct of that kind is calculated completely to wreck and make impossible the working of the machinery that the company was endeavoring to set up for the benefit of the workers and indirectly for the benefit of the company itself. It seems to me quite impossible to suggest merely because this happened outside working hours that it was so disconnected with the employment as to make it wrong to regard it as misconduct within Clause 8. To say that seems to me to shut one's eyes to the obvious realities of the situation.

10. In *Tata Oil Mills Co. v. Workmen* 1964 I L.L.J 173, the relevant standing orders inter alia provided that drunkenness, fighting, riotous or disorderly behaviour within or without the factory would be misconduct. A workman was found to have assaulted outside the factory another workman as the latter was in favour of introduction of incentive bonus scheme, which was opposed by the former and his colleagues. The Industrial Tribunal held that the action of the concerned workman was not covered by the relevant standing orders as it was a private quarrel between the two workmen which took place outside the factory. In appeal by special leave the Supreme Court held that the award of the Industrial Tribunal cannot be sustained. The Court said:

The said standing order provides that without prejudice to the general meaning of the term "misconduct", it shall be deemed to mean and include, inter alia, drunkenness, fighting, riotous or disorderly or indecent behaviour within or without the factory. It is common ground that the alleged assault took place outside the factory, and, in fact, at a considerable distance from it. The tribunal has held that the assault in question can be treated as a purely private matter between Raghavan and Sri Augustine, with which the appellant was not concerned and as a result of which standing Order 22(viii) cannot be invoked against Raghavan.

According to the charge, such acts were highly subversive of discipline. The enquiry officer has held that in the light of the evidence given by M.M Augustine and I.T. Joseph the charge as framed had been proved. This finding clearly means that the assault was not the result of a purely individual or private quarrel between the assailant and his victim, but it was referable to the difference of opinion between the two in regard to the introduction of the incentive bonus scheme on which the two unions were sharply divided. Therefore, if Raghavan assaulted Augustine solely for the reason that Augustine was supporting the plea for more production, that cannot be outside the purview of standing Order 22(viii).

11. Even though it is open to a management to take up disciplinary proceedings against a worker for his misconduct outside working hours, the basic principle,

which should guide the management in taking the proceedings is whether the misconduct of the worker has any relation with the employment, whether the misconduct is to a co-worker or to a stranger and whether the misconduct was committed within the precincts of the concern. Even in the absence of standing orders the management can take disciplinary proceedings against, a worker for his conduct outside working hours, provided the employer reasonably thinks that the conduct has a relation with the employment or that he conduct is such that the employee is unworthy to be employed. Hence, the Labour Court has taken the view that the driver's conduct in picking up quarrel with the stranger outside working hours has no reasonable relation with the employment nor is it such as would render him Unworthy of employment. The driver and conductor were having none with them and there was apparently some reason for the driver to suspect the motive of the stranger in sleeping on the verandah of the building, and if a quarrel took place between the stranger and the driver over the presence of the stranger at the place at that hour, one cannot reasonably say that the conduct of the driver was such that it would in any way affect the reputation of the management or the discipline of the employees in the establishment, or that it would render the employee unworthy of employment. Even if all the witnesses examined on behalf of the management are believed when they say that the delinquent driver smelt alcohol at the time, according to the Labour Court that would not show that he was intoxicated or drunk See State of Gujarat Vs. Ukaji Devaji, .

12. I think, the Labour Court did not go wrong in interfering with the findings of the management in the domestic enquiry. The charge against Velayudhan was that he picked up quarrel with a stranger while on duty and alter getting himself drunk. The court found that the findings in the domestic enquiry were perverse; it has, I think, kept in view the circumstances under which alone it could interfere. Viewing the case from all aspects I cannot say that the Labour Court has overstepped its limits in interfering with the findings. I see no error of law apparent on the face of the record. I decline to interfere.

13. The writ petition is dismissed, but, in the circumstances, without any order as to costs.