
(1958) 09 CAL CK 0033
In the Calcutta High Court
Case No : A.F.A.D. No. 661 of 1955

Nuddea Mills Co. Ltd.

APPELLANT

Vs

Surendra Ghose

RESPONDENT

Date of Decision : 02-09-1958

Acts Referred:

Citation : AIR 1959 Cal 607 : 64 CWN 106 : (1960) 1 LLJ 460

Hon'ble Judges : K.C. Das Gupta, J;B.K. Guha, J

Bench : Division Bench

Advocate : B. Das, Dinesh Chandra Bose and Purnendu Narayan Biswas, for the Appellant;Arun Kumar Dutta and Bimal Kumar Dutta, for the Respondent

Final Decision : Allowed

Judgement

K.C. Das gupta, J.—The respondent Surendra Nath Ghose was an employee of the appellant company for many years since 1929. He brought this suit on an averment that sometime after he was served with a charge sheet alleging that he had committed theft of certain brass bushes and he submitted his explanation, the company did not allow him to resume his duties. His case is that no enquiry was made in the matter and that no formal order of suspension or dismissal was passed. He asked for a declaration that he had not been dismissed, that his service under the defendant company was still continuing that the action of the defendant company in verbally suspending him was arbitrary, illegal, wrongful and mala fide and for a permanent injunction against the company restraining it from interfering with the plaintiff's resuming his duties.

2. The main defence of the company was that the plaintiff was found guilty of gross misconduct and the Manager was satisfied of his guilt and was competent to dismiss the plaintiff without notice. It is further alleged that the Court has no jurisdiction to interfere with the action of the management.

3. At the trial it has been found that there was in fact an enquiry and that the Manager recorded his view that the plaintiff was guilty of the charge made

against him and then recorded an order of dismissal. It appears that under a standing order which was adopted by the Company in accordance with the provisions of the Industrial Employment (Standing Orders) Act, 1946 the Company was entitled to dismiss the plaintiff without notice if he was found guilty of misconduct. It is also not disputed that theft or dishonesty in connection with the employer's business or property, such as was alleged in the present case, amounts to misconduct. Under the standing order already referred to it was provided also that no order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity explaining the circumstances alleged against him. As both the Courts have found that this requirement was satisfied, this provision does not require further consideration. Another provision in the standing order is that a copy of the order awarding punishment passed by the Manager shall be supplied to the workman concerned. The trial Court held that this requirement had not been satisfied and that consequently the plaintiff was entitled to a decree as asked for. He accordingly decreed the suit

4. On appeal, the learned Subordinate Judge was also of opinion that the copy of the order awarding punishment passed by the Manager was not supplied to the workman concerned. He was also of opinion that

"non-service of the order of dismissal amounted in law to want of an order of dismissal, that therefore the respondent is deemed by law to be still continuing in service."

In that view he dismissed the appeal and affirmed the judgment and decree made by the trial Court. Mention should also be made of the findings of the courts below that there was no order or suspension in writing. The learned court of appeal has stated that this made the initiation of the proceeding illegal. It does not appear, however, that the learned Judge has ultimately relied on this fact for his conclusion that there was no order of dismissal.

5. The main question that arises for decision in this appeal, therefore, is whether failure to comply with the provisions of the standing order that a copy of the order awarding punishment passed by the Manager shall be supplied to the workman concerned invalidates the order of dismissal. In numerous cases the Courts have to consider as regards provisions in statutes or other documents whether they are directory in the sense that compliance therewith is not a condition precedent to the validity of the order or are such that non-compliance therewith will make the order invalid. It is not necessary for our present purpose to examine the question whether these provisions of the standing order are merely conditions of service which should be implied in every contract of service between the Company and its employees by reason of the standing order or whether they have any greater force as statutory provisions. In either case the question will remain whether the provisions in question are directory in the sense mentioned above. The provisions as regards dismissal appear in the following words:

"A workman may be dismissed without notice or any compensation in lieu of notice, if he is found to be guilty of misconduct.

No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. The approval of the manager of the establishment and, where there is no manager, of the employer, is required in every case of dismissal, and when circumstances appear to warrant it, the manager or the employer may, whether an appeal has or has not been preferred, institute independent enquiries before dealing with the charges against a workman.

In awarding punishment under this Standing Order, the manager shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. A copy of the order passed by the manager shall be supplied to the workman concerned."

For a proper understanding of the procedure to be followed it is necessary also to consider the following further provisions:

"All complaints arising out of employment, including those relating to unfair treatment, or wrongful exaction or wrongful application of these rules, shall be submitted to the manager or any other person authorised in this behalf.

The order of the manager or of the authorised person, upon such complaint, as also an order of imposition of fine, of suspension, or of dismissal shall be subject to a right of appeal by the workman to his employer. The managing agents shall be deemed to be employers within the meaning of these rules."

All these provisions have to be considered together in order to come to a conclusion whether the provision that a copy of the order of the manager awarding punishment shall be supplied to the workman concerned is a directory provision or a condition precedent to the validity of the order. A mere reading of these provisions makes it clear that while on the one hand the employer, or where there is a manager, the manager, is given authority to dismiss without notice or any compensation in lieu of notice when an employee is found guilty of the misconduct, care has been taken to ensure that no order of dismissal is made without a workman having an opportunity to explain the circumstances alleged against him. Provision is also made that the punishment shall not be awarded arbitrarily but the manager shall take into account the gravity of the misconduct and his previous record and all the circumstances. The further provision that a copy of the order passed by the manager shall be supplied comes into operation only after an order has been made. On an ordinary grammatical construction it is difficult to see how action which can only be taken after an order has been made can be considered to be a condition precedent to the validity of the order. Where it is intended that even action of this nature would be a condition precedent to the validity of the order of dismissal, it is

absolutely necessary in my opinion that this should be stated in so many words. Thus, there could have been a provision, though this would be unusual in my view, that no order of dismissal would be valid in law unless a copy thereof has been supplied to the workman concerned. If there has been such a provision, we would have been bound to hold that this provision as regards supplying a copy of the order to the workman was not directory merely, but was a condition precedent to the validity of the order. Unless, clear words have been used to show that it was the intention of the Standing Order to make such supplying of the copy of the order as a condition precedent to the validity of the order, it is unreasonable to think that such was the intention.

6. There is no doubt that if a copy of the order of dismissal is not supplied to the workman, he may find it difficult to make an appeal in proper time. It would be improper conduct for the manager not to comply with the provision that a copy of the order should be supplied and if by reason of such conduct the workman suffers injury, it will be for him to seek such remedy as may be available to him in law against the Manager of the Company. That, however, cannot in my opinion make the provision to supply a copy of the order a condition precedent to the validity of the order.

7. My conclusion, therefore, is that the courts below have erred in law in holding that because a copy of the order of dismissal was not supplied to the workman, the order of dismissal that was actually made by the Manager has become invalid.

8. It is hardly necessary to add that the fact that no written order of suspension was made cannot in any way affect the validity of the order of dismissal.

9. I have, therefore, come to the conclusion that the plaintiff is not entitled to any relief in this suit and the suit must be dismissed inasmuch as he has failed to show that in law the order of dismissal is invalid.

10. In view of this decision, I have thought it unnecessary to consider the larger question raised on behalf of the appellant that even if the order of dismissal is invalid in law, the plaintiff can only recover damages against the Company and is not entitled to have a declaration that there has been no order of dismissal.

11. I would therefore allow the appeal, set aside the judgments and decrees of the courts below and order that the suit be dismissed.

12. The appellant will get its costs throughout.

Guha, J.

13. I agree.