
(1960) 08 P&H CK 0036
In the Punjab And Haryana At Chandigarh

National Transport and General Company (Private) Ltd.	APPELLANT
Vs	
Ishar Singh and Others	RESPONDENT

Date of Decision : 31-08-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1962) 2 LLJ 275

Hon'ble Judges : Gosain, J

Bench : Single Bench

Judgement

Gosain, J.—This is a petition under Article 226 of the Constitution of India praying that a writ of certiorari or other appropriate writ, direction or order be issued quashing the award of the Industrial tribunal, Punjab, Jullundar, dated 23 February 1959, in complaint No. 72/1 of 1959 in reference No. 72 of 1957 published in the Punjab Government Gazette, dated 20 March 1959.

2. The petitioners, National Transport and (general Company (Private), Ltd., Ludhiana, are carrying on transport business with their office at Ludhiana and branches at Khanna, Machhiwara, Rupar, Kurali, Morinda and Samrala. A dispute arose between the petitioners on the one hand and some of their workers on the other and this was later sponsored by the workers' union. The Punjab Government by their notification No. 7858-C-Lab-58/26674, dated 29/30 July 1958, referred the said dispute to the industrial tribunal, Punjab, Jullundar, u/s 10 of the Industrial Disputes Act, 1948. The items of dispute as mentioned in the notification were three in number. The first of the said items was as under:

Whether the suspension or dismissal of the following workmen is in order and unjustified (sic)? if not, to what relief they are entitled?

and the workers concerned in this dispute were Gulwant Singh Harlal Singh, Ishar Singh and Pritam Singh. The Industrial tribunal, Punjab, Jullundar, by means of the impugned award decided the aforesaid dispute between the parties. The petitioners accept the decision of the tribunal be far at Gnlwant

Singh, Harlal Singh and Pritam Singh workers are concerned, but they impugn the award qua Ishar Singh. There were charges of neglect of duty as against Ishar Singh and the petitioners had inquired into the said charges through a committee and on the basis of the report of the enquiry committee they had passed orders of his dismissal. The tribunal, however, came to the conclusion that the punishment of dismissal was too severe in the circumstances of the case and observed in the award as under:

But taking all the facts into consideration I find that the order of dismissal is rather very severe and, I therefore, change it into one of discharge and direct that he shall be paid retrenchment relief at fifteen days' consolidated wages for each year's completed service. He shall also be entitled to earned wages, if any, but he shall not be entitled to reinstatement or reappointment. The amounts awarded shall be paid to him within one month from the date of publication of the award in the Government gazette.

The petitioners feel aggrieved against the part of the award quoted above and their case is that the industrial tribunal was not justified in substituting its own judgment for that of the domestic tribunal and that there was no authority with the tribunal to change the form of punishment, it is also urged by the petitioners that the dispute in this case was an individual dispute relating to four workers named above and that the same could not be treated to be an industrial dispute referable u/s 10 of the Act.

3. The petition is opposed by the State as also by Ishar Singh on whose behalf it is urged that the dispute was an industrial dispute and that the industrial tribunal was fully authorized to change the order of dismissal into an order of discharge and that the present petition is, therefore, misconceived.

4. The first contention raised on behalf of the petitioners is that the dispute and this case related to four workers only and could not be treated as an industrial dispute and the tribunal had, therefore, no jurisdiction to give any award. This point was raised before the tribunal also and formed the subject-matter of issue which reads as under:

Is the reference not valid on any of the grounds mentioned in the written statement?

5. In support of the issue the workers examined the labour inspector who filed the complaints received by him regarding the suspension or dismissal of Ishar Singh and the other three workmen mentioned above, and these complaints clearly showed that the cause of these workmen had been taken up by the union who had made the said complaints. Now, it is well settled that an individual dispute, if taken up or sponsored by the union of workers, turns into an industrial dispute. It is significant that the petitioners do not impugn the award with regard to the other three workers, and this itself proves that they have no real grievance on the point that the industrial tribunal had no jurisdiction to give an award with regard to the dispute referred to him.

6. The only other contention raised on behalf of the petitioners is that the tribunal having come to the conclusion that a proper inquiry was made by the inquiry committee set up by the petitioners and that there was no unfair labour practice or victimization involved in the matter should not have interfered with the ultimate order of punishment passed by the domestic tribunal. This contention seems to have a good deal of force. The tribunal has actually found that a proper inquiry was made in the matter of Ishar Singh and that the rules of natural justice were complied with. The tribunal has further found that the finding of the inquiry committee that Ishar Singh was guilty of neglect of duty is fully justified. From the award it appears that Ishar Singh did not even allege any want of good faith or victimization or unfair labour practice on the part of the petitioners or the inquiry committee. He admitted as A.W. 4 that he was present throughout the inquiry, but stated that no witnesses were examined in his presence. The latter part of his statement was not believed by the tribunal who came to the conclusion that in the domestic inquiry the charges against Ishar Singh were fully proved by the statements of the witnesses.

7. The point that arises now for decision is whether the tribunal had on the aforesaid findings jurisdiction to vary the form of punishment awarded to Ishar Singh or was justified in doing so. The law on this point has been very clearly laid down by their lordships of the Supreme Court in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, of the judgment of the said case it is observed as under:

Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, industrial tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere

- (i) when there is a want of good faith,
- (ii) when there is victimization or unfair labour practice,
- (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and
- (iv) when on the materials, the finding is completely baseless or perverse.

Somewhat similar observations were made by their lordships of the Supreme Court in *Caltex (India), Ltd. v. E. Fernandes* in 1957 I L.L.J. 1 and in *Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup*, The former of these two cases was a case u/s 33 and the latter a case u/s 22, but the principles laid down there are certainly applicable to the present case. The case reported in *Caltex (India), Ltd. v. E. Fernandes* is, however, a direct authority. In the present case the tribunal has not found

- (i) that there was any want of good faith,
- (ii) there was any victimization or unfair labour practice,
- (iii) that the management was guilty of a basic error or violation of a principle of natural justice, or
- (iv) that the finding arrived at by the domestic tribunal, i.e., management, was baseless or perverse.

and, In the circumstances, the tribunal had no jurisdiction at all to change the form of punishment awarded by the domestic tribunal, and, in any case this change was not justified. The tribunal has not given any convincing reasons for changing the order of dismissal into one of discharge.

8. I would, therefore, accept the present petition and quash the order of the tribunal so far as the change of punishment awarded to Ishar Singh is concerned. The order of dismissal of Ishar Singh passed by the petitioner-company will stand. The respondents shall pay the petitioners' costs.