

(1965) 09 PAT CK 0012

In the Patna High Court

Case No : Misc. Judicial Case No. 165 of 1962

Hindustan General Electrical Corporation Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-09-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10(1), 15, 2

Citation : AIR 1967 Patna 284

Hon'ble Judges : R.L. Narasimham, C.J;R.J. Bahadur, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh and Bindabashini Prasad Sinha, for the Appellant; Ranen Roy, Radha Raman and Arvind Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an application to quash the order of the Labour Court Ranchi dated the 39th December, 1961, in Reference case No. 3 of 1961, holding the termination of the services of Sri Padma Nabh Nola, respondent No. 3, by the petitioner to be illegal and unjustified and directing his reinstatement with full wages.

2. Respondent No. 3 joined the service of the petitioner as an Assistant Store-keeper on the 2nd August, 1956. On the 24th January 1959 he was called upon to explain certain shortages in the general section of the stores kept in his charge. He submitted his explanation, but that was not found to be satisfactory and then on the 2nd March, 1959 his services were terminated (Annexure A) in pursuance of Clause 11 (b) of the Service Rules prevailing in the petitioner's office The Government of Bihar, on the 5th April. 1961 referred to the Labour Court (see Annexure C) the dispute relating to the question as to whether respondent No. 3 should be reinstated in service or else he should be otherwise compensated. In their order of reference (vide notification of the Department of Labour and Employment No. III/DI-6044/61-L 2203, dated the 5th April. 1961)

the Government stated as follows: "Whereas the Governor of Bihar is of opinion that an industrial dispute exists or is apprehended between the management of Hindustan General Electrical Corporation Ltd. Karampura, (Dhanbad) and their workmen represented by Karampura Workers Union. Karampura (Dhanbad)

3. The Labour Court while holding that Respondent No, 3 was not victimised and that there was no unfair Labour practice never the less held that, though the employer (the petitioner) purported merely to terminate the services of Respondent No. 3, in essence, it was a case of dismissal for misconduct, and that, as admittedly no enquiry was held the order of dismissal could not be sustained.

4. Mr. Balbhadra Prasad Singh on behalf of the petitioner raised the following conditions:

(1) There was no industrial dispute before the Labour Court. This was a simple dispute between an individual workman and the management and the Labour Court had no jurisdiction to decide it.

(2) Once it is held by the Labour Court that there was no mala fides on the part of the employer, nor unfair labour practice, right of the employer to terminate the services of a workman in accordance with the terms of employment, as provided in the rules or in the Standing Orders was not assailable.

5. It is true that originally it was a simple dispute between an individual workman and the employer but the Secretary of the Labour Union gave evidence before the Labour Court to the effect that he referred the dispute between respondent No 3 and the employer to the Labour Officer in the first instance who attempted conciliation which failed. Thereupon the matter was referred to the State Government who referred it to the Labour Court on the ground that an industrial dispute existed or was apprehended. Mr. Balbhadra Prasad Singh argued with considerable ingenuity that the evidence of the Secretary of the Union (Annexure B) did not show that he purported to act as Secretary of the Union and not in his individual capacity and that, consequently the Labour Court was not justified in holding that Labour Union took up the cause of respondent No 3. Apart from the fact that this cannot be an error of law apparent on the face of the record a fair reading of the deposition of the Secretary (Annexure B) would show that whatever he did in this case was on behalf of the Union and not in his individual capacity. Nothing was brought out in his cross examination to support such a view. Moreover it is well known that even an individual dispute between a workman and an employer might have the potentiality of becoming an industrial dispute and if there is an apprehension that such an industrial dispute might exist the Government have jurisdiction to make a reference u/s 10 (1). In the order of reference which I have already quoted the Government had made it clear that in their opinion there was in existence an industrial dispute or else there was an apprehension of the existence of such a dispute. In the circumstances of this case this opinion of the Government must be held to be not

liable to challenge in this application.

6. It is true that the order of termination of service merely purports to terminate the services of respondent No 3 in pursuance of Clause 11 (b) of the service Rules. But, as pointed out by the Supreme Court in *The Chartered Bank, Bombay Vs. The Chartered Bank Employees' Union*, the form in which the order is passed is not decisive because to quote their Lordships at page 448.

"The form of the order of termination is not conclusive of the true nature of the order for it is possible that the form may be merely a camouflage for an order of dismissal for misconduct. It is therefore always open to the tribunal to go behind the form and look at the substance; and if it comes to the conclusion for example that though in form the order amounts to termination simpliciter it really cloaks a dismissal for misconduct it will be open to it to set it aside as a colourable exercise of the power"

The same principle has been reiterated in *The Management of U.B. Dutt and Co. Vs. Workmen of U.B. Dutt and Co.*, and *Assam Oil Co Ltd New Delhi v. its Workmen*. AIR 1900 SC 1264 Here therefore the Tribunal scrutinized the various circumstances under which the termination of service took place and held that the real reason for such termination was the opinion formed by the Management to the effect that respondent No 3. while in charge of the stores of the petitioner could not account for shortages of the stores kept in his charge. He was called upon to explain such shortage, but his explanation was found unsatisfactory. It is true that a regular charge for the purpose of a departmental enquiry was made. But the petitioner's application before the Labour Officer dated the 8th January, 1960, is to the following effect:

"On 24-1-59 he (referring to respondent No. 3) was charge-sheeted for discrepancies found in stores which was under his direct charge the reply submitted by Mr. Nola was found unsatisfactory as the shortages which took place within a fortnight of the last inventory could not be properly explained by him. The Company had to suffer considerable loss due to his inefficiency lack of supervision and disinterestedness in work".

On this material it was open to the Labour Court to hold that, in substance, it was a case of dismissal for misconduct and that, as admittedly no departmental enquiry was held and the rules of natural justice were not followed, the order of termination of service could not be maintained. He held that it was a colourable exercise of the power of terminating the service of the employee. In view of the afore said decisions of the Supreme Court, the Labour Court was justified in coming to such a finding from the materials on record and this court cannot interfere with the same in exercise of its jurisdiction under Articles 226 and 227 of the Constitution. The Labour Court rightly held that it was academic to consider whether the Service Rules of the employer would govern this case or else the Industrial Employment Standing Orders would apply. In either case no workman can be dismissed without being given a reasonable opportunity to show

cause against his dismissal and without holding a departmental enquiry.

7. For these reasons the petition is dismissed with costs. Hearing fee Rs. 100

R.J. Bahadur, J.

8. I agree.