

**(1966) 04 KAR CK 0007**

**In the Karnataka High Court**

**Case No : Writ Petition No. 1000 of 1965**

New Taj Mahal Cafe (Private) Ltd.

APPELLANT

Vs

Its Workmen and Another

RESPONDENT

**Date of Decision : 07-04-1966**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10

**Citation :** (1969) 1 LLJ 279 : (1966) 2 MysLJ 161

**Hon'ble Judges :** T.K. Tukol, J;K. Bhimayya, J

**Bench :** Division Bench

## Judgement

Tukol, J.—The managing director of the New Taj Mahal Cafe (Private), Ltd., Mangalore, has filed this writ petition under Art. 227 of the Constitution of India for a writ of certiorari quashing the award made in favour of respondent 1 (workmen of the cafe) by the labour court at Hubli of 29 January, 1965.

2. The facts leading to the present writ petition are not in dispute. The Government of Mysore, by their order No. PLM 237 LLD 64, dated 17 September, 1964, referred to the labour court at Hubli for adjudication, the dispute between the petitioner and the seven workmen. The point referred to for adjudication was whether the seven workmen named therein were entitled to reinstatement with back-wages and continuity of service with effect from 5 December, 1963 or any other relief. On the evidence adduced by the parties, the labour court came to the conclusion that the service of the workmen had been illegally terminated from 5 December, 1963, without any enquiry, that there had been victimization by the management and that all the aggrieved workmen except one. Gummanna Gowda, were entitled to reinstatement in their former posts with continuity of service from 5 December, 1963, and back-wages from the same date at half the agreed rate. The management was directed to comply with the terms of the award within fifteen days from the date of its publication in the Mysore Government Gazette. The award was published in the gazette on 20 May, 1965.

3. The case of the petitioner before the labour court was that the workmen had

been employed on a temporary basis till December, 1963, and that the management terminated their services on the expiry of the contractual period. Respondent 1 denied this fact and contended that the services of the seven workmen had been terminated as they had participated in a token strike on 23 November, 1963, as a protest against the oppressive and unfair labour practices adopted by the management.

4. Both of the parties adduced oral and documentary evidence before the labour court in support of their respective contentions. On a careful survey of the entire evidence, the court came to the conclusion that the management failed to establish that the services of the seven workmen were terminated with the expiry of the period of their appointment. It also came to the conclusion that the seven workmen along with some others had participated in a strike on 23 November, 1963 and that the abrupt termination of their services on 5 December, 1963 without enquiry was in the nature of punishment offending all principles of natural justice. Incidentally, the court also held that the requirements of S. 41 of the Madras Shops and Establishments Act, 1947, had not been followed in the case and that even on that ground termination of the services of the five workmen mentioned in Para. 29 of the award was illegal.

5. The first contention raised on behalf of the petitioner by Sri U. L. Narayana Rao is that the award was vitiated by an error apparent on the face of the record as the finding of victimization recorded by the court was not based on any evidence. As pointed out by the Supreme Court in *Ananda Bazar Patrika (P) Ltd. Vs. Its Workmen*, , the finding as to victimization should not be made either in a casual manner or lightheartedly but should be recorded only when there is evidence to justify it. The argument of the learned counsel for the petitioner is that the labour court had based its findings on the alleged victimization solely on the ground that the seven workmen were members of the union and that their relationship with the management was not happy. If that were the sole ground, such a finding would be untenable in law in view of the decision in *Bengal Bhatdee Coal Co. Vs. Ram Prabesh Singh and Others*, . On a scrutiny of evidence in that case, the Supreme Court came to the conclusion that there was practically no evidence in support of the finding of the tribunal as regards victimization except that the workmen concerned were office-bearers of the union. As against these decisions, Sri Swetadri, appearing for respondent 1 has placed reliance on the decision of the Supreme Court in *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, , in which it has been laid down that it would not be open to the High Court to disturb the labour court's finding on the question of victimization except on the ground of error apparent on the face of the record or on the ground that there was no evidence at all to support it.

6. In the present case, we are unable to hold that the finding of the labour court suffers from any of the infirmities. The learned advocate for the petitioner has not been able to point out to us any error apparent on the face of the records.

The finding seems to have been based on evidence and the circumstances disclosed by the evidence. The seven workmen participated in the strike on 23 November, 1963, along with some others. When they went to work on 5 December, 1963, they were orally informed, without any enquiry, that their services had been terminated. They were neither apprised of any reason for the abrupt termination nor given any notice or wages in lieu of notice terminating their service from any subsequent date. It is not for this Court to consider whether the evidence was sufficient or insufficient since there is some evidence and there are some circumstances which support the finding of the labour court. We are, therefore, unable to interfere with this finding. We incidentally note that this finding on victimization is not of much importance as the termination of the services of the workmen is *prima facie* illegal as could be seen from the reasons that follow.

7. The second contention advanced by the learned advocate for the petitioner is that the order of reinstatement was bad in law and that the labour court exceeded its jurisdiction in passing that order along with the direction for payment of back-wages at half the contracted rate. It was submitted that the seven workmen having been employed on a temporary basis, the workmen would be entitled to neither reinstatement nor to the back-wages, but only to wages for the period of reasonable notice. No authority has been cited in support of this proposition. According to the finding of the labour court as deduced from the evidence of the petitioner himself, the services of the workmen were up to the end of December, 1963. Abrupt termination of their services on 5 December, 1963, without prior notice or enquiry is certainly illegal. If that were so, the workmen would be deemed to have continued in service and would be entitled to continue in service until their services are terminated either according to the terms of the contract, if any, or according to the provisions of law or the standing orders governing the conditions of services of the workmen concerned. While an employee has a right to expect security of tenure of his services, the employer has also a right to exercise option of terminating his services, in pursuance of the terms of the contract or the provisions of law :

"... There is no doubt that the normal rule is that in case of wrongful dismissal, the dismissed employee is entitled to reinstatement; but there can be cases where it would not be expedient to follow this normal rule and to direct reinstatement ..." [Vide *Assam Oil Company Vs. Its Workmen*,

8. This proposition has been further amplified by the Supreme Court in *The Provincial Transport Service Vs. State Industrial Court*, as follows :

"In dealing with industrial disputes under the Industrial Disputes Act and other similar legislation, industrial tribunals, labour courts, appellate tribunals, and finally this Court have by a series of decisions laid down the law that even though under contract law, pure and simple, an employee may be liable to dismissal, without anything more, industrial adjudication would set aside the order of dismissal and direct reinstatement of the workmen where dismissal was

made without proper and fair enquiry by the management or where even if such enquiry had been held the decision of the enquiry officer was perverse or the action of the management was mala fide or amounted to unfair labour practice or victimization, subject to this that even where no enquiry had been held or the enquiry had not been properly held, the employer would be an opportunity of establishing its case for the dismissal of the workman by adducing evidence before an industrial tribunal ..."

9. The petitioner has not established any ground which disentitled the workmen in this case to the order of reinstatement passed by the labour court in their favour.

10. Sri Narayana Rao further submitted that the order for payment of back-wages at half the agreed rate from the date of dismissal till the date of reinstatement was not justified. We see no force in this contention. On the facts of this case, the award for reinstatement of the workmen is lawful and is accordingly being confirmed by us. In that view, it cannot be said that the labour court had no jurisdiction to award backwages. It has been held by the Supreme Court in *Tika Ram and Sons Ltd. Vs. Its Workman (Bishamber Dayal)*, , that the direction in regard to the payment of subsistence allowance and back-wages is a matter of discretion on the part of the labour court or tribunal. Such directions cannot be interfered with by this Court unless it is shown to its satisfaction that the discretion had been exercised wrongly or without just grounds.

11. The last contention raised by Sri Narayana Rao, learned advocate for the petitioner is that the workmen ought to have approached the Labour Commissioner under S. 41(2) of the Madras Shops and Establishments Act, 1947, and that the labour court had no jurisdiction to entertain the dispute. We see no substance in his contention. It is not disputed that the dispute between the petitioner and the workmen is an industrial dispute falling within the scope of S. 10 of the Industrial Disputes Act, 1947. It appears from Para. 8 of the award that the learned advocate for the petitioner made a faint attempt to contend before the labour court that the dispute referred to that court for adjudication was not an industrial dispute and he subsequently conceded that the dispute referred to was an industrial dispute. In our opinion, the concession was rightly made.

12. Section 41 of the Madras Shops and Establishment Act, 1947, provides for notice prior to the termination of the services and for the right of appeal to the aggrieved workman. It reads :

"41. (1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice, provided, however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an inquiry held for the purpose.

(2) The person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that their was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer."

13. It is obvious that according to the provisions of this section, the employer could not have dispensed with the services of the workers without giving each of them at least a month's notice or wages in lieu of such notice. Since it is not the case of the petitioner that the services of the workmen were dispensed with on a charge of misconduct supported by enquiry, the question of dispensing with such notice does not arise. The section confers a right on an aggrieved workman to approach the Labour Commissioner (who is the prescribed authority) in appeal. It gives a remedy to an individual employee against the improper termination of his services. That section does not affect the jurisdiction of the labour court where a dispute between the employer and the workmen is referred to the labour court under the Industrial Disputes Act, 1947. Reliance was placed for the petitioner on the decision of the Madras High Court in *Manager, United Commercial Bank Ltd. Vs. Commr. of Labour and Another*, . That decision is of no assistance to the petitioner in this case. What is laid down therein is that the right of appeal given to the individual employee against the order of his employer dispensing with his services under S. 41(2) of the Act is not taken away by the provisions of the Industrial Disputes Act or the Industrial Disputes (Banking and Insurance Companies) Act, 1949. The Madras Act provides a cheap remedy for an aggrieved workman to approach directly the Labour Commissioner. It has no reference to a joint claim made by a number of workmen or a group of workmen against the management. It does not however debar the State Government from making a reference of an industrial dispute to the labour court, where the aggrieved party is a union of workmen or a workman backed up by the union of which he is a member.

14. These are the only points submitted for our consideration. We see no merit in any of them, and, accordingly, dismiss the petition with costs.

15. Advocate's fee Rs. 100.