
(1958) 07 RAJ CK 0001
In the Rajasthan High Court
Case No : Civil Writ Case No. 107 of 1958

Mansingh

APPELLANT

Vs

The Mewar Textile Mills Ltd., Bhilwara and Another

RESPONDENT

Date of Decision : 23-07-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : AIR 1959 Raj 36 : (1959) 1 LLJ 637 : (1959) RLW 4

Hon'ble Judges : K.L. Bapna, J;I.N. Modi, J

Bench : Division Bench

Advocate : Kistoormal, for the Appellant;

Final Decision : Dismissed

Judgement

K.L. Bapna, J.—This is an application under Article 226 of the Constitution.

2. The case set out by Mansingh petitioner is that he was an employee of the Mewar Textile Mills Ltd. Bhilwara, as a sepoy, and his duty on the night between the 29th and 30th September, 1957, was to supervise the Chowkidars from 2 a. m. to 6 a. m. A theft took place on that night at the mills premises. The petitioner along with certain other Chowkidars were suspended and an inquiry was held by the Manager of the Mill.

His finding was that the petitioner and certain other Chowkidars were negligent in their duty. It was found that the theft was committed either by the Sepoys or it could be attributed to their gross negligence. Taking into consideration the previous conduct of the petitioner, the management directed his dismissal from the date of his suspension, that is, 1-10-1957. The management offered one month's pay as required by Section 33(2) of the Industrial Disputes Act, 1947, and an application seeking approval of the action taken by the management was made to the Industrial Tribunal. The Industrial Tribunal by an order dated 30-11-1947, affirmed the decision taken against the petitioner but modified it in respect of certain other persons with whom we are not concerned.

3. The petitioner has come to this Court and the contention raised on his behalf is that there were no standing orders applicable in respect of the workmen in the category of the petitioner, and, therefore, he could not be dismissed nor could the order of dismissal of the management be referred to the Industrial Tribunal. Reliance was placed on Sub-section (2) of Section 33. That sub-section is as follows:

"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."

4. It is said there was some dispute pending before the Industrial Tribunal but the matter in respect of which the petitioner was dismissed was not one connected with the dispute. The argument raised by learned counsel for the petitioner is that the employer could only dismiss his employees in accordance with Standing Orders, and as there were no Standing Orders applicable to the petitioner, he could not be dismissed. Further for the same reason, that order was not one which could be submitted to the Industrial Tribunal for approval.

The argument if accepted would lead to absurd results. The Industrial Employment (Standing Orders) Act (No. 20 of 1946) provides by Section 3 for submission of standing orders to the certifying officer within six months of the Act becoming applicable to the industrial establishment. Section 5 relates to proceedings by certifying officer after giving notice to the employer and the trade union as to any modification which may be necessary. Then there is a provision of appeals by Section 6, and Section 7 relates to coming into operation of the standing orders from a certain date.

If the argument of learned counsel is accepted, nothing could be done during the entire period till the enforcement of the standing orders. The Schedule mentions the matters to be provided in the standing orders, and these matters, among other things, relate to the payment of wages, hours of work, leave and holidays. If the argument of learned counsel is accepted, the employees need not be given their wages or leave, and in fact the whole work should remain at a standstill. This would lead to an absurd result.

5. Learned counsel referred to Section 13 of the Industrial Employment

(Standing Orders) Act where penalty is provided for any omission by the employer to submit draft standing orders as required by Section 3; but that does not mean that in the absence of standing orders, the ordinary conditions of service between master and servant will not be applicable. The words "in accordance with the standing orders" occurring in Section 33(2) only mean that the procedure which may be adopted for discharging any workman should be in accordance with the standing orders if there are any.

The limitation is imposed by this section that the standing orders will have to be complied with. But if there are no standing orders, the restriction does not apply. In the present case, the finding of the management is that the petitioner was guilty of gross negligence, and that finding is accepted by the Industrial Tribunal. The management has complied with the provisions of Sub-section (2) of Section 33 inasmuch as the wages required to be paid were tendered, and the order was submitted to the Tribunal for approval.

6. There is no force in this petition and it is hereby dismissed in limine. Learned counsel wants leave to appeal, and the leave is refused.