

(1964) 03 PAT CK 0002
In the Patna High Court
Case No : Misc. Judl. Case 67 of 1961

Mahabit Mallah and Another	Vs	APPELLANT
Sone Valley Portland Cement Co. Ltd. and Another		RESPONDENT

Date of Decision : 24-03-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33(2), 33A

Citation : AIR 1965 Patna 297 : (1964) 9 FLR 181

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Kanhaiya Prasad Verma, for the Appellant; Standing Counsel, T.K. Prasad and Ramji Saran, for the Respondent

Judgement

Untwalia, J.—The two petitioners in this case were the workmen employed in the Cement Factory of respondent No. 1. During the pendency of an industrial dispute before the Industrial Court, they were dismissed by the respondent Company on the 17th of August, 1959. The said Company filed an application before the Labour Court, respondent No. 2, under the proviso to Section 33(2) of the industrial Disputes Act, 1947 (Act 14 of 1947) hereinafter called the Act, for approval of the action of dismissal taken against the petitioners. The petitioners filed an application u/s 33A of the Act on the ground of the alleged contravention of the provisions of Section 33 during the pendency of proceedings before the Labour Court and asked for a relief of reinstatement.

The Labour Court dealt with the two applications together and, by its order dated 2nd of November, 1960, refused to accord its approval to the action of dismissal taken by the Management against the two workmen, the effect of which was dismissal of their (Management's) application made under the proviso to Section 33(2) of the Act for approval. At the same time, by Its award of the same date contained in the same order published in the Bihar Gazette dated November 16, 1960, (a copy of which is annexure "A" to the writ application), the Labour Court

refused to order the reinstatement of the petitioners u/s 33A of the Act and, instead, directed payment of three months' wages as compensation in lieu of their prayer for reinstatement. The petitioners have obtained a rule from this Court against the respondents to show cause why the said award made u/s 33A of the Act be not set aside and, instead an award directing reinstatement of the workmen be not made. Cause has been shown on behalf of respondent No. 1, which did not file any application for interference with the order of the Labour Court refusing to accord approval to their action of dismissal against the petitioners.

2. According to the case of the Management, the services of the petitioners were terminated as they, had absented themselves without leave or information for more than ten days. Their case, on the other hand, was that regular application for leave had been sent by them to the Works Manager through post and, accordingly, they were not guilty of any act of misconduct within the meaning of the Standing orders of the respondent Company. The Labour Court has held that (sic) charge was ever framed against the workmen and at no stage prior to the dismissal of the workmen was any opportunity afforded to them to meet any charge of misconduct which, according to the employer, they were guilty of. On merits also, the Court has rejected the stand of the management that the workmen had absented themselves from work without leave or information for more than 10 days. In that view of the matter, it has refused, to accord its approval to the action of dismissal taken by the Management against the two workmen. The Labour Court has further held that since the dismissal order has not been made in strict, observance of the Standing Orders of the Company, the Management must be deemed to have contravened the provision of Section 33 of the Act. In that view of the matter, it has thought it fit to allow the petitioners' application u/s 33A of the Act and give them the relief of compensation as stated above.

3. The only argument put forward by Mr. K. P. Verma, learned advocate for the petitioners is that after refusing to accord approval to the action of dismissal taken by the Management against the petitioners, the effect of which was the dismissal of the application of the respondent Company filed under the proviso to Section 33(2) of the Act, the petition u/s 33A filed by the petitioners also ought to have been merely rejected and the court has committed an error of jurisdiction in allowing that application and giving the relief of compensation only, by taking an erroneous view in regard to the contravention of the provisions of Section 33 of the Act. In view of the submission aforesaid made on behalf of the petitioners, their prayer for modifying the award u/s 33A of the Act and giving them the relief of reinstatement has not been pressed.

Mr. T. K. Prasad, learned advocate for respondent No. 1, did not object to the prayer made on behalf of the petitioners for rejection of their application u/s 33A of the Act, rather he submitted that the view taken by the Labour Court in regard to the alleged contravention of the provisions of Section 33 of the Act is

erroneous and, there being no contravention, the application u/s 33A ought to have failed on that ground alone. He, however, submitted that, on the facts and in the circumstances of this case, the order of the Labour Court refusing to accord its approval to the action of dismissal taken by Management against the two workmen is erroneous and should be interfered with in this proceeding. Counsel submitted that the said order is an integral part of the award itself and, therefore, even though the Management has not attacked it by a separate application under Articles 226 and 227 of the Constitution of India, it is open to us to interfere with that part of the order if we are satisfied that it is, in fact, erroneous on the face of it.

We have refused to examine the propriety or impropriety of the order of the Labour Court made on the application of the Management for approval of their action of dismissal against the petitioners and to find for ourselves as to whether the said order is correct or not for the simple reason that, although the said order is contained in the award made u/s 33A of the Act and published in the Gazette, it is nonetheless an order in a separate proceeding u/s 33(2)(b) of the Act and the same having not been challenged on behalf of the Management by an appropriate application cannot be examined and Interfered with.

4. in regard to the main point urged on behalf of the petitioners, the parties are at one and both sides have contended that merely because the dismissal order was not made in strict observance of the Standing Orders of the Company as found by the Labour Court, it could not be held that there has been any contravention of the provision of Section 33 of the Act. I may state here that the claim of the petitioners that they were protected workmen within the meaning of Sub-section (3) of Section 33 of the Act has been rejected by the Labour Court and has not been pressed before us. Apart from there being an agreement between the parties in regard to the point of contravention of the provision of Section 33 of the Act, I would like to give my reasons also for accepting the argument as well founded.

5. Section 33A provides--

"Where an employer contravenes the provisions of Sec. 33 during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Labour Court, Tribunal or National Tribunal and on receipt of such complaint that Labour court, Tribunal or National Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly."

It has been held in *The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others*, by the Supreme Court;

"A cursory perusal of Section 33-A of the 1947 Act as well as Section 23 of the

1950 Act will at once show that it is the contravention by the employer of the provisions of Section 33 in the first case and of Section 22 in the second case that gives rise to a cause of action in favour of the workmen to approach and move the respective authority named in the section and this contravention is the condition precedent to the exercise by the authority concerned of the additional jurisdiction and powers conferred on It by the sections."

We are not concerned in this case as to what would be the scope of enquiry u/s 33A of the Act and what relief should be and ought to have been given to the petitioners in the present case as the petition has got to be rejected on the ground of there being no contravention of the provision of Section 33(2)--and no other provisions of the said section has been violated. Section 33(2) reads thus--

"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."

The only two conditions which, if not fulfilled and violated, would lead to the finding of the contravention of the provision contained in Section 33(2) of the Act, are-- (1) that no such workman shall be discharged or dismissed unless he has been paid wages for one month: and (2) that unless 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, such workman cannot be discharged or dismissed. None of these conditions has been found to have been violated. In my opinion, therefore, there was no contravention of the provision contained in Section 33(2) of the Act, The Labour Court seems to be of the view that merely because the employer has not dismissed the workmen in accordance with the Standing Orders applicable to them, it has violated the provision contained in Section 33(2) of the Act. In my opinion this view of the Labour Court is erroneous as the provision contained in the first paragraph of Sub-section (2) of Section 33 of the Act enables the employer to take action in accordance with the Standing Order--action as enumerated in Clauses (a) and (b) of the said sub-section and, if it be found that the employer has not taken action in accordance with the Standing Orders and the action is not justified on merits, the court may refuse to accord Its approval to the action taken by the Management, but that is no ground for holding that the employer has

contravened the provision of Section 33(2) of the Act. 6. In the result, I allow the application in part and, in exercise of the authority of this Court under Article 227 of the Constitution of India, I set aside the award made by the Labour Court respondent No. 2, u/s 33A of the Act and direct that the application of the petitioners u/s 33A of the Act be rejected. The order made on the application of respondent No. 1 filed under the proviso to Section 33(2)(b) of the Act refusing to accord approval cannot be and is not being interfered with. I would, however, like to make it clear that I am not deciding in this case, as it is not necessary to do so, the effect of the order aforesaid although the parties, with reference to some observations of the Supreme Court in the case of Strawboard Manufacturing Co. Vs. Gobind, and in the case of The Punjab National Bank Ltd. Vs. Its Workmen, , advanced divergent arguments in that regard, on the facts and in the circumstances of the case, I would make no order as to cost.

Ramaswami, C.J.

7. I agree.