
(1973) 05 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 922 of 1972

Messrs Kapur Silk Weaving Mills, Amritsar	APPELLANT
Vs	
Shri Manohak Lal	RESPONDENT

Date of Decision : 14-05-1973

Acts Referred:

Payment of Wages Act, 1936 — Section 15(2)

Citation : (1973) 05 P&H CK 0009

Hon'ble Judges : Prem Chand Pandit, J

Bench : Single Bench

Advocate : R.L. Aggarwal with Mr. Amar Datt, for the Appellant; B.S. Bindra with Mrs. Surjit Bindra, for the Respondent

Final Decision : Dismissed

Judgement

Prem Chand Pandit, J.—The facts giving rising to this petition under Article 227 of the Constitution are not in dispute. Manohar Lal was employed as a Chowkidar by Messrs Kapur Silk Weaving Mills of Amritsar, hereinafter referred to as the Mills. It is said that a theft took place in the Mills on the night intervening 10th and 11th September, 1966, and after an enquiry was held by one Sikandar Lal Sashar, the Chowkidar was dismissed from service on 29th October, 1966. ON 3rd October, 1967, this Chowkidar made an application u/s 15 (2) of the Payment of Wages Act, 1936, for the recovery of Rs. 1148.50 Paige as wages from 29th October, 1966, to 30th September, 1967. His case was that his employers had not got the approval of his dismissal u/s 33 (2) (b) of the Industrial Disputes Act, hereinafter called the Act, and, consequently, under the law, he would be deemed to be in service and that is why he was entitled to the said wages.

2. This application was contested by the Mills on two grounds, via. that the claim was barred by limitation, and that the Authority under the Payment of Wages Act had no jurisdiction in the Matter, because it would involve the reinstatement of the applicant is service after holding the order of dismissal to be had and that

was not the function of the said Authority.

3. At the time of the final hearing before the Authority under the Payment of Wages Act, the first ground was given up and it was the other one, which was pressed, and the same prevailed with the said Authority and it came to the conclusion that it had no jurisdiction to deal with the matter and observed:

A survey of the above authorities; therefore, leaves no difficulty in coming to the conclusion that it is not within the scope of the "Authority" under the P.W. Act, to consider or examine the validity or otherwise of an order of dismissal, discharge or removal from service of a workman. The Authority has only the limited jurisdiction to pass a direction against an employer regarding the unpaid or delayed wages almost on admitted facts and the question of the validity or otherwise of dismissal or discharge order is not an incidental matter, referred in the P.W. Act. In my opinion, therefore. It is beyond the scope of the jurisdiction of the Authority to decide the present controversy and the point is decided against the petitioner and in favour of the respondent (Mills).

4. Against this order, Manohar Lal went in appeal before the learned Additional District Judge, Amritsar. The learned Judge reversed the finding of the Authority under the Payment of Wages Act and held that the said Authority had the jurisdiction to try the matter. The appeal was consequently, accepted and it was directed that the case should go back to the Authority for determining the amount of wages payable to Manohar Lal. Against this order, the Mills have come here in revision under Article 227 of the Constitution.

5. There is no dispute about two matters, namely, that a Workman, who has been validly dismissed from service, cannot approach the Authority under the Payment of Wages Act for wages after his order of dismissal. It may be stated that at the time when the order of dismissal was made, there was a dispute pending between the Workman and the Mills before the Industrial Tribunal, Punjab, Chandigarh. It is not quite clear on the record as to what that precise dispute was, but it is said that Manohar Lal was a party to it, he also being a workman employed by the Mills. It is also not in dispute that an order of dismissal, when some dispute is pending between the Workman and the Management before the Industrial Tribunal, has to be approved by the Tribunal u/s 33 (2) (b) of the Act. The parties are also agreed that the Management had applied to the Tribunal for approval of the order of dismissal passed against Manohar Lal u/s 33 (2) (b) of the Act, but the said approval was refused by the Tribunal. The question for determination is whether under these circumstances, the Authority under the Payment of Wages Act had the jurisdiction to deal with the claim of Manohar Lal made before it.

6. As I look at the matter, if the approval, which was, admittedly, needed for the proper dismissal of Manohar Lal, was not granted by the Tribunal, his dismissal was obviously not valid. If the dismissal was improper, then he would be deemed to be in the service of the Management. It follows, there from, that the Authority

under the Payment of Wages Act will be able to deal with the matter in dispute. The Authority, in the peculiar circumstances of the instant case, was not right in observing that it was not within its jurisdiction to examine the validity or otherwise of the order of dismissal. When it is agreed that the necessary approval u/s 33 (2) (b) was not forthcoming and the same was refused by the Tribunal, it means that the Workman Manohar Lal continued to be in service as if he had never been dismissed. If, on the other hand, the approval had been there, then, it would have been held that he had been properly dismissed from service, with the result that he would not have been able to approach the Authority under the Payment of Wages Act for his salary from the date of the alleged order of dismissal.

7. No direct authority has been cited before me dealing with this matter, except the one given by the Calcutta High Court in *Messrs. Kumar Engineering Works (Private) Ltd. Vs. Sri Dinabandhu Koley and Others*, which has been relied on by the learned Additional District Judge also. There it was held:

It is well settled now that the dismissal of workmen in a case, contemplated u/s 33 (2)(b) of the Industrial Disputes Act, would be invalid, in effect and inoperative if no approval of the order of dismissal is obtained from the relevant Tribunal.

Therefore, where the application made by the employer u/s 33(2)(b) of the Industrial Disputes Act for the approval of dismissal of workmen during pendency of proceedings before Industrial Tribunal relating to the wage structure, payment of bonus etc. is permitted to be withdrawn with the observation that the result of the withdrawal will be that there will be no approval for the dismissal and the parties will be subjected to the legal consequences arising from this position. The Authority under the Payment of Wages Act has jurisdiction to entertain the application for back wages etc. and the Authority is justified in holding that the workers are employees under the employer. The effect of withdrawal being dismissal of application there was no contravention of provisions of section 33, Industrial Disputes Act and, hence, application u/s 33-A of that Act is not open to workmen.

8. The above decision goes a long way in support of the contention of the learned counsel for the respondent. The Division Bench of the Calcutta High Court had relied on two Supreme Court decisions, i.e. *Strawboard Manufacturing Co. Vs. Gobind*, and *Tata Iron and Steel Co. Ltd. Vs. S.N. Modak*, . In the former, it was observed:

There could therefore be no doubt that sub-section (2) (b) read together with the proviso contemplates that the employer may pass an order of dismissal or discharge before obtaining the approval of the authority concerned and at the same time make an application for approval of the action taken by him. If the Tribunal does not approve of the action taken by the employer, the result would be that the action taken by him would fall and thereupon the workman would be

deemed sever to have been dismissed or discharged and would remain In the service of the employer. In such a case no specific provision as to reinstatement is necessary and by the very fact of the tribunal not approving the action of the employer, the dismissal or discharge of the workman would be of no effect and the workman concerned would continue to be in service as if there never was any dismissal or discharge by the employer. In that sense, the order of discharge or dismissal passed by the employer does not become fiat) and conclusive until it is approved by the tribunal u/s 33(2) of the Act.

The proviso contemplates three things mentioned therein, namely,

- (i) dismissal or discharge;
- (ii) payment of wages ; and
- p(iii) making of an application for approval.

to be simultaneous and to be part of the same transaction, so that the employer when he takes action u/s 33(2) by dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time. The employer's conduct should show that the three things contemplated under the proviso, namely,

- (i) dismissal or discharge ;
- (ii) payment of wages, and
- (iii) making of the application.

are parts of the same transaction. If that is done, there will be no occasion to fear that the employee's right u/s 33A would be affected

In the latter case, it was held that until the approval u/s 33 (2)(b) of the Industrial Disputes Act is obtained, the order of dismissal cannot effectively terminate the relationship of the employer and the employee.

9. It would, thus, be seen that when approval for the dismissal was not admittedly given by the Tribunal; the dismissal order passed by the Management was in operative and the relationship between the employee and the Management remained the same and was not terminated.

10. The argument raised by the learned counsel for the petitioner was that the proper remedy for the Workman in the present case was to make a complaint u/s 33A of the Act, because, according to him, the contravention of section 33(2)(b) gave a cause of action to the workman to make such a complaint.

11. I have not been able to appreciate this argument, because, according to the Workman, there had been no contravention of section 33(2)(b), because his case was that the approval to his dismissal had been rightly withheld by the Tribunal. It was, on the other hand, the case of the Management that the Tribunal had

wrongly refused to give its approval to the order of dismissal and thus the provisions of section 33 (2)(b) of the Act had been contravened and if that be so, it were they, who should have sought their remedy under the Act or by way of a writ petition in this Court. But the Management did not adopt any of those courses, with the result that the order of dismissal, which was, concededly, not approved by the Tribunal, and which approval, according to the learned counsel for the petitioner, was essential in this case, remained inoperative. Besides, it is not understandable as to how the Workman could make a complaint u/s 33 A of the Act, because, according to the Supreme Court, the Workman could file such a complaint Only if the Management had not complied with the conditions laid down in the proviso to section 33(2)(b) All the three conditions laid down by the Supreme Court above had been duly fulfilled and, therefore, there was no occasion for the Workman to move u/s 33A of the Act.

12. In view of what I have said above, I find no merit in this petition, which is hereby dismissed, but with no order as to costs Parties have been directed to appear before the Authority under the Payment of Wages Act on 16th July, 1973, for further proceedings in the case.