
(1964) 08 MP CK 0008
In the Madhya Pradesh High Court

Hukumchand Mills Ltd.

APPELLANT

Vs

Industrial Court and Others

RESPONDENT

Date of Decision : 31-08-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Industrial Relations Act, 1960 — Section 31(3)

Citation : (1966) ILR (MP) 863 : (1966) JLJ 239 : (1966) 2 LLJ 738

Hon'ble Judges : P.V. Dixit, C.J.;V.R. Newaskar, J

Bench : Division Bench

Judgement

V.R. Newaskar, J.—This is a petition Under Articles 226 and 227 of the Constitution for securing the quashing of the order passed by the industrial court.

2. The material facts are that respondent 3, John Randive, was a permanent workman in the electric department of the petitioner-mills. On 17 May 1961 the electrical engineer of the mills Sri Lokesh, who was Randive's superior, ordered him to repair a motor starter which was given to him. Randive refused to do the work on the ground that the said work did not form part of his duties. On hearing the reply a chargesheet was issued to him for his misconduct as contemplated under standing Order 21 (4). The charge was that he had willfully disobeyed the "lawful and reasonable order " of his superior. After the service of the chargesheet a departmental inquiry was held and Randive was found guilty of the aforesaid misconduct. He was consequently ordered to be dismissed by an order dated 22 May 1961. Thereafter the respondent Randive approached the petitioner with a request for the change in pursuance of the provision of Section 31 (3) of the Madhya Pradesh Industrial Relations Act, 1960, but without success. He consequently moved the labour court u/s 31 (3) read with Section 61 of the said Act for his reinstatement and for securing his back-wages. In the petition before the labour court Randive contended that the work of repairing a motor starter was not included amongst his duties, that he had not done that kind of work before and that consequently he had told Sri Lokesh that he was incapable of doing that work. In spite of these facts, it was said, an inquiry

against him was held and he was ordered to be dismissed. The order, according to him, has been issued on the grounds which were not lawful and reasonable and therefore his conduct did not amount to misconduct.

3. In answer to this petition It was replied on behalf of the mills that on 28 June 1958 the management of Hukumchand Mills and the Indore Mills Mazdoor Sangh, which is the representative union of the textile mills at Indore, entered into an agreement in good faith in respect of the wages and the workload of the employees working in the electrical department of the mills. As a result of agreement aforesaid the wages of the employees, including that of respondent 3 Randive of the electrical department, were increased with effect from 1 April 1958 and their workload was also fixed. It was alleged on behalf of the mills that the work of repairing the motor starter forms part of the duties of a wireman and Randive refused to carry out the order given to him by Sri Lokesh to do the work of repairing the motor start. The order given by Sri Lokesh, under the circumstances, was, according to the mills, a lawful and reasonable order. Randive had disobeyed the same. He had consequently been found guilty of misconduct under standing Order 21 (4) and had been dismissed.

4. The labour court, after hearing the case found:

(1) That the agreement dated 1 April 1958, which defined the duties of a wireman as including the repair work of motor starter, was not binding upon Randive as the said agreement had not been registered.

(2) Randive was not aware of the said agreement and had not known that the repair work of motor starter was included amongst his duties and consequently his refusal to do the work could not be said to be wrongful.

(3) Under the circumstances of the case it was the duty of the electrical engineer Sri Lokesh to ascertain from Randive "as to whether he possessed the requisite capacity to do the work of repairing the motor starter which he intended to entrust to him before ordering him to do the work. Since this was not done, mere inability of Randive to carry out the work which he was asked to do, did not constitute wilful disobedience on his part of the order given by his superior. There was, therefore, no misconduct as contemplated under standing Order 21 (4).

5. In view of the aforesaid findings the labour court set aside the order of dismissal and directed reinstatement of Randive and further directed payment to him of all the back-wages from the date of his dismissal to the date of his reinstatement.

6. Against this decision of the labour court a revision petition was submitted on behalf of the mills before the Industrial court, Indore, u/s 61 of the Act. The industrial court, after hearing both the sides, came to the conclusions

(i) that the agreement dated 1 April 1958 between the management of the Hukumchand Mills and the Indore Mill Mazdoor Sangh could not be Ignored and was binding upon Randive and that pursuant to that agreement " the work of

repairing a motor starter fell within his duties;

(ii) the finding of the labour court that Randive had no knowledge of the agreement dated 1 April 1958 on the date of the incident was perverse;

(iii) Sri Lokesh was a superior officer of respondent 3, Randive, and the order given by him to Randive was a lawful order.

The work of the repairing of the motor starter fell within the duties of a wireman and as Randive had been employed as a wire-man it pertained to the character of duties assigned to him and the said work did not involve any risk to his life or limb. The Industrial court, however, found that Randive had not the requisite capacity for repairing the motor starter. The order given by Sri Lokesh, under the circumstances, was not a reasonable order. The disobedience of that order consequently did not constitute misconduct as contemplated under Order 21 (4) of the standing order. It was also held that even on the assumption that the order was lawful and reasonable, the disobedience was not wilful. There were, according to the industrial court, legitimate considerations before Randive which led him to decline to carry out the order of his superior. As a result of these findings the industrial court dismissed the revision petition.

7. Sri Chaphekar for the petitioner contended that on the findings of the learned Judge neither the labour court nor the industrial court were justified in setting aside the order passed in the domestic enquiry. The domestic court found that the respondent had refused to obey the order. This finding was based on his own admission and that he had not even attempted to do the work. Had he complied with the order and was unable to repair the motor starter due to want of adequate knowledge, skill or capacity the matter would have been different. In that case perhaps it could have been said with a certain amount of plausibility that there was no misconduct on his part under standing Order 21 (2) though it could be something else such as inefficiency. The learned Counsel in this connexion referred to the two decisions of the Supreme Court in *Ananda Bazar Patrika v. their employees* 1963 XI L.L.J. 429 at 432 and *Khardah & Co., Ltd. v. its workmen* 1963 XI L.L.J. 452. He further relied upon the Division Bench decision of this Court in *Thakurlal v. Hukumchand Mills, Ltd., Indore* (Miscellaneous Petition No. 40 of 1959, decided on 6 November 1961), and also upon the short note in *Jiyajeerao Cotton Mills v. Ramcharan* 1961 J.L.J. (S.N.) 152.

8. In our opinion the contention raised is well-founded.

9. In *Ananda Bazar Patrika v. their employees* 1963 XI L.L.J. 429 at 432 (vide supra), it was held by their lordships :

The extent of the jurisdiction which the labour court or an industrial tribunal can exercise in dealing with such disputes is well-settled. If the termination of an industrial employee's services has been preceded by a proper domestic enquiry which has been held in accordance with the rules of natural justice and the

conclusions reached at the said enquiry are not perverse, the tribunal is not entitled to consider the propriety or the correctness of the said conclusions. If, on the other hand, in terminating the services of the employee, the management has acted maliciously or vindictively or has been actuated by a desire to punish the employee for his trade union activities, the tribunal would be entitled to give adequate protection to the employee by ordering his reinstatement, or directing in his favour the payment of compensation; but if the enquiry has been proper and the conduct of the management in dismissing the employee is not mala fide, then the tribunal cannot interfere with the conclusions of the enquiry officer or with the orders passed by the management after accepting the said conclusions.

10. In the second case in *Khardah & Co., Ltd, v. its workmen* 1963 XI L.L.J. 452 (vide supra) their lordships reiterated the above view and referred in that connexion to their earlier decision in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, wherein it had been laid down that the industrial tribunal should not sit in appeal over the finding recorded at the said enquiry and should not interfere with the management's right to dismiss a workman who is found guilty of misconduct. They observed that:

The enquiry officer (in the domestic enquiry) need not write a very long and 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 reason 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.

It was further added by them:

It is well-settled that if the enquiry is held to be unfair, the employer can lead evidence before the tribunal and justify his action, but in such a case, the question as to whether dismissal of the employee is justified or not, would be open before the tribunal and the tribunal will consider the merits of the dispute and come to its own conclusion without having any regard for the view taken by the management.

11. It is clear from these decisions that where the termination of an industrial employee's services has been preceded by a proper domestic enquiry, which has been held in accordance with the rules of natural justice, and the conclusions reached at the said enquiry are not perverse nor is it established that the management has acted maliciously or vindictively or has been actuated by a desire to punish the employee for his trade union activities, the tribunal is not entitled to consider the propriety or the correctness of the said conclusions.

12. Bearing the aforesaid principles in mind let us examine whether the industrial court in this case has proceeded rightly in exercise of its jurisdiction.

13. Now, the stand taken by the respondent at the domestic enquiry was that he

would not do the work as it did not fall within his duties. He tried to reinforce this stand by saying that he was not asked to do that kind of job in the past. It was explained to him that the work fell within the scope of duties of a wireman, to which class he belonged, under the agreement reached between the mills and the representative union. He, however, refused to carry out the order. There was a clear admission of this at the domestic enquiry that he had not even attempted to do the work and had failed. The sole question for consideration at the domestic enquiry was whether his refusal was justified because the work did not fall within his legitimate duties. The question, whether he had requisite capacity or ability to do the work or not was not raised at the domestic enquiry. Neither the labour court nor the industrial court was, therefore, justified in considering the question as to whether he had the requisite capacity to do the work which on their findings fell within the scope of his duties and to set aside the order passed as a result of the enquiry by the mills. They were not justified in permitting the respondent to raise a new question of fact which had not been raised before the mills authorities at the time of domestic enquiry. That enquiry was not shown to be unfair or against the principles of natural justice. The respondent, Randive, was examined as a witness as also Sri Lokesh. The only witness offered by Randive was also examined.

14. Moreover, it was not shown that there was want of good faith or basic error on the part of the enquiry officer or the management was actuated by a desire to victimise the respondent for his trade union activities.

15. It was a simple case of a worker refusing to do the work falling within the scope of his duties without even attempting to do it on the sole ground that he had not been asked to do that kind of work in the past.

16. The order of Sri Lokesh asking the respondent to repair a motor starter, under the circumstances, cannot be said to be unreasonable or unlawful.

17. The respondent was explained that the work fell within the scope of his duties. He still persisted in his refusal and did not care even to attempt to do it. There was consequently wilful disobedience on his part and his misconduct fell under 01. 21 (4) of the standing order.

18. The labour court as well as the industrial court were consequently not justified in interfering with the order passed in the domestic enquiry directing dismissal of the respondent. The decision of the labour court as well as that of the industrial court are, therefore, hereby quashed.

19. The petitioner is entitled to costs of this petition from the opposite side. Counsel's fee shall be taxed at Rs. 50.