
(1972) 07 AHC CK 0008
In the Allahabad High Court

Paras Nath Misra

APPELLANT

Vs

U.P. State Industrial Tribunal and Others

RESPONDENT

Date of Decision : 12-07-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33, 33A

Citation : (1973) 1 LLJ 354

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Judgement

N.D. Ojha, J.—These two appeals are directed against the judgment of a learned single Judge dated March 27, 1964 in Civil Misc. Writ Petition No. 2768 of 1959. Paras Nath Misra is the appellant in Special Appeal No. 377 of 1964 whereas Special Appeal No. 498 of 1964 has been filed by the U. P. State Industrial Tribunal and the State of U. P. Paras Nath Misra was employed as a darban in the establishment at Allahabad of Amrit Bazar Patrika Private Ltd. The State Government referred an industrial dispute in regard to bonus between Amrit Bazar Patrika Private Ltd., herein referred to as the company, and its employees on December 16, 1957. The Industrial Tribunal, Allahabad gave its award which was published on March 21, 1958. Since it became enforceable on the expiry of 30 days of the date of its publication the proceedings would be taken to have remained pending by virtue of Section 6D of the U. P. Industrial Disputes Act (Act 28 of 1947) hereinafter referred to as the Act, from December 16, 1957 to April 20, 1958.

2. During the pendency of the aforesaid dispute the company charge-sheeted Paras Nath Misra on January 28, 1958 for disobedience and insolent behaviour. He was suspended with effect from January 29, 1958 and in pursuance of departmental enquiry that took place subsequently he was dismissed with effect from January 29, 1958. This order was communicated to Paras Nath Misra vide letter dated March 20, 1958.

3. Paras Nath Misra filed a complaint u/s 6F of the Act making a grievance of the fact that the order of his dismissal was in contravention of the provision of Section 6E(2) of the Act. The case set up by Paras Nath Misra was that since an industrial dispute was pending before the Industrial Tribunal at the time when the order of dismissal was passed the said order was illegal inasmuch as neither he had been paid wages for one month nor had an application been made by the company to the Industrial Tribunal for approval of the action taken by it as required by Section 6E(2) of the Act.

4. The claim of Paras Nath Misra was contested by the company but was allowed by the Tribunal by its order dated August 24, 1959 whereby the order of dismissal of Paras Nath Misra was held to be null and void and he was directed to be reinstated with benefits of continuity of service. The company was also directed to pay to Paras Nath Misra whole of the wages and allowances that he would have earned for the period he had remained out of employment. Aggrieved, the company filed the aforesaid writ petition in this Court. The learned single Judge came to the conclusion that non-compliance of the provisions of Section 6E(2) of the Act was a lame technicality in the instant case and the Tribunal was wrong in setting aside the order of dismissal on this ground. He also held that after the Tribunal had found that the provisions of Section 6E(2) had been violated it was its duty to have decided the dispute between the parties on merits. He, however, did not refer back the matter to the Tribunal on the ground that Paras Nath Misra was guilty of laches in making the complaint u/s 6F of the Act and the Tribunal was in error in entertaining it. On this finding the learned single Judge allowed the writ petition and quashed the award of the Tribunal by his order dated March 27, 1964. Hence these two appeals.

5. Two contentions were raised on behalf of the appellant: (1) that no limitation had been provided for in the Act for making an application u/s 6F of the Act and it being within the discretion of the Tribunal to entertain an application even though it was belated and the Tribunal in the instant case having entertained the complaint the learned single Judge committed an error in interfering with that discretion and (2) that once it was established that the provisions of Section 6E(2) of the Act had been violated, no further enquiry was called for and the order of dismissal of Paras Nath Misra had rightly been set aside by the Tribunal.

6. We are in agreement with the submissions made by the learned Counsel for the appellant on the first point. From a perusal of the Act it is apparent that it does not prescribe any period of limitation for making a complaint u/s 6F. Even so the complainant is expected to approach the Tribunal within a reasonable time but simply because the complainant is guilty of laches it does not affect the jurisdiction of the Tribunal to entertain the complaint and condone the laches. In the instant case the Tribunal having entertained the complaint it would be deemed to have condoned the laches and in a matter like this which was essentially one of discretion, the order of the Tribunal did not deserve to be set aside by this Court in the exercise of its equitable jurisdiction under Article 226 of

the Constitution unless the order of the Tribunal was arbitrary. In *Corporation of Calcutta Vs. Mulchand Agarwalla*, , the Supreme Court held as follows:

It is a well-settled principle that when the Legislature entrusts to an authority the power to pass an order in its discretion, an order passed by that authority in exercise of that discretion is, in general, not liable to be interfered with by an appellate Court, unless it can be shown to have been based on some mistake of fact or misapprehension of the principles applicable thereto.

7. *Corporation of the City of Nagpur Vs. The Nagpur Handloom Cloth Market Co. Ltd.*, , was a case in which a writ petition had been entertained by the High Court even though the petitioner was guilty of laches. It was urged before the Supreme Court that the ground upon which the High Court condoned the laches was inadequate. This argument was repelled by the following observations :

This ground may appear to us inadequate, but the High Court has exercised its discretion in holding that, the petition notwithstanding the delay should be entertained and we are unable in a matter essentially of discretion to set aside the judgment of the High Court on this ground alone....

8. In this view of the matter we are of the opinion that the finding of the learned single Judge whereby he interfered with the discretion of the Tribunal in entertaining the complaint u/s 6F of the Act notwithstanding the fact that it was made with considerable delay cannot be upheld.

9. In order to appreciate the submissions made by the learned Counsel for the appellant on the second point it is necessary to consider the relevant provisions of Section 6E(1) and Section 6E(2) of the Act which run as follows :

6E(1). During the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before a Labour Court or Tribunal in respect of an industrial dispute, no employer shall?

(a) in regard to any matter connected with the dispute, alter to the prejudice of the workmen concerned in such dispute the conditions of service applicable to them immediately before the commencement of such proceeding, or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute?

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding, or

(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.

(3)...

(4)...

(5)...

10. It was conceded by the learned Counsel for the appellant that the order of dismissal of Paras Nath Misra was passed for misconduct not connected with the dispute which was pending before the Tribunal between December 16, 1957 and April 20, 1958 and, therefore, it is Sub-clause (2) and not Sub-clause (1) of Section 6E which is relevant for our consideration. learned Counsel laid emphasis on the proviso to Sub-clause (2) and contended that the requirements of the said proviso were mandatory and inasmuch as Paras Nath Misra had neither been paid wages for one month nor had an application been made by the company to the Industrial Tribunal for approval of the action taken by it the order of dismissal was liable to be set aside on this ground alone and it having not been disputed that none of the two conditions contained in the aforesaid proviso were fulfilled the Tribunal was justified in giving the award as it did. It was urged that after having found that the conditions of the aforesaid proviso had not been fulfilled it was not necessary for the Tribunal to have entered into the merits of the order of dismissal and the learned single Judge erred in quashing the award of the Tribunal by taking a contrary view.

11. learned Counsel for the appellant relied upon certain observations made in the case of P.H. Kalyani Vs. Air France Calcutta, , but in our opinion this case has no bearing upon the question which falls for our consideration. Reliance was next placed, and with considerable emphasis, upon the following observations made in Strawboard Manufacturing Co. Vs. Gobind, , in regard to the interpretation of the proviso to Section 33(2)(b) of the Industrial Disputes Act, 1947 (Act XIV of 1947) which is in pan materia with Section 6E(2) of the Act:

As we read the proviso, we are of opinion that it contemplates the three things mentioned therein, namely, (i) dismissal or discharge, (ii) payment of wages and (iii) making of an application for approval, to be simultaneous and to be part of the same transaction, so that the employer when he takes the action u/s 33(2) by dismissing or discharging any employee, should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time.

12. We are, however, unable to accept the aforesaid submission. The relevant provisions of Sub-sections (1) and (2) of Section 33 of the Industrial Disputes

Act, 1947 (Act XIV of 1947)(hereinafter referred to as the Central Act) after its amendment by Act XXXVI of 1956 are identical with Sub-section (I) and (2) of Section 6E of the Act and need not be reproduced. Section 33 of the Central Act before it was amended by Act XXXVI of 1956 was as follows :

33. During the pendency of any conciliation proceedings or proceedings before a Tribunal in respect of any industrial dispute, no employer shall

(a) alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the Conciliation Officer, Board or Tribunal, as the case may be.

13. In *The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others*, , their Lordships of the Supreme Court while interpreting Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 which is in part materia with Section 33 of the Central Act quoted above held that before setting aside an order of dismissal for non-compliance of the provisions of Section 22 it was incumbent upon the authority to whom a complaint has been made in this behalf to decide the merits of the case also after it had found that the provisions of Section 22 had not been complied with.

14. The aforesaid case was relied upon in *Equitable Coal Co. Ltd. Vs. Algu Singh and Another*, , wherein it was observed:

In an enquiry held u/s 23, two questions fall to be considered : Is the fact of contravention by the employer of the provisions of Section 22 proved? If yes, is the order passed by the employer against the employee justified on the merits? If both these questions are answered in favour of the employee, the Appellate Tribunal would no doubt be entitled to pass an appropriate order in favour of the employee. If the first point is answered in favour of the employee, but on the second point the finding is that, on the merits, the order passed by the employer against the employee is justified, then the prejudice of Section 22 proved against the employer may ordinarily be regarded as a technical breach and it may not, unless there are compelling facts in favour of the employee, justify any substantial order of compensation in favour of the employee. It is unnecessary to add that, if the first issue is answered against the employee, nothing further can be done u/s 23.

15. *The Punjab National Bank Ltd. Vs. Its Workmen*, , was a case u/s 33 of the Industrial Disputes Act and while interpreting its scope Mr. Justice Gajendragadkar speaking for the Court held :

Thus there can be no doubt that in an enquiry u/s 33A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of Section 33 by the employer. If such contravention is proved it would still be

open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the Tribunal has to consider because the complaint made by the employer is treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered u/s 33A. Therefore, we cannot accede to the argument that the enquiry u/s 33A is confined only to the determination of the question as to whether the alleged contravention by the employer of the provisions of Section 33 has been proved or not.

16. In view of the law laid down by the Supreme Court there is no manner of doubt that once the Tribunal had come to the conclusion that the company had failed to comply with the requirement of Section 6E(2) of the Act it was incumbent upon it to have proceeded to decide the dispute on merits and its finding to the contrary suffers from a manifest error of law.

17. The learned Counsel for the appellant, however, argued that the provisions of Section 33 of the Central Act as they stood before the said Act was amended by Act XXXVI of 1956 and as they stand thereafter are materially different and the aforesaid case being under the unamended Section 33 will not apply to the amended section which is in pan materia with Section 6E of the Act as brought on the statute book by the U.P. Industrial Disputes (Amendment and Misc. Provisions) Act, 1956 (U.P. Act I of 1957). We are unable to accept this argument. From a perusal of the relevant provisions before and /after the amendment in the Central Act it would appear that the conditions imposed upon the employer by the said section at both the stages were mandatory. Before it was amended the employer could not pass an order of dismissal during the pendency of any conciliation proceedings or proceedings before a Tribunal in respect of any industrial dispute without the express permission in writing of the Conciliation Officer, Board or the Tribunal as the case may be. The section as it then stood did not make any distinction between misconduct connected with the dispute and misconduct not connected with the dispute.

18. After it was amended by Act XXXVI of 1956 Sub-clause (1) provided for those casein which the misconduct for which the employee had been dismissed was connected with the dispute pending at the time when the order of dismissal was passed and Sub-clause (2) provided for a misconduct not connected with the dispute. Under Sub-clause (1) an order of dismissal could not be passed save with the express permission in writing of the authority before which the proceeding was pending and under the proviso to Sub-clause (2)(b) no such order of dismissal could be passed unless the employee had been paid wages for one month and an application had been made by the employer to the authority before which the proceeding was pending for approval of the action taken by the employer. The requirements of both these Sub-clause (1) and (2) are on the face of it mandatory and there seems to be no justification for holding that the law laid down by the Supreme Court in the cases referred to above will apply only to cases falling under Sub-clause (1) and not under Sub-clause (2) of Section 33 of the Central Act.

19. Air-India Corporation, Bombay Vs. V.A. Rebellow and Another, , was a case where the services of V. A. Rebello had been terminated by the Air India Corporation and V.A. Rebello had filed a complaint u/s 33A of the Central Act. The Tribunal found that the order of termination had been passed in violation of the provisions of Section 33, Before the Supreme Court one of the questions for consideration was whether the order of termination amounted to dismissal and if it did amount to dismissal whether the requirements of Section 33 had been fulfilled. Considering the scope of Sub-clause (1) and (2) of Section 33 in that context their Lordships of the Supreme Court made the following observation :

It is not necessary for us to decide whether the present case is governed by Sub-section (1) or Sub-section (2) because the relevant clause in both the subsections is couched in similar language and we do not find any difference in the essential scope and purpose of these two sub-sections as far as the controversy before us is concerned.

20. learned Counsel for the appellant then relied upon the case of Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter, , wherein their Lordships of the Supreme Court while interpreting the provisions of Rule 5 of Central Services (Temporary Services) Rules, 1965 observed that the requirement about payment of one month's salary in the said rule was mandatory and its non-compliance would render the order of termination of a temporary Government servant invalid.

21. We are, however, of the opinion that the observations made in the said case will not apply to the facts of the instant case where we are concerned with the interpretation of Section 6E(2) of the Act which is in pari materia with Section 33 of the Central Act. In our opinion the requirements of the relevant proviso are conditions precedent to the maintainability of a complaint u/s 6F of the Act. Normally a dispute is to be referred to a Labour Court or Tribunal by the State Government u/s 4K of the Act. Section 6F gives a right even to the aggrieved workmen to make a complaint to a Labour Court or Industrial Tribunal if the provisions of Section 6 E have not been complied with and thereby achieve the same object which could be achieved on a reference made u/s 4K of the Act. We are, therefore, of the opinion that non-compliance of the requirements of Section 6E of the Act have the effect of only enabling the aggrieved workmen to make a complaint u/s 6F of the Act and not of rendering the order of punishment invalid on this ground alone.

22. We, therefore, allow the appeals, set aside the order of the learned single Judge and quash the award of the Industrial Tribunal dated August 24, 1959. We further direct the Industrial Tribunal to decide the question whether the order of dismissal passed by the company against Paras Nath Misra is justified on the merits and thereafter to pass appropriate orders. The appellant in Special Appeal No. 377 of 1964 would be entitled to his costs but there will be no order as to costs in Special Appeal No. 498 of 1964.