
(1994) 02 KL CK 0040
In the High Court Of Kerala
Case No : W.A. No. 1279 of 1993

Narayanan

APPELLANT

Vs

B.P.L. Systems (P) Ltd.

RESPONDENT

Date of Decision : 14-02-1994

Acts Referred:

Citation : (1994) 68 FLR 1067 : (1994) 2 ILR (Ker) 677 : (1995) 1 LLJ 43

Hon'ble Judges : M. Jagannadha Rao, C.J;K.G. Balakrishnan, J

Bench : Division Bench

Advocate : M. Rajasekharan Nayar, for the Appellant;

Final Decision : Dismissed

Judgement

Jagannadha Rao, C.J.—Writ petitioners are the appellants. They are employees of the first respondent, the B.P.L. Systems and Projects. Ltd. On the ground of charges of misconduct amounting to causing bodily injury to officers of the management, these two employees were dismissed from service, after holding a domestic enquiry. Thereafter the matter came up before the Industrial Tribunal, Calicut in I.D. No. 6 of 1987. The said I.D. ended against the workmen on July 22, 1988 in a reasoned award. The award has been challenged in the O.P. by the workmen and the O.P. was dismissed by the learned single Judge by his judgment dated July 11, 1993. This appeal is preferred against the said judgment by the workmen.

2. Relying mainly on the decision of the Supreme Court in Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, it was contended for the workmen that the incident of assault on the officers of the management took place outside the factory premises and, therefore, the dismissal was bad. This contention was raised before the learned single Judge and the same was rejected. In this appeal also, learned counsel for the workmen relies upon the Supreme Court decision in Glaxo Laboratories (I) Ltd's case, (supra).

3. Before adverting to the contention of the appellants, we shall refer to the

facts. The charge, as set out in the Award, is as follows:

"While Sri. K.P.R. Nambiar, the Managing Director, Sri B. Narayanan, General Manager (Engineering), Sri K.P. Viswanathan, General Manager, Sri N.G. Nair, Factory Manager, Sri. V.U.N. Unni, Sri. N.V. Subramanian, Sri. N.C. Sriram, Sri. Chandramohan Nambiar and others were going for work on March 14, 1983, between 8.45 and 9.15 a.m. you along with others indulged in physical assault thereby causing grievous bodily injuries to Sri B. Narayanan and others near BPL Bus Stop Pollachi Road diversion from National Highway."

The Industrial Tribunal found that there was a strike in the factory. The Industrial Tribunal also pointed out that as per the evidence of MW1, Sri. B. Narayanan, the workers were on strike and were blocking the willing workers on various occasions from reaching the factory. He went to the factory with the willing workers on March 14, 1983 and the striking workers prevented them and while he was trying to escape through a dried pond two stones hit on the back of his head one after another and he sustained bleeding injuries and became unconscious and regained memory in the hospital. The Industrial Tribunal found that this would show that the incident had taken place on their way to the factory and near the B.P.L. Bus Stop. That the incident took place near the B.P.L., Bus Stop is not disputed. Nor was there any dispute about the time of the incident. The Tribunal therefore held that the evidence would show that it was early in the morning when the willing workers were going to the factory that the incident took place near the B.P.L. Bus Stop. It then held:

"From the circumstances, it can be seen that the misconduct alleged has got an intimate connection with employment in the factory, though it has not taken place within the factory. Because the act is between two sections of employees, i.e., between the willing workers and the striking workers, the injured persons are all managerial staff."

The Industrial Tribunal described the acts of the workmen as unfair and amounted to subversive acts. The Industrial Tribunal referred to the decision of the Supreme Court in *Mulchandani Electrical and Radio Industries Ltd. Vs. The Workmen*, and then pointed out that in that case the Supreme Court held that the relevant Standing Order relating to the commission of any act subversive of discipline or good behaviour within the premises or precincts of the establishment, would have to be interpreted properly. The Supreme Court observed that on a plain reading of the clause of the words "within the premises or precincts of the establishment" referred not to the place where the act, which is subversive of discipline or good behaviour is committed, but where the consequence of such act manifests itself. The Industrial Tribunal therefore found as follows:

"Following the above I find that the act committed by these workers are subversive of discipline and the management has every right to proceed against them."

It noticed that as per the Kerala Standing Orders Rules (Rule 17(3)), any incident taking place outside the factory could not be considered as an act subversive of discipline.

4. It is this view of the Tribunal that is questioned in this writ appeal, relying upon Glaxo Laboratories (I) Ltd's case (supra).

5. In Central India Coalfields Ltd., Calcutta v. Ram Bilas Shobhatt 1961 I LLJ 546 (SC), the workman was dismissed for misconduct of "drunkenness, fighting, riotous or disorderly or indecent behaviour" in the quarters of the workers attached to the factory. The Industrial Tribunal held that the misconduct had taken place outside the colliery premises and set aside the dismissal. On appeal, the Supreme Court reversed the same and held that it was not a private matter, but that there were "special circumstances". The incident took place in the quarters within a short distance from the coal bearing area and that as held by the Inquiry Officer, unless the employer "took some action against the respondent, breach of peace was threatened and that is not a matter which the appellant could consider with complacency". There was no mala fides alleged nor any unfair labour practice. The case was a "straightforward" one and the Tribunal could have "resisted the temptation of examining the validity of the said order in such a technical way". In W.A. Agnani v. Badri Das 1963 I LLJ 684 (SC) the case related to use of vulgar language outside the premises against a stranger. On facts, the Supreme Court upheld the award setting aside the dismissal, but the Court observed: (P 691): "It may, however, be relevant to observe that it would be imprudent and unreasonable on the part of the employer to attempt to improve the moral or ethical tone of his employees' conduct in relation to strangers not employed in the concern". In Tata Oil Mills Co. Ltd. v. Its Workmen (1964-II-LLJ-113), the Supreme Court was dealing with a Standing Order which made the act misconduct whether it took place within or without the factory. But, it held that in order that the Standing Order may be attracted, it must be shown that the disorderly or riotous behaviour had some "rational connection" with employment of the assailant and the victims. The Court held, on facts, that the assault by the workmen upon the chargeman of the plant was motivated by the fact that the victim was in favour of introduction of the Incentive Bonus Scheme which was opposed by one set of workmen. It was not a private dispute and the dismissal was valid.

6. The case in Mulchandani Electrical and Radio Industries Ltd. v. Their Workmen (supra) is directly in point. There, the Standing Order provided that the "commission of any act subversive of discipline or good behaviour within the premises or precincts of the establishment" would be misconduct. The workman had assaulted the chargeman of the factory outside the factory, in a suburban train, while the latter was going home. It was clearly held that the words "within the premises or precincts of the establishment" refer not to the place where the act which was subversive of discipline or good behaviour is committed, but where the consequence of such an act manifests itself. It was said (P.394):

"In other words, an act wherever committed, if it has the effect of subverting discipline or good behaviour within the premises or precincts of the establishment, will amount to misconduct..."

The present case fits squarely into the above case (supra). Likewise in *Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another*, the Supreme Court held that if there was "nexus" between the misconduct and the employment, it was sufficient. In the light of the above dicta, the present case of dismissal was rightly upheld by the Industrial Tribunal.

7. In our view, in *Glaxo Laboratories case*, (supra) the Supreme Court, on facts, held that there was no misconduct within the scope of the Standing Orders. But it is significant that even in that case, it was observed that "the casual connection in order to provide linkage between the alleged act of misconduct and employment must be real and substantial, immediate and proximate and not remote or tenuous. *Glaxo Laboratories*" case cannot therefore be said to have deviated in principle from the ratio of earlier cases decided by Benches of Three Judges.

8. Following the aforesaid decisions of the Supreme Court, we are of the view that the Industrial Tribunal had not committed any error of law in holding that the bodily injuries suffered by the management staff, even though they were received outside the factory, were in connection with the strike, when the striking workers attacked the willing workers who were accompanying the officers of the management just before the factory hours at a place near the BPL Bus Stop of the factory. The Industrial Tribunal has taken into account all the factors as enumerated by the Supreme Court in the above cases.

9. So far as *Glaxo Laboratories case* is concerned, we are satisfied that the present case satisfies the test laid down in that case also. We are of the view that the assault on the staff officer who was leading the non-striking workmen into the factory to the extent of leaving him unconscious on the spot had a "definite linkage or nexus with the employment, the nexus was real and substantial, proximate and immediate and not remote or tenuous". We may add that the learned Single Judge who decided *B.P.L. India Ltd. Vs. B.P.L. and P.S.P. Thozhilali Union*, also laid down similar principles.

10. So far as the acquittal in the criminal case is concerned, the same is not of any effect in view of the findings independently arrived at by the Industrial Tribunal.

11. In any event having regard to the acts of violence involved in this case, in which responsible officers of the management received injuries and fell unconscious on the spot, this is not a fit case for interference under Article 226 of the Constitution of India. The writ appeal is dismissed.