

(1961) 04 CAL CK 0014
In the Calcutta High Court

Karam Chand Thaper and Bros. (Private) Ltd.	APPELLANT
Vs	
Mitra (K.K.) (Judge, Industrial Tribunal) and Others	RESPONDENT

Date of Decision : 06-04-1961

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33A

Citation : (1962) 2 LLJ 447

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Judgement

D.N. Sinha, J.—The facts in this case are shortly as follows. The petitioner is a private limited company. It has not got any standing orders within the meaning of that expression as used in Section 33(2) of the Industrial Disputes Act, 1947 (hereinafter called the Act), The petitioner had in its employment, the respondent 3, Ram Laut Ahir, as a peon employed at the petitioner's office at 9-A, Dalhousie Square East. On or about 24 October 1959, a Remington type writer machine was stolen from the said office. The petitioner lodged complaint with the police and respondent 3 Ahir was arrested, but subsequently released on ball. Five workmen of the petitioner, including Ahir against whom reports were lodged with the police, were suspended. It appears that Ahir at first admitted that on the nights of 24 and 25 October 1959 the door of the said office room leading to the terrace was open and that his cot was placed across the said doorway, whereupon he slept. He later on retracted his admission. Ahir was later on discharged by the police for want of sufficient evidence. On 16 November 1959 a letter was written by the company to the said respondent Ahir, a copy whereof is annexure A to the petition which runs as follows:

As a result of the enquiry held in respect of the theft of the typewriter No. C/IJ-133500/K from the office premises at No. 9-A; Dalhousie Square, Calcutta, between the night of 24 October 1959 and the morning of 26 October 1959 and the evidence recorded therein, the management has strong reasons to believe that you had some hand in this theft though there is no direct evidence on the

file to charge you with the commission of the same.

In view of the above and also in view of your retracting statements during the course of enquiry and your previous bad service record, the management has lost confidence in you. With a view, however, not to spoil your future career the management, instead of inflicting the extreme penalty of dismissal which is warranted in the circumstances, have decided to discharge you from the service of the company with immediate effect.

You will be paid the salary upto date plus one month's salary as required under the Industrial Disputes Act.

2. At the time when the said respondent was discharged, there was a dispute between the petitioner and his workmen pending before the fourth industrial tribunal, West Bengal. The petitioner made an application before the said tribunal u/s 33(2) of the said Act for approval of its said action. After a time, however, this application was withdrawn. It is stated that the petitioner was advised that such an application was not necessary or maintainable. Thereupon, the respondent Ahir made an application before the said tribunal, the respondent 1 herein u/s 33A of the said Act, challenging the order of discharge pending the result of an industrial dispute and without obtaining leave or approval of the said tribunal. By its order dated 2 August 1960, the said tribunal allowed the application and directed that the said respondent Ahir should be reinstated and that he should be paid half wages including dearness allowances for the period of forced unemployment. It is against this order that this application is directed. In order to appreciate the argument put forward by Mr. Sen on behalf of the petitioner, it is necessary to set out the provisions of Section 33(2) of the said Act, which runs as follows:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-

* * * (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders, applicable to a workman concerned in such dispute.?

(a) alter in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding, or

(b) for any misconduct not connected with the dispute discharge or punish, whether by dismissal or otherwise that workman.

Provided that no such workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

3. The first point taken by Mr. Sen is that inasmuch as the company did not have

any standing order, the provisions of Sub-section (2) of Section 33 do not apply. It will be borne in mind that the application that has been made by the respondent Ahir was u/s 33A. This provides that where an employer contravenes the provisions of Section 33 during the pendency of proceedings before, inter alia, a tribunal, then any employee aggrieved by such contravention, may make an application to the tribunal, which may adjudicate upon the complaint as if it were a dispute referred to it in accordance with the provisions of the Act, and will proceed to make an award accordingly. It is admitted that unless there has been contravention of Section 33, no application lies u/s 33A. The point made is that in the absence of standing orders, the provisions of Sub-section (2) of Section 33 do not apply at all so that there was no contravention of Section 33. The other Sub-sections do not apply to the facts and circumstances of this case.

4. The second point taken is that the prohibition contained in Clause (b) of Sub-section (2), is that no workman should be discharged or punished for any misconduct not connected with the dispute, unless an application has been made before the tribunal and its approval taken in the present case, it is not suggested that there is any misconduct connected with the original dispute. What is stated is that there has not been any discharge or punishment for any misconduct at all. In other words, what is stated is that the discharge was in accordance with the ordinary law as master and servant, upon proper notice and therefore it does not come under Clause (b) of Sub-section (2) of the said Act.

5. On the first point, namely, as to the applicability of Section 33(2) of the Act, in the absence of standing orders, there seems to be a conflict of decisions so far as the industrial tribunals are concerned. The industrial tribunal of Bombay has held in *Anthony v. Good Year Tyre and Rubber Co.* 1958 I L.L.J. 377 that in the absence of standing orders Sub-section (2) of Section 33 does not apply. A similar view has been taken by the industrial tribunal, Patiala, in *New Valley View Transport, Ltd. v. their workmen* 1960 I L.L.J. 104. A contrary view, however, has been taken by the industrial tribunal, Madras, in *Murugan and Ors. v. Pioneer Mills, Ltd., Coimbatore* 1959 I L.L.J. 327 and by the Rajasthan High Court in *Mansingh Vs. The Mewar Textile Mills Ltd., Bhilwara and Another*, . The tribunal in the present case has followed the latter rulings and has held that the absence of standing orders does not exclude the operation of Sub-section (2) of Section 33. In my opinion, this is the correct view. Sub-section (2) of Section 33 gives power to the employer to alter, in regard to any matter not connected with the dispute the condition of service of the workman, and to discharge or punish him whether by dismissal or otherwise, for any misconduct not connected with the dispute. These things must be done in accordance with the standing orders. This does not mean that no action can be taken if there are no standing orders. All that it says is that if standing orders exist, action must be taken in accordance with it. I agree with the tribunal that simply by omitting to frame standing orders an employer cannot acquire plenary powers of discharge or dismissal against its workmen. On the other hand, simply because standing orders have not been formulated, it does not mean that the employer is powerless to take any steps in

that behalf, however deserving the case may be. The next thing to be considered is as to the circumstances under which an order of discharge or dismissal can be passed by the employer. In this respect, the law appears to have been altered substantially. Previously, permission of the tribunal was necessary whenever an employer wanted to discharge or dismiss a workman or alter his condition of service to his prejudice, pending the adjudication of a dispute referred to a tribunal. The law now is that we have to classify the cases into three heads. The first is, where the discharge, dismissal or punishment is, in respect of any misconduct connected with the main dispute. In such a case, neither can the condition of service be altered discharge or dismissal made, or punishment given, except with the express permission in writing of the tribunal before whom the dispute is pending. The second is where there is misconduct, but it is not connected with the dispute. In such a case, the workman can be discharged or dismissed or punished, provided that the workman has been paid wages for one month and an application is made to the authority before when the dispute is pending for approval of the action taken by the employer. The third case is not expressly mentioned in Sub-section (2) but must follow therefrom. Where a workman is not discharged for any misconduct at all or is not so discharged or dismissed by way of punishment, then there seems to be nothing against such discharge or dismissal in the Act. For example, where no misconduct is alleged, but I the employer is not satisfied with the performance of his work by the workman, or has lost confidence in him, there does not seem to be any impediment in the way of dismissal or discharge. Whether a particular workman has been dismissed or discharged or punished because of any misconduct, or whether the discharge or dismissal is by way of punishment for misconduct, is a question lot fact depending on the circumstances of each case. The form of the order terminating the employment is not always decisive. In *Municipal Corporation of Greater Bombay and Others Vs. Labour Appellate Tribunal of India and Another*, , it was observed as follows:

It was true that the form of the order terminating employment is not always decisive of the true nature of the order. If an order in form terminating employment is passed merely to camouflage the order of dismissing or discharging from employment, the labour court may be entitled to come to the conclusion, having regard to the circumstances in which the order was passed, that the requisite formalities not having been followed the order was unlawful and cannot be given effect to.

6. Mr. Sen has cited a decision of the Nagpur High Court, *Provincial Transport Services, Nagpur v. Assistant Labour Commissioner* 1958 II L.L.J. 758. In that case, a complaint was made to the police against some workmen and an explanation was called for from them. The employer stated that the employees were liable to be dealt with and punished for their misconduct. Then, referring to the police case, the employer stated that it has lost confidence in the workmen and terminated their services. It was held that this did not amount to punitive action. It was pointed out that what was really material was not the antecedent

enquiry made by the employer for satisfying himself Whether he should continue in service an employee or not, but what was material was the actual action taken by him, in pursuance of the opinion so formed. It will appear, therefore, that in reality, a decision on this point must depend upon the facts of each case. Coming now to the present case, the most material document to be considered is the letter dated 16 November 1959, the relevant part whereof has been set out above. It will appear therefrom that the employer admits that there was no direct evidence to charge Ahir with the commission of theft, but it believes, and has strong reason to believe, that he was an accessory, i.e., he aided and abetted in the commission of the offence. The employer then proceeds to state that having formed that belief, and as Ahir has retracted his statement made in course of the enquiry, it has decided to discharge him. In my opinion, this is certainly punitive. It is no good stating that the action was taken with a view "not to spoil the future career of the workman." A statement by the employed to the effect that in its belief the workman was an accessory to a theft of property belonging to the employer, cannot but cast a blot on his career and affect his chance of future employment. Applying the principles enunciated in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, and *Purshotham Lal Dhingra v. Union of India 1958-I L.L.J. 544* it must be held that, in the context of the facts of this case, the dismissal was by way of punishment, and did affect the future prospect and career of the workman. That being so, it follows that the matter comes within the proviso to Sub-section (2) of Section 33 and that it was necessary to obtain the approval of the tribunal. It is unfortunate that the employer having made an application for such an approval was advised to withdraw it.

7. In the premises, I see no reason to interfere in this case and the application is dismissed. The rule is discharged. Interim orders, if any, are vacated. There will be no order as to costs.