

(1960) 07 AP CK 0024
In the Andhra Pradesh High Court

Hendricks and Sons	Vs	APPELLANT
Industrial Tribunal and Others (Automobile Workers" Union)		RESPONDENT

Date of Decision : 29-07-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11, 12, 16, 17
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (1960) 2 LLJ 484

Hon'ble Judges : P. Chandra Reddi, C.J; Sanjeevarao Naidu, J

Bench : Division Bench

Judgement

Sanjeevarao Naidu, J.—This appeal is directed against the judgment in Writ Petition No. 1091 of 1956, of our learned brother Srinivasachari, J. Hendricks and Sons Vs. Industrial Tribunal and Others, who confirmed the decision of the industrial tribunal in the case, and directed the dismissal of the writ petition.

2. The facts out of which this writ appeal has arisen may be briefly stated:

The appellants are the employers of Hendricks & Sons., a firm of automobile repairers in Secunderabad. One Papiiah was in the employment of the firm of the appellants, as a motor mechanic. For about a year prior to 1956, the appellants noticed a tendency on Papiiah's part to bring: down the reputation of the business of the appellants and a series of complaints had been received by them from their customers expressing dissatisfaction at the repair work done by Papiiah on their cars. On 21 January 1956 at about 2-45 p.m. a Hindustan car was entrusted to Papiiah with instructions to dismantle the timing case and the engine-head of the car. When a representative of the appellants inspected the progress of work on the car at 6-15 p.m. the same evening, it was found that papiiah had dismantled not only the timing base and the engine-head but also many other I parts and accessories of the engine, such as, the dynamo, the delco and the self-starter, which had no connexion with the job entrusted to Papiiah. It transpired that these unnecessary parts had been dismantled by Papiiah at the instance of the driver of the car, although he had not been

instructed by the appellants to do so. It was further found that after the assembly of the head of the engine had been completed, it had to be dismantled as one of the head bolts had been broken by Papiah. All these, according to the appellants, resulted in considerable delay in effecting delivery of the car to the customer, thereby prejudicially affecting the good reputation of the appellants. The management having been dissatisfied with the conduct and work of Papiah and taking into account the conduct of Papiah during the past one year which was by no means satisfactory from the point of view of the management, they had served a show-cause notice on Papiah on 22 January 1956 wherein was set out the careless and negligent performance of the duty by Papiah in respect of the Hindustan car entrusted for repairs to him on 21 January 1956, and the inordinate delay that had resulted which caused loss to the firm and inconvenience to the customer; and Papiah was asked to show cause why disciplinary action should not be taken against him for negligent performance of his duty which amounted to misconduct in the view of the management.

3. In response to this show-cause notice, Papiah gave an explanation on 21 January 1956. Not having been satisfied with the explanation given by Papiah, the management intimated to him that an oral enquiry would be held on 7 February 1956, on which date Papiah was examined with reference to the charge made against him in the show-cause notice: and as no satisfactory explanation has been given in the evidence, and as the management felt that all the charges made against Papiah had been either established or admitted by him in the oral enquiry the management passed orders on 10 February 1956 dismissing him from service.

4. Consequent on the dismissal of Papiah from service, general unrest apparently developed among the other employees of the appellants, which necessitated the Government of Andhra Pradesh making a reference of the dispute between the workmen and the employers, the appellants, to the industrial tribunal, in exercise of the powers conferred by Clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Act XIV of 1947), hereinafter referred to as "the Act." The points of reference were set out in the order of the Government as follows:

(1) Whether the dismissal of Sri Papiah is justifiable.

(2) If not, to what relief is he entitled?

The Industrial tribunal took up the dispute for consideration and recorded the evidence of a number of witnesses on either side, and made an award on 14 September 1956, holding that there was no gravity of misconduct alleged by the employers and that therefore they were not justified in dismissing Papiah. Accordingly, the tribunal directed that Papiah be reinstated with effect from the date of his dismissal, namely, 11 February 1956 with continuity of service and with back-wages from the date of dismissal. It is this award of the industrial tribunal that was questioned in the writ petition before our learned brother,

Srinivasachari, J., who, as pointed out earlier, had upheld the award of the industrial tribunal, and dismissed the writ petition. Hence this appeal.

5. The simple point that arises for consideration in this appeal is whether the industrial tribunal was justified in interfering with the order of dismissal passed by the management against Papiah, and directing the latter's reinstatement with effect from the date of dismissal as has been done in this case.

6. Before we deal with the respective contentions raised by the parties before us and before we advert to the decisions to which our attention has been drawn in this case, we consider it necessary to set down the general principles governing such and similar matters bearing on the imposition of punishment on an employee whether by way of dismissal or otherwise, for reasons considered proper by the management and on the powers of the industrial tribunal to interfere with that decision of the management.

7. Firstly, the procedure to be followed by the management should be in conformity as Dearly as practicable, to the accepted procedure in accordance with the principles of natural justice, namely, that the employee sought to be dismissed or punished should be given an opportunity to show cause why disciplinary action should not be taken against him for any negligence or misconduct alleged against him and also an opportunity to clear himself in the eyes of the management in regard to the allegations or charges against him and to show cause against the proposed action.

8. Secondly, once the management's action could be regarded as being generally in conformity with the accepted procedure and the principles of natural justice, it would not be open to the Industrial tribunal to interfere with the action taken by the management unless it is satisfied on the materials before it:

(1) that the action of the management n the disciplinary step taken by them and the imposition of the punishment was either contrary to law or lacked good faith, or was baseless or perverse ; or

(2) that it was done by way of victimization or unfair labour practice and not for imposing a just punishment.

9. Thirdly, the Industrial tribunal in dealing with the dispute should not constitute itself as an appellate authority over the decision of the management and ought not to interfere with the decision of the management merely because it takes a different view on the evidence and on the facts and circumstances of the case, the degree of proof required being only a prima fade case and not a case proved to the hilt. The teat is whether it was possible to arrive at the conclusion reached by the management on the evidence. Unless the requirements specified above are shown to exist and have actually been found by the industrial tribunal to have been established, the tribunal would not be justified in law in interfering with the decision of the management and substituting its own decision in its place.

10. In this connexion, it will be useful to refer to some of the relevant provisions of the Industrial Disputes Act. Section 10 of the Act provides for a reference of industrial disputes to boards, courts or tribunals. The portion of the section having a bearing on the subject-matter of the present appeal is extracted below:

10. (1) Where the appropriate Government is of opinion that any Industrial dispute exists "or is apprehended, it may at any time by order in writing

(a) * * * (b) * * * (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Schedule II or the Schedule III, to a tribunal for adjudication?

11. A reference to the Schedule II of the Act shows that item 3 thereof (?) is in the following words:

Discharge or dismissal of workmen Including reinstatement of, or grant of relief to, workmen wrongfully dismissed.

It is In exercise of these powers vesting in the Government u/s 10(1) of the Act that the reference in this case was made to the industrial tribunal. Section 11 of the Act deals with the procedure and powers of tribunals. Section 11(3) reads:

Every...tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (V of 1908), when trying a suit, in respect of the following matters, namely :

(a) enforcing the attendance of any person and examining on oath;

(b) compelling production of documents and material objects;

(c) issuing commissions for the examination of witnesses:

(d) in respect of such other matters as may be prescribed;

and every enquiry or Investigation by a tribunal shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (XLV of 1860).

Section 12 of the Act provides for the duties of conciliation officers, who are to hold conciliation proceedings in the manner prescribed ; and Sub-section (5) of Section 12 provides that, on a consideration of the report of the conciliation officer, If the Government is satisfied that there is a case for reference to the tribunal. It may make such reference and that section provides that where an industrial dispute has been referred to a tribunal for adjudication, It shall hold its proceedings expeditiously and shall, as soon as It is practicable, on the conclusion thereof, submit Its award to the appropriate Government; and Section 16(2) of the Act provides that the award shall be In writing and shall be signed by Its presiding officer; and Section 17 provides for the publication of the award. Section 18(3) lays down that the award of a tribunal shall be binding on all parties to the industrial dispute.

12. It may be seen from the above provisions bearing on the duties and powers of the industrial tribunal that there is nothing clearly specified as to the scope of the investigation to be made by an Industrial tribunal and the grounds on which it could issue an award either confirming the order of the management or setting aside the decision, In respect whereof the reference is made to the tribunal. It is therefore necessary to examine the decisions bearing on the subject. In *Mckenzie and Co. Ltd. Vs. Its Workmen and Others*, the Supreme Court had to consider the scope of enquiry before industrial tribunal if a reference is made by the Government regarding the decision of dismissal of a workman or workmen, and the question that was considered and decided was whether the industrial tribunal could interfere with the finding arrived at the departmental disciplinary proceedings, by disbelieving the evidence of a witness or witnesses examined at such enquiry. The facts leading to the appeal before their lordships in that case rested on a prior dispute between the workmen and the management of the company In consequence whereof the t latter served chargesheets on the workmen calling upon them to submit their explanations. The workmen offered no explanation. An enquiry was then held and the workmen were found guilty of gross misconduct amounting to a major misdemeanour which merited dismissal or termination of the services of the workmen as a result of the enquiry, and it is this termination of the services of these workmen that gave rise to an industrial dispute and a reference was made by the West Bengal Government in regard to all the 64 workmen who were dismissed. The points referred for adjudication included the question whether the dismissal of the workmen mentioned in the attached list was justified, and if not, whether the company should not reinstate them and what compensation should be paid to the workmen for the action taken against them by the company. The matter went up before the Labour Appellate Tribunal which was in existence at that time, who reversed the order of the Industrial tribunal. The appeal by special leave to the Supreme Court was brought against the decision of the Labour Appellate Tribunal, and one of the points that, had to be considered was whether the Labour Appellate Tribunal could not sit in appeal against the managerial enquiry. It was in this connexion that the following observations were made by their lordships of the Supreme Court:

The principles which govern the power of an Industrial tribunal to Interfere with the decision of the employer following an enquiry made by him were laid down by this Court in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, where S.K. Das, J., said at pp. 269-270:

Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited, and when a dispute arises, industrial tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. Incase of dismissal on misconduct, the tribunal does not, however, act, as a court of appeal and substitute its own judgment for that of the management. It will interfere

- (i) when there is want of good faith,
- (ii) when there is victimization or unfair labour practice,
- (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and
- (iv) when on the materials the finding is completely baseless or perverse.

In *Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup*, which was a case u/s 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, this Court held that if it was established that the workmen had resorted to illegal strike, that a fair enquiry into the alleged misconduct and insubordination of the workmen had been held by the management without violating any principles of natural justice and as a result of enquiry the management had found the workmen guilty of misconduct and insubordination with which, they had been charged, and the management had come to a conclusion that continuing the workman in its employ was dangerous in the interest of the company, the tribunal would not interfere with such order.

13. In *Sri Banude Jute Mills v. Amin Das* 1956 II L.L.J. 45 it was held that no appeal lies against the order of an industrial tribunal where the tribunal had examined the question whether the discretion of the employer to dismiss certain workmen was properly exercised, whether the employer was acting bona fide, whether he had resorted to any unfair labour practice or victimization and whether his desire to dismiss the workmen was actuated by any improper motive.

14. It is for the management to determine what constitutes major misconduct within its standing orders sufficient to merit dismissal of a workman, but in determining such misconduct it must have facts upon which to base its conclusions and it must act in good faith without caprice or discrimination and without motive of vindictiveness, intimidation or resorting to unfair labour practice and there must be no infraction of the accepted rules of natural justice. When the management does have facts from which it can conclude misconduct, its judgment cannot be questioned provided the above-mentioned principles are not violated.

15. In *Martin Burn Ltd. Vs. R.N. Banerjee*, at 255 their lordships of the Supreme Court had to examine the limitations of the power of the Labour Appellate Tribunal in interfering with the action taken by the management and in the matter of appreciating the facts before them. The test proposed by their lordships was the determination on the materials available that prima facie case had been made by the management for the termination of the workmen. In that connexion, the following useful observations occur in that case:

A prima facie case does not mean a case proved to the hilt, but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at

the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record.

16. In a subsequent decision reported in *Management of Balipara Tea Estate Vs. Its workmen*, their lordships of the Supreme Court had again to consider the limitations on the powers of the Industrial tribunal In the matter of judging, in the case before them. In that case, one Nandeswar Bora, who was working as a woman mohurir in the employment of the appellant tea estate was responsible for the preparation and maintenance of the leaf weighment book and daily wages book in which certain irregularities were discovered by the auditor; in consequence whereof several excess payments had apparently been made resulting In loss to the company. The company accordingly served a chargesheet on the said Nandeswar Bora calling upon him to explain the circumstances appearing against him and to show cause why he should not be dismissed for misconduct. The said Nandeswar Bora answered the charge by his letter and asked for pardon In the event of any errors having been proved. After this, a regular enquiry into the charges was held in the presence of the said Nandeswar Bora and after he was given an opportunity to explain the circumstances appearing against him, the company dismissed the said Nandeswar Bora In consequence. It is this dismissal that was the subject-matter for reference by the Government of Assam to the industrial tribunal, which made an award directing Nandeswar Bora to be reinstated with all back-wages from the date of dismissal, basing its decision on certain findings arrived at by the tribunal on the evidence, and it was against this award of the tribunal that appeal by special leave was taken to the Supreme Court.

17. In considering the scope of the enquiry made by the tribunal and the limitations on its appreciation of the materials available on record, their lordships made the following observations (p. 249) :

It has been contended on behalf of the appellant, and in our opinion, rightly, that the tribunal has misdirected Itself in so far as it has judged the case against the workman concerned, but it had also laid down a wrong line of approach to the case. The tribunal misdirected itself in so far as it insisted upon conclusive proof of guilt to be adduced by the management in the enquiry before it. It is well settled that a tribunal has to find only whether there was justification for the management to dismiss an employee and whether a case of misconduct had been made out at the inquiry held by it.

18. Dealing with the other merits of the case, their lordships observed (pp. 249-250) :

In this case, the award suffers from the inherent weakness of the approach made by the tribunal in determining the controversy before it. It had not got to decide

for itself whether the charge framed against the workman concerned had been established to its satisfaction; it had only to be satisfied that the management was justified in coming to the conclusion that the charge against the workman was well-founded. If there had been a finding by the tribunal that the management had been actuated by any sinister motives, or had indulged in unfair labour practice, or that the workman had been victimized for any activities of his in connexion with the trade union, it might have had reasons to be critical of the inquiry held by the management. But that is not so on the findings in the award itself.

In view of these considerations, it must be held that the award is invalid and suffers from an inherent infirmity. The appeal 1b, accordingly, allowed, and the award, set aside.

19. Applying these principles to the facts of the present case we have no hesitation in coming to the conclusion that the management in this case had ample justification in coming¹ to the conclusion that the workman Papiiah intentionally and without instructions dismantled more parts from the engine of the car than were necessary for the job entrusted to him. It is also clear from Papiiah's own admission made during the enquiry on 7 February 1956 by the management that he did so at the request of the driver of the car, which obviously implied that he was not instructed to do so by the appellants. He also admitted that he broke a cylinder head bolt and offered no explanation why it should have been broken, except stating that it broke while tightening. He farther admitted that a considerable delay had occurred in the completion of the job entrusted to him, although he pleaded that he was sick for two days, but never informed the management of the sickness. He farther admitted that the job done by him was not satisfactory as on a trial the car was not running properly and some adjustments had to be made. When he was questioned about Mr. D'Cruze's car regarding the reopening of the gear box after completion of the assembling of the engine, he refused to give any answer, and apparently gave impertinent replies. It was in this situation that the management had to make a decision whether the service of Papiiah should be continued to be retained or should be dismissed, and the management felt that not only was Papiiah found to be slack in his work and was not acting according to the instructions given to him by the management which was affecting the goodwill and reputation of the business, but he was also found to be negligent in his work resulting in damage to the parts of the cars entrusted to him, and having regard to the number of complaints from the customers received by the management which were the direct result of the negligent conduct of Papiiah, the management took the decision to dismiss him. It was in determining as to what disciplinary action should be taken against Papiiah, the question of his past conduct came to be considered, and as it was by no means complimentary to Papiiah, an appreciation of the situation was made and the management decided that Papiiah. was guilty of negligent conduct in the discharge of his duties amounting to misconduct, that in consequence the goodwill and reputation of the firm was

suffering and that therefore the management regarding him as no longer fit to be retained in service and accordingly dismissed him.

20. In these circumstances, the industrial tribunal had only to consider whether any principles of natural justice had been violated in passing the dismissal order, or whether there was any want of good faith on the part of the management or any victimization or unfair labour practice on their part, or whether on the materials available the finding is completely baseless or perverse. The industrial tribunal did not come to any finding to this effect in its award, and instead, the tribunal sought to substitute its own decision in the case for that of the management, a course which had been expressly prohibited by the Supreme Court, as seen from the observations quoted above. As none of the grounds which would have justified the industrial tribunal to interfere with the decision of the management has been shown to have existed in this case, the order of the tribunal setting aside the order of the management and directing the reinstatement of the workman, Papiiah, is clearly unsustainable and must necessarily be quashed.

21. Our learned brother, Srinivasachari, J., in dealing with and disposing of the writ petition addressed himself to the consideration of the decision of the industrial tribunal as to whether that decision offended any principles of natural justice or whether it was perverse or unjust. He did not go further and examine whether the decision of the management was in any manner vitiated by a violation of these principles. The tests propounded by their lordships of the Supreme Court were not in respect of the decision of the industrial tribunal, but in respect of the circumstances in which an industrial tribunal could interfere with the decision of the management. The judgment under appeal omitted to apply the principles laid down by the Supreme Court to the consideration of the question in what circumstances the industrial tribunal could interfere with the decision of the management. The only point that was taken into consideration by the learned Judge was one of victimization, although it was observed that interference by the tribunal is warranted not only in cases where victimization would be, but in other cases also. But having made that observation and clarified it subsequently with reference to the decision of the Supreme Court in the Indian Iron and Steel Company, Ltd. v. their workmen 1968 I L.L.J. 260 the learned Judge omitted to apply the principles to the facts of the case before him and determine whether in the light of those observations the industrial tribunal was justified in interfering with the decision of the management. On the other hand, our learned brother proceeded on the assumption that the tribunal could interfere with the decision of the management if it took a different view of the case, as seen from the following observations :

The normal rule is, that if the tribunal comes to the conclusion that the order of dismissal was not justified, reinstatement could be ordered.

22. This is clearly contrary to the view expressed by the Supreme Court in the decisions cited above.

23. The tribunal not having found that any of the grounds on which it could validly interfere as Indicated by the Supreme Court existed in the instant case, the decision of the tribunal interfering with the decision of the management is clearly unsustainable, and would have to be set aside. We are therefore constrained to set aside the judgment of our learned brother Srinivasachari, J., and direct that the writ petition be allowed, and a writ of certiorari be issued quashing the award of the industrial tribunal directing the reinstatement of the workman Papiiah in this case.

24. In the result, we allow the appeal and set aside the judgment In W.P. No. 1091 of 1956 dated 19 December 1958 1959 I L.L.J. 235 and direct that a writ of certiorari be issued quashing the award of the industrial tribunal dated 14 September 1956. In the entire circumstances of the case, we wish to make no order as to costs.