

(1968) 11 PAT CK 0014

In the Patna High Court

Case No : C.R. No. 832 of 1967 with C.W.J.C. 313 of 1968

Indian Tube Company Ltd.

APPELLANT

Vs

Pratap Mishra

RESPONDENT

Date of Decision : 27-11-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227

Citation : (1969) 17 BLJR 589 : (1970) 1 LLJ 322

Hon'ble Judges : S. Wasiuddin, J;N.L. Untwalia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.L. Untwalia, J.—This civil revision u/s 115 of the CPC as also the writ application under Articles 226 and 227 of the Constitution are directed from the same order dated 3-5-1967 of Shri T.P. Choudhury, Presiding Officer, Labour Court, Ranchi in B.S. Case No. 32 of 1965. As sometimes a doubt is entertained as to whether the Labour Court acting as an Authority u/s 26 of the Bihar Shops and Establishments Act, 1953-Bihar Act 8 of 1954 (hereinafter called the Act), is a court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, as a matter of abundant precaution the writ application has also been filed. A similar doubt arose in the case of the Calcutta Chemical Company Limited v. D. K. Barman C.R. No. 371 of 1965 heard with C.R. No. 320 of 1967 and 1967 CWJC 509 disposed of on 29-10-1968. In that case we said that we were inclined to take the view that the Labour Court is a court subordinate to the High Court and, even assuming it to be not so, since all the cases were placed before and heard by a Division Bench, it made no difference whether the applications were treated u/s 115 of the CPC or Article 227 of the Constitution. The same view was expressed in another Bench decision of this Court in Imperial Tobacco Co. of India Ltd. Vs. The Assistant Labour Commr. and Others, .

2. In support of the rule, Mr. K.D. Chatterji has pressed two points for our consideration, (1) that the order of the employer dispensing with the services of the employee concerned in this case was justified and legal, the Labour Court has committed an error of jurisdiction in holding it otherwise and (2) that in any view of the matter, the Labour Court was wrong in law in thinking that merely because the order dispensing with the services of the opposite party was bad, he was entitled to the relief of the reinstatement; the court below under that wrong impression of law has exercised jurisdiction with material illegality in ordering reinstatement in this case.

3. The facts of the case may be stated in a short compass. The employee was employed as a driver under the Indian Tube Company Ltd., the petitioner in this case, sometime in the year 1957. On account of illness he was absent from duty for a few days in the last week of April and in the first week of May, 1964. Leave had been granted up to the 4th of May, 1964. From 5th of May, however, the employee remained absent without any leave application or justifiable cause. The employer thereafter proceeded to frame a charge-sheet against the employee on the 20th of May, 1964, and terminated his services without holding an enquiry and without giving one month's notice or one month's wages in lieu of notice. The services were terminated with effect from 3-6-1964.

4. It further appears from the order of the court below that there was a communal riot in the colony in which the opposite party had been allotted a quarter by the company, and was residing there. In connection with that riot the employee surrendered and was arrested on 27-5-1964. He was put in Jamshedpur sub-jail wherefrom he was released on bail on 23-10-1964. The order dated 3-6-1964 was communicated to the employee in the letter of that date which is Ext. K. The said letter was sent to the Superintendent, Jail, along with a covering letter dated 3-6-1964 (Ext. N). It was served on the employee on 16-6-1964. It may be stated here that according to the employee's case, he had sent two or three applications in the meantime for extension of the leave, but the Labour Court has recorded a finding against the employee in this regard. It may also be mentioned here that apart "from the fact that the employee, in connection with the communal riot at which offences of murder, arson and loot are said to have been committed, was arrested and later on released, there is nothing in the records of this case that he was ever charge-sheeted by the police or put on trial in connection with any of the alleged offences.

5. On 28-10-1964 the employee went to join his duty, only five days after he was released from jail, but he was not allowed to do so by the company. It appears, thinking that it can be an industrial dispute even at the instance of one worker, he approached the Assistant Labour Commissioner on 7-11-1964 for conciliation. The said Labour Commissioner eventually on 21-5-1965 asked him to apply to the Authority under the Act u/s 26. Accordingly, an application was filed in the Labour Court on 1-6-1965 u/s 26(2) of the Act.

6. The Labour Court has condoned the delay in the filing of the application

finding, in accordance with Section 26(4) of the Act, that sufficient cause was there for not filing the application within the prescribed period of 30 days. I ought to have stated that the finding of the Labour Court in this regard was also vehemently attacked on behalf of the petitioner, but having considered all aspects of the matter, I am definitely of the view that the Labour Court has committed no error, much less an error of jurisdiction, in recording a finding of sufficient cause and condoning the delay in the filing of the application. It is difficult to accept the argument that even an application could be and, therefore, should necessarily have been filed from jail. It was difficult for the man in the position of the opposite party to arrange to file an application u/s 26(2) of the Act from jail. After coming out from jail, under a bonafide belief that he could get the relief by approaching the Assistant Labour Commissioner, he approached him. It was only when after a lapse of about six months the Assistant Labour Commissioner directed him to approach the Labour Court, he did so. I see absolutely no reason to interfere with the order of the court below on the point of limitation,

7. It is undisputed in this case that one month's notice or one month's wages in lieu of such notice was not given by the employer to the employee at the time of his discharge. It is also no longer in dispute, after the finding has been recorded by the court, that no enquiry was held by the employer and no finding was recorded upon any evidence holding the employee guilty of any misconduct as prescribed by Rule 20 of the Bihar Shops and Establishments Rules, 1955. Under the standing orders of the company, if a proper enquiry would have been held, it may have been possible to find the employee guilty under para. 24(xi) of the standing orders. Perhaps, the employee could have been held guilty of the charge of such misconduct as has been prescribed under Rule 20 of the Rules aforesaid. But no such course was adopted by the employer. After having perused the language of the relevant letters and reports (Exts. K. and J), it is clear that the services of the employee were dispensed with by way of punishment. This was also the stand taken by the employer in the court below. That being so, it was incumbent upon the employer to dismiss or discharge the employee either by giving one month's notice or one month's wages in lieu of such notice or by complying with the requirement of the proviso to Sub-section (1) of Section 26 of the Act. It is manifest, neither of the two was done. I am, therefore, of the view that the order of dismissal or discharge, as clearly the order was, within the meaning of Section 26(1) of the Act was bad in law. It is difficult to accept the argument put forward on behalf of the employer that it was a case of termination of contract of service at the instance of the employer or a case of abandonment of service by the employee concerned as envisaged under para. 41 of the standing orders. The period of continued absence of the employee for 14 days expired on the 19th May, 1964. The services were not treated as abandoned by the employer on and from the 20th May, 1964 in accordance with para. 41 of the standing orders. Instead, the company proceeded to frame a charge-sheet and then record an order of dismissal or discharge. As I have said above it was not a case of termination of contract of

service pure and simple as was contended on behalf of the employer. It was clearly a case of dismissal or discharge of the employee concerned within the meaning of Section 26(1) of the Act. That being so, in either view of the matter, that is, for failure to give one month's notice or one month's wages in lieu of such notice, or for failure to hold an enquiry and record a finding of guilty against the employee, the order is bad and has rightly been held to be so by the Labour Court.

8. In the unreported decision of this Bench, referred to above, it was said that in appropriate cases, relief of reinstatement may be given, in some cases relief of money compensation only may be given and in some cases both reliefs may be awarded. The power is not to be exercised whimsically or arbitrarily. It is not quite correct to say that whenever an order of dismissal or discharge is found to be bad, the employee concerned is entitled to the relief of reinstatement. The relief of reinstatement has got to follow keeping in view certain principles of law decided by the Supreme Court in cases in relation to the industrial disputes--cases which have been referred in our unreported decision. Once the order of dismissal or discharge is found to be bad, the relief of reinstatement is not ordinarily to be refused. It has to be refused on certain justifiable and good grounds. In this particular case, our attention was drawn to some passages in the judgment of the court below to persuade us to strike out the relief of reinstatement awarded by the said court to the employee concerned. In my opinion, the Labour Court took too legalistic and technical a view of the matter while making those observations. It ought to have taken a broad picture of the facts in which this particular employee was placed. He was involved in a serious criminal case. In absence of there being anything in the records of this case to show that he was so involved rightly, it has to be assumed that he was wrongly involved. If in such a situation, he was not able to join his duty or file any application for extension of leave, to deny him the relief of reinstatement will not be proper and just after once the order of dismissal or discharge has been held to be bad. As I have said above, it was possible for the employer to terminate the contract of employment or to dismiss or discharge the employee by fulfilling the requirements of Section 26(1) of the Act, but that is a different matter. Once it is found that the legal course was not adopted for dispensing with the services of the employee, to deny him the relief of reinstatement, it appears to me, on the facts and in the circumstances of the case, would be quite unjust. It is not uncommon to find that sometimes innocent persons are wrongly named and involved in rioting and specially communal riots cases, and Once they are so named or involved, they try to escape arrest by one method or the other. I am, therefore, of the view that although the case of the employee that he was ill for the rest of the days in May, when he was absent from duty before he was arrested, has not been accepted by the Labour Court, and perhaps rightly not accepted, it is difficult to upset the relief of reinstatement granted to the employee merely because of that finding. Taking a broad and realistic view of the picture which emerges from the facts of this case, I have unhesitatingly come to

the conclusion that the relief of reinstatement has been properly granted in this case. I may also add that the Labour Court has rightly, and for good good reasons, not awarded any compensation to the employee concerned.

9. In the result, both the application failed and are dismissed, but I shall make no order as to costs in either of them.

S. Wasiuddin, J.

10. I agree.