

(1963) 08 BOM CK 0003
In the Bombay High Court
Case No : Appeal No. 40 of 1961

National Machinery Manufacturers Ltd.	APPELLANT
Vs	
Vyas P.D. and Another	RESPONDENT

Date of Decision : 06-08-1963

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 33, 33(1), 33(2), 33A

Citation : AIR 1964 Bom 184 : (1964) 66 BOMLR 169 : (1964) MhLj 331

Hon'ble Judges : R.M. Kantawala, J;D.V. Patel, J

Bench : Division Bench

Advocate : N.V. Phadke, instructed, Mulla and Mulla and Craigie Blunt and Caroe, for the Appellant; K.K. Singhvi, for the Respondent

Judgement

Patel, J.—This appeal is against the order of Justice Sri Mody dismissing the petitioner's petition under Arts. 226 and 227 of the Constitution.

2. The short facts are that respondent 2 was employed as a watchman with the petitioner-company. On 5 December, 1959, he was chargesheeted for an alleged misconduct, i.e., theft, fraud or dishonesty in connexion with company's business or property. The enquiry was proceeded with but thereafter on 2 January, 1960, the chargesheet was cancelled and on 3 January, 1960, his services were terminated under standing order 21(1) on the ground of loss of confidence with effect from that date. At this time, dispute was pending before the industrial tribunal, Bombay, between the workmen on the one hand and the company on the other Respondents 2, feeling himself aggrieved by this order, made a complaint to the industrial tribunal under S. 33A of the Industrial Disputes Act, 1947, alleging that his services were terminated in breach of S. 33(2)(b). In that complaint he prayed that the petitioner should be directed to reinstate him with all back-wages and further prayed that suitable compensation should be awarded to him. The company contested the application contending that the termination of the services of respondent 2 did not amount to illegal dismissal and was not wrong, unfair and unjust. It further contended that it was

a case of discharge simpliciter and, therefore, the provisions of S. 33(2)(b) of the Act were not attracted. It, therefore, contended that the complaint under S. 33A was not entertainable and, therefore, the tribunal had no jurisdiction to decide it.

3. The industrial tribunal repelled the contention of the company that since the action of the company purported to be a discharge simpliciter, the case did not fall within S. 33(2)(b) of the Act. It held that the action of the company was in connexion with the theft, fraud or dishonesty, i.e., the misconduct of the employee, and therefore, the order was not a bona fide order of discharge under, the standing orders made in the company's ordinary course of business. The tribunal therefore, allowed the complaint and directed the petitioner-company to reinstate respondent 2 to his original post with full back-wages. The petitioner - company approached this Court to by a writ petition and as the matter arose in Bombay, it was heard on the Original Side by Justice Sri Mody. National Machinery Manufacturers, Ltd. Vs. Vyas (P.D.) and Another,

4. Before Justice Sri Mody, the petitioner-company contended that S. 33(2)(b) had no application to a case of discharge simpliciter and as the order was one of discharge, the tribunal had no jurisdiction to entertain the complaint under S. 33A. It was contended that the tribunal conferred jurisdiction upon itself by making an erroneous finding on a question of fact, viz., whether the termination of respondent 2's services amounted to punishment for misconduct, and while doing so, instead of requiring respondent 2, if he so desired, to prove mala fides on the part of the petitioner, the tribunal proceeded on the footing that it was the petitioner's duty to prove positively want of mala fides; that there is no clear finding of mala fides on the part of the petitioner and even if there were any, it was based on no evidence whatsoever. His further contention need not be stated as it does not survive.

5. Justice Sri Mody held that a simple discharge was covered by Sub-section (2) (b) of S. 33 and as the condition of the proviso was not complied with, the tribunal's order was justified. He did not decide the question whether the discharge was for misconduct. He, therefore, dismissed the petition.

6. The question involves the interpretation of S. 33(2) which is by no means easy. Section 33 consists of five sub-sections and the material ones are the first three sub-sections. The intention of the legislature would appear to be to divide the action of the employer against the workmen into two kinds :

- (i) action connected with the dispute, which is pending; and
- (ii) action not connected with the pending dispute.

7. In each division again, there are subdivisions :

- (a) action which changes to the prejudice of the worker any of the conditions of service; and
- (b) action which entails his removal from service for misconduct.

8. By Clause (a) of Sub-section (1) the first is entirely prohibited and by Clause (b) as to the second, action could be taken only with the express permission in writing of the authority before whom the dispute is pending. We are not concerned with Clause (a) Sub-section (1). The words used in Clause (b) of Sub-section (1) are :

"for any misconduct ... discharge or punish, whether by dismissal or otherwise ..."

9. It is clear that when the words "discharge or punish, whether by dismissal or otherwise" are used, they are used in connexion with "for any misconduct." This clause requires that in case of discharge or dismissal or any other punishment for any misconduct which is connected with the dispute pending before it, then the express permission of the authority is necessary.

10. Sub-section (2) affirmatively provides what the employer can do. Here again the action of the employer is divided into two sub-divisions :

(a) action connected with conditions of service; and

(b) action connected with removal from service for misconduct unconnected with service."

11. The first is permitted without reference to the authority and as to the second, the employer has to make an application for approval of the action taken. Evidently no prior permission in this case is necessary and both the dismissal or discharge and the application for approval can be simultaneous.

12. The word used in S. 33(2)(b) are :

"for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, the workman."

13. Grammatically it would seem clear that the clause "for any misconduct" qualifies the verbs, discharge, dismiss or punish in Clause (b) of both Sub-secs. (1) and (2). It is argued that the word "discharge" in Clause (b) of Sub-section (2) should stand apart and the words "for any misconduct" should govern the verbs "dismiss or punish" since this was the intention of the Parliament.

14. It must be accepted that in construing all documents including statutes the ordinary and grammatical meaning must be given to the words used. It is true that it may be that construction may lead to some absurdity or redundancy, etc., in which case the ordinary meaning may be departed from but that too only to the extent necessary. See Maxwell, 11th Edn., p. 6., "In construing with ... no further." In order to arrive at the real intention of the legislature, the Court must take into account all the constituent parts of the statute as a whole and as far as possible no provision should be rendered superfluous and redundant. It is also legitimate in arriving at the intention of the legislature to consider the scope and purpose of the Act including the circumstances which necessitated the enacting of the Act. See R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), per Venkatarama Ayyar, J. Even so, however,

"The dominant purpose in construing a statute is to ascertain intention of the legislature as so expounded. This intention and, therefore, the meaning is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of the Parliament." - Halsbury's Laws of England, Vol. 36 (3rd Edn., pp. 3 and 7).

15. Grammatically, as we have said above, the verb "discharge" is as much qualified by the words "for any misconduct" as the verbs "dismiss" or "punish". Unless, therefore, there are justifying reasons for departing from the usual rule of construction the section must be construed in its ordinary sense and we must hold that an application for approval would be necessary if the order of "discharge" is made for reasons of misconduct.

16. We must also refer to the previous history of this legislation. Originally S. 33 of the Act created an absolute bar preventing an employer from altering, to the prejudice of any workman who was concerned in a dispute then pending before the tribunal, the conditions of service which were applicable immediately before the commencement of the proceeding, it also prevented the employer from discharging or punishing, whether by dismissal or otherwise, any workman concerned with the dispute. Because of this absolute bar, a great deal of inconvenience was felt by the industry. As a result of this, the industry made representations to the Central Government to the effect that it caused a great deal of inconvenience because of the delay which prevented the company from taking any action against a workmen even though it was absolutely necessary to do so, even in cases unconnected with matters in dispute. With a desire to meet to some extent the grievance of the industry, the Act was amended and S. 33 was replaced by the present S. 33. It may be noticed that the scheme of the section now reintroduced is not to create an absolute bar and thereafter create exceptions to this bar.

17. Under Sub-section (1) Clause (a), of S. 33 alterations of the conditions of service in regard to any matter which is connected with the dispute are not allowed and by Clause (b) without the prior permission in writing of the authority before whom such dispute is pending workmen cannot for misconduct be discharged, dismissed or punished if the misconduct is connected with the dispute. This part is in a prohibitive form. Sub-section (2) is an enabling section and is worded in permissive language enabling the employer

(a) to alter the conditions of service of a worker in regard to any matter not connected with the dispute, and

(b) it enables an employer for misconduct to discharge or punish, whether by dismissal or otherwise the workman with the condition that in case of discharge or dismissal he must pay wages for one month and must make in application to the authority before which the proceeding is pending, for approval of the action taken by him.

18. It may be possible to suggest, though it was not so suggested in the arguments, that as Clause (b) of Sub-section (2) is affirmative in form permitting the employer to discharge or dismiss, etc., for misconduct, the inference must be that a negative is implied in it, i.e., that he shall not do anything else, i.e., terminate the service. In our view, it is not possible to adopt this construction for the simple reason that merely because discharge for misconduct is permitted with certain restrictions, it could never have been intended to prohibit simple discharges totally.

19. To adopt this meaning would mean that in no case can action be taken under provisions such as S. 25F which could not be the intention of the legislature. Such a construction would be inconsistent with the object of the amendment and would not remedy the mischief to prevent which it was enacted.

20. We may in this connexion refer to the following at p. 166, Maxwell on Interpretation of Statutes :

"Firstly it is laid down generally that when last enactment is worded in affirmative form only, without any negative expressed or implied, it does not repeal the earlier law."

21. The earlier law in the present case is the law of contract as modified by the standing orders which permits the employer to terminate the services of a workman by discharge. It may be that as in respect of discharges and dismissals for misconduct the right was intended to be subject to conditions, the clause has been cast in its present form. Sri Singhvi suggested that Sub-section (2) is redundant and may have been enacted as a matter of abundant caution, That however would be going too far.

22. It is argued by Sri Singhvi and this argument found favour with the learned Judge that "discharge" is included within the word "punish, whether by dismissal or otherwise," and to adopt the ordinary grammatical sense would render the word "discharge" superfluous and useless. He, therefore, contends that the word "discharge" must have been intended to mean discharge simpliciter made by virtue of the power of the employer under a contract or standing order. It is not possible to accept this construction for several reasons.

23. In this connexion, Sri Singhvi referred us to standing orders 23, 24 and 25. Standing order 24 enumerates all that which falls within the word "misconduct" and standing order 25 refers to the punishment for misconduct. Under standing order 25, the punishment for misconduct are :

- (a) Warning or censure,
- (b) fine,
- (c) suspension not exceeding a period of four days, or
- (d) dismissal without notice.

24. It is argued that a discharge as defined by standing order 23 is not one of the punishments for misconduct, and, therefore, the word "discharge" could not possibly have been used to mean "discharge" for any misconduct. However, while referring to Clause 14(a) of standing order 23 Sri Singhvi had to admit that it suggests that a discharge could as well be for misconduct or in connexion with misconduct. This clause requires that reason for the discharge be recorded in writing and communicated to the workman if he so desired unless such communication in the opinion of the manager is likely, directly or indirectly, to lay the person open to civil or criminal proceedings at the instance of the workman. Once it is accepted that there could be a discharge for misconduct, though it may not be classed as punishment for misconduct under the standing orders, it is clear that "discharge" can be qualified by the words "for any misconduct" and they do not render, when so applied, the word "discharge" superfluous.

25. Moreover, it cannot be doubted that if there is a discharge for misconduct, though it may not be said to be a positive punishment under standing order 25, it carried with it certain amount of stigma. This provision has been made in order to see that no employer may with ulterior motives make up a false charge of misconduct and discharge a workman which might in future come in his way of obtaining other employment.

26. In this connexion we may refer to Sub-section (3) of S. 33 where there is an absolute prohibition in regard to any action against protected employees. The words there used are :

".... by discharging or punishing, whether by dismissal or otherwise, such protected workman,"

27. It is contended that Sub-section (3) begins with the words "notwithstanding anything contained in Sub-section (2)" and it must therefore be held that the right of discharge simpliciter was intended to be covered by Sub-clause (b). This argument would probably have been sound provided reference had been made to Clause (b) of Sub-section (2); but the reference is not to that clause but to the whole of the sub-section and as the purport of Sub-section (2) is to enable an employer to discharge a workman for grounds other than misconduct without any restrictions contained in S. 33, it may be that the clause has been cast in that form. Even the learned Judge says that

"..... This consideration by itself may perhaps not be sufficient for the purpose of construing that "discharge" simpliciter does fall under Sub-section (2) but it certainly is a further factor to support that the above interpretation placed by me on Sub-section (2) is correct."

28. Analyzing this sub-section, it is clear that the draftsman was very clearly aware of the words that he was using and the meaning that he was intending to convey in each sub-section. Clause (b) of Sub-section (3) says "shall not take any action by discharging or punishing, whether by dismissal or otherwise" the word "discharge" being used without any qualifications, while in Clause (b) of

Sub-section (2) the words "discharge or punish" are preceded by the phrase "for any misconduct not connected with the dispute." Therefore, under Clause (b) of Sub-section (3) the discharge is intended to be any discharge whatever be the ground while the discharge in Clause (b) of Sub-section (2) of S. 33 is intended to be for any misconduct which is not connected with the dispute. It is not possible, therefore, to infer by reference to Sub-section (3) that the legislature negligently framed Sub-clause (b) of both Sub-secs. (1) and (2) and the Court is entitled to so transport the words in them or rewrite those provisions as contended for by Sri Singhvi on behalf of respondent 2, according to the supposed intention.

29. It was strongly pressed upon us that the proviso to Clause (b) of Sub-section (2) must be so read as to be completely independent of that sub-section and must mean that in every case of discharge or dismissal, the workmen must be paid one month's wages and an application must be made to the authority before which the proceeding is pending for approval of the said action. It is argued that a proviso need not be read as a limitation upon something that is contained in the section itself. There are cases, says Sri Singhvi, where a proviso performs a far larger function and may sometimes be an independent provision in a statute, apart from the section itself. In this connexion he relied upon a Full Bench decision in *Patel Maganbhai Jethabhai Vs. Somabhai Sursang*, where the following remarks are to be found at p. 1389. The learned Chief Justice (Chagla, C.J.) said :

"..... In fact the true function of a proviso is to take something out of a section and deal with a part of the section. It is not the function of the proviso to cover an ambit wider than the section itself. But we have had numerous instances in the past where the legislature has in the shape and garb of a proviso enacted a substantive provision of law, and, therefore, if the language of the proviso is clear and the subject-matter is clear, the Court will not be deterred from giving true effect to the proviso merely because it is a proviso to that section in, nor would the Court be compelled to say that the ambit of the proviso must be restricted to the ambit of the section itself."

30. The learned Chief Justice was considering the provisions of S. 43(c) of the Bombay Tenancy Act, 1948. In the said Act there were two clear indications which showed that the ambit of the proviso was larger than the section. In the present case, there is nothing in the proviso itself nor in the scheme of this section, which can persuade us to hold that the proviso was intended to be an independent provision creating another disability on the employer which was not contained in Clause (a) or (b) of Sub-section (2) of S. 33.

31. The learned Judge accepted the contention of Sri Phadke that the word "discharge" in proviso to Clause (b) of Sub-section (2) should not be given a meaning other than the one in Clause (b) of the sub-section and relies upon it for holding that Clause (b) is intended to include within it a discharge simpliciter. With great respect, the words, "no such workman" have been omitted from

consideration which must apply to "the workman" referred to in Clause (b). If due effect is given to all the words in the proviso, it must mean that "the workman who is being discharged or dismissed under Clause (b) shall not be discharged or dismissed unless"

32. Sri Singhvi then contended that the use of the words "such workman" does not refer to any workman who has been discharged or dismissed under Clause (b) but to the "workman concerned in the dispute," in the beginning of sub-section (2) which reads "the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute." It is an ordinary rule of construction that where relative words are used, they qualify or relate to the nouns preceding those words. No reasons are suggested why we should depart from the ordinary grammatical rule of construction. The words clearly refer to "such workman" as is referred to in Clause (b), i.e., one who has been discharged or is being punished for misconduct. To read the words in the way suggested by Sri Singhvi would necessarily mean that Clause (b) of Sub-section (2) is a useless appendage in the section and need not have existed there, since this by itself would be a complete safeguard for the workman. In our view before a proviso could be read as a proviso amplifying the meaning of the section or as an independent provision by itself, there must be sufficient and strong indications in the language of the provision which is very much lacking in the case. This contention must, therefore fail.

33. Sri Singhvi also stressed that the word "discharge" in Clause (b) of both Sub-secs. (1) and (2) must mean "discharges simpliciter" and would not be a discharge for misconduct. But, then he had to meet the difficult question as to whether the employer should act under Sub-section (1) or (2) since both would apply, if "discharge" is not to be qualified "for misconduct" in both sub-sections. Realizing the difficulty in the way of his argument, he accepted that the "discharge" must be for misconduct in Sub-section (1) connected with the dispute and in Sub-section (2) not connected with the dispute. We are clearly, therefore, of the opinion that the word "discharge" is used not to mean "discharge simpliciter" in Cls. (b) of each of the sub-sections but a discharge for misconduct. Justice Sri Mody says :

"Therefore, though, under Clause (b) "discharge" is to be for misconduct, "discharge" can be otherwise than for punishment and it is in that sense that that word has been used in Clause (b)" National Machinery Manufacturers, Ltd. Vs. Vyas (P.D.) and Another, .

34. In Kunjan Manu and Others Vs. Aspinwalla and Co. Ltd. and Others, Justice Sri Vaidialingam held this to mean that in order that Sub-section (2)(b) should apply "discharge" must be for misconduct (see p. 216. This however does not appear to be so with respect, as his final observations 1961 L.L.J. 274 that "Sub-section (2) also covers the case of "discharge simpliciter" would seem to be in conflict. In our view, with respect, S. 33(2)(b) can have no application to case of discharge unless it is for misconduct.

35. This brings us to the question whether this Court has jurisdiction to determine whether the finding on the issue of fact involved is erroneous on the basis of which relief has been granted. Sir Phadke argued that the language of S. 33 shows that it is only in the case of breach of S. 33(1) or 33(2) that an application can be made under S. 33A and this being a condition any finding made by the tribunal on the question of breach of S. 33 must be treated as a finding on a jurisdictional issue and this Court is entitled to examine its merits. Sri Singhvi seriously disputed this proposition. However, in view of the observations of Justice Sri S. R. Das in *The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others*, where the learned Judge says that the contravention of the section is the condition precedent to the exercise by the authority concerned of the additional jurisdiction and powers conferred on it by the section, we may for the purposes of this case assume without deciding that the question whether the respondent has been discharged in contravention of the provisions of S. 33(2)(b) is a jurisdictional issue and can be gone into by this Court.

36. On the merits, however, there is not much that can be said against the finding made by the tribunal. It is admitted that the respondent was a watchman and as such had to perform the duties of safeguarding the propriety of the company. It is also admitted that on a certain day he was found not behaving as he should have, which raised suspicion in the mind of the two gentlemen who had seen him. As a result of this, a charge was framed against him and an enquiry was proposed. As enquiry was in fact made by Mr. J. E. Small. It is also admitted in the petition that the management thought that the evidence was not sufficient or strong enough to justify the conclusion of guilt as having been established beyond doubt, which could justify the dismissal of respondent 2. It is further admitted that it was for this reason, that on January, 1960, the charge was withdrawn and on 3 January, 1960, respondent 2 was discharged from service. Under these circumstances, it is impossible to say that the discharge was an ordinary discharge in the ordinary course of business of the company. When the statements from the petition were pointed out to Sri Phadke, he practically gave up this contention. It is clear, therefore, that the discharge in the present case is for misconduct and it being for misconduct not connected with the matter in dispute, is covered by Clause (b) of Sub-section (2) and since admittedly no application was made for the approval of the action taken by the employer, there is a clear contravention of the said section.

37. In the result, the appeal is dismissed with costs. We quantify the costs of this appeal at Rs. 750. The appellants to pay costs of respondent 2 only. Liberty to respondent 2 to withdraw the deposit of Rs. 500.