
(1962) 02 PAT CK 0015

In the Patna High Court

Case No : Misc. Judicial Case No. 873 of 1959

Mohini Sugar Mills Ltd.

APPELLANT

Vs

A. Hasan and Others

RESPONDENT

Date of Decision : 28-02-1962

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33(2)

Citation : AIR 1962 Patna 348 : (1962) 2 LLJ 389

Hon'ble Judges : V. Ramaswami, C.J;R.K. Choudhary, J

Bench : Division Bench

Advocate : A.B.N. Sinha and Ramji Sharan, for the Appellant; Ranen Roy, T.K. Das and Addl. Govt. Pleader, for the Respondent

Judgement

Choudhary, J.—This is a writ application under Article 226 of the Constitution" of India,

2. The petitioner is a public limited company duly registered under the Indian Companies Act, 1913, and having its registered office at 12, India Exchange Place, Calcutta. It carries on the business of manufacture of sugar from sugar cane at its factory situated at Warsaliganj in the district of Gaya. Its Managing Agents are Messrs. Karamchand Thapar and Brothers (Private) Limbed. Respondents 2 to 9 were workmen employed in the petitioner company. They along with ten other workmen were made to retire, and their case was taken up by the Mohini Sugar Mills Workers" Union (hereinafter to be referred as "the Union) as a result of which the Government of Bihar, in the Department of Labour under Notification No. III/D1-805/57-L-16876, dated the 19th September, 1957, referred the question of the justifiability or otherwise of the retirement of these 19 workmen, along with one other matter, to the Presiding Officer of the Labour Court at Patna for adjudication. The above notification gave rise to Reference No. 3/L.C. of 1957 before the said Labour Court.

It appears that an agreement was arrived at between the parties on the 14th of August, 1957, with regard to the question of the justifiability or otherwise of the

retirement of the workmen, according to which as alleged by the petitioner company in its written statement, a copy of which is annexure "F" to the writ application, it was agreed that the law would take its own course and in case any retired person felt aggrieved on the question of age, it could be examined at the level of Works Committee, and if no decision was arrived at then the opinion of the Civil Surgeon would be binding, and that the first preference for fresh appointment would be given to the song of the retired workmen. Accordingly the president of the Union filed a petition on the 9th of June, 1958, before the Presiding Officer, Labour Court, Patna enclosing an extract from the above agreement, and prayed, that in view of the Mutual agreement arrived at between the parties in regard to the question of retirement, that item would not be pressed. There was a further agreement between the parties on the 16th of November, 1958, under the terms of which the remaining retired workers out of those 19 who had not produced certificates in time were to be taken back from the season 1958-59 without any payment for the period they had not worked. Accordingly, another application was filed by the President of the Union on the 2nd of December 1958, in which it was prayed that the terms of the above agreement be incorporated in the award. The Labour Court, therefore, in its award dated the 30th of December, 1958, accepted the position with regard to the question of justifiability or otherwise of the retirement, as stated in the petitions filed on behalf of the president of the Union", and the award was given in terms of the agreements.

3. Before the above award was made, however, the Government of Bihar by another notification, No. III/D1.-804/58-L-21679, dated the 23rd of December, 1958, referred certain matters to the Industrial Tribunal, Bihar for adjudication, which gave rise to Reference no. 18 of 1959. During the pendency of that reference, the management of the petitioner company passed an order on the 19th of March, 1959, as a result of which respondents 2 to 9 were made to retire with effect from the date of the closure of the crushing season 1958-59- A copy of the above order is Annexure "D" to the writ application. The General Secretary of the union, Sri Ram Narain Pandey, claiming to have been authorised by the said respondents, filed an application purporting to be u/s 33-A of the Industrial Disputes Act, 1947, praying for reinstatement of those respondents. This application gave rise to Miscellaneous Case No. 87 of 1959. On receipt of notice from the Industrial Tribunal about the said application, the management of the petitioner company filed its written statement supporting the justifiability of the order of retirement. The industrial Tribunal gave its award in the above miscellaneous case on the 23rd of October, 1959 by which it allowed the application filed by the General Secretary of the Union, set aside the order of retirement passed in respect of those respondents and gave a direction for their reinstatement. The petitioner, being thus aggrieved, filed the present application for Issue of an appropriate writ quashing the above award of the Industrial Tribunal.

4. Cause has been shown by the respondents 2 to 9 on whom the notice of the

application was ordered to be issued, and they have filed a counter-affidavit sworn by Ram Narain Pandey the General Secretary of the Union. A reply to that counter-affidavit has been filed on behalf of the petitioner company with certain annexures, including annexures D-1 to D-4 in support of its contention that the respondents agreed to be bound by the terms of employment and rules and regulations of Messrs. Kararn-chand Thapar and RrOthers (Private) Limited.

5. The terms and conditions of services applicable to companies under the management of Messrs. Karamchand Thapar and Brothers (Private) Limited are prescribed in certain rules (hereinafter to be referred to as "the rules"). Rule 1 of the Rules States that these rules shall be referred to" as the Service Rules, and apply to all the employees of Messrs. Karam Chand Thapar and Bros. Private Limited, and also to the employees of all the companies under their management and control and shall, mutatis mutandis apply to all their branches and Offices, Mills, Factories, Collieries and other works wherever situate, except in so far and to the extent it is otherwise agreed upon by agreement or letter of appointment in any case or to the extent they are modified by any Standing orders under the industrial Employment (Standing Orders) Act, 1946, or any other statute for the time being in force and applicable to any office, Mill, Colliery or works or to an employee or group of employees. Under Rule 11(c) of the Rules, the age of 55 has been fixed as being the age of superannuation of an employee, and it runs as follows :-

"(c) All the employees shall retire from service of the Company on the 31st March, immediately following the completion of their 55th year of age except in the case of employees in Sugar Factories where for the purpose of retirement instead of 31st March, the date will be the last date of the current crushing season following the completion of the 55th Year of age of an employee. The Company, however, at its sole discretion may re-employ such of the retired employees as they may consider necessary. The employees thus re-employed shall not be entitled to join the company's Provident Fund."

It is under this rule that respondents 2 to 9 were made to retire on their completion of age of 55 Years.

6. The Industrial Tribunal took the view that, as there was no provision with regard to the age of superannuation in the certified standing orders of the petitioner company, the rule in the Rules prescribing the age of superannuation would be in violation, of the provisions of the standing orders, it also took the view that the order of retirement passed during the pendency of the adjudication in Reference No. 18 of 1959, without seeking approval of the Tribunal, was in contravention of the provisions of Section 33 of the Industrial Disputes Act and was, therefore, illegal.

7. The first point raised by Mr. A. B. N. Sinha, on behalf of the petitioner company, is that the workmen in the present case agreed to the application of the rules to them, and, as such, they are bound by these rules and the order of

retirement passed in pursuance of Rule 11 (c) of the Rules is, therefore, perfectly valid and binding on respondents 2 to 9. Annexures D-1 to D-4 have been filed by way of samples to show that the workmen agreed to be bound by the terms of employment and rules and regulations of the company, and in paragraph 5 of the reply to the counter-affidavit, it has been clearly stated on behalf of the petitioner that the workmen themselves had accepted the application of these rules at the time of their appointments. The statement has not been denied by the workmen, but an argument has been parsed on their behalf that Annexures D-1 to D-4 are of no assistance to the petitioner. Because the agreement therein is with regard to the binding nature of the rules and regulations, of the company which must mean the petitioner company, and not the company of the Managing Agents.

There is nothing on the record to show and nobody has Suggested, that the terms and conditions of employment in the petitioner company are different from those prescribed in the Rules of the Managing Agents, Messrs. Karamchand Thapar and Brothers (Private) Limited. Even the industrial Tribunal seems to have accepted the position that the workmen had agreed to be bound by the "Rules of the Managing Agents. It however explains away the above agreement as having no force in the eye of law beyond the agreement itself, with an observation that if the employees accepted a provision in the rules which is more favourable to them, it does not give the management a legal right to enforce such provisions of it which are prejudicial to the workmen. I have not been able to follow the above observation and the correctness of the proposition laid down by the Industrial Tribunal. In my opinion, there is ample material on the record to show that the workmen agreed to be bound by the rules of the Managing Agents and these Rules are binding on respondents 2 to 9.

8. Even assuming that there were no such agreements by the workmen to be bound by the Rules of the Managing Agents, their case does not improve In the least. Rule of the rule referred to above, makes it perfectly clear that the rules apply to the employees of all the companies under the management of Messrs. Karamchand Thappar and Brothers (Private) Limited, except in so far as to the extent it is otherwise agreed upon by an agreement or letter of appointment in any case or there are any standing orders under any statute for the time being in force and applicable to any office, mill, colliery or works or to an employee or group of employees. The employees of the petitioner company, therefore, are bound by the Rules unless they can bring their case within the exceptions, referred to above. It is nobody's case that either under the letters of appointment or by any agreement the employees are not bound by the Rules. Admittedly the standing orders of the petitioner's company are absolutely, silent on the point of superannuation. Therefore, there is no difficulty in the application of Rule 11 (c) of the Rules of the employee of the petitioner company in regard to the age of their superannuation. The Industrial Tribunal, therefore, erred in law in holding that the Rules Of the Managing Agents were not applicable to respondents 2 to 9.

9. It has further been urged by Mr. A. B. N. Sinha that even if it be assumed that the Rules of the Managing Agents are not applicable to the employees of the petitioner company, the award in question has still to be held to be not legally valid inasmuch as the complaint made u/s 33-A of the Industrial Disputes Act was not at all maintainable. The argument is well founded and must be accepted as correct. Section 33-A of the said Act reads as follows:-

""33-A. Where an employer contravenes the provisions of Section 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 o 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 accot dance with the provisions of this Act and shall submit it award to the appropriate Government and the provisions Of this Act shall apply accordingly."

In order, therefore, that such a complaint could be maintainable, an employer must have contravened the provisions of Section 33 of the Act. in the present case, the complaint of the work men is that the Order making them to retire contravenes the provisions of Sub-section (2) of Section 33 of the Act, which runs as follows:-

"(2) During the pendency of any such proceeding in respect of an industrial dispute, that 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 dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(h) 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."

It is contended on, behalf Of the petitioner that Clause (b) of the above sub-section has no application to the present case inasmuch as the order of retirement does not amount to discharge or punishment. Mr. Ranen Roy, appearing for respondents 2 to 9, however, has urged that retirement amounts to discharge within the meaning of Clause (b) of Sub-section (2) of Section 33 of the Act. , No authority has been cited by Mr. Roy in support of his contention, and I am unable to accept his argument as correct. In my opinion, superannuation does not amount to discharge Clause (b) of Sub-section (2) of Section 33, therefore, has no application to the present case.

10. It has then been contended by Mr. Roy that the petitioner company did not obtain approval of the Industrial Tribunal with respect to the action taken by it in gating the workmen referred to above, to retire. The Industrial Tribunal also took the view that the petitioner should have obtained its approval. This contention is based on the assumption that the case of these workmen, is covered by Clause (a) of Sub-section (2) of Section 33 of the Act. The argument, however, in my opinion, is based on confusion, because a mere reading of Sub-section (2) of Section 33 makes it perfectly clear that the requirement of approval, as laid down in the proviso, relates to the matter covered by Clause (b) of Sub-section (2) and it has nothing to do with matters covered by Clause (a) of the said sub-section.

This view gains support from a Bench decision of this Court in Harinagar Sugar Mills Ltd. Vs. Choudhary Sia Saran Sinha and Another, wherein it has been pointed out that by Clause (a) of Sub-section (2) of Section 33 of the Act the employer has been empowered to alter the condition of service applicable to a workman immediately before the commencement of the proceeding in regard to Such matter in accordance with the standing orders applicable to that workman and that by Clause (b) of that Sub-section the employer has been further empowered by discharge or punish, by dismissal or otherwise, a particular workman for any misconduct not connected with the dispute, subject to the condition that the workman has been paid his 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 him. The same view has been taken by the Supreme Court in the case of The Lord Krishna Textile Mills Vs. Its Workmen, . The following observation of his Lordship, Gajendragadkar, J., in this connection is very Important;

"It would be noticed that even during the pendency of an Industrial dispute the employer's right is now recognised to make an alteration in the conditions of service so long as it does not relate to a matter connected with the pending dispute, and this right can be exercised by him in accordance with the relevant standing, orders, in regard to such alteration no application is required to be made and no approval required to be obtained. When an employer, however, wants to dismiss or discharge a workmen" for alleged misconduct not connected with the dispute, he can do so In accordance with the standing order but a ban is imposed on the exercise of this power by the proviso. The proviso requires that no Such workman shall be discharged or dismissed unless two conditions are satisfied; the first is that the employees concerned should have been paid wages for one month, and the second is that an application should have been made by the employer to the appropriate authority for approval of the action, taken by the employer."

It is, therefore, manifest that the order of retirement did not require the approval of the In-dustrial Tribunal.

10a. Counsel for the petitioner hag submitted .that the order of retirement in the

present case does not amount to an alteration of the condition of service applicable to the work-men concerned immediately before the commencement of the proceeding in respect of an industrial dispute, and as such it does not violate the provisions of Section 33(2) of the Act There is much force in this argument. Admittedly, immediately before the commencement of the Industrial dispute in Reference no. 18 of 1959, there was nothing to shew the conditions of service as regards superannuation of an employee, and, in that view of the matter, there could be no question of alteration of those conditions by introducing the age of superannuation and making respondents 2 to 9 to retire on the completion of the age prescribed in, the Rles. It is, therefore, clear that on this account also there is no contravention of the provisions of Section 33 of the Act.

11. Lastly, it has been submitted on behalf of the petitioner that, since there is nothing in the standing orders of the petitioner company about the age of superannuation of an employee, there could be no question of altering the conditions of his service by fixing the age of superannuation in accordance with the standing orders, and in support of this contention reliance has been placed on a Bench decision of the Rajasthan High Court in Mansingh v. Mewar Textile Mills Ltd., Bhilwara MR 1959 Raj 36. It has been held in that case that the words "in accordance with the standing Orders", occurring in Section 33(2) of the, Act 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, and that the limitation is imposed by this section that the standing Orders will have to be complied with. It was further pointed out that, if there are no standing orders, the restriction does not apply, and in such a case the ordinary conditions of service between master and servant would be applicable. I am in full agreement with the view taken in the above case.

12. On a consideration of the facts and the circumstances of this case, along with the authorities, referred to above, my concluded opinion is that the Order of retirement of respondents 2 to 9, a copy of which is Annexure "D" to the writ application, does not contravene the provisions of Section 33 of the industrial Disputes Act, and as such, the complaint u/s 33-A of the Act was not maintainable. The award in question, therefore, could not be legally valid and has to be quashed-

13. The result, therefore, is that the application is allowed. Let a writ in the nature of certiorari be issued quashing the award of the Industrial Tribunal, dated the 23rd October, 1959, a copy of which is Annexure "G" to the writ application? In the circumstances of the case, there will be no order as to costs.

Ramaswami, C.J.

14. I agree.