
(1962) 02 PAT CK 0005

In the Patna High Court

Case No : Misc. Judicial Case No. 547 of 1961

Hurduttroy Jute Mills Private Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-02-1962

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 10, 33, 33A

Citation : AIR 1962 Patna 365 : (1962) 5 FLR 409 : (1962) 2 LLJ 387

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : A.B.N. Sinha and S.B. Sanyal, for the Appellant; Addl. Standing Counsel and H.R. Das, for Dy. Registrar Guardian, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the petitioner is in charge of the management of a jute factory known as Rai Bahadur Hurduttroy Mortal Jute Mills in the town of Katihar. In the course of hearing of an adjudication matter in Reference Case No. 7 of 1958 before the Industrial Tribunal, Bihar, the petitioner dismissed its workmen, respondents 3 to 13, for various acts of misconduct, and thereafter filed applications before the Tribunal under the proviso to Section 33(2)(b) of the Industrial Disputes Act for approval of the action taken by it. The applications were rejected by the Industrial Tribunal, after which the petitioner reinstated the workman and allowed them to resume their duties in the jute mills. A few days after-wards the petitioner terminated the services of the eleven workmen in accordance with Clause 14 (a) of the Certified Standing Orders which reads as follows :

"14. be given either by the employer or by the workman for the periods noted below :

In the case of monthly-paid permanent workmen. probationers and apprentices, one month's notice shall be necessary. In the case of permanent workmen,

probationers and apprentice paid on any other basis, two weeks" notice shall be necessary. In the case of badli, whose period of employment for the time being has exceeded fourteen days continuously, seven days" notice shall be necessary; if the unexpired period of the present employment of a badli be less than seven days, the notice shall be for such unexpired period only. It will be optional for the employer to pay the wages for the notice period in lieu of notice. No notice shall be necessary in case of temporary or casual workmen."

Respondents 3 and 5 accepted the termination of their services as final and received final payment of their dues, but the other respondents filed complaints u/s 33A of the Industrial Disputes Act against the action of the petitioner. These applications were dismissed by the Industrial Tribunal on the 28th November, 1959, and 15th December, 1959, and the awards were published in the Bihar Gazette on the 30th December, 1959. Sometime afterwards, on the 14th September, 1960, the Government of Bihar made a reference u/s 10 of the industrial Disputes Act with regard to the justification of the termination of the services of respondents 3 to 13. The industrial Tribunal gave an award on the 11th May, 1961, holding that there was no justification for termination of the services of respondents 3 to 13 and they should be reinstated by the petitioner in its employment.

2. The petitioner has now obtained a rule from the High Court calling upon the respondent to show cause why the award of the Industrial Tribunal should not be Set aside by the High Court under Article 227 of the Constitution. Cause has been shown by the Additional Standing counsel on behalf of respondents 1 and 2 to whom notice of the rule was ordered to be given.

3. On behalf of respondent no. 8 and respondent no. 10 learned Counsel submitted that he win not oppose the application. There is no appearance on behalf of respondents 3 to 7, 9. 11 to 13 and 14.

4. The main contention put forward on behalf of the petitioner is that the award of the industrial Tribunal is erroneous in law because the petitioner can legally terminate the services" of respondents 3 to 13 in exercise of the power under Clause 14 (a) of the Certified Standing Orders. It was also submitted that there was no material to support the finding of the Industrial Tribunal that the action of the petitioner terminating the services of respondents 3 to 13 was mala fide. It was conceded that the exercise of the power under Clause 14 (a) by the petitioner may have the effect of circumventing indirectly the order of the Industrial Court in not approving the previous action by the petitioner dismissing respondents 3 to 13 for misconduct. But that cannot be a valid reason for finding that the exercise of the power under Clause 14 (a) of the Certified Standing Orders was a mala fide exercise of power.

In our opinion the argument of learned Conusel for the petitioner is well founded and must be accepted as correct. The industrial Tribunal was not correct in holding that merely because the employees were dismissed at a previous point of

time and their dismissal was set aside and they were reinstated the action of the petitioner in taking recourse to Clause 14 (a) of the Certified Standing Orders is mala fide in character. It is not correct to say that where an employee has been dismissed at a prior time but the dismissal has been set aside and he has been reinstated his services cannot be terminated again by resort to a term in the contract of employment. In our opinion the right of an employer to enforce a term in a contract is not necessarily taken away because the employer had taken action at a prior time to dismiss the employee for misconduct. The view we have expressed is borne out by a decision of the Madras High Court in, *The Management of "Tamil Nadu" Madurai Vs. Working Journalists of Tamil Nadu and Others*, , where it was pointed out by Balkrishna Ayyar, J., that items 8 and 9 of the Schedule to the Industrial Employment (Standing Orders) Act make a distinction between termination of employment by the issue of notice and dismissal for misconduct, and it was, therefore, open to the employer to terminate the services of a workman by giving him proper notice by virtue of the contract of employment. It was observed by the learned Judge in that case that a case of this description will not be a case of dismissal which would give the Labour Court jurisdiction to interfere.

We are also of opinion that in the present case there is no material to support the finding of the Industrial Tribunal that the action taken by the petitioner in discharging respondents 3 to 13 was mala fide. It follows, therefore, that the industrial Tribunal committed an error of law in holding that the termination of the services of respondents 3 to 13 by the petitioner was not justified in terms of Clause 14 (a) of the Certified Standing Orders.

5. For these reasons we hold that the award of the Industrial Tribunal dated the 11th May, 1961, is vitiated by a manifest error of law, and by virtue of the power conferred upon us under Article 227 of the Constitution we set aside that award. We accordingly allow this application, but there will be no order as to costs.