

(1961) 05 KL CK 0001
In the High Court Of Kerala

Kannan Devan Hills Produce Company	APPELLANT
Vs	
Industrial Tribunal and Another	RESPONDENT

Date of Decision : 30-05-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33, 33A

Citation : (1961) 2 LLJ 363

Hon'ble Judges : M.A. Ansari, C.J;P. Govinda Menon, J

Bench : Division Bench

Judgement

P. Govinda Menon, J.—This is an appeal against the decision of the learned single Judge of this Court refusing to quash the order of the industrial tribunal, Ernakulam, in an application u/s 33(2) of the Industrial Disputes Act 1947 (hereinafter referred to as the Act), for approval of the appellant's action in dismissing from service an employee of theirs, F.M. Fernandez, respondent 2 in this appeal.

2. Respondent 2 was a workman employed in the Munnar workshop of the appellant-company. He was charge sheeted under standing order 22 (ft) of the standing orders for the workmen in the company. The charge against him was that on 17 September 1959 at about 9-30 a.m. while on duty in the workshop he in conjunction with one Arogyaswami and Christy Jeyaraj quarrelled with motor mechanic M.C. Mathew and abused him in filthy language because of his having resigned his membership from the K.D.H.P. Company Engineering Employees' Union.

3. Respondent 2 denied the charges levelled against him. An enquiry was, therefore, held according to the standing orders and respondent 2 was given full opportunity to produce his evidence and to cross-examine witnesses produced by the management against him. As a result of the enquiry thus held the management found that the charges were proved and that the employment of respondent 2 would be detrimental to the interests of the company and he was

therefore dismissed from service. Notice was given to him to take one month's wages in lieu of notice under proviso to Section 33(2) of the Act. Respondent 2 refused to receive the wages.

4. At that time an Industrial dispute between the management and the workers was pending before respondent 1, but those proceedings were however unrelated to the charges framed against the respondent and so the management filed an application u/s 33(2) of the Act as amended seeking its approval for the action it had taken, Respondent 2 in his turn filed a petition u/s 33A against the management for alleged contravention of the provisions of Section 33. Respondent 1 tribunal refused to accord approval holding that the charges levelled against the employee have not been established and dismissed the petition filed by the management. The petition of respondent 2 was also dismissed. The management therefore filed an application under Article 226 of the Constitution to quash the order of respondent 1. The petition was dismissed and this appeal has been filed against the abovesaid order.

5. It is argued by the learned Counsel for the appellant that in matters of this kind the industrial tribunal is not a Court of disciplinary appeal from the management, that it has "jurisdiction to interfere only where the management has been guilty of either unfair labour practice or of victimization or where the order it had made is clearly vitiated by mala fides and that in the instant case the tribunal has exceeded its powers in attempting to review the findings of fact reached by the management and in surmising want of bona fides and victimization unsupported by any evidence recorded at the enquiry.

6. The learned Counsel for respondent 2 on the other hand argues that on the evidence adduced nobody could have reasonably come to the conclusion that the charges were proved, that the finding is arbitrary and that it is clear that the management with the Improper motive of getting rid of respondent 2 had dismissed him and that the tribunal was well within its rights in finding that a prima facie case has not been made out to accord sanction for the dismissal.

7. The nature and scope of the enquiry by the tribunal u/s 33 of the Act and the Appellate Tribunal under the corresponding Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, has been the subject-matter of various decisions of the Supreme Court.

In Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup, which was a case u/s 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, Bhagwati, J., referred as the two earlier decisions of the Supreme Court and observed as follows:

The tribunal before whom an application is made under that section has not to adjudicate upon any industrial dispute arising between the employer and the workman but has only got to consider whether the ban which is Imposed on the employer in the matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be

lifted. A prima facie case has to be made out by the employer for the lifting of such ban and the only jurisdiction which the tribunal has is either to give such permission or to refuse it provided the employer is not acting mala fide or is not resorting to any unfair practice or victimization.

On the question of punishment the learned Judge said as follows:

The tribunal before whom such an application for permission is made u/s 22 of the Act would not be entitled to sit in judgment on the action of the employer if once it came to the conclusion that a prima facie case had been made out for dealing out the punishment to the workman. It would not be concerned with the measure of the punishment nor with the harshness or otherwise of the action proposed to be taken by the employer except perhaps to the extent that it might bear on the question whether the action of the management was bona fide or was actuated by the motive of victimization.

So if it is established that a fair enquiry into the alleged misconduct had been held by the management without violating any principles of natural justice and if as a result of such an enquiry the management had found the workman guilty of misconduct and had come to the conclusion that continuing the workman in its employ was dangerous in the interests of the company, the tribunal would not interfere with such an order.

8. The same principle has been stated in another case, *Martin Burn Ltd. Vs. R.N. Banerjee*, and there also it was emphasized that the function of the tribunal is only to find out whether a prima facie case has been made out by the employer for the lifting of the ban imposed.

Discussing as to what a prima facie case means, it was stated:

A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out, the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record [see *Buckingham and Carnatic Co., Ltd. v. the workers of the Co.*].

9. The limitation on the power of the tribunal to interfere with the order of management has again been laid down in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, where it has been held that the powers of the tribunal to interfere with orders of dismissal are not unlimited because the tribunal does not act as a Court of appeal and substitute its own judgment for that of the management. The Supreme Court has indicated the class of cases in which the tribunal would be justified in interfering with the impugned order of

dismissal. It would and should interfere when there is a want of good faith, when there is victimization or unfair labour practice, when the management has been guilty of a basic error or violation of the principles of natural justice or when on the materials the finding of the management is completely baseless or perverse.

10. Similarly in *Patna Electric Supply Co., Ltd., Patna Vs. Bali Rai and Another*, their lordships of the Supreme Court were dealing with the exercise of the powers by the tribunal u/s 33 of the Act. In discussing the nature of the jurisdiction that is exercised by the tribunal it was stated:

The only question relevant to be considered by the industrial tribunal would be that. In taking the step which it did, the appellant was not guilty of any unfair labour practice or victimization. If the industrial tribunal did not come to a conclusion adverse to the appellant on these counts, it would have no jurisdiction to refuse the permission asked for by the appellant.

11. Again in *The Punjab National Bank Ltd. Vs. Its Workmen*, dealing with the powers of the tribunal u/s 33 of the Act, the Supreme Court examined its earlier decisions on the point and considered the nature of the enquiry which the appropriate authority can hold when an application is made before it by the employee u/s 33(1) and the extent of the jurisdiction which it can exercise in such an enquiry. Their lordships.

Where an application is made by the employer for the requisite permission, u/s 33 the jurisdiction of the tribunal in dealing with such an application is limited. It has to consider whether a prima facie case has been made out by the employer for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee and if it does not appear that the proposed dismissal of the employee amounts to victimization or an unfair labour practice, the tribunal has to limit its enquiry only to the question as to whether a prima facie case has been made out or not. In these proceedings it is not open to the tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the tribunal grant permission, subject to certain conditions, which it may deem to be fair. It has merely to consider the prima facie aspect of the matter and either grant the permission or refuse it according: as it holds that a prima facie case is or is not made out by the employee.

12. *Lord Krishna Textile Mills v. its workmen* 1981 I L.L.J. 211 is the latest case. There again this question came up for consideration. The application there was made u/s 6E(2)(b) the Uttar Pradesh Industrial Disputes Act, 1947, for according approval for the dismissal of its workmen. The tribunal found that the management had failed to make out a case for dismissing the workmen in question and dismissed the petition.

The material provisions of Section 6E(2) of the Uttar Pradesh Act are the same as Section 33(2)(f) of the Act after its amendment made by Act 36 of 1956. Their lordships "in setting aside the order of the tribunal discussed the difference

in the- two oases falling under Sections 33(1) and 33(2) and the powers of the tribunal and held:

It is well-known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a Court of fact and may fall to be considered by the appellate Court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the Court is limited 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 that it is not justified by any legal evidence 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.

13. The tribunal has referred to the decision in *The Management of the Bangalore Woollen Cotton and Silk Mills Co. Ltd. Vs. B. Dasappa, M. T.* represented by the Binny Mills Labour Association, but has failed to appreciate correctly the principles laid down in that case. What has been stated in that case is only that a finding that the management has acted bona fide will not ordinarily be reached if the materials are such that a reasonable man could not have come to the conclusion which the management has reached. So the tribunal ought to address itself to the question whether on the materials on record the conclusion reached by the management could reasonably be reached and not whether that was the correct conclusion or the only possible conclusion. The tribunal is not called upon to decide whether in its opinion the evidence given by the witnesses at the enquiry is true but only whether when the manager states that he considered the evidence credible he had acted like a reasonable person.

14. In the light of the principles deducible from all these cases the question for the tribunal to decide on the employer's application is whether a prima facie case for according approval is made out or not. It is for the management to determine what constitutes misconduct within its standing orders sufficient to merit dismissal of the workmen, but in determining such misconduct it must have facts upon which to base its conclusions and it must act in good faith without caprice or discrimination and without motive of vindictiveness or resorting to unfair labour practice and there must be no infraction of the accepted canons of natural justice. When the management does have facts from which it can conclude on misconduct, its judgment cannot be questioned provided the abovementioned principles are not etiolated.

15. There is no dispute in this case that the offence mentioned in the chargesheet if proved would amount to a misconduct as mentioned in the standing orders. There is also no dispute that a proper chargesheet was given to the employee and an enquiry was properly held and opportunity was given to the employee to lead his evidence and to cross-examine the witnesses examined

against him. The tribunal has not found that the enquiry was not regular or proper. As a result of the enquiry the officer who held the enquiry came to the conclusion that the charges framed have been proved and the order of dismissal was passed. It is therefore difficult to understand how the tribunal was justified in refusing to accord approval to the action taken by the appellant.

16. What the tribunal has done is to consider questions of fact and the finding of the tribunal is that the evidence adduced was not sufficient to hold the charges proved. The tribunal has exceeded its jurisdiction in attempting to enquire whether the conclusions of facts recorded in the enquiry were justified on the merits. The tribunal dearly has lost sight of the limitations statutorily placed upon its powers and authority in holding the enquiry u/s 33(2)(b).

17. We have been taken through the entire evidence and after carefully considering the criticisms made by the tribunal about the enquiry proceedings we have no hesitation in holding that on the merits the conclusion of the enquiry officer is fully justified. It is not disputed that an incident did take place in the company's premises between Mathew and respondent 2 on that day. As to what happened was spoken to by Mathew. According to him while himself and Arogyaswami were talking about the reasons for his resigning from the union respondent 2 interfered, used filthy language and threatened to assault him when witness Iype and others pacified and led him away. That Mathew and respondent 2 were talking in an angry mood and were separated is spoken to by Iype himself. According to him if he had not separated an unhappy incident would have occurred. Another witness George spoke to his hearing exchange of words and seeing Iype leading respondent 2 away. The next witness Ramalingam Filial also supported the case by saying that he heard loud talks and saw Iype separating respondent 2. Similarly Krishnan, another witness examined in the case, has spoken to his seeing the quarrel and exchange of filthy words between Mathew and Fernandez. It is not necessary to enter into the minute details of the evidence. Sufficient to say that there is enough evidence on which the management could have found respondent 2 guilty of misconduct.

18. The records also show that the respondent 2 was found guilty of a similar offence of riotous and disorderly behaviour in the premises of the workshop on an earlier occasion and therefore it could not be said that the punishment awarded is harsh or unduly severe. The measure of punishment to be meted out is within the discretion of the employer who is the judge for himself as to what is the proper punishment commensurate with the offence. The circumstances relied on by the tribunal do not afford any material for finding that the action of the management was either lacking in bona fides nor does it spell victimization or unfair labour practice. A perusal of the proceedings before the management would indicate that the management was really anxious to find out the truth of the matter. When it was found that unfounded allegations were made against certain persons they were exonerated and the complainant Mathew was properly dealt with. Merely because Mathew made allegations against two others which he

was not able to substantiate is no ground to hold that the case against respondent 2 is also false.

19. Having carefully considered the reasons given by the tribunal in its order refusing approval, we feel that the appellant is fully justified in contending that the tribunal had assumed jurisdiction not vested in it by law and consequently its refusal to accord approval to the action taken by the appellant is patently erroneous. Where the order is tainted with error of law apparent on the face of the record. It has to be set aside by a writ of certiorari. This aspect of the matter that the tribunal has exceeded its powers has been probably lost sight of by the learned single Judge.

The appeal is accordingly allowed and the order passed by the tribunal refusing to accord approval is set aside. There will be no order as to costs.