
(2012) 07 AHC CK 0282

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31236 of 2010

Modi Distillery

APPELLANT

Vs

Presiding Officer, Industrial Tribunal (V), U.P. and Another

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6F

Citation : (2012) 134 FLR 771

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Shakti Swarup Nigam, for the Appellant; Siddharth, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri S.S. Nigam, Advocate for the petitioner and learned Standing Counsel as well as Sri Siddharth, Advocate for respondents. With the consent of learned Counsel for the parties the Court has proceeded to decide this matter at this stage under the Rules of this Court though no counter affidavit has been filed by respondent No. 2.

2. The petitioner is aggrieved by award dated 29.7.2009 passed by respondent No. 1 in Misc. Case No. 3 of 1995, u/s 6-F of U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the "Act, 1947"). The respondent No. 2, the workman, filed an application u/s 6-F of Act, 1947 pleading that he was employed since 12.7.1980 as a regular and permanent employee in petitioner's industry, namely, Modi Distillery (hereinafter referred to as the "Employer"). The Employer declared a temporary closure and lockout on 5.1.1992, justification whereof was agitated by Modi Employees Union (hereinafter referred to as the "Employees Union") which resulted in a reference u/s 4-K of Act, 1947 for adjudication before Industrial Tribunal registered as Adjudication Case No. 73 of 1992. During pendency of the said reference, Employer suspended the workman, respondent No. 2 by letter dated 29.5.1995/2.6.1995 which resulted in dismissal order dated

8.11.1995. The workman assailed the order of dismissal alleging to be in utter violation of principle of natural justice inasmuch as he was not afforded opportunity of hearing and in a wholly ex parte proceedings the punishment order of dismissal was passed.

3. It is contended that aforesaid dismissal amounts to violation of requirement of section 6-E(2) of Act, 1947 and, therefore, application u/s 6-F was maintainable and this contention has been upheld by Industrial Tribunal, Meerut, U.P. vide award impugned in this writ petition.

4. Sri Nigam, learned Counsel for the petitioner contended that there was no question of any alteration of conditions of service but here the workman was found guilty of an act and omission constituting misconduct and after a departmental inquiry in which he was found guilty, he was punished with imposition of punishment of dismissal, hence section 6-E(2) has no application to the present case and Labour Court has committed patent error apparent on the face of record.

5. On the contrary Sri Siddharth, learned Counsel appearing for respondent No. 2 submitted that even when a discharge or dismissal of workman is made during pendency of any industrial dispute, the same cannot have been done unless the workman has been paid wages for one month and an application has also been made by Employer to the authority before whom the proceeding is pending for approval. In the present case, since this requirement as contemplated in Proviso to section 6-E(2) of Act, 1947 has not been complied with, the Industrial Tribunal has rightly held dismissal illegal and impugned award warrants no interference.

6. The only question up for consideration in this case is about the application of section 6-E(2) of Act, 1947 in the facts of this case?

7. It is not in dispute that so far as Adjudication Case No. 73 of 1992 is concerned, the reference was not answered either way by Tribunal before which it was pending, may be on the basis of an adjudication or the so called settlement on the date when the workman was dismissed. Therefore, the Tribunal, in my view, has rightly come to the conclusion that at the time when workman concerned was dismissed from service, adjudication proceeding by way of Adjudication Case No. 73 of 1992 was pending before Tribunal. Therefore, it cannot be said that the workman was dismissed from service but not during pendency of an industrial dispute before Tribunal.

8. Now the only question is, whether section 6-E(2) stand complied with or not.

9. Section 6-E(1) prohibits change of any conditions in service during pendency of industrial dispute without approval of authority before whom the proceedings are pending. Sub-section (2), however, provides an exception where the Employer even during pendency of proceedings can take an action in accordance with Standing Orders applicable to workman concerned in respect to, (i) change of conditions of service applicable to such workman immediately before

commencement of such proceedings provided the same are not in regard to the matter connected with dispute, and (ii) he can discharge or punish whether by way of dismissal or otherwise such workman for any misconduct not connected with dispute. This power given to Employer vide sub-section (2), however, is further checked by Proviso which says, if the workman is to be discharged or dismissed, it shall not be done so unless the workman has been paid wages for one month and an application has been made by Employer to the authority before whom proceeding is pending for approval of action taken by Employer.

10. There is no manner of doubt that Proviso imposes a restriction upon Employer that before dismissal or discharge by resorting to liberty granted under sub-section (2) of section 6-E, the Employer will take into confidence the authority concerned before whom the proceeding is pending by moving an application for approval of action taken by Employer and shall also pay wages for one month to such workman. It is not the case of petitioner that any such application was filed before respondent No. 2. Consequently, the breach of requirement of proviso to section 6-E(2) is evident and virtually admitted by petitioner.

11. The decisions relied at the Bar, i.e., *Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup*, , *National Engineering Industries Ltd. Vs. Hanuman*, , and *Indian Oxygen Limited v. Udaynath Singh and others* 1970 (2) LLJ 413, in my view, have no application to the facts of this case.

12. In *L.D. Sugar Mills v. Ram Sarup* (supra) the question was, whether a lockout declared by Employer would amount to alteration of conditions of service or a discharge or punishment of workman requiring permission u/s 33 of Act, 1947. The Apex Court held that it does not come within any of the contingencies referred to in section 33 of Act, 1947.

13. In *National Engineering Industries Ltd., Jaipur v. Hanuman* (supra) there was a standing order contemplating automatic termination of a workman for remaining absent without permission for a particular period. The said standing order was attracted resulted in automatic termination of workman and Apex Court held that such termination would not attract section 33 and no application, thus u/s 33-A of Act, 1947 would be maintainable.

14. In *Indian Oxygen Limited v. Udaynath Singh* (supra) the question was, whether despite of a decision in a works committee about sale of carbide drums to the employees at concessional rates but refusal to do so would attract section 9-A read with section 33-A of Act, 1947 and the said question was answered in negative by Apex Court.

15. The Division Bench judgment in *Symonds and Co. (Pvt.) Limited Vs. Maharani and Others*, , in effect considered the same contingency as was involved in *National Engineering Industries Ltd., Jaipur v. Hanuman* (supra) and, therefore, this decision also, in my view, also has no application to the facts of this case.

16. Then there is a Single Judge decision of Calcutta High Court relied by Sri Nigam, i.e., M/s. A.K. Corporation Pvt. Ltd. v. State of West Bengal and others 1977 Lab IC 1035, where a dispute referred u/s 2-A of Act, 1947 was pending and the Court said that since it was an individual industrial dispute, hence in respect to employees which are not connected with such dispute, section 33 would have no application. This also lends no credence to the petitioner.

17. In my view, the present case would be squarely covered by Apex Court's decision in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, , where the Apex Court while construing a pari materia provision u/s 33(2)(b) of Act, 1947 has observed that the proviso thereto is mandatory and conditions contained therein are to be initially complied with. In para 12 of the judgment the Court said:

12. The proviso to section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of section 33 and in the context of the proviso to section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of section 33 invites a punishment u/s 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1,000 or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in other way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed u/s 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. An employer cannot be permitted to use the provision of section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

18. The above observations leave no doubt in the mind of this Court that an employee can be punished during pendency of an industrial dispute by imposing punishment of dismissal or discharge or otherwise if the misconduct is not connected with proceedings pending before the authorities concerned and Employer can get over the otherwise restriction imposed by sub-section (1) of section 6-E of Act, 1947 but this liberty is not absolute and on the contrary is duly controlled by authority before whom the proceedings are pending. The Employer will have to show correctness of its action, i.e., the application of section 6-E(2) in the particular case before the authority concerned by submitting an application seeking its approval for the action taken and when

such authority is satisfied and grants approval, such punishment would be valid and not otherwise. Besides, if the punishment is of dismissal or discharge, the workman will have to be paid one month wages which is an additional protection u/s 6-E(2), though in common parlance and service jurisprudence when a punishment of dismissal is imposed there is no requirement of payment of any wages to the employee concerned. When Legislature in its wisdom has provided even in such a case, a protection to an employee concerned, it has to be observed in words and spirit and cannot be disregarded.

19. The award impugned in this writ petition, in my view, thus, cannot be faulted in view of discussion made above.

20. The writ petition thus is devoid of merits.

21. Dismissed. However, there shall be no order as to costs.