

(1974) 05 GAU CK 0005
In the Gauhati High Court

Lomdhar Tanti

APPELLANT

Vs

Manager, Murmura Tea Estate and Another

RESPONDENT

Date of Decision : 02-05-1974

Acts Referred:

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

Citation : (1975) 2 LLJ 157

Hon'ble Judges : D.M. Sen, J;D. Pathak, J

Bench : Division Bench

Judgement

D.M. Sen, J.—This is an application under Article 226 of the Constitution of India by the workman-petitioner against the order of the learned Presiding Officer, Labour Count, approving u/s 33(2)(b) of the Industrial Disputes Act, 1947, hereinafter called the "Act" the order of dismissal passed by the management on 3-9-1966.

2. The charge against the workman was (vide Annexure B p. 17) that he had built a pucca structure in between two labour quarters without permission and that when he was ordered in writing to dismantle the said unauthorised construction on or before 10-8-1966, he failed to do so, despite sufficient time and opportunity having been given to him. Accordingly, the workman was charged with willful disobedience of superior officer's lawful and reasonable orders, which amounted to a gross misconduct within the meaning of Clause 10(a)(1) of the Standing Order. Clause 10(a)(1) reads as under:

10(a)(1). Willful insubordination or disobedience, whether alone or in combination with another, or others of any lawful and reasonable order of a superior.

The evidence on record and the finding of the enquiry officer, which was duly approved by the management, leaves no room for doubt that the workman did in fact construct the building without authority. It is also clear that notwithstanding the refusal of permission by the management, he had erected a pucca structure

near the existing kutchha shop house, which he had already built with the permission of the management for use as a fair price shop.

3. The management thereupon terminated the services of the workman on ground of gross misconduct under its power under the standing order.

4. Mr. R.C. Choudhuri, the learned Counsel appearing for the workman-petitioner, submits that the disobedience of the workman to refrain from constructing the building in question or to dismantle the said building cannot amount to a misconduct within the meaning of Clause 10(a)(1) of the Standing Order. Mr. Choudhuri has taken the ground that an act to be construed as misconduct must be an, act on the part of the workman, having some rational connection with his terms and obligations as a workman. In support of his contention, he has referred us to the decision in the case of *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, In that decision, their Lordships have held--"In order that Standing Order 22 (viii) may be attracted, it must be shown that the disorderly or riotous behaviour had some rational connection with the employment of the assailant and the victim." Their Lordships held that a dispute of a purely private or individual nature would not attract the provisions of Order 22(viii) and amount to a misconduct.

5. In the instant case, we have therefore, to consider whether the act or conduct which has been levelled as misconduct and for which the workman has been dismissed did have any rational connection with his employment.

6. In the above connection, we may refer to the decision in the case of *Work men of the Shalimar Rope Works v. Shalimar Rope Works Ltd.* 1953 Lab. A.C. 584, where that Court had gone into the question as to when an act can be properly held to be a misconduct. The following guidelines were enunciated therein, to determine whether an act would be a misconduct, namely, if the act (1) is inconsistent with the fulfillment of the express or implied conditions of service or (2), is directly linked with the general relationship of employer and employee or (3) has a direct connection with the contentment or comfort of the men at work or (4) has a material bearing on the smooth and efficient working of the concern. If the answers to the above are in the affirmative, the act in question would amount to a misconduct. In other words, if it be found that the act of disobedience complained of has some relationship to the affairs of the factory, having a tendency or effect to disturb the peace and good order of the establishment, or be subversive of discipline in any direct or proximate sense, we may hold that such an act amounts to a misconduct under the Standing Rules, The act or omission, resulting from the disobedience must have some connection with the affairs of the factory, in that one of the consequences of such act or omission would be to affect the smooth relationship between labour and management or between groups of workmen or be generally subversive of discipline or disturb the peace in the establishment.

7. In the instant case, unauthorised construction of a pucca structure within the

labour lines, regardless of any directions to the contrary by the management, and subsequent failure to dismantle the same, certainly affects the smooth and amicable relationship between employer and employee and would also tend to disturb the peace and discipline in the establishment. Such conduct on the part of a workman is clearly subversive of discipline. We are, therefore, of the opinion that the act of disobedience, for which the services of the workman were terminated, falls within the scope and ambit of Clause 10 of the Standing Order. In this connection, we have to state that every act or omission cannot be spelt out in details or specifically in any standing order under the heading--misconduct. We have to examine the probable and natural consequences of such act or omission, in the light of the guidelines stated above. In that view of the matter, we are clearly of the opinion that the impugned act of the workman did amount to a misconduct, within the provisions of Clause 10(a)(1) of the Standing Order.

8. Mr. Chaudhuri's next ground is that the punishment inflicted on the workman is much too severe. In that connection, we may refer to the decision in the case of Caltex (India) Ltd. Vs. Their Workmen, where their Lordships have held that "In exercising the jurisdiction u/s 33, the Tribunal 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 amounts to victimisation 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 such proceedings it is not open to the Tribunal to substitute its judgment in the matter of punishment. It cannot, for instance, enquire whether the dismissal for which permission is asked is unduly severe."

9. No doubt, if the punishment is so disproportionate in extent or degree to the offence for which it has been awarded, that it shocks the conscience of any reasonable person, it would amount to be an unfair labour practice and victimisation. In the instant case, we however, do not find that it is so.

10. The next ground taken by Mr. Choudhuri is that the finding is perverse. We, however, do not find any force in this submission, inasmuch as the evidence relating to the unauthorised construction as well as failure to dismantle the same has been believed by the enquiry officer and we cannot substitute our own judgment of assessment of that evidence for that of the Labour Court or Tribunal.

11. The last ground taken by Mr. Choudhuri is that the enquiry should have been conducted by the manager himself in view of Clause 9(e) of the Standing Order, read with Clause 14 thereof. We do not find any merit in this submission. Our attention has been drawn to Clause 9(e) of the Standing Order. All that it requires is that a workman who is guilty of gross misconduct must be informed in writing of the alleged misconduct and must be given an opportunity to explain the circumstances alleged against him. Nowhere is it stated that the enquiry conducted before coming to a finding as to whether the workman has committed

the misconduct in question should or must necessarily be by the manager himself. In this connection, our attention has been drawn to the decision in the case of Pradyat Kumar Bose Vs. The Hon"ble The Chief Justice of Calcutta High Court, This decision clearly lays down that the task of enquiry into the relevant facts relatable to the charges against an employee, on which the dismissing authority (management in this case) would ultimately come to its finding, one way or other, may be entrusted to any proper officer by the management. In the instant case, the Personal Officer conducted the enquiry; the enquiry report was duly submitted before the management, and the order of dismissal was passed by the management itself. In the instant case, there was no evidence that the enquiry officer had failed to discharge his duties in conducting the enquiry; or that there was no prima facie case of misconduct against the workman, justifying the punishment of dismissal. As such, the decision of the Labour Court, approving the management's order of dismissal u/s 33(2)(b) of the Industrial Disputes Act, 1947 cannot be interfered with.

12. In the result, the application is dismissed. There will, however, be no order as to costs. The stay order is vacated. The Rule is discharged.

D. Pathak, J.

13. I agree.