
(1959) 03 MAD CK 0022
In the Madras High Court

Cambodia Mills, Ltd.

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 03-03-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 33

Citation : (1959) 03 MAD CK 0022

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—The management of the Cambodia Mills, Ltd., Coimbatore, is the petitioner. In October 1958 the respondent 2, Karunakaran, was working as an electrical supervisor in the mills. His immediate superior was the electrical engineer, Gopalan by name. On 26 October 1958 the electrical engineer reported in writing to the manager that at 9 a.m. that day he had asked Karunakaran to work on the second shift from the 27 instant in the place of one Ponnappan who had resigned and that " he angrily and defiantly retorted that he will see the manager and let the manager say to that effect, that then only he will attend for the night shift." The electrical engineer further reported: " I told him that I wanted him to come for the night shift, that there was no use of his arguing the matter with me and that if he had any grievance he is at liberty to report and complain to the manager." But Karunakaran was in no mood to heed to his orders and went away saying that he would first see the manager.

2. On the basis of that report the management framed the following charge against Karunakaran on the 27 instant:

It is reported that yesterday when the engineer who is your immediate superior asked you to come to work for the night from Monday, you told him you will ask the manager and then only proceed. This is sheer impertinence because you have to obey your superiors. Among the staff we cannot tolerate any such impertinence and you are required to show cause within 24 hours of this why action including dismissal should not be taken against you for your serious

misconduct failing which it will be presumed you have no explanation to offer "and further steps will be taken against " you.

The same day Karunakaran submitted an explanation in these terms:

When the engineer asked me to come to work for the night from Monday, the 27 instant, I did not refuse to comply with his instructions. I only added that I would also ask the manger about the sudden change, for I have been working always in the day for all these about eight years. This cannot be construed as sheer impertinence on my part. I have not done anything meriting immediate suspension. I, therefore, request you to kindly cancel the suspension order and allow me to report for duty, today itself.

3. The same day the management again wrote to Karunakaran telling him that it was not satisfied with his explanation and that an enquiry would be held into his conduct on the 28 instant by the manager of the office. On the 28 instant the manager held an enquiry in the course of which Gopalan, the electrical engineer, and Krishnaswami, electrician No. 1, were examined. Karunakaran was allowed to cross-examine both these persons. On 29 October 1958 the manager notified Karunakaran as follows:

As a result of the enquiry held by me against you on charges of impertinence, etc., to your superior officer, the engineer, I have dismissed you from service from 29 October 1958.

The letter then said that he could take his " earned wages" and that he would be paid one month's wages under proviso to Section 33(2) of the Industrial Disputes Act, 1947, that the payment was being made by way of abundant caution. The letter ended with the statement that the managing agency had gone fully into the papers and approved the action taken by the manager.

4. At this time an Industrial dispute between the management and the workers was pending before the Industrial Tribunal, Madras. So the management filed an application u/s 33(2) of the Industrial Disputes Act before the industrial tribunal asking for its approval for the action it had taken. By an order made on 18 November 1958 the tribunal refused its approval and dismissed the petition filed by the management. The management has, therefore, come to this Court for the issue of an appropriate writ to quash the order of the tribunal.

5. Mr. Thyagarajan, the learned advocate for the petitioner, pointed out that in matters of this kind the industrial tribunal is not a court of disciplinary appeal from the management, that it has jurisdiction to interfere only where the management has been guilty either of unfair labour practice or of victimization or where the order it has made is clearly vitiated by mala fides, and that in the present case the tribunal was in error in attempting to review the findings of fact reached by the management. The comment was also made that there are some obvious errors in the order of the tribunal itself.

6. It seems to me to be clear that in places the order of the tribunal is mutually

contradictory. In Para. 2 of its order the tribunal stated:

The engineer as well as the witnesses examined, no doubt, gave evidence as stated above. Of course, that evidence has to be accepted, and the manager who held the enquiry was right in accepting that evidence.

If that finding of the tribunal stands the conclusion must follow that the charge against Karunakaran stood proved. But then almost immediately afterwards the tribunal observed :

I find it difficult to interpret that statement of the worker as disobedience of the orders of the engineer.

I do not find it easy to reconcile this observation of the tribunal with the earlier and explicit finding it had recorded that the manager who held the inquiry was right in accepting the evidence of it. The tribunal then went on:

The worker must have thought that the engineer was issuing improper orders in posting him to the night shift, when for many years he was in the day shift and therefore told the engineer that he would speak to the manager and then attend to the work ...

With respect this seems to me to be mere surmise. Besides, I do not see how this surmise can be reconciled with the earlier categorical finding recorded by the tribunal. The tribunal went on to say :

The worker did not say that he would not obey the engineer's orders, but said that he would attend to night duty as ordered, after making an appeal to the manager.

Now I can find very little support for this statement in the evidence. On the other hand the evidence is definitely the other way about. I quote the relevant passages from the evidence of Gopalan, the engineer:

I told him to go for second shift on 27 instant, on the morning of 26 Sunday. He then said ... he cannot attend to the shift unless the manager calls me and tells me so."

Question by Karunakaran: Did you tell me that the manager has approved of this change ?

A. Yes, I told you.

Question by Karunakaran : Did I refuse to go for the third shift ?

A. Yes. You said I will speak to the manager and then only attend the night shift.

7. Subsequently the manager asked Karunakaran :

Have you got any further statement to make ?

Karunakaran replied:

Yes, When I came inside the mills at about 8-30 a.m. on 26 Sunday, near the verandah of the time office, engineer Mr. Gopalan standing near the verandah told me to come for night on the 27 instant. I asked him whether it was manager's order. He replied, it was Ms order. I told him I will ask the manager about this. After fifteen minutes I told him I will go away and come for night and shall ask manager later. I gave charge after telling him how the tools have been entrusted. There was no one in the time office whom I was told to go for night shift. Then I went away home.

Even from this statement of Karunakaran it Is clear that at the time when Gopalan told Karunakaran to attend to night duty on the 27 instant he informed him that it was the manager's order. Krishnaswami, the other witness, stated in unmistakable terms:

Mr. Karunakaran replied that he will not come for third shift and will speak to the manager. Then he went away saying he will speak to the manager.

Karunakaran asked him :

Did I tell him that I won't come or did I say I will speak to the manager ?

Krishnaawami replied :

You said I will not come for night shift. I will speak to the manager. The engineer twice told you that the manager has asked you to come for night shift.

In view of these statements of the witness it is difficult to see how the tribunal could have taken the view that Karunakaran did not say that he would not obey the engineer's order but only said that he would attend to night duty after making an appeal to the manager. This is an obvious error in the order of the tribunal.

8. Mr. Lakshminarayana Reddi, the learned Counsel for the second respondent, pointed out that according to the evidence of Krishnaswami, Karunakaran handed over a key to Gopalan the engineer, and he explained that Karunakaran did so in order that he might be in a position to attend the night shift. But this explanation does not emerge from the evidence. Nor did Karunakaran say so in clear terms as he would have done if the explanation were true.

9. Mr. Lakshminarayana Reddi, the learned advocate for respondent 2, drew my attention to the explanation which Karunakaran furnished on the 27 instant in which he said:

I, therefore, requested him to kindly cancel the suspension order and allow me to report to duty today itself.

He argued that this sentence made it plain that Karunakaran was willing to go on night duty on the 27 instant. I do not think that the words are so plain at all. If Karunakaran was willing to go on night duty on the 27 instant, he could very simply and explicitly have said so in the explanation he furnished. As I read it, all

that Karunakaran wanted was that the order of suspension should be cancelled. He did not say, as he had an opportunity then of saying, that he would report to duty on the 27 instant.

10. Mr. Lakshminarayana Reddi then said that the charge framed against the second respondent was only for impertinence, that the findings was one of disobedience and that the enquiry is vitiated in the sense that the finding and the charge do not tally. Now the first thing we must remember in matters of that kind is that the charges were framed by persons who are not conversant with the Criminal Procedure Code, and that it will not be right to scrutinize the charges in the same way as this Court would when it hears appeals from convictions and sentences passed by a Magistrate or a Sessions Judge. The charge as framed definitely stated that Karunakaran told Gopalan that he would ask the manager and then only proceed. This, the chargesheet stated, was sheer impertinence. Therefore, it would not be correct to say that there is a contradiction or variation between the charge and the finding. The impertinence referred to in the charge arose out of and is a commentary on the allegation of disobedience to the order of the engineer.

11. Mr. Lakshminarayana Reddi next said, and here he had the support of certain observations made by the tribunal, that no question of disobedience would arise until the afternoon or the evening of the 27 instant when the time arrived for Karunakaran to report to duty and he failed to do so. I am unable to take this view of the matter. One illustration will make my meaning clear. If an engine-driver on the railway were told by his superior officer to be ready to take out a train at 5 p.m. on a certain date from Central Station and he were to reply that he would not do so then nobody would expect the concerned authorities to wait till 5 p.m. on that day to make certain whether that particular driver would turn up for duty or not. On the other hand, if he makes it plain that he would not come, the driver cannot claim that everybody concerned must have waited till 5 p.m. on the particular day to find out whether he would obey orders or not.

12. One must remember certain facts. The responsibility for the conduct of an enterprise rests squarely on the management. The responsibility for maintaining discipline is also on the management. One management may be slack and indulgent. Another may be strict. The industrial tribunal is not a court of appeal in disciplinary matters. It cannot interfere except in the cases referred to by the Supreme Court in *Patna Electric Company v. Bali Rai* and *Anr. 1958 L.L.J. 257* and *Martin Burn Ltd. Vs. R.N. Banerjee*, .

13. The order complained of is liable to be set aside not merely for the reason that it runs counter to the decisions just referred to but also because of the contradiction and the mistake I have pointed out in the earlier portions of this order. In the result the writ prayed for will issue and the order complained of will be quashed. There will be no order as to costs.