
(2003) 05 AHC CK 0247

In the Allahabad High Court

Case No : C.M.W.P. No's. 9498 and 10321 of 1981

Nuboard Manufacturing Co. Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 293, 323, 427

Uttar Pradesh Industrial Disputes Act, 1947 — Section 33(2), 4K, 6E(2), 6E(3)

Citation : (2003) 5 AWC 4143

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : S.N. Varma and Rakesh Bahadur, for the Appellant; Shyam Narain and S.C., for the Respondent

Judgement

D.P. Singh, J.-

1. Heard Sri Rakesh Bahadur for the Petitioner and Sri Shyam Narain learned Counsel for the contesting Respondent workmen.
2. These writ petitions are directed against an award dated 31.3.1981. While Writ Petition No. 9498 of 1981 challenges that part of the impugned award by which the labour court has awarded 50% of the back-wages from the date of discharge to the date of award to the Respondent-workmen. The other Writ Petition No. 10321 of 1981 attacks the entire award by which the termination of the workmen has been upheld.
3. The determinative facts of both the petitions are the same, however, for convenience sake, Writ Petition No. 9498 of 1981 filed by the management is being taken up as the leading case.
4. Brief facts for the decision of this petition are that the Respondent No. 3 lodged a first information report under Sections 293, 427 and 323, I.P.C. against the Director, Administrative Officer and Field Officer of the Petitioner company. Since no action was taken, the Respondent No. 3 followed it up by lodging a

criminal complaint before the Judicial Magistrate, Rampur. The allegations in the complaint were that on 10th April, 1977 at about 11 p.m., while the complainant and others were engaged in realizing union fee from the employees, the officials of the company called them to the office and on refusal to show the receipt book they manhandled him and deprived him of Rs. 691 and also assaulted him. In the trial, Respondent Nos. 4 and 5 appeared as witnesses on behalf of the Respondent No. 3. The Special Judicial Magistrate vide his judgment dated 29th June, 1978 honourably acquitted all the accused persons on the ground that the charges were not proved and the entire case was fabricated. Thus, the charge-sheet was issued to the workmen for making false allegations against Senior Officers of the company and also knowingly and deliberately maligning them. This resulted in termination of service of Respondent Nos. 3 and 4 on 17th July, 1978 and that of Respondent No. 5 on 26th July, 1978. The workmen approached the Conciliation Officer and upon a failure report the matter was referred u/s 4K of the U.P. Industrial Disputes Act which was registered as Adjudication Case No. 95 of 1979. After giving parties due opportunity of hearing, the labour court itself held an enquiry into the charges levelled against the workmen. It found that the workmen were guilty of gross misconduct and thus, he refused to set aside the termination order. However, the labour court found that since another industrial dispute with regard to some other workmen was pending when the termination order was made and also on the ground that the labour court itself had held the enquiry, therefore, since approval u/s 6E had not been obtained prior to the termination, granted only 50% back-wages from the date of their respective termination to the date of award. Both the parties have challenged the said award by their respective writ petitions.

5. The counsel for the Petitioner has contended that since the removal was found justified on the basis of gross misconduct, the order of termination would relate back to the date when it was passed. Therefore, according to him, the labour court was not justified in granting back wages for the period between the termination and the date of award. In support of his contention he has relied upon a decision of the Supreme Court rendered in *R. Thiruvirkolam Vs. Presiding Officer and another*, . However, the learned Counsel for the workman urges that the termination was void as no approval u/s 6E(2) was taken, which according to him, was mandatory in view of the pendency of a dispute before the labour court. In support of his argument, he relies upon the decision of the Apex Court rendered in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others*,

6. It is not denied that some industrial dispute was pending before the labour court when the workmen were removed. It is also not denied that any application u/s 6E(2) was moved. It will be useful to quote the relevant portion of Section 6E:

6E. Conditions of service, etc. to remain uncharged in certain circumstances during the pendency of proceedings:

(2) During the pendency of any such proceedings in respect of an industrial

dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute-

(a)

(b) 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.

7. A perusal of the provision shows that when an industrial dispute is pending before a labour court no other workman should be discharge by the employer without approval of the labour court, irrespective of the fact that such discharge is not connected with the pending industrial dispute. The legislative intent in bringing the aforesaid provision on the statute book, appears to be for maintenance of industrial harmony and atmosphere in the establishment. This section provides for abnormal situation unlike when no such dispute is pending and the management is at liberty to discharge any workman without reference to a labour court. Normally, it is upon the workman to approach the labour court through a reference under the Act to challenge his discharge. There is marked difference between the two situation. Where a dispute is pending, the employer has to approach the labour court u/s 6E(2) for approval of the discharge together with the payment under the said section. However, when no such dispute is pending the workman has to approach the labour court through a reference order. The question which arises for determination is as to what is the effect of failure to make an application u/s 6E(2)? Learned Counsel for the workmen contends that such an order is void and for this proposition he relies upon the decision of the Supreme Court rendered in R. Thiruvirkolam's case (supra).

8. Before we deal with the arguments, it will be useful to note that word used in the proviso to Section 6E(2) is "approval" and not "prior approval", and in the case of Section 6E(3) "express permission" has been used. Both words, "approval" and "permission" have been used in the same section. The principles of interpretation are clear that when words of similar connotation are used in the same section or statute, it would be presumed that the Legislature has intentionally used them to convey a different meaning, of course, if such a course does no violence, to the very object of the section. "Approval" has been defined by Chamber's to mean "to confirm" or "to ratify" while permission means "to allow" or "grant liberty". Thus, in common parlance, "approval" would mean confirmation or satisfaction after the action and "permission" would mean liberty to take action. This interpretation is also in consonance with the object of the two Sub-sections. Section 6E(3) is meant for office bearers of the Union, who are protected workmen and are entitled to more protection against dismissal, etc. Also Section 6E(3) uses "express" to qualify "permission". Therefore, non-

obtaining the approval u/s 6E(2) could only mean that the discharge would remain inoperative till it is approved or ratified.

9. The question can be examined from a different angle also. The Supreme Court in *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Ltd. Mazdoor Sabha* 1980 (40) FLR 152 and in *Deshraj Gupta v. Industrial Tribunal* 1990 (61) FLR 763, which were two Judge Benches had held that an order without such approval would be void. However, in *R. Thiruvirkolam's* case, it considered the decision of a Constitution Bench rendered in *P.H. Kalyani v. Air France* 1963 (6) FLR 435 and several others and came to the conclusion that an order of discharge without applying for approval u/s 33(2)(b) (corresponding to Section 6E(2) of the U. P Act) would remain ineffective or inoperative and the termination order would operate from the day it was passed in case it is approved u/s 33(2)(b). So also in *Jaipur Zila Bank (supra)*, the Supreme Court was concerned with the question "if approval is not granted u/s 33(2)(b) of the Industrial Disputes Act, 1947 whether the order of dismissal becomes ineffective from the date it was passed or from the date of non-approval of the order of dismissal and whether failure to make application u/s 33(2)(b) would not render the order of dismissal inoperative?" While answering the aforesaid question, the Court though has used the word "void or inoperative" in paragraph 12 of the report but in paragraphs 15 and 17 of the report it came to the conclusion that such an order of discharge would remain inoperative. Thus, the argument of the learned Counsel for the workman cannot be accepted and has to fail.

10. The question still remains as to what is the effect of the reference and award with regard to the discharge. Section 6E(2) was brought on the statute book also to ensure that the employee is not burdened with the procedure to raise an industrial dispute when another was pending, therefore, the employer was required to seek approval of the labour court. The labour court u/s 6E(2) has the same powers as that while deciding a reference u/s 4K. In proceedings u/s 6E(2), it can examine the fairness of an enquiry, hold an enquiry itself and can consider the quantum of punishment, etc. Therefore, if the labour court has examined the validity of such discharge in a reference u/s 4K, failure to make an application u/s 6E(2) would not invalidate the discharge. The Supreme Court, in somewhat similar circumstances, in the case of *Syndicate Bank Ltd. Vs. K.R.V. Bhat*, has held that in such a situation it cannot be said that Section 6E(2) was violated. It is settled law that an unfair enquiry is as good as no enquiry at all and the labour court itself could hold the enquiry. Therefore, the labour court was not correct in holding that since it was holding the enquiry for the first time, therefore, the discharge order would operate from the date of award. Thus, the submission of the learned Counsel for the Petitioner has to be accepted.

11. The learned Counsel for the workman has also urged that lodging of a criminal case against the officials of the company was not a misconduct, as enumerated in the Standing Order and, therefore, the award of the labour court holding the workman guilty of misconduct was bad. In support of his contention,

he has relied upon the decision of the Supreme Court in the case of Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others,

12. This specific argument was raised by the workman before the labour court itself. The labour court after considering the provisions of the Standing Order and the conduct of the workman came to the conclusion that such conduct of the workman was in fact gross misconduct. While examining the contention, the labour court took note of the law laid down by the Apex Court in East India Coal Co. Ltd. v. Chief Mining Engineer, Bararee Colliery, Dhanbad v. Rameshwar and Ors. 1968 (2) LLJ 279 and also a decision of this Court rendered in New Viktoria Mills Company Ltd., Kanpur v. Presiding Officer, Labour Court, Meerut and Ors. 1968 FLR 260 . In Glaxo Laboratories (I) Ltd. case (supra) the Supreme Court was concerned with the question as to whether the manhandling between the two sets of workmen outside the factory premises would amount to misconduct. The Supreme Court after distinguishing the decision of Mahendra Singh Dhantwal Vs. Hindustan Motors Ltd. and Others, , has held that such an act would not constitute misconduct. In the present case the allegations of manhandling and depriving the workmen of money was an incident within the office of the Director of the Company. This allegation was viewed to be fabricated by a competent criminal court. The criminal court in its judgment has held that the case appears to have been lodged to pressurise the management into accepting their demands. It has held, "The complainant, it appears wants to exercise his Unions influence upon the administrative officers of the Nuboard Company because he has put the blame of forcibly snatched away the amount upon him and that of taking away of subscription books upon the Director," and went on to hold that they have failed to prove their case and "As General Secretary of the Labour Union the complainant appears to have been thrust in by some Union members to file this complaint in order to meet their demands more conveniently." Therefore, in my view, the decision rendered in Glaxo's case would not apply to the facts of the present case.

13. The Supreme Court in Mahendra Singh's case (supra) has held in paragraph 23:

Standing orders of a company only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workman may commit. Even though a given conduct may not come within the specific terms of misconduct described in the Standing orders, it may still be a misconduct, in the special facts of a case, which it may not be possible to condone and for which the employer may take appropriate action. Ordinarily, the Standing orders may limit the concept but not invariably so.

14. Describing behavioural pattern of humans is the most complexed of issues. Generally, they can be heralded under two heads of "good" or "bad" but just as a rainbow, it throws up numerous facets of different descriptive nature. By the first step a mother seeks to help her child to discriminate between good and bad. The first lesson is "do not lie". Right from sublime naivety thru impressionable

teens to the brittle adulthood, mother seeks to forewarn him of the ills of "lies" and virtues of "truth". False allegations and that too knowingly made to achieve, something not legally due, is universally accepted as against good or gentlemanly conduct. But used in such situation, as the present one, it would be described as misconduct. Myriads of acts can be termed as misconduct. Commonly understood, making false allegations and that too knowingly would also be misconduct. It cannot be disputed that for every conceivable action or conduct, the Code or Standing Orders, as in this case, can provide a clear cut definition. The Standing orders cannot be exhaustive, but they can only be illustrative. But, always, it should be in the realm of employment. It will have to be seen as to whether it has a cascading effect on the organization in general.

15. False allegations against the senior most man of the establishment, would definitely amount to misconduct. If no action is taken, it would not be conducive to the establishment. It will tell on the morale of the managers and supervisors. The labour court has rightly held that the action of the workmen was misconduct.

16. The learned Counsel for the workmen has lastly contended that Respondent Nos. 3 and 5 were protected workmen therefore, without obtaining permission they could not have been discharged and non-filing of the application u/s 6E(3) would render the discharge void. The labour court while considering this argument has held that though the concerned workmen were office bearers of the union and were recognized as such by the Registrar of Trade Union on 16.5.1978, the management had no knowledge about this fact, the workmen failed to prove that the management was in the knowledge of this fact. Yes, if the management knew about the fact, these two workmen would have been entitled to wages between the dates of discharge and the award as the same would not relate back to the date of discharge. But so far as the validity of the discharge is concerned, for the reasons given while dealing with Section 6E(2), the defect stood cured by the making of the award.

17. In view of the discussions hereinabove Writ Petition No. 9498 of 1981 succeeds and is hereby allowed and that part of the award which grants 50% back-wages to the workmen is set aside. However, Writ Petition No. 10321 of 1981 is hereby dismissed. No order as to cost.