

(1969) 01 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No. 280 of 1965

Hindustan Steel Ltd.

APPELLANT

Vs

A.K. Roy and Others

RESPONDENT

Date of Decision : 27-01-1969

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 15, 25H

Industrial Employment (Standing Orders) Act, 1946 — Section 12A

Citation : AIR 1969 Ori 252

Hon'ble Judges : S. Barman, C.J;B.K. Patra, J

Bench : Division Bench

Advocate : B.B. Rath, for the Appellant; P. Palit, for Opposite Parties (No. 1), for the Respondent

Final Decision : Dismissed

Judgement

Patra, J.—In this application under Articles 226 and 227 of the Constitution, the petitioner M/s. Hindusthan Steel, Limited Rourkela prays for issue of a Writ of Certiorari or any other writ or order quashing the award dated 31st August, 1965 passed by the Presiding Officer, Industrial Tribunal, Bhubaneswar by which the said Tribunal ordered the reinstatement in service of opposite party No. 1 Sri Ajit Kumar Ray with full back wages. In the year 1955, Sri Ajit Kumar Ray was admitted as a Trade Apprentice for the purpose of training by Hindusthan Steel Limited and on successful completion of the three years" period of training he was by letter dated 9-10-1958, informed that having completed his training with effect from 19-9-58, he should enter into an agreement to serve the Company for a period of five years. There is nothing on record to show that Sri Ray ever executed the required bond. He was however appointed as a skilled worker (fitter) with effect from 19-9-58. The order of appointment may be quoted:

MANAGEMENT EX. No. 5

HINDUSTHAN STEEL LIMITED KOURKELA STEEL PLANT ROURKELA: ORISSA.

OFFICE ORDER No, 4044 dated 22-9-1959.

Consequent on the successful completion of training Sri A. K. Ray has been appointed in this Organisation as Skilled Worker (Fitter) on a pay of Rupees 72/- per month in the scale of 60-3-90/-with effect from 19-9-1958. (Forenoon).

2. Provident fund, leave, dearness allowance and other allowance etc., will be regulated, under rules of the Company in force from time to time.

3. He will have to execute a bond to serve the Company for a term of 5 years.

4. The Resident Director has powers to recover from his salary any amount that is due to the Company or Government.

5. On satisfactory completion of three years service from the date of appointment stipulated in para 1 above he will be fixed in the scale of Rs. 80-5-120/-,

6. In any matter not covered by the above terms he will be governed by the relevant regulations and orders of the Company, If any doubt arises as to the correct interpretation of any of these terms or regulations or orders of the Company with regard to any condition of service stated above, the decision of the Company shall be final."

2. On 9th December, 1960 he was served with an order terminating his services which may be quoted:

HINDUSTHAN STEEL LIMITED ROURKELA STEEL PROJECT ROURKELA : ORISSA.

Office order No. 3786 dated 9th December, GO.

The services of Shri Ajit Kumar Ray, Fitter (Passed Out-Trainee), Blast Furnace Department, Rourkela Steel Project, Rourkela, are hereby terminated forthwith. He is entitled to three months pay in lieu of notice.

His name will be removed from the establishment rolls of this project from the date of his release."

3. He was actually relieved from service on the 13th December. 1980. The Rourkela Steel Mazdoor Union which took up the cause of Sri Ray raised an industrial dispute. There was a conciliation proceeding which ended in failure and in due course Government referred to the Industrial Tribunal the dispute; whether the termination of services of Sri A. K. Ray, Fitter (Passed out-trainee) Blast Furnace Department of the Rourkela Steel Project, Rourkela by the Management of Hindusthan Steel Limited, Rourkela, is legal and justified. If not, what relief he is entitled to."

4. After enquiry, the Tribunal held that Shri A. K. Ray was a regular employee and that the termination of his services was not in pursuance of any contractual right but was punitive in nature. He negatived the contention of opposite party No. 1 that he was victimised by the Management for his trade union activities.

But having regard to the other circumstances of the case and the punishment imposed on Sri Ray which the Tribunal considered to be illegal and unjustified he came to the conclusion that the action taken against Sri Ray amounted to victimisation and unfair labour practice and therefore passed the impugned order directing the reinstatement of Sri Ray with full back wages.

5. It is contended by Mr. B. B. Rath appearing for the petitioner Hindusthan Steel Limited that Sri Ray's appointment was made subject to verification of his antecedents and as on necessary verification of the same adverse police reports were received, he was discharged in terms of the contract of service and therefore it being a discharge simpliciter, the Tribunal was wrong in considering the action of the petitioner as punitive in nature. He next contended that the discharge being in accordance with Clause 44 of the Standing Orders adopted by the Company, it was not necessary to resort to any proceedings against Sri Ray. In any case, the petitioner's action being bona fide, the order passed by the petitioner is not liable to be interfered with.

6. There is nothing in the order of appointment of Sri Ray quoted above to indicate that it was being made subject to verification of his antecedents by the Police. Not a single scrap of paper was produced by the Management before the Tribunal to indicate that Ray had at any time been informed that his appointment was a conditional one depending upon the result of verification of antecedents. It is stated by Sri P. B. Kanungo, the Senior Personnel Officer of the petitioner who was examined before the Tribunal that the Management had adopted a policy to verify the character and antecedents of candidates seeking employment under the Hindusthan Steel Limited and there was a Circular in October, 1958 that the services of an employee will be liable for termination on receipt of adverse confidential reports after character verification. No such document has been produced before the Tribunal to support Sri Kanungo's statement. The petitioner also declined to file before the Tribunal the alleged Police report against the petitioner. All that is produced was the letter dated 28th October, 1960 marked "Secret" addressed by the Senior Security Officer to the General Manager which says:

"In enclosing herewith the verification roll of Sri Ajit Kumar Ray along with the enquiry report of Superintendent of Police, Rourkela and the letter No. IV-13-60 (5543) SB. dated 24-10-60 of D. I. G., C. I. D., Orissa, Cuttack, I am to point out that in view of the opinion given by the Police, his services may be terminated.

After actions are taken, the verification roll and other enclosures may please be returned to this office."

The verification report itself was not produced on the ground that it was secret. When on the basis of the report it is sought to discharge an employee from, service, the Management cannot be heard to say that the contents of the report cannot be disclosed on the ground of secrecy. It may be as contended by opposite party No. 1 that the report is based entirely on the trade union activities

of the opposite party in which case the discharge would itself be improper. The learned Tribunal has elaborately discussed this aspect of the case and we entirely agree with his view that even if the Management terminated the services of Shri A. K. Ray, simply on the ground that it received an adverse report against him, the order of such termination of services in the circumstances cannot be treated as legal or justified.

7. Sri Rath next relies on Clause 44 of the Standing Orders, a copy of which had been filed before the Tribunal and is kept in record. Section 3(1) of the Industrial Employment (Standing Orders) Act, 1946 provides that within six months from the date of which the Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment. Sub-section (2) relates to matters which are to be provided for in the Standing Orders, Section 4 prescribes the condition for certification of the Standing Orders and Section 5 says that on receipt of the Draft Standing Orders, the Certifying Officer shall forward a copy thereof to the workmen inviting objections if any which the workmen may desire to make to the draft Standing Orders and that it is only after giving such an opportunity and hearing both the employer and the employees that the Certifying Officer should with or without modification certify the same. Section 6 makes provision for an appeal against the order of the Certifying Officer and Section 7 provides that it is only thereafter that the Standing Orders shall come into operation. It is admitted on behalf of the petitioner that the Standing Orders relating to the petitioner's establishment had been submitted to the Certifying Officer on 1-4-1960 and that the same were certified only in the year 1964. Admittedly, therefore, there were no certified Standing Orders relating to this establishment by 13-12-1960 when the impugned order of removal was passed against Sri Ray. True it is that Clause 44 of the aforesaid Draft Standing Orders provides that excepting as specifically provided in the contract of service, the Management may at any time discharge any employee from service or terminate his services by giving notice or on paying wages in lieu of such notice and it enumerates the period of notice to be given to different categories of employees, the maximum period of notice being three months provided in the case of regular employees. But in view of the fact that this Standing Order was not legally in force by the time Sri Ray was discharged, the Management cannot avail itself of it.

8. It is then contended on behalf of the petitioner that although the Standing Orders were certified only in 1964 yet the Management was following these Standing Orders ever since they were submitted for certification in April 1960 and a reference in this connection was made to Section 12A of the Standing Orders Act. Section 12A provides that notwithstanding anything contained in Sections 3 to 12 for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under the Act come into operation u/s 7 in that establishment, the prescribed model standing orders shall be deemed

to be adopted in that establishment. Section 12A was not in the original Act but was added by Act 39 of 1963. There is nothing in the section to indicate that it was intended to give retrospective effect to this provision. That being so, the petitioner cannot take advantage of Section 12A of the Act. It was then pointed out that in the order of appointment of Sri Ray already quoted it was stated in paragraph 6 that in any matter not covered by the terms mentioned therein, the employee would be governed by the orders and regulations of the Company. But there is nothing to show that the draft Standing orders which had already been sent for certification would govern the employee till such certification was made.

9. Sri Rath then stated that Sri Ray was employed as a Fitter in the Blast Furnace Section which is one of the important sections of the establishment and as the Management received adverse Police reports against the opposite party No. 1, it acted bona fide and in the interest of security of the project discharged him and that as such the action of the petitioner cannot be deemed to be illegal. In support of this contention reliance is placed on a decision of the Supreme Court in *Orissa Cement Ltd. Rajanpur v. Their Workmen* 1960 2 LLJ 91 (SC). In that case a workman was employed as a temporary wireman in the Cement Factory. The Secretary. Licencing Board intimated to the Factory that all electricians and wiremen employed in the factory should be directed to appear in a departmental examination. All the wiremen were given two chances but the wireman in question could not pass. Thereupon, the Company terminated his services although the relevant Electricity Rules did not prohibit employment of a wireman who has failed or who has not passed the wireman permit examination. Their Lordships of the Supreme Court rejected the wireman's contention that the action of the Company was mala fide and held that the Department was fully justified in insisting upon all the wiremen being fully qualified before they were appointed as such and that it is desirable in the public interest that the wireman should be duly qualified and one of the well-recognized methods of testing such qualification is to require the candidate concerned to appear for an examination held in that behalf. It was therefore held that even in the absence of a statutory rule, if the department desired that the Company should appoint a qualified man and the latter complied with the request, the discharge of the wireman in the circumstances was fully justified. It is therefore clear from the facts stated above that there was no dispute at all regarding the circumstances under which the workman was discharged and those circumstances were considered to be sufficient to justify the removal. In the present case, it is not admitted by the opposite party that there was any adverse police report against him. At any rate, the report itself was not produced before the Court to judge whether the infirmities pointed out therein against the opposite party were so serious as to justify his removal. In the *Orissa Cement Case*, the wireman was a temporary hand, whereas, as we would show presently, the opposite party is a regular employee. We therefore feel that the above decision would not justify the stand of the petitioner. In *Dasan v. State of Kerala*, 1964 1 Lab LJ 570 : (AIR 1965 Ker 63) on which the petitioner relies the services of a person who was provisionally

appointed as a peon by the State were terminated because of verification of his character and antecedents through prescribed channels it was found that he was not found suitable for appointment to Government service. Apart from the fact that the appointment itself was provisional, the confidential file relating to the peon was offered for perusal to the Court with a request that the petitioner should not be given access to the same. Although in such circumstances the learned Judges of the High Court of Kerala refused to look into the file, they were satisfied that the discharge of the peon was occasioned due to the adverse Police report. That apart, the appointment of the peon was provisional in nature which completely distinguishes that case from the present one. Another case of Kerala High Court reported in K.M. Sugatha Prasad and Others Vs. State of Kerala and Others, , on which the petitioner relies also relates to the case of discharge of a Government employee who was given provisional appointment pending investigation into his character and antecedents and in whose case the appointing authority not being satisfied with his character and antecedents terminated his services.

10. It is then contended on behalf of the petitioner that Ray himself is a temporary servant as there is nothing on record to show that he was ever made permanent. This contention however cannot be accepted. The Senior Personnel Officer Sri P. B. Kanungo has stated that after completion of his training Sri A. K. Ray was taken as a regular employee and an office order was issued to that effect. Sri Rath states that the expression "regular employee" occurs in para. 3 of the Standing Orders which deals with classification of employees where "regular employee" is defined as one appointed on contract with automatic extension clause. He contends that if the Standing Orders cannot be looked into on the ground that by the time Sri Ray was discharged the Standing orders had not been certified, they cannot also be looked into to determine the meaning of the expression "regular employee". There appears to us to be a fallacy in this argument. It is not the ease of the opposite party that he derived his status from, any provision of the Standing Orders. In fact, it is the evidence of the Personnel Officer that Sri Ray was taken as a regular employee after completion of his training. It is only to understand the meaning of the expression and the sense in which the Management has understood it that one can look into the definition of this expression in the Standing Orders. In any case, this is a question of fact and the learned Tribunal after considering all the circumstances has come to the conclusion that Sri Ray is a regular employee as that expression is defined in the Standing Orders and we see no reason to disturb that finding.

11. Lastly the petitioner relies on the Supreme Court decision in *The Chartered Bank, Bombay Vs. The Chartered Bank Employees' Union*, in support of its contention that even a permanent employee can in certain circumstances be discharged provided the action is bona fide. In that case, the Cash Department of the Chartered Bank was headed by the Chief Cashier under whom a number of Assistant Cashiers were working. The chief cashier alone gave security for the staff working in the Cash Department and hence no individual guarantees or

fidelity bonds were taken from the Assistant Cashiers working in the Cash Department. There was a practice in the Bank and there was also a departmental Circular to the effect that all Assistant Cashiers on duty should remain present at the end of the day when the cash was checked and locked up under the supervision of the Chief Cashier so that any shortage in cash would be easily checked. The Chief Cashier reported to the Management that one of the Assistant Cashiers was leaving the Bank without his permission for some time past before the cash was checked and hence he was unable to guarantee him and unless his services were dispensed with his conduct would affect the security of the Cash Department. The Bank acting on such report and in order to avoid going into the wrongs and rights of the dispute between the Chief Cashier and the Assistant Cashier terminated the services of the Assistant Cashier, who had then put in a service of 22 years, in pursuance of para 522 (1) of the Bank award which more or less corresponds, to para 44 of the Standing Orders in this case. An industrial dispute having been raised, the Industrial Tribunal held that when there are allegations which would amount to misconduct against an employee, the procedure under para 521 of the Award must be followed and not the procedure under para. 522 (1). On ap-peal by the Employer, the Supreme Court held that faced with the report of the Chief Cashier, the Bank had no option but to terminate the services of the Assistant Cashier under para 522 (1) of the Award and that this action was not mala fide. In this view of the matter, the discharge of the Assistant Cashier was upheld. Here again, the circumstances under which the Assistant Cashier had to be discharged are not in controversy and therefore there was sufficient material to come to a conclusion whether the action of the Management was bona fide or not. The law on the subject has been summarised by their Lordships which may be quoted:

"There is no doubt that an employer cannot dispense with the services of a permanent employee by mere notice and claim that the Industrial tribunal has no jurisdiction to inquire into the circumstances in which such termination of service simpliciter took place. Many standing orders have provisions similar to para. 522 (1) of the Bank award and the scope of the power of the employer to act under such provisions has come up for consideration before labour tribunals many a time. In *Buckingham and Carnatic Mills Ltd. v. Their Workers*, 1951 II2 J LJ 314 (LATI-Cal) the Labour Appellate Tribunal had occasion to consider this matter relating to discharge by notice or in lieu thereof by payment of wages for a certain period without assigning any reason. It was of opinion that even in a case of this kind the requirement of bona fides is essential and if the termination of service is a colourable exercise of the power or as a result of victimization or unfair labour practice, the industrial tribunal would have the jurisdiction to intervene and set aside such termination. Further it held that where the termination of service is capricious, arbitrary or unnecessarily harsh on the part of the employer judged by normal standards of a reasonable man, that may be cogent evidence of victimization or unfair labour practice.

This decision correctly lays down the scope of the power of the tribunal to

interfere where service is terminated simpliciter under the provisions of a contract or of standing orders or of some award like the Bank award. In order to judge this, the tribunal will have to go into all the circumstances which led to the termination simpliciter and an employer cannot say that it is not bound to disclose the circumstances before the tribunal. 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 in reality cloaks a dismissal for misconduct, it will be open to it to set it aside as a colourable exercise of the power."

It would be noticed that their Lordships emphasized on the fact that in order to judge the circumstances under which the services of the employee had been terminated, the Tribunal will have to look into all the circumstances which led to the termination and that an employer cannot say that it is not bound to disclose such circumstances to the Tribunal. In this case, the Management having declined to place before the Tribunal the report on the basis of which Sri Ray's services have been terminated, it is no more open to it to contend that its action is bona fide. On a careful consideration of the facts and circumstances of this case we are fully satisfied that the Tribunal has come to the correct conclusion in holding that the termination of the services of Sri Ray is illegal and has to be set aside.

12. It is then submitted on behalf of the petitioner that even if the termination of the services of Sri A. K. Ray is unjustified, it is a fit case in which instead of ordering reinstatement, payment of compensation can be ordered. In cases where it is shown that an industrial employee has been improperly dismissed, as a general rule, he is entitled to claim reinstatement. There may however be cases in which industrial adjudication may take the view that if the case presents certain industrial features, reinstatement might not be granted and compensation might meet the ends of justice. But whether in a particular case the discharged employee is to be reinstated or whether compensation would be adequate relief is a matter for discretion of the Industrial Tribunal and when the Tribunal exercised it in a particular way, it will not be interfered with in appeal unless there are valid and cogent reasons for such interference. On the petitioner's side reference is made to the two oft-quoted decisions of the Supreme Court in *Assam Oil Company Vs. Its Workmen*, and *Management Utkal Machinery Ltd. Vs. Workmen*, Miss Shanti Patnaik, as instances where although removal was held to be unjustified, their Lordships declined to reinstate them but ordered payment of compensation. In *Assam Oil Company Vs. Its Workmen*, it was found that the New Delhi office of the Assam Oil Company where Miss Scott was employed was a very small one with only 3 to 4 employees, that Miss Scott occupied a confidential position with her superior Mr. Gowan who on account of her dereliction of duty on several occasions was thoroughly dissatisfied with her

work. Mr. Gowan had also sworn that he had lost confidence in Miss Scott. These and the fact that subsequent to her removal Miss Scott had been employed elsewhere are the special features which weighed with their Lordships in departing from the normal rule of reinstatement and ordered payment of compensation. The judgment in *Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik*, does not show that the prayer for reinstatement was pressed either before the Tribunal or before the Supreme Court. In fact, the employee Miss Patnaik was unrepresented in the Supreme Court. The entire controversy turned on the question about the legality of the termination of service and quantum of compensation. In the instant case, the Management trained Sri Ray for three years to be a skilled worker at its own cost. There is nothing on record to show that his work as a Fitter was ever found unsatisfactory. There is no plea of any lack of vacancy. The case of the Management throughout being that Sri Ray was not removed for his trade union activities, he cannot also be treated as a potential danger to industrial peace inside the plant. The statement of Sri Ray that ever since the discharge from service, he is unemployed, has not been controverted. Sri Ray has been with the Company since 1955, first as an apprentice for three years and thereafter as a Fitter for two years and there is nothing on record to show that during these five years, his character and conduct were such as to render him unfit for service, because obviously no action for any such lapses had been taken against him during this period. Assuming that the so-called Police report did contain something adverse to Sri Ray, it must necessarily have related to the period prior to 1955, when Sri Ray was just a student. Assuming further that there was something objectionable in his activities then, it is clear that after he joined the Hindusthan Steel, Limited, he turned a new leaf in his career and his conduct during the period of five years he was with the Company is without any blemish. We therefore see no special reason to depart from the normal rule that the employee should be reinstated and to differ from the order of reinstatement passed by the Tribunal.

13. In the result, this application fails and is dismissed with costs. Hearing fee Rs. 200/-.

Barman, C.J.

14. I agree.