

(1968) 12 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 136 of 1964

Hindusthan Steel Ltd.

APPELLANT

Vs

Rourkela Mazdoor Sabha and Others

RESPONDENT

Date of Decision : 12-12-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 15

Citation : AIR 1969 Ori 209 : (1969) 35 CLT 116 : (1970) 2 LLJ 533 : (1969) 2 LLJ 202

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

Bench : Division Bench

Advocate : B.B. Rath, for the Appellant; M.S. Misra, (1), for the Respondent

Final Decision : Partly Allowed

Judgement

Patra, J.—This application under Articles 226 and 227 of the Constitution has been filed by the Hindusthan Steel, Limited, Rourkela Steel Plant praying for issue of a writ of certiorari quashing the order of the Labour Court directing reinstatement with full back wages of B. Sabat, a driver who was dismissed from service by the Management by its order dated 3-7-1962. B. Sabat was appointed as a driver in the Rourkela Steel Plant on a three-year-contract and he joined his duty in the forenoon of 6-1-1961. On 13-2-1962, he was served with a charge-sheet containing the following four charges:

"It has been reported against you as under:

(1) On 5-1-62 while driving vehicle No. ORN-3499 (Pool Jeep) you made an accident with State Transport Bus No. ORN-2123.

(2) On 8-1-62 you made another accident while driving ORN-3497 (Pool Jeep).

(3) On 30-1-62 due to your careless parking of Truck No. ORN-621 another accident occurred with vehicle No. 2212.

(4) On 11-2-62 you left the garage while on duty early.

(vide-Annexure A)"

Shri Sabat was called upon to explain in three days why disciplinary action would not be taken against him for the above incidents. On 15-2-1962, he submitted an explanation pleading not guilty to all the four charges levelled against him (Annexure B). The Management constituted a Committee of Inquiry consisting of Shri Gupta, the Junior Engineer and Sri Patra, the Labour Welfare Officer. The Committee held the inquiry on 7-4-62 and 12-4-62 and submitted its findings to the Senior Deputy General Manager on 23-4-62 (Annexure C). On 31-5-1962, the Senior Deputy General Manager tentatively decided to remove Sri Sabat from service and called upon him to show cause why the proposed penalty should not be inflicted on him (Annexure D). The driver showed cause on 4-6-1962 (Annexure E) and by order dated 3-7-1962 he was dismissed from service with effect from that date. The Rourkela Majdoor Sabha took up the cause of the driver and on being moved by them, the Government by its order dated 30th September, 1963 referred the following dispute to the Labour Court for adjudication.

"Whether dismissal of Sri B. Sabat, Driver, by the Management of Hindusthan Steel, Ltd, Rourkela is legal and/or justified and if not to what relief he is entitled?"

The Labour Court after careful examination of all the circumstances of the case came to the conclusion that the enquiry held by the Management on the allegations against the driver was neither fair nor proper. The Court thereupon considered the evidence laid before it by both parties and finally arrived at the conclusion that none of the charges framed against the driver was established and that consequently the order of dismissal passed against him was not justified. He, therefore, passed an order for reinstatement of the driver with back wages. It is the correctness of this order that is challenged in this writ petition.

2. It is contended at the outset by Sri B. B. Rath appearing for the petitioner that a full and fair enquiry was held by the domestic Tribunal in this case and as such the Labour Court exceeded its jurisdiction in embarking upon a fresh enquiry into the charges. It is well established that in respect of industrial disputes arising from orders passed by the employers terminating the services of their employees, the following principles govern the limits and scope of the exercise of the Industrial Tribunal's jurisdiction in respect of such disputes:

Where an employer serves the relevant charge or charges on his employee and holds a proper and fair enquiry, it is open to him to act upon the report submitted to him by the Enquiry Officer and to dismiss the employee concerned. If the enquiry has been properly held, the order of dismissal passed against the employee as a result of such an enquiry can be challenged if it is shown that the conclusions reached at the departmental enquiry were perverse or the impugned dismissal is vindictive or mala fide, and amounts to an unfair labour practice. In

such an enquiry before the Tribunal, it is not open to the Tribunal to sit in appeal over the findings recorded at the domestic enquiry. When a proper enquiry has been held, it would be open to the Enquiry Officer holding the domestic enquiry to deal with the matter on merits, bona fide and come to his own conclusions. Where, however, it appears that the departmental enquiry held by the employer is not fair in the sense that proper charge had not been served on the employee or proper or full opportunity had not been given to the employee to meet the charge, or the enquiry has been affected by other grave irregularities vitiating it, then the position would be that the Tribunal would be entitled to deal with the merits of the dispute as to the dismissal of the employee for itself. The same result would follow if no enquiry has at all been held. (See *Management of Ritz Theatre (P) Ltd. Vs. Its Workmen*,

An enquiry against an employee cannot be said to have been properly held unless (i) the employee proceeded against has been informed of the charges levelled against him; (ii) witnesses are examined ordinarily in the presence of the employee in respect of the charges; (iii) the employee is given a fair opportunity to cross-examine witnesses; (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes and (v) the Enquiry Officer records his findings with reasons in his report.

3. The Labour Court first proceeded to consider whether the domestic enquiry was fairly conducted and in doing so he noticed several infirmities. He has rightly found that not a single witness was examined on behalf of the Management before the delinquent was subjected to an examination by way of questions and answers. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is sought to be supported. In a similar case where the enquiry against an employee consisted in putting question to each workman in turn and where no witness was examined in support of the charge before the workman was questioned, the Supreme Court in *Meenglas Tea Estate Vs. Its Workmen*, held that the enquiry was vitiated because it was not held in accordance with the principles of natural justice. Again the enquiry Committee utilised the statement of one Bansidhar Jena with regard to the second charge without examining him in the presence of the delinquent and without giving him an opportunity to cross-examine Sri Jena. Even the statement of Sri Jena does not appear to have been shown to the delinquent. Similarly, in regard to the fourth charge, the Enquiry Committee utilised the statement given by one Dr. Agarwal without examining him in the presence of the delinquent and affording him an opportunity to cross-examine him. Similar use also was made of the statement of the Officer-in-charge of Transport Section without examining him and without even showing his statement to the delinquent. The Supreme Court has held in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, that where the enquiring officer based his conclusions against the concerned workman on the report given by other employees behind the back of the concerned workman without giving copies of such report to him and without making them available for cross-

examination at the enquiry, the enquiry must be held to be unfair. Lastly, the Labour Court noticed that the report of the Enquiry Committee submitted to the Management (Annexure C) is only a catalogue of facts or evidence without any inference or finding and that after this report was submitted to the Senior Deputy General Manager, this officer too has not recorded his conclusions on the evidence recorded by the Committee and straightway called upon the delinquent to show cause why he should not be dismissed. As held by the Supreme Court in *Khardah Co. Ltd. Vs. Their Workmen*, this is a serious infirmity in enquiry. This is what their Lordships said-

"If industrial adjudication attaches importance to domestic enquiries and the conclusions reached at the end of such enquiries, that necessarily postulates that the enquiry would be followed by a statement containing the conclusions of the enquiry officer. It may be that the enquiry officer need not write a very long or elaborate report; but since his findings are likely to lead to the dismissal of the employee, it is his duty to record clearly and precisely his conclusions and to indicate briefly his reasons for reaching the said conclusions. Unless such a course is adopted, it would be difficult for the industrial tribunal to decide whether the approach adopted by the enquiry officer was basically erroneous or whether his conclusions were perverse. Even in a case where the enquiry officer himself is the ultimate punishing authority, he must state his reasons for finding the concerned workmen guilty of the charges levelled against him. Failure to record any finding after holding the enquiry would constitute a serious infirmity in the enquiry itself."

In view of the serious infirmities noticed above, the learned Labour Court below was justified in coming to the conclusion that the enquiry conducted by the domestic Tribunal was not fair. The Court thereupon proceeded to consider the evidence placed before it by both parties in respect of the charges framed against the delinquent.

4. We have carefully gone through the findings recorded by the Court below on each of the four charges framed against Sri Sabat. Far from the reasonings and the conclusions being either unreasonable or perverse we are satisfied that the evidence and other materials on record fully justified the conclusion arrived at by the Court below that none of the charges had been established against the driver and that the order dismissing him from service was not justified. The Labour Court was therefore justified in ordering his reinstatement with back wages.

5. The controversy, however, does not end there. In passing the order of reinstatement, the Court below does not appear to have been conscious of the fact that Sri Sabat was on a contract service for three years which period was to terminate on 5-1-1964. The impugned order was passed on 3-6-1964, that is, about five months after the date when the contract period expired. It is therefore, contended on behalf of the petitioner that the order passed by the Court below should be effective till expiry of the contract period, namely, 5-1-64 and should not operate from the day following.

6. In reply thereto Sri S. Misra appearing for the respondent-employee contends that but for the proceedings started against the employee, the latter would have, in usual course, been continued even beyond the period of contract and that therefore the Labour Court was right in the order he passed. It is, however, conceded by him that if at the end of the contract period of three years the Management would not have continued the "employee in service, the latter would not have had any cause of action to complain against the Management. In other words, the employee had no right to continue in service beyond 5-1-1964. In these circumstances, Sri Misra's contention that but for the proceedings the Management might have continued the employee in service and on that basis to force the Management now to take back Sri Sabat into service on paying him back wages from 6-1-64 till the date of reinstatement appears to be completely devoid of any force.

Sri Misra next contends that in certain circumstances, an Industrial Tribunal has the power to substitute a new contract for an existing one in the interest of industrial peace and that therefore the order of the Court below should be construed in that light. In support of his contention, he relied on the following observations of their Lordships of the Supreme Court in *Rohtas Industries Ltd. Vs. Brijnandan Pandey*, :

"There is undoubtedly a distinction between commercial and industrial arbitration. Industrial arbitration may involve the extension of an existing agreement, or the making of a new one, or in general the creation of new obligations or modifications of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements. A Court of law proceeds, on the footing that no power exists in the Courts to make contracts for people, and the parties must make their own contracts. The Courts reach their limit of power when they enforce contracts which the parties have made. An Industrial Tribunal is not so fettered and may create new obligations or modify contracts in the interests of industrial peace. . . ."

Their Lordships, however, added and significantly, that they could not accept the extreme position canvassed before them that-

"An Industrial Tribunal can ignore altogether an existing agreement or existing obligations for no rhyme or reason whatsoever."

The above decision is therefore no authority in support of the extreme position contended for by Sri Misra that the Labour Court was justified in this case in extending the period of contract of service of the employee. Certain other decisions to which our attention was drawn by Sri Misra in support of his contention related to interference by Industrial Tribunals with orders of discharge or dismissal passed by the Management concerned in terms of relevant contracts of service where Courts have held that the contractual power of the employer to discharge employees under the terms of contract can in suitable cases be

questioned by the Tribunal. We are not concerned here with a case of discharge by the employer of the employee. The employee in this case had been employed for a period of three years and at the end of the period, he automatically goes out, unless the Management takes a positive action in extending the period of contract. The Management need not have to pass any specific order to bring about the termination of the services of the employee. In this respect it differs from the case of an employee who has been taken in on probation. The position in law about the employee employed on probation is that he continues as a probationer even after the expiry of the period of probation if at the end of the period his services had either not been terminated or he is confirmed. At the end of the period of probation, the employer can either confirm him or terminate his services. But if no action is taken by the employer by way of confirmation or by way of termination, the employee continues to be in service as a probationer. We are not dealing here with such a case which requires any positive action on the part of the employer to bring about the severance of the status of the employee.

7. An identical question came up for consideration before the Madras High Court in *V.R.M.S. Bus Service Vs. Labour Court and Others*, A workman was entertained in service on his application wherein he requested that he might be employed for a period of eight months. He also agreed therein that the management could terminate his services at any time if they were not satisfied with his work. The workman entered on his duty on 1-9-56. On 16th February, 1957, his services were terminated. The matter in due course was referred to the Labour Court, Coimbatore which by its award dated the 11th December, 1957 directed the workman to be reinstated with back wages. Aggrieved by this order, the Management sought relief by a writ of certiorari. Rajagopala Ayyangar, J, agreed with the Court below that the termination of services of the workman was unjustified and that he would be entitled to back wages, but his Lordship held that the liability to pay wages cannot extend to a period later than 1st May, 1957 which would be eight months from the date on which he was entertained in service. The award of the Tribunal directing payment of wages for any period subsequent to 1st May, 1957 was therefore held to be erroneous and it was held that the only order which the Tribunal Court could pass was to direct payment of wages of the employee up to the 1st May, 1957. We agree, with respect with the view the learned Judge took in that case.

8. In the result, we would allow this application in part. While upholding the order of the Labour Court awarding back wages to the employee for the period commencing from the date of his removal upto and including 5-1-1964. We would quash his order in so far as it orders reinstatement of the employee and payment of back wages to him for any period subsequent to 5-1-1964. In the circumstances, there would be no order for costs.

Barman, C.J.

9. I agree.