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(1970) 11 PAT CK 0003

In the Patna High Court

Case No : C.W.J.C. No. 1574 of 1970

Indian Explosives Limited — APPELLANT

Vs

The Presiding Officer, Labour Court and Another — RESPONDENT

Date of Decision : 16-11-1970

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 33, 33(2)(b)

Citation : (1971) PLJR 145

Hon'ble Judges : S.N.P. Singh, J;Kanhaiyaji, J

Bench : Division Bench

Advocate : K.D. Chatterji and Bindhbashini Prasad Sinha, for the Appellant; Radha Raman, Man Mohan, D.N. Pandey, J.P. Singh and Dinesh Chandra Sinha, for the Respondent

Final Decision : Allowed

Judgement

S.N.P. Singh, J.—In this application under Articles 226 and 227 of the Constitution of India the petitioner has challenged the validity of the order dated the 25th of July, 1970, passed by the Presiding Officer, Labour Court, Patna, in Miscellaneous Case No. 161/66/67/67, u/s 33(2)(b) of the Industrial Disputes Act. The petitioner is a company incorporated under the Indian Companies Act, 1913 (hereinafter to be called "the Petitioner Company") and it carries on the business, inter alia, of manufacture and sale of explosives and has a factory at Gomia in the district of Hazaribagh. The terms and conditions of service of the workmen are governed by the Standing Orders duly certified under the Industrial Employment (Standing Orders) Act, 1946, a true copy of which has been made Annexure ''1'' to the application. Surendra Pratap Rana (respondent no. 2) was in the employment of the Petitioner Company as a Junior Chemist in the Research Department of the factory at Gomia. As alleged by the Petitioner Company, on the 18th of August, 1966, respondent no. 2 assaulted another Junior Chemist named Awadhesh Kumar Chaudhury whereupon an order of suspension-cum-charge sheet was served upon respondent no. 2. A true copy of the said order

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has been made Annexure ''2'' to the application. On the 21st of August, 1966, respondent no. 2 furnished his explanation in writing. A true copy of the application has been made Annexure ''3'' to the application. Subsequently an enquiry was instituted as required by the Standing Orders of the Petitioner Company in respect of the charges set out in Annexure 2 and the said enquiry was conducted by one Shri W.E. Machado, Chief Superintendent, Detonators Department of the Petitioner Company. The Enquiry Officer found respondent no. 2 guilty of the charges framed against him and submitted his report dated the 1st of September, 1966, to the Petitioner Company. A true copy of the report has been marked as Annexure ''4'' to the application. The Technical Director and Works Manager of the Petitioner Company, who was the appointing authority of respondent no. 2, after considering the report of the Enquiry Officer, passed an order of dismissal dated the 4th of October, 1966. By the said order respondent no. 2 was also offered one month''s wages. A true copy of the order has been made Annexure ''5'' to the application. As a reference u/s 10 of the Industrial Disputes Act was pending before the Industrial Tribunal, Bihar, at the time of the dismissal of respondent no. 2, an application under the proviso to Sub-section (2) of Section 33 of the Industrial Disputes Act for approval of order of dismissal was made by the Petitioner Company. A true copy of the said application has been made Annexure ''6'' to the application. That application was transferred to the Labour Court, Patna (respondent no. 1). After hearing the parties, the Presiding Officer of the Labour Court passed the impugned order dated the 25th of July, 1970, refusing the prayer of the Petitioner Company for approval of the order of dismissal passed against respondent no. 2. A true copy of the said order has been made Annexure ''7'' to the application. The Petitioner Company then filed this writ application in this Court praying for a writ of certiorari for quashing the order of the Presiding Officer of the Labour Court.

2. The charge which was framed against respondent no. 2 reads as follows:

On 18. 8.1966 at about 11.00 a.m. while you were on duty you assaulted Sri Awadhesh Kumar Choudhury, Junior Chemist, who was also on his duty, in the Raw Material Analysis Laboratory in the Fuse Plant premises of our Factory.

It appears from the enquiry report (Annexure 4) that four witnesses deposed before the Enquiry Officer in support of the alleged incident. The Enquiry Officer on the basis of the evidence of those witnesses came to the finding that Mr. Rana hit Mr. A.K. Chaudhury without any provocation. It appears that the injuries of Mr. A.K. Chaudhury, had been examined by one Dr. B.D. Sinha, Medical Officer of the factory of the Petitioner Company. The Enquiry Officer had recorded the evidence of Dr. B.D. Sinha, which was marked as Exhibit 3 by the Labour Court. The labour Court upon a consideration of the evidence of Dr. Sinha took the view that the Enquiry Officer ignored important evidence which was before him. It further expressed the view that the enquiry report is not a well reasoned one. The Labour Court recorded its own finding by holding that there was a mere quarrel between Mr. S.P. Rana and Mr. A.K. Chaudhury and if any offence was

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committed at all by Mr. S.P. Rana it was a misdemeanour as provided in Clause 27 of the Standing Orders of the Petitioner Company for which the only punishment was warning, fine or suspension. Ultimately the Labour Court held that no reasonable person could have arrived at the conclusion at which the Enquiry Officer arrived in the instant case and accordingly the prayer of the Petitioner Company for approval of the order of dismissal passed against respondent no. 2 was refused.

3. It may be stated here that according to the Petitioner Company the action of respondent no. 2 in assaulting Mr. A.K. Chaudhury was an act of mis-conduct within the meaning of Clauses 28(4), 28(8) and 28(12) of the Standing Orders of the Petitioner Company. The Labour Court in Paragraph 8 of its order considered the question whether the offence of assaulting Mr. A.K. Chaudhury by Mr. S.P. Rana constituted an act of misconduct under Clauses 28(4), 28(8) and 28(12) of the Standing Orders. In the opinion of the Labour Court, an offence of mere assault does not come within any of the above three clauses and as such it did not constitute an act of misconduct.

4. Mr. K.D. Chatterji, learned counsel appealing for Petitioner Company, raised two contentions. In the first place, he submitted that the Labour Court has exceeded its jurisdiction in reversing the finding of the Enquiry Officer which is based on the evidence of four eye-witnesses to the incident. Secondly he submitted that the Labour Court erred in law in holding that the act of assault by Mr. Rana on Mr. Chaudhury was not an act of misconduct within the meaning of Clauses 28(4), 28(8) and 28(12) of the Standing Orders.

5. In the case of (1) The Lord Krishna Textile Mills Vs. Its Workmen, the nature and extent of enquiry permissible u/s 33(2)(b) of the Industrial Disputes Act was considered and it was observed as follows:

In view of the limited nature and extent of the enquiry permissible u/s 33(2)(b) all that the authority can do in dealing with an employer''s application is to consider whether a prima fade case for according approval is made out by him or not. If before dismissing an employee the employer has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribed by Section 33(2)(b) and the proviso are satisfied or not. Do the Standing Orders justify the order of dismissal? Has an enquiry been held as provided by the Standing Orders? Have the wages for the month been paid as required by the proviso and, has an application been made as prescribed by the proviso?

It was further observed therein as follows:

It is well known that the question about the adequacy of evidence or its sufficiency or its satisfactory character can be raised in a court of facts and may fall to be considered by an appellate court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the court is limited

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as u/s 33(2)(b). It is conceivable that even in holding an enquiry u/s 33(2)(b) if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense whatever only in such a case it may be entitled to consider whether approval should be accorded to the employer or not; but it is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence.

6. In the case of (2) Central Bank of India Ltd. Vs. Prakash Chand Jain, it was held by the Supreme Court that there are two cases where the findings of a domestic tribunal like the Enquiry Officer dealing with disciplinary proceedings against a workman can be interfered with, and these two are cases in which the findings are not based on legal evidence or are such as no reasonable person could have arrived at on the basis of the material before the Tribunal. In each of these cases, the findings are treated as perverse. According to the finding of the Tribunal, Mr. S.P. Rana had been informed of the charge levelled against him; the witnesses were examined in his presence in respect of the charge and he was given a fair opportunity to cross-examine those witnesses and was further given a fair opportunity to examine his witnesses including himself in his defence. As I have already stated, four witnesses deposed before the Enquiry Officer in support of the alleged incident and the Enquiry Officer on the basis of the evidence of those witnesses came to the finding that Mr. Rana hit Mr. Chaudhury without any provocation. As the finding of the Enquiry Officer is based on the direct evidence of four witnesses, the view of the Labour Court that there was no legal evidence in support of the finding and on that ground the order is perverse is manifestly wrong. In the concluding paragraph of its order, the Labour Court has expressed the view that no reasonable person could have arrived at the conclusion at which the Enquiry Officer arrived in the case. It was rightly contended by Mr. K.D. Chatterji that no cogent ground has been given by the Labour Court for taking such a view. In Paragraph 7 of its order, the Labour Court, while considering the evidence of Dr. B.D. Sinha observed as follows:

.....from the evidence of Dr. B.D. Sinha it appears that there was an abrasion on the medial side of left thigh, size 2" X 1/8" superficial skin, two linear scratches on left side of the neck below the left ear, one was 2 cm. and the other 2.5 cm. in length and redness around the left eye. As regards the injury of the abrasion the statement of Dr. B.D. Sinha before the Enquiry Officer was that this was inflicted by small sharp or blunt articles. As regards the injuries below the left ear, on the back, and the redness around the eye, the statement of Dr. B.D. Sinha is that they could be self inflicted. It is nowhere the case of the complainant Sri A.K. Chaudhury that Sri S.P. Rana had any sharp or blunt articles in his hand at the time of assaulting him. Sri A.K. Chaudhury clearly stated before the Enquiry Officer that Sri S.P. Rana had beaten him with hands and the injuries were above shoulders. As regards the scratch, his statement was that injury might be the result of his hitting against the door or a table or some other thing nearby. As regards redness near the left eye, the statement of Sri A.K.

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Chaudhury at page 66 of Ext. 3 is that Sri S.P. Rana had hit him with his fist to his eye. Curiously enough the Doctor does not say of any injury caused by fist.

The Labour Court further observed as follows:

The statement of Sri A.K. Chaudhury is that during assault his shirt was torn and that he had showed this to Mr. M. Rama Rao who had gone to the place of occurrence after the alleged assault. Mr. Rama Rao was also examined before the Enquiry Officer and his statement at page 50 of Ext. 3 was that Sri. A.K. Chaudhury had not shown his torn shirt to him. Under such circumstances it can be safely held that the Enquiry Officer lost sight of such important evidence as discussed above which were before him.

In my opinion, from the above observation of the Labour Court it is clear that the Labour Court has given a wrong approach to the whole matter and has considered the evidence as an appellate court which it was not legally entitled to do. On the basis of the medical evidence discussed by the Labour Court, there was no justification for ignoring the direct evidence of the four witnesses. Out of them, three deposed on the point of assault by Mr. Rana to Mr. Chaudhury. Apart from that, it cannot be said, in my opinion, that the medical evidence, as pointed out by the Labour Court, is inconsistent with the case of the complainant that Mr. S.P. Rana had beaten him with hands and the injuries were above shoulders. The Labour Court has attached weight to the statement of Dr. B.D. Sinha to the effect that the injuries below the left ear, on the neck and the redness around the eye could be self-inflicted. It is a common experience that in case of minor injuries, which are not found on the vital parts of the body of a person, the doctor when questioned gives the opinion that such injuries can be self-inflicted. But a court of law does not come to the conclusion that the minor injuries are self-inflicted merely on the basis of the opinion of the Doctor. The Labour Court has not given adequate reason for doubting the statement of Mr. A.K. Chaudhury that the scratch might be the result of his hitting against the door or a table or some other thing and the redness near the left eye was due to fist blow given by Mr. S.P. Rana. But the Labour Court has doubted the statement of Mr. Chaudhury to the effect that the redness in his left eye was caused because of the fist blow given by Mr. Rana merely because the Doctor did not say that any injury was caused by fist. Has the Doctor stated positively that the redness which was found near the left eye was not possible by a fist, there might have been some justification for doubting the statement of Mr. Choudhury. But since the Doctor did not give any opinion whatsoever there was no justification for doubting the statement of Mr. Chaudhury. The contradiction which has been pointed out between the statement of Mr. Chaudhury and that of Mr. Rama Rao on the point whether the torn shirt was shown to the latter was also a matter of minor detail and as such no weight should have been attached by the Labour Court to such a minor contradiction.

7. For the foregoing reasons I am of the opinion that the Labour Court was not justified in holding that the Enquiry Officer has lost sight of any important

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evidence. The Labour Court was also not justified in taking the view that no reasonable person could have arrived at the conclusion at which the Enquiry Officer did in the case. It must therefore, be upheld that the Labour Court has exceeded its jurisdiction in reversing the finding of the Enquiry Officer which is based on the evidence of four eye-witnesses to the incident.

8. The next point which falls for consideration is as to whether the act of assault by Mr. Rana to Mr. Chaudhury was a mere misdemeanour or a mis-conduct as provided in the Standing Orders of the Petitioner Company. Clause 27 of the Standing Orders specifies acts and omissions which would be treated as "misdemeanours" whereas Clause 28 of the Standing Orders specifies acts and omissions which would constitute "mis-conduct". Under Clause 27(e) "quarrelling" is misdemeanour for which suspension, fine or warning is the prescribed punishment. In the Oxford Dictionary the word "quarrel" has been given the meaning "violent contention or altercation, rupture of friendly relations." Therefore, when workman assaults another workman it will not be a mere act of quarrel and as such it cannot be treated as misdemeanour. Mr. Radha Raman, appearing for respondent no. 2 in support of his contention that the word "quarrel" is comprehensive to include assault, relied on a quotation given in Stroud''s Judicial Dictionary, Third Edition. There under the heading "Quarrels" there is a quotation which reads thus:--

As to this word (quarrels), it is to be known that quarrels extend not only to actions as well real as personal, as it is held in 9 E. 44a; but also to causes of actions and suits, as it is held in 39 Hen. 6, 9b. So that, by releases of all ''quarrels'', not only actions depending in suit, but causes of action and suit also are released....And this word quarrels is derived a querendo, unde etiam querons, who is the plaintiff; and quarrels, controversies, and debates, are synonime, and of one and the same signification (Altham''s case, 8 Rep. 153 a 153 b).

In my opinion, there is nothing in the above quotation to support the contention of Mr. Radha Raman. The ordinary dictionary meaning of the word "quarrel" must be given and it must, therefore, be held that an act of assault does not come within the meaning of the word "quarrel". As already stated, according to the Petitioner Company, the act of Mr. Rana in assaulting Mr. A.K. Chaudhury was a misconduct within the meaning of Clauses 28(4), 28(8) and 28(12) of the Standing Orders of the Petitioner Company. As specified in Clause 28(4), a conduct which endangers the lives and safety of other employees is misconduct. The mere act of assault by Mr. Rana to Mr. Chaudhury was not such a conduct which endangered the lives and safety of other employees of the Petitioner Company. The Labour Court was, therefore, justified in holding that the act of Mr. Rana did not constitute misconduct under Clause 28(4) of the Standing Orders. As provided in Clause 28(12) of the Standing Orders, interference with the work of other employees is a misconduct. Though some interference with the work of other employees might have been caused for some time because of the act of

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assault by Mr. Rana to Mr. Chaudhury, Mr. Rana had no intention to interfere with the work of other employees and as such his act would not constitute misconduct under Clause 28(12). As provided under Clause 28(8) of the Standing Orders, riotous or disorderly behavior is a mis-conduct. Though the act of assault by Mr. Rana to Mr. Chaudhury may not be said to be a riotous behavior, it was certainly a disorderly behavior and as such his act constituted misconduct within the meaning of Clause 28(8) of the Standing Orders. The Labour Court, therefore, was not justified in holding that the act of assault did not constitute misconduct as specified in Clause 28 of the Standing Orders. The second contention raised by Mr. K.D. Chatterji must, therefore, also be upheld.

9. It appears that Mr. S.P. Rana (respondent no. 2) examined himself as a witness before the Labour Court. A copy of his deposition before the Labour Court has been made Annexure F to his counter-affidavit. Mr. Radha Raman contended before us that the Labour Court relying on the statement of respondent no. 2 has recorded the finding that there was a mere quarrel. In support of his contention that the Labour Court has jurisdiction to take evidence and to arrive at a finding of its own relied on the case of (2) Bharat Sugar Mills Ltd. Vs. Shri Jai Singh and Others, . In that case it was observed as follows:

When an application for permission for dismissal is made on the allegation that the workman has been guilty of some misconduct for which the management considers dismissal the appropriate punishment the Tribunal has to satisfy itself that there is a prima facie case for such dismissal. Where there has been a proper enquiry by the management itself the Tribunal, it has been settled by a number of decisions of this Court, has to accept the findings arrived at in that enquiry unless it is perverse and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty or unfair labour practice or is acting mala fide. But the mere fact that no enquiry has been held or that the enquiry has not been properly conducted cannot absolve the Tribunal of its duty to decide whether the case that the workman has been guilty of the alleged misconduct has been made out. The proper way for performing this duty where there has not been a proper enquiry by the management is for the Tribunal to take evidence of such evidence is adduced before the Tribunal the management is deprived of the benefit of having the findings of the domestic tribunal being accepted as prima facie proof of the alleged misconduct unless the finding is perverse and has to prove to the satisfaction of the Tribunal itself that the workman was guilty of the alleged misconduct.

In the instant case the Labour Court has not taken evidence of both sides in respect of the alleged misconduct on the ground that the enquiry was not properly conducted by the Enquiry Officer, There is also nothing in the order of the Labour Court to indicate that it has recorded its finding on the basis of the statement of respondent no. 2 (Annexure F to the counter-affidavit). The contention of Mr. Radha Raman, therefore, must be rejected.

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As both the contentions raised on behalf of the Petitioner Company have been upheld, this application is allowed, the order of the Presiding Officer, Labour Court (Annexure 7 to the application) is quashed by a writ of certiorari and it is directed that a writ of mandamus be issued on the Presiding Officer, Labour Court, Patna (respondent no. 1 to the application) to accord approval of the order of dismissal passed against respondent no. 2 by the Petitioner Company u/s 33(2)(b) of the Industrial Disputes Act. In the circumstances, there will be no order as to costs.

Kanhaiyaji, J.

I agree

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