
(1966) 03 PAT CK 0012

In the Patna High Court

Case No : Misc. Judl. Case No. 911 of 1963

Employers in relation to Toposi Colliery	APPELLANT
Vs	
Their Workmen and Others	RESPONDENT

Date of Decision : 11-03-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : AIR 1967 Patna 90 : (1967) 14 FLR 431

Hon'ble Judges : R.L. Narasimham, C.J;G.N. Prasad, J

Bench : Division Bench

Advocate : Ranen Roy, Rama Raman and J. Krishna, for the Appellant; S. Ali Ahmad and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an application under Articles 226 and 227 of the Constitution against the order of the Presiding Officer, Central Government Industrial Tribunal, Dhanbad, setting aside the order of dismissal, dated the 8th September, 1962, passed by the petitioner-employers on one of their workmen, namely, Bikash Chandra Das, opposite party No. 3, directing his reinstatement and also giving other appropriate reliefs.

2. The said Bikash Chandra Das was employed in the petitioners' colliery as Pump Khalasi. He was charged with having been found sleeping while on duty on the 31st August, 1962 and on the 1st September, 1962, which was a serious violation of the Mines Regulations. Some sort of domestic enquiry was held and he was dismissed from service on the 8th September, 1962. In the order of dismissal (Annexure B) it was, however, stated that he was dismissed with effect from the 2nd September, 1962; but an affidavit was subsequently sworn on the 24th December, 1962, on behalf of the employers to the effect that through misconception and inadvertence the figures "2-9-62" were written in the order, and that in reality the order of dismissal was made prospectively from the 8th

September, 1962. The employee contended that the Allegations against him were false and that he was victimised for some other reason. The Union took up his cause, and after an abortive conciliation proceeding the following reference was made by the Government of India to the Industrial Tribunal:

"Whether the order dated the 8th September, 1962, issued by the Manager of the Toposi Colliery dismissing Sri Bikas Das, Pump Khalasi, with retrospective effect, viz. from 2nd September, 1962, is lawful. If not, to what relief the workman is entitled?"

The learned Tribunal came to a finding that the domestic inquiry was conducted in a fair manner with due observance of the principles of natural justice. But he further found that the dismissal of the workman was by way of victimisation, mainly because the employer became annoyed at his conduct in lodging information at the Jamuria police station on the 20th August, 1962, alleging trespass and assault on him. The finding of the Tribunal on this point is as follows:

"On the foregoing facts, it is clear as day light that the management was very much annoyed with the workman because he was making complaints about his grievances to the management and insisted on his grievances being redressed and ultimately informed the police which visited the spot and this infuriated the management and immediately thereafter, next day, charges of sleeping during duty hours start pouring in from 24-8-1962 to 1-9-1962 The facts do show that the dismissal of the workman concerned was predetermined, due to the Manager's annoyance with him and only by way of victimisation. Admittedly the workman had a clean record before.

3. Mr. Roy for the petitioner-employers raised the following two contentions:

(1) On the terms of reference as set out in the Government of India's order, the dispute was confined only to the limited question as to whether retrospective effect could be given to the order of dismissal, which though passed on the 8th September, 1962, was directed to take effect from the 2nd September, 1962. It was urged that the Tribunal exceeded its jurisdiction in widening the scope of reference and considering whether the order of dismissal was due to victimisation or not.

(2) The finding about victimisation is vitiated by a serious error of record inasmuch as there was no evidence to show that on the information lodged by the employee at the police station the police officers went to the colliery, saw the Manager and spoke to him about that matter.

4. In my opinion, neither of these two contentions can prevail. The first contention is based on a very narrow construction of the term of reference as given in the order of the Government of India quoted above. In the original order of dismissal (Annexure B) it was stated that the employee was dismissed from service with effect from "2-9-62". The Government of India merely quoted this

order in the terms of reference On a fair construction of the terms of reference, however, it is clear that the entire question as to whether the dismissal was lawful or not was in controversy and it was that question that was referred to the Tribunal for adjudication.

It is not correct to say that the retrospectivity of the order of dismissal alone was the subject-matter of the controversy between the parties. This will be apparent if the report of the Conciliation Officer, who attempted a conciliation at the early stages of the dispute, is carefully considered (Annexure F). It shows clearly that the main controversy between the employer and the workman was as to whether the dismissal of the workman was justified, or else whether he was victimised for his legitimate trade union activities. The giving of retrospective effect to the order of dismissal by a few days was an extremely minor point and it was not the main question in controversy. Moreover, as already pointed out, the employers themselves by their affidavit dated the 24th December, 1962, removed the retrospective portion of the order of dismissal and asserted that it was prospective. Before the Tribunal also, both parties joined issue on the question as to whether the dismissal was justified or not and whether there was unfair victimisation. I am, therefore, satisfied that on a fair construction of the terms of reference the Tribunal was justified in considering whether the dismissal itself was lawful or not and it has not exceeded its jurisdiction.

5. As regards the second point, it was urged by Mr. Roy that there was no evidence on record to show that in pursuance of the information lodged by the workman at the Jamuria Police Station (Ext. W-3) on the 20th August, 1962, the officer in charge visited the colliery, saw the Manager and asked him to proceed in a legal manner. Mr. Roy urged that this portion of the observation of the learned Tribunal was based on no evidence whatsoever and that it has vitiated its conclusion on the question of victimisation. Mr. Roy does not seriously challenge the fact that the workman lodged information at Jamuria Police Station on the 20th August, 1962. It also appears from exhibit M-6 that the Union also sent information to the police officer on the next day, namely, the 21st August, 1962, alleging that the employers forcibly committed house trespass and tried to assault the workman and evict him with the help of goondas But Mr. Roy urged that there was no evidence to show that in pursuance of this information the police officer went to the colliery and saw the Manager and spoke to him

6. This Court is not a Court of appeal. The lower Court record is not here and we are not in a position to say whether there was on record a copy of the police report in connection with the said information, indicating that the police officer actually went to the colliery and spoke to the Manager. Several documents. (Exhibits W to W-37) were exhibited before the Tribunal and the petitioners have not filed a copy of the list of exhibits. In the petition also the allegation about the Tribunal committing an error of record is put in a very guarded form. Thus in paragraph 19 of the petition it is stated as follows:

"That no police enquiry, on the allegation of trespass made by the workman, was

ever held in the knowledge or in the presence of any of the representatives of the management and this was not even mentioned in the written statement filed by the workmen. No advice from the Officer-in-charge, Jamuria P. S., was ever received by the management in the matter."

The petitioners have not categorically stated that there was no documentary evidence before the Tribunal to show that the police officer (during the course of enquiry into the allegations made by the workman and the Union) went to the colliery, saw the Manager and spoke to him about the same. In the absence of such a categorical denial, I must take the statement as mentioned in the judgment of the Tribunal as correct so far as facts are concerned. Moreover, in holding that the workman was guilty of victimisation, the Tribunal has taken into consideration several facts, including an earlier complaint made to the Management on the 1st June, 1962, the representation of the Union filed on the 1st August, 1962, and other facts. The deposition of the workman concerned was also filed by Mr. Roy for the petitioners, and that shows that he gave evidence to the effect that the Director himself and the Manager of the Company threatened him with shoe-beating. The Tribunal also took due notice of the fact that on no previous occasion was the workman charge-sheeted for any misconduct and that he was never found even dozing at any time before the 23rd August, 1962. On a careful review of all these facts, the Tribunal held that the charge was a false one, made on account of the Manager's annoyance with the workman, and that it was by way of victimisation. This Court cannot interfere with this finding in a writ petition.

7. It is true that the Tribunal held that the domestic inquiry was done properly, following the rules of natural justice. But where allegations of victimisation are made, it is open to the Tribunal to examine this question, and the mere fact that the domestic inquiry was made after observing the rules of natural justice will not show that there could be no victimisation of the workman concerned. The two are entirely different. If, as held by the Tribunal, the dismissal of the workman was pre-determined for other reasons, the employers will always make a show of holding a domestic inquiry in accordance with the rules of natural justice. Hence the finding of the Tribunal in favour of the employers so far as the domestic inquiry is concerned does not in any way affect its further finding that there was victimisation of the workman.

8. For these reasons I see no reason for interference. The petition is dismissed with costs Hearing fee Rs. 100 payable to respondents No. 1.

G.N. Prasad, J.

9. I agree