
(1961) 05 P&H CK 0027
In the Punjab And Haryana At Chandigarh

Panipat Woollen and General Mills Co. Ltd.	APPELLANT
Vs	
Industrial Tribunal and Others	RESPONDENT

Date of Decision : 12-05-1961

Acts Referred:

Constitution of India, 1950 — Article 223, 226, 227
Industrial Disputes Act, 1947 — Section 10

Citation : (1962) 1 LLJ 555

Hon'ble Judges : A.N. Grover, J

Bench : Single Bench

Judgement

A.N. Grover, J.—This is a petition filed by the management of the Panipat General and Woollen Mills Company, Limited, under Article 226 of the Constitution challenging the legality and validity of an award made by the Industrial tribunal functioning at Patiala, the presiding officer being Kesho Ram Passey.

2. Jagjit Singh, respondent 4, was a placer in the spinning department of the mills. The allegation against him was that on 8 April 1959 he went to the house of Chaugule, the works manager, at about 8 p.m. accompanied by another placer Gokul Narain. They were both drunk and respondent 4 was armed with a knife. They wanted the works manager to come out of the house, the obvious intention being to do him harm but Chaugule was away to Ludhiana. On 9 April 1959, Chaugule, the works manager, made a complaint in writing against respondent 4 and Gokul Narain, to the general manager, Shiv Kumar Gupta. On that report, the general manager only wrote " Mr. Jha." This to be found at page 49 of the record of the tribunal. A charge-sheet, dated 14 April 1959 was drawn up by Chaugule to the effect that respondent 4 had gone on the night of 8 April 1959 at 8 p.m. in a drunken condition along with Gokul Narain to the house of works manager, Chaugule and at that time, the aforesaid respondent had a knife in his hand. He was asked to appear in the office of the manager on 17 April 1959 at 6 p.m, to show cause why action should not be taken under standing Order 28/H. The enquiry, however, is stated to have been conducted by A.K. Jha, who was the labour officer, who examined a number of witnesses including one Nand Lal

Chaudhari, a Government employee, being the line superintendent of the Punjab Electricity Board, Kharar, and S.P. Jadav, the spinning master of the mills. The evidence was recorded in Urdu and at the conclusion of the depositions of the witnesses, signatures of respondent 4 also appear. Gokul Narain was similarly charge-sheeted and an enquiry was held against him as well. Respondent 4 was present at the enquiry and there is no allegation that he was not given full opportunity to participate in the proceedings. He, however, denied the incident as alleged against him. On 20 April 1959, A.K. Jha made a report to the general manager. The conclusion as contained in the report of the enquiry officer was as follows:

In view of the statements of complainants and his witnesses, I am fully satisfied that they went to Chaugule's place to cause injuries to him. Chaugule is the works manager of the company and the action of these persons even if it is outside the factory premises, cannot be tolerated, because this sort of action with the manager of the company is an act of misconduct, even if it is committed outside the factory premises,

He recommended that respondent 4 be dismissed from service and as Gokul Narain had resigned, no action was necessary against him. The general manager recorded an order" on 21 April 1959, dismissing respondent 4 under standing Order 29/A with effect from 21 April 1959. It appears that the union took up the matter on behalf of respondent 4 and conciliation proceedings were held by the conciliation officer. By means of a letter, dated 25 April 1960, the Secretary to the Punjab Government, Labour Department, informed the management of the mills that the charges against; Jagjit Singh and Gokul Narain had been found to be serious during the consultations and there was no justification in referring their case for adjudication. Only a few months later, however, the Government made a reference u/s 10(1) Of the Industrial Disputes Act by means of a notification, dated 8 July 1960, in the dispute between the management and respondent 4. The matter in dispute was stated to be as follows:

Whether the termination of services of Jagjit Singh, workman, is justified and in order and If not, to what relief he is entitled.

3. The tribunal made an award, dated 1 September 1960 holding that the termination of service of respondent 4 was neither justified nor was it in order. It was directed that he should be reinstated with continuity of service with his back wages in full till the date he was reinstated.

4. The first point that has been raised by the learned Counsel for the petitioners relates to a legal issue, namely, whether a dispute which the Government had earlier refused to refer, could be referred for adjudication. The tribunal has stated that the management led no evidence to support this contention nor did its representative even advert to the issue during the course of arguments before the tribunal. As this contention was not pressed before the tribunal, no question of examining it in these proceedings arises. Even otherwise there can be no

doubt that the order of reference u/s 10(1) is an administrative act of the Government. If there is an industrial dispute, the factual existence of which could not really be in dispute, a fresh determination by the Government of the question of the expediency of making a reference does not amount to a review of a question judicially determined previously and, therefore, a prior order of the Government does not affect the jurisdiction of the Government to exercise the statutory power u/s 10(1)(c) of the Industrial Disputes Act (vide *Sri Rama Vilas Service, Limited (Kumbakonam Branch) v. State of Madras and Anr.* 1956 I L.L.J. 498).

5. The next and the more serious question is whether there is any such error in the award which would justify interference under Article 223 of the Constitution. The tribunal found that none of the witnesses examined by the management before the enquiry officer had stated that Jagjit Singh had a knife in his hand. That part of the charge according to the tribunal must be held to have failed hopelessly but the tribunal proceeded to give a number of other reasons for Betting aside the order of termination. They may be categorized as follows:

(1) The enquiry itself was unauthorized and the charge-sheet was not drawn by A.K. Jha who held the enquiry but by Chaugule himself. The general manager or any other officer competent to make an order in that behalf had never made any order for holding of any enquiry much less had he appointed A.K. Jha as the Inquiry officer.

(2) A.K. Jha did not go into the witness box to explain away the aforesaid lacuna going to the root of the enquiry.

(3) It was Chaugule who had required respondent 4 to answer the charges levelled against him and bring his defence witnesses on 17 April 1959, and it is not known how on 17 April 1969, A.K. Jha who had not been asked by the general manager to do so stepped in to hold the enquiry which was never directed to be held by the general manager or any other officer having authority in the matter.

(4) The enquiry was vitiated by the fact that the statements of the witnesses were neither recorded by A.K. Jha himself nor on his dictation. They did not bear his initials. It was not known who wrote those statements and whether A.K. Jha was actually present when they were written in Urdu, which script Jha could neither read nor write.

(5) There were interpolations in the statements of Nand Lal and S. B. Jadav. These interpolations being " Jagjit Singh ne pi rakhi thi" and " Donon ne khub pi rakhi thi." It was not safe therefore to base any conclusion on such undependable and unreliable record of enquiry.

(6) There was nothing to show that Jagjit Singh had any motive in behaving in the way in which he was alleged to have misconducted himself.

(7) The enquiry itself was unauthorized and was held by an unauthorized person.

6. The learned Counsel for the petitioners has invited my attention to the record of the tribunal in submitting that there was no justification for saying that the enquiry was unauthorized because, as has been mentioned before, there is a document at p. 49 which is the complaint made by Chaugule, the works manager, to the general manager on which he wrote the word " A.K. Jha." This, according to the learned Counsel for the management, meant that Jha had been appointed the Inquiry officer. It is farther pointed out that there was absolutely no material on which it could be said that during the enquiry, the statements of the witnesses were not recorded at the dictation of A.K. Jha and further the tribunal could not have possibly come to the conclusion that Jha was not present when those proceedings were held. It was true that the charge-sheet had been drawn by Chaugule but that did not mean that the enquiry, was not held by Jha who submitted the final report and to whom the complaint had been marked by the general manager. Jha appeared as R.W. 1 and he was not asked a single question either by respondent 4 or by the tribunal itself to elucidate any of these matters. In the *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, , it has been laid down that the error apparent on the face of the record in the context of that case, meant assumption of facts which were not borne out by the record. This aspect will also have to be kept in mind.

7. It is further contended that apart from this the tribunal has altogether ignored the scope of Interference with an order of dismissal made by the management after a proper enquiry. It is well-settled by now that the management of a concern has the power to direct its own internal administration and discipline but that power is not unlimited and when a dispute arises, the tribunal has to see whether the termination of service is justified so as to give proper relief. In case of dismissal on misconduct, the tribunal does not act as a Court of Appeal and substitute its own judgment for that of 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 [vide *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*,

Undoubtedly there was no material to support the charge that respondent 4 had a knife in his hand and the tribunal was justified in saying that that charge had not been established. With regard to the other part of the charge that respondent 4 was drunk when he went to the house of works manager, the tribunal acted on the assumption that certain interpolations had been made in the statements of Nand Lal and Jadav who had been examined by the Inquiry officer and for that reason It came to the conclusion that there was no

trustworthy material on which an adverse finding could have been given against respondent 4. According to the learned Counsel for the petitioners, the tribunal could not convert itself into a Court of Appeal and go into the question of appreciation of evidence and come to the conclusion that there was no trustworthy material for finding that respondent 4 was drunk when he went to the house of Chaugule. Moreover. It is pointed out that the tribunal has not come to the conclusion that this part of the finding of the inquiry officer was baseless or preverse. To my mind, the more substantial point is whether the tribunal was justified in assuming that the so-called interpolations in the statements of Nand Lal and Jadav were Interpolations at all without examining A.K. Jha, the Inquiry officer, on that point and giving him an opportunity to explain how those words came to be written in the statements. It is no doubt true that the words in question are in different ink and it may even be possible that they were interpolations made subsequently after the depositions had been recorded but no opportunity whatsoever was afforded to the management to disprove that allegation. It is significant that in the written statement which has been filed by respondent 4 before the tribunal, no such allegations were made that any such interpolations existed or had been made. The tribunal considered that because of the interpolations it was not safe to base any conclusions on such an undependable and unreliable record of enquiry. In other words, the mind of the tribunal was affected in a large measure by the aforesaid consideration. In *Ram Lal Guramal Textile Mills Vs. State of Punjab and Others*, their lordships of the Supreme Court observed that the tribunal had misdirected itself in basing its conclusion upon the absence of a document which neither the parties before It nor the tribunal Itself, during the enquiry thought to be relevant. If the tribunal had any genuine doubt of its own as regards the bona fides of the management, it should have called upon the management to produce the particular document. Without adopting such a course, it was not open to the tribunal to take an adverse view for failure to produce such a document. It was further observed in that case that the award suffered from the Inherent weakness of the approach made by the tribunal in determining the controversy before It. It has only to satisfy that the management was justified in coming to the conclusion that the charge against the workman was well-founded. If there had been a finding by the tribunal that the management had been actuated by sinister motives or had Indulged in unfair practices or the workman concerned was victimized for any activity in connexion with the trade union, it might have been reasonable to be critical of the enquiry held by the management but that was not the case there. These observations are quite apposite for the present case and I must hold that the award of the tribunal proceeded

firstly, on certain assumptions of fact which did not exist or, at any rate, in respect of which there existed no cogent material, and;

secondly, while examining the charge with regard to respondent 4 having gone to the house of Chaugule in drunken condition in company with Gokul Narain, the tribunal did not keep in mind the real test laid down by the Supreme Court,

namely, whether the finding was completely baseless or perverse.

Furthermore, the tribunal proceeded to hold that there were certain interpolations in the statements recorded by the inquiry officer without examining the inquiry officer with regard to them, especially when he appeared as a witness before the tribunal and was present throughout during the proceedings, particularly in the absence of any such allegation on the part of respondent 4. For all these reasons, I quash the impugned order.

8. In the exercise of my powers under Article 227, I direct that the tribunal should give a fresh award in accordance with law. In the peculiar circumstances of the case, the parties are left to bear their own costs in this Court.