

(1965) 09 PAT CK 0006
In the Patna High Court
Case No : Misc. Judl. Case No. 541 of 1962

Jagdish

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 22-09-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33, 33(2)

Citation : AIR 1966 Patna 330

Hon'ble Judges : R.L. Narasimham, C.J.; R.J. Bahadur, J

Bench : Division Bench

Advocate : Ranen Roy, J. Krisna, Rama Raman and T.K. Das, for the Appellant;
A.C. Mitra, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an application by a workman to quash an order passed by the labour Court in Miscellaneous Case No. 6 of 1960, maintaining the order of the employer (respondent No. 2) dismissing the petitioner from service.

2-a. As the dismissal took place during the pendency of another industrial dispute, the employer sought the approval of the Labour Court, in pursuance of the proviso to Sub-section (2) of Section 33 of the Industrial Disputes Act (hereinafter referred to as "the Act"). The workman also filed another application u/s 33A of that Act, and the Labour Court heard both the applications at the same time and disposed of them by one order. The Court observed that the employer did not pay wages for one month to the workman before dismissing him from service and applying to the Court for approval of its action in pursuance of the proviso to Sub-section (2) of Section 33. The Court observed:

"Under the circumstances, if this application u/s 33 were to stand alone it would not have been possible for me to accord any approval to the action of dismissal taken by the Company against the workman concerned."

But it thought that as the workman himself by filing an application u/s 33A raised an industrial dispute it was open to the Court to consider the dispute and decide whether the dismissal of the workman was justified on merits. It then examined the materials that were before the enquiring officer of the employer, (on the basis of which the workman was found guilty of the charges) and came to the conclusion that there were sufficient grounds for the dismissal of the workman. Hence it upheld the order of dismissal.

2. Mr. Ranen Roy for the petitioner-work man raised the following four contentions:--

(1) There was no contravention of the provisions of Section 33 and, consequently, the Labour Court had no jurisdiction to decide the dispute u/s 38A

(2) Alternatively, once it held that there was contravention of Section 38(2), so far as the non-payment of one month's wages to the petitioner was concerned, and consequently it was not prepared to approve the action of the employer in dismissing the workman, nothing further remained to be done, and following the observations of their Lordships of the Supreme Court in the *Strawboard Manufacturing Co. Vs. Gobind*, the labourer must be deemed to have been reinstated and further proceedings u/s 38A of the Act should have been dropped.

(3) On the materials on record the Labour Court should not have held that there was due enquiry into the charges against the workman and the rules of natural justice were observed and that the dismissal was justified on merits.

(4) In any view of the case, the giving of retrospective effect to the order of dismissal from the date of suspension of the workman was invalid in law.

3. Before discussing these points, I may briefly refer to certain admitted facts. On the 81st March 1960, specific charges of misconduct were framed against the petitioner and he was called upon to answer those charges and further informed that a departmental enquiry would be made on the 11th April, 1960, where he would be given full facilities to cross-examine the witnesses who might depose against him and also to adduce evidence on his behalf. He was also informed that he was suspended forthwith from duty pending enquiry (see Annexure A). The allegations of misconduct mentioned in the charges are of serious nature, including theft, fraud and dishonesty in respect of certain articles of the Company. A regular departmental enquiry was held against the workman and also against some other workman, and on the basis of the enquiry report the employer by his order dated the 18th May, 1960, (Annexure D), dismissed the petitioner from service with retrospective effect from the date of his suspension, namely the 31st March, 1960. An application was also made to the Labour Court for approval of the order in pursuance of the proviso in Sub-section (2) of Section 33 of the Act.

4. The fourth point raised by Mr. Roy can be disposed of with a few words. As pointed out in *Harbanslal Malhotra and Sons (Private), Ltd. v. State of West*

Bengal (1964) 2 Lab L.J 342 (Cal). where the Standing Orders of a Company provided that a workman found guilty of misconduct might be dismissed with effect from the date of suspension, the giving of such retrospective effect to the order of dismissal will be valid Here the counter-affidavit filed by the employer shows (paragraph 13) that Standing Order No. 26 (vi) permits the giving of such retrospective effect to the order of dismissal There is no challenge to the contents of Standing Order No. 26 (vi). Following the said decision, therefore. I must hold that in this case the giving retrospective effect to the order of dismissal was valid.

5. As regards the first point, Mr. Roy wanted to make a fine distinction between "breach" of some of the provisions of Section 33 on the one hand and "contravention" of those provisions on the other, and urged that where some of the non-essential portions of Section 33 are not complied with there may be a breach but not contravention. According to him, the word "contravention" must relate to an essential part of Section 33. Developing this point further he urged that if the employer had failed to apply for approval to the Labour Court after dismissing the workman during the pendency of an industrial dispute, such omission to apply for approval may amount to contravention of Sub-section (2) of Section 33. But where such an application for approval is actually made but one month's wages are not paid to the workman or else there was no Strict compliance with the standing orders applicable to him, there may be a breach of the provisions though there may not be contravention.

Section 33A says, "Where an employer contravenes the provisions of Section 33 the employee aggrieved by such contravention may make a complaint to the Labour Court, which shall then have jurisdiction to decide the dispute The proviso to Sub-section (2) of Section 33 lays down two conditions to be fulfilled before an employer can dismiss a workman for misconduct during the pendency of an industrial dispute. Those two conditions are (1) that the workman must be paid wages for one month, and (2) that an application should be made before the Labour Court for approval to the action taken by the employer. Both these conditions are express provisions in Sub-section (2) of Section 33 and there is no special reason why the failure to fulfill the first condition should be treated as a mere technical breach and not contravention for the purpose of Section 33A.

In the well known *Strawboard Manufacturing Co. Vs. Gobind*, , on which Mr. Roy relied for another purpose, their Lordships while considering the proviso to Sub-section (2) of Section 38 observed as follows: "As we read the proviso, we are of opinion that it contemplates the three things mentioned therein, namely, (i) dismissal or discharge (ii) payment of wages and (iii) making of an application for approval (para graph 9)" It would not be proper on a question of mere interpretation to give undue weight to contravention of one of the conditions mentioned in the proviso and to hold that mere failure to pay one month's wages though a breach will not amount to contravention for the purpose of S 33A.

6. Mr. Roy frankly conceded that he could not cite the authority in support of his contention, but he relied on a Division Bench judgment of this Court in Mahabit Mallah and Another Vs. Sone Valley Portland Cement Co. Ltd. and Another, where their Lordships held that merely because an order of dismissal was passed by an employer without complying with the provisions of the Standing Order of the Company it cannot be said that the employer contravened the provisions of Section 33(2) of the Act Mr Roy pointed out that Sub-section (2) required that the dismissal of a workman should be in accordance with the Standing Order applicable to him. He, therefore, urged that when this Court held that the failure to comply with the provisions of the Standing Orders of the Company was not a contravention of that sub-section, by parity of reasoning, the failure to pay one month's wages to the dismissed workman as required by the proviso to that Sub-section must also be held to be not a contravention.

In my opinion the failure to follow strictly the provisions of the Standing Order of the company does not stand on the same footing as failure to pay one month's wages to the workman. The former may be a contravention of the provisions of the Standing Order, but it cannot be said to be directly the contravention of the provisions of Sub-section (2) of Section 38 of the Act. But failure to pay one month's wages to a dismissed workman will be a direct contravention of the proviso to Sub-section (2) of Section 33 in view of the express provision made therein to that effect. I must, therefore, hold that there was contravention of the provisions of Section 33 by the employer inasmuch as one month's wages were not paid to the dismissed workman, and, consequently, the Labour Court had jurisdiction to consider the dispute u/s 33A of that Act.

7. The second contention of Mr. Roy is very ingenious but in my opinion, not sustain-able. It is based mainly on the observations of their Lordships of the Supreme Court in the Straw Board case AIR 1962 SC 1600, para. 8 as to the legal effect of the decision of the Tribunal in not approving the action of the employer in dismissing a workman. Their Lordships observed:

"Thereupon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer. In such a case no specific provision as to reinstatement is necessary and by the very fact of the tribunal not approving the action of the employer the dismissal or discharge of the workman would be of no effect and the workman concerned would continue to be in service as if there never was any dismissal or discharge by the employer."

On the basis of this observation Mr. Roy urged that when the Labour Court after holding that one month's wages were not paid to the work man, further stated that if the application u/s 33 stood alone it would not have been possible for it to accord approval of the dismissal of the workman, the aforesaid principle laid down by the Supreme Court should be immediately applied and it must be held that the order of dismissal ceased to have any effect, and in the eye of law the dismissed workman continued to be in service. Hence, according to Mr. Roy there was no further dispute to be decided by the Labour Court u/s 33A and that the

application should have been disposed of accordingly. According to him, the Labour Court had no further jurisdiction to again examine if the order of dismissal was justified on merits.

8. Mr. Roy urged that Section 33A was specially inserted by the Legislature with a view to confer a benefit on an aggrieved workman and that it should not be so applied as to benefit the employer. It is true that the main object of inserting Section 33A was to enable an aggrieved workman to approach the Labour Court direct for redress of his grievance where the employer contravenes the provisions of -S. 38, instead of resorting to the somewhat dilatory process of requesting the Government u/s 10 to raise an industrial dispute and then refer it to the Labour Court. But this does not mean that once the dispute is raised before the Labour Court under the special procedure mentioned in SECTION 33A, the Labour Court must always decide the dispute in favour of the workman. It has to adjudicate on the dispute and the decision will be either in favour of the workman or of the employer according to the merits of each case.

Mr. Roy quite fairly conceded that where the employer completely ignores the provisions of Sub-section (2) of Section 33 and omits to apply to the Labour Court for approval of his action in dismissing a workman and that workman raises a dispute u/s 33A, it will be open to the Labour Court to adjudicate on that dispute and for that purpose examine whether the order of dismissal was justified on merits. But he urged that where the contravention of Section 33(2) was as regards payment of one month's wages to the dismissed workman in consequence of which the Labour Court is unable to approve the action of the employer in dismissing the workman, the principle laid down by the Supreme Court in *Straw Board case* AIR 1962 SC 1600 would apply and the workman should be deemed in the eye of law not to have been dismissed in consequence of which the Labour Court has no jurisdiction to further proceed with the decision of the dispute u/s 33A.

This subtle distinction between the classes of contravention of Section 33, namely, (1) complete omission to apply to the Labour Court for approval and (2) while applying for approval omitting to fulfil the other conditions required by Sub-section (2) of Section 33, such as omission to pay one month's wages is I think artificial. Where the contravention was of the latter type, it was open to the workman concerned not to have applied to the Labour Court u/s 33A in which case once the Labour Court refuses to approve the action of the employer in dismissing the workman, the principle laid down in *Strawboard Manufacturing Co. Vs. Gobind*, would apply and the order of dismissal would be deemed to be non-existent. But the labourer took the risk of conferring jurisdiction on the Labour Court by making an application u/s 33A. Once such jurisdiction is conferred by such an application, the Labour Court has no other option but to adjudicate on the dispute. The question about the contravention of the provisions of Section 33 arises only for the limited purpose of conferring jurisdiction on the Labour Court u/s 33A, but once the jurisdiction is conferred, the Labour Court

has to decide the industrial dispute on its merits.

9. Though the point is not free from difficulty nevertheless it should be pointed out that the aforesaid observation in the *Strawboard Manufacturing Co. Vs. Gobind*, was made in respect of an application u/s 33(2)(b) only. Their Lordships were not dealing with a case where there were two applications namely, one by the employer u/s 33(2) for approval of his action in dismissing a workman and another application by the workman u/s 33A raising an industrial dispute both pending before the Labour Court. The observations quoted above should not be taken to mean that once it is held that there was contravention of the provisions of Section 33(2), in consequence of which the Labour Court was not prepared to approve the action of the employer in dismissing the workman, the dispute also came to an end and the Labour Court could not adjudicate on that dispute u/s 33A.

On the other hand in *The Punjab National Bank Ltd. Vs. Its Workmen*, there are several observations to show that in an application u/s 33A the Labour Court cannot dispose of the matter by merely saying there was contravention of the provisions of Section 33, but it must further examine whether the dismissal was justified on merits. Their Lordships referred to their own previous decisions and observed that in a proceeding u/s 33A the Labour Court's duty was not only to find whether there was contravention of the provisions of Section 33 but further whether the dismissal order could be justified on merits. To quote their observations at page 172:

"Thus there can be no doubt that in an enquiry u/s 33A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of Section 33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the tribunal has to consider because the complaint made by the employer is treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered u/s 33A. Therefore, we cannot accede to the argument that the enquiry u/s 33A is confined only to the determination of the question as to whether the alleged contravention by the employer of the provisions of Section 33 has been proved or not."

The same principle was reiterated in the *Delhi Cloth and General Mills Co. Ltd. Vs. Shri Rameshwar Dyal and Another*, .

10. The decisions of the High Courts also are to the same effect. Thus in *Batuk K. Vyas v. Surat Borough Municipality* AIR 1963 Bom 133 an argument similar to that advanced by Mr. Roy in this case was repelled. This decision was followed in a Punjab case in *Oriental Textile Finishing Mills Vs. State of Punjab and Others*, . There is also a decision of the Madras High Court in *Ram Krishnan Kulwant Rai v. State of Madras* (1963) 1 LLJ 582. In that case the Labour Court held that there was contravention of Section 33(2)(b) and directed the reinstatement of the dismissed workman. The learned Judge, after distinguishing the observations in

the Strawboard Manufacturing Co. Vs. Gobind, and following the observations in the The Punjab National Bank Ltd. Vs. Its Workmen, cited above, held that as an industrial dispute was still pending the Labour Court ought to have examined whether the order of dismissal was justified on merits. For these reasons I must reject the second contention of Mr. Roy.

11. The third contention deals mainly with questions of fact which cannot be agitated before this Court in an application of this kind. The charges against the petitioner were proved by two co-workers, namely, Bishwanath and Ganesh, against whom also there were departmental proceedings pending at that time. The rules of natural justice were complied with in conducting the departmental enquiry and there was some evidence though of a somewhat tainted nature, to substantiate the charges. This Court cannot interfere with the finding based on such evidence.

12. For these reasons the application is dismissed but in the circumstances without costs.

Bahadur, J.

13. I agree.