

(1958) 12 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1091 of 1956

Hendricks and Sons

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 19-12-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1959) 1 LLJ 235

Final Decision : Dismissed

Judgement

1. This is an application on behalf of the management of Hendricks & Sons, Secunderabad, for the issue of a writ of certiorari under Art. 226 of the Constitution and praying that the award of the industrial tribunal in Case No. 5 of 1956 before the Industrial Tribunal, Hyderabad, be quashed. There was a reference by the Government of Hyderabad referring an industrial dispute between the workmen of Hendricks & Sons (hereinafter referred to as the concern) and the management thereof and the reference was as to whether the dismissal of one Papiah, one of the workmen in the concern, was justifiable; if not, to what relief he was entitled. The management of the concern issued a show-cause notice to Papiah on 27 January 1956 stating that he was entrusted with a Hindustan car with direct instructions to dismantle the timing-case and head; on inspection at 5-15 p.m. It was found that he had dismantled many unnecessary parts which had no connexion with the job entrusted to him. It was further stated that after the assembling of the head it necessitated the dismantling of the head as one of the head bolts had broken. It was stated in the notice that on account of the careless attitude of the said Papiah towards his work the concern had suffered great loss and inconvenience and that it had also caused delay in the delivery of the car to the customer. Setting out these grounds, Papiah was asked to show cause as to why disciplinary action should not be taken against him for the negligence of duty and misconduct on his part. The employee denied that he had exceeded the instructions given to him for the repair of the car and also denied the allegation that the delay was due to his

negligence. He also refuted the charge of misconduct. Subsequently it would appear that the management issued a notice calling upon Papiiah to present himself before the representative of the management for an enquiry by the said management on 7 February 1956. On 7 February 1956, an enquiry was conducted. This took the form of questions and answers. On 10 February 1956, the management issued a notice terminating the services of Papiiah with effect from 11 February 1956 wherein it was stated that during the enquiry the said employee had admitted almost all the charges against him and taking his past into consideration they were constrained to dismiss him from service. It may be mentioned that as a result of this dismissal of Papiiah, some unrest started among the workmen of the concern and they refused to go to their work till Papiiah was reinstated. The labour officer contacted the workers and the trade union officials, and persuaded the former to resume duty. A meeting was convened on 15 February 1956 to settle the issue. But nothing came out of all these efforts. The workers insisted upon the case being recommended for reference to the industrial tribunal for an award. The Government, therefore, made a reference on 22 June 1956. Before the tribunal, both the management of the concern and the workers filed their statements. Three witnesses were examined on behalf of the workmen and six on behalf of the management. The tribunal by its award, dated 25 September 1956, held that it was inclined to believe that if at all there was negligence on the part of the worker, it was not (?) wilful and negligent with an intention to cause harm to the owner. Being of the opinion that there was no gravity of misconduct as alleged by the management, it held that the dismissal of Papiiah was unjustified. It, therefore, directed that Papiiah the worker be reinstated from the date of his dismissal. It is this award that is being challenged in this writ petition. Learned counsel submitted that the award was liable to be quashed on the simple ground that it was not an award in the strict sense of the term in that the industrial tribunal had not discussed the evidence led by the parties. The further argument was that the industrial tribunal in making the award ignored the material on record and proceeded on more surmises and conjectures. It was also urged that the tribunal held that the dismissal was unjustified; this conclusion could not have been arrived at for the reason that the management had led evidence on the past conduct of the employee and when there was material on record that the past conduct was very objectionable, the tribunal ought to have taken that factor into consideration while ordering reinstatement.

2. This being an application under Art. 226 of the Constitution, the jurisdiction of the High Court is very much limited. Not all matters which could be canvassed before an appellate Court could be urged before this Court in these proceedings. The essential grounds on which the order of a quasi-judicial tribunal could be sought to be quashed are :

- (1) on the ground of there being an error apparent on the face of the record;
- (2) the order being manifestly against the principles of natural justice.

3. Learned counsel pressed before me that the award of the industrial tribunal was vitiated by an error of law as well as of fact. It may be pointed out straightaway that in order that an error of law might form a ground for correction by the High Court, such error must be manifest on the record. But with regard to errors of fact it may now be taken to be settled by the course of decisions and finally settled by the judgment of the Supreme Court in *Nagendranath v. Commissioner of Hills Division* [1958 S.C. 339] that it cannot form a ground for interference. The whole question therefore is as to whether in this particular case it could be said that there has been an error of law manifest on the record. In my Opinion, it could not be said that the tribunal acted against the established procedure or in derogation of any principle of law. With regard to the question as to whether there has been an error of fact this Court would not go into it. The next question is as to whether it could be stated with regard to the award that there has been a violation of the principles of natural justice. In my opinion this objection also cannot be urged with regard to the award, because opportunity was given to both the parties to lead evidence and on an appreciation of the evidence, the tribunal gave its own conclusions. So, the questions that have to be decided fall within a narrow compass, viz., as to whether the management has been able to establish serious misconduct on the part of the employee to justify the dismissal and whether the circumstances of the case warranted an order of reinstatement. By the passing of the Industrial Disputes Act, a machinery has been provided to smoothen out the disputes between the employers and employees. As the preamble would indicate the scope of the Act is wide in its application in bringing within the ambit of the industrial tribunal, the investigation and settlement of disputes in private concerns as well. The object of the Act is primarily to harmonize the relations between the employers and the employees. The industrial tribunal no doubt has all the trappings of a Court. But it does not necessarily follow that the industrial tribunal could decide only strictly according to the general law of the country. As was observed by May, C.J., in the case of *Reg v. Dublin Corporation* [(1878) II L.R. I.R. 371] : "If there be a body empowered by law to enquire into facts, make estimates to impose a rate on a district, it would seem to be that the facts of such a body involving such . . . consequence would be judicial acts." The industrial tribunal, in my opinion, may apply any standard for its decision, such as fairness and reason. Keeping these fundamental principles in view, it has now to be considered as to whether the order of the tribunal was erroneous. A perusal of the award would indicate that while drawing its own inference the tribunal took into consideration the evidence led by the employer with regard to the alleged misconduct of the employee and it has given its reasons as to why it could not be regarded as gross misconduct, for it says that the only Proof that has been led is with regard to the error committed in the repair to the Hindustan car. Learned counsel for the petitioner-concern stressed on the question that this circumstance taken with the past conduct of the employee justified the dismissal of the employee, as the further continuance of the employee was calculated to harm the reputation of the concern. With regard to the past misconduct, the learned counsel elaborated his

argument by saying that evidence of past conduct was a relevant factor to be taken into consideration in such matters. He relied upon the decision in *Buckingham and Carnatic Mills, Ltd. v. Their workers* [1951 II L.L.J. 314]. While considering as to whether the order for reinstatement was justified, the learned Judges observed that the past record of the employee, the nature of his alleged lapse and the grounds on which the order of the management is set aside are relevant factors for consideration. I must straightaway say that in a given case where an employee goes before the industrial tribunal with the complaint that he has been wrongfully dismissed and prays for his reinstatement, the question as to whether it would be reasonable and expedient to grant the prayer for reinstatement would depend on a number of circumstances. Therein the tribunal has to have regard to matters like industrial peace, the interests of the employers as well as the interests of the employee. In such a case no definite rule of law could be laid down, but it would have to be left to the discretion of the deciding authority as to what would be just in the interests of a peaceful settlement of an industrial dispute, which is the object of the Industrial Disputes Act. The cause of the employer is that the workman was guilty of deliberate negligence and had been exhibiting carelessness for some time past which tended to injure the reputation of the concern. The charge which has been extracted already in this order confined itself to the careless attitude of the workman with regard to the repair to the Hindustan car and this was regarded as negligence of duty amounting to misconduct. With regard to the misconduct alleged by the employer, the tribunal, as has already been stated, has given its finding to say that the evidence does not establish serious misconduct. At the most the statements of the witnesses only show that the repairs effected were not satisfactory. I am in agreement with the tribunal that the quantum of evidence in this case is not enough to substantiate the allegation that the action of the respondent was deliberate and wilful and which led to the injuring of the reputation of the concern. Learned counsel urged that even if this particular act did not amount to misconduct, his past conduct was a very relevant factor to be taken into consideration as to whether the dismissal of the employee was justified. It has to be observed in this regard that the charge of the respondent being habitually negligent and reckless has not been made out at all. No doubt witnesses have been examined and their letters produced complaining about the repairs effected. One of the witnesses on behalf of the management has come to speak about the fact that the cars in regard to which complaints were received were entrusted to this particular workman. It is sought to be argued on the basis of the complaints received that there has not been one act of negligence and carelessness on the part of the workman but there have been a series of such acts and the attitude of the workman was clearly one of indiscipline and one that tended to bring down the reputation of the concern. It has to be said that this habitual negligence and deliberate recklessness was not brought home to the workman. It was essential that the employee should have been told about the charge and he be given an opportunity to explain, as otherwise it would amount to his being condemned unheard. I may herein advert to the observations of the

Supreme Court in the case of Laxmi Devi Sugar Mills Vs. Nand Kishore Singh, Their lordships said that an employer cannot justify his action on any ground other than those contained in the chargesheet. Their lordships went to the extent of saying that the employee has not been charged even though such act could be brought home to the employee. As observed above, the charge herein related to the recklessness in the repair to the Hindustan car while the dismissal is sought to be effected on the ground of his past misconduct. In deciding as to whether an employee could be dismissed among the various considerations, past misconduct also would be one of the considerations, there can be no doubt. It is not necessary to go into the various authorities cited by the learned counsel that it would be a relevant factor, in the view that I have taken that the workman had no opportunity to answer the charge. The report of the domestic enquiry, which is marked as Ex. M. 3 and which is in the form of questions and answers, would also indicate that the enquiry was confined to the repair to the Hindustan car and another car of one D'Cruze and there was no interrogation with regard to his negligent and careless acts in the past. An argument was advanced by the learned counsel that the tribunal had not adverted to the evidence on record and in this connexion the decision of the Patna High Court in Superintendent of Collieries v. Deputy Commissioner [1957 Pat. 647] was cited. That was a case where a writ was sought to be issued against the Deputy Commissioner of Hazaribagh. The learned Judges found on a perusal of the records that the authority had proceeded on Purely speculation and had drawn inference from his own imagination. It was under those circumstances that the learned Judges held that the order could not be sustained. I may point out herein that these tribunals are not hampered by the rules of evidence. The Madras High Court in the case of Electro-mechanical Industries v. Industrial Tribunal [1950 L.L.J. 1133] went to the extent of holding that where there was no definite evidence on record the tribunal was entitled to rely upon the data available to it other than the evidence led by the parties. In the instant case it could not be said that the tribunal had drawn on its own imagination or bad proceeded on mere conjectures. It has taken into consideration the long service of the worker and the comparatively small offence alleged against him. On these grounds I do not think that the argument that the tribunal's finding is based on conjectures is sustainable.

4. A point was made that in the award of the tribunal there was no finding of victimization and, therefore, the order of the tribunal interfering with the order of dismissal by the employer was not justified. It may be pointed out that interference by the tribunal is warranted not only in case where victimization is established but in other cases also. It is one of the grounds which would justify interference. The tribunal would also step in where an order of dismissal is found to be mala fide or it finds that there has been a flagrant violation of the principles of natural justice or where it feels that the decision of the management relating to the dismissal is baseless or perverse. The Supreme Court had to consider cases of dismissal of certain employees of the Indian Iron and Steel Company, Ltd., at Burnpur, and one such employee was a nurse in hospital. The charge

against her was that she incited and instigated a sweeper working in the hospital not to do her work. In the domestic enquiry held by the management she was found guilty. On a reference being made to the industrial tribunal of the Industrial dispute, the tribunal held the charge to be baseless and opined that a mountain was made of a molehill. When the question arose as to whether the order of the dismissal could be interfered with by the tribunal, their lordships observed that among other grounds the order being baseless and perverse would be a ground justifying interference on the part of the tribunal. Vide *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, The next question that was argued by the learned counsel for the petitioners was that the tribunal was not justified in directing reinstatement. In so far as this question is concerned, the submission was that the point of view of the employer was not taken into consideration. The power of the tribunal to direct reinstatement was doubted under the English statute but so far as India is concerned, it may now be taken to be settled by the decision of the Federal Court in *Western India Automobile Association v. Industrial Tribunal, Bombay* [1949 L.L.J. 245] that such a power exists. Mahajan, J., as he then was, observed in that case as follows :-

"The relief is not of such an unusual character that it may be wholly ruled out as one of the legal reliefs which the Courts can grant. The relief of reinstatement is on the same footing as the relief of restitution."

5. It, therefore, follows that the reinstatement of an employee has come to be held to be a recognized relief that could be awarded by the industrial tribunal. This power of directing reinstatement which is vested in the tribunal is a discretionary power that has to be exercised on a consideration of the facts and circumstances of the case. There could be no hard-and-fast rule governing the exercise of this power. The learned counsel invited my attention to a decision of the Patna High Court in the case of *Jugal Kishore Bhadani Vs. Labour Commissioner and Others*, The facts therein were that two employees of a firm were discharged from service. They preferred appeals before the Labour Commissioner. The Labour Commissioner held that the discharge orders in regard to these persons were illegal. They held so on the ground that no notice was served on the employees and further that they were not guilty of any misconduct as alleged by the employer. While considering this case, the Labour Commissioner thought that the relationship between the employer and the employee had so much deteriorated that no useful purpose would be served if they were reinstated. He, therefore, instead of passing an order of reinstatement directed the payment of compensation. In the particular circumstances, the learned Judge, who decided the case, observed that the appellate authority had considered that it was not inclined to pass order of reinstatement which ordinarily he could have passed but in order to avoid any future trouble he thought that there would be no useful purpose in forcing the discharged employees on the employer against his will. In the present case there is no material on record to come to the conclusion that the relationship between the employer and the employee had become so deteriorated that it would not be in

the interests of industrial peace to order reinstatement. The normal rule is, that if the tribunal comes to the conclusion that the order of dismissal was not justified, reinstatement would be ordered. In so ordering the tribunal should be actuated by a sense of fairplay taking into consideration the past record of the employees, the nature of his present delinquency and also consideration of discipline, etc. In the instant case no contumacious attitude of the worker in the past has been held to be established by the tribunal. This Court would not be justified in interfering with the finding of fact of the tribunal as was observed by the Supreme Court in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, Learned counsel, in my opinion, has not been able to establish that the reinstatement of the employee would destroy industrial peace. For all these reasons I am of opinion that the writ petition should be dismissed and it is dismissed with costs. Advocate's fee Rs. 100.