

(1978) 09 KL CK 0002
In the High Court Of Kerala

Phoenix Plywood

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 07-09-1978

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33, 33A, 33C

Citation : (1979) 1 ILR (Ker) 244 : (1979) 1 LLJ 386

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.;S.K. Kader, J

Bench : Division Bench

Judgement

V.P. Gopalan Nambiyar, C.J.—The appeal is against the judgment of a learned Judge of this Court, dismissing the appellant's writ petition to quash Ext. P1 order of the Industrial Tribunal, Alleppey u/s 33(2)(b) of the Industrial Disputes Act. The application was for approval of the order of dismissal passed by the appellants against respondents 2 to 12 on 30-7-1970. The respondents were workmen employed under the appellants, and, according to the nature and functions of their work, till 2-4-1970, they were maintaining diaries showing the outturn of their work of cost accounting and pricing. From 6-4-1970 to 10-4-1970 the workmen used merely to affix their signature to a record of the work done from day to day. After 10-4-1970, they refused to do even this. By letter dated 6-4-70, marked Ext. P2 before the Tribunal, the Manager of the appellant informed a set of workmen that the Account Books entrusted with the workmen were not received back, and that the Manager was informed that the books were missing. The workmen were called upon to entrust the books to the Manager. A copy of the explanation submitted by the workmen to this letter is Ext. W16 before the Tribunal. The same denied entrustment of books to the workmen by the supervisor, and gave that as the explanation of the workmen in not submitting the books. By Ext. P3 letter dated 13th April, 1970, the management intimated that the absence of diaries and the workmen's attitude denying any knowledge about the same should be regarded as subversive activities. Reference was made to the refusal of the workmen to initial the work-list showing the outturn for everyday. These were brought to the notice of the

union suggesting that the union may ask the workers to initial the list to facilitate checking it up. It may not be very necessary to trace the correspondence that followed in its full sequence, except to state that in Ext. W30 letter dated 30-4-1970 from the president of the union to the appellant's Manager, it was admitted that the workmen had refused to sign the list in authentication of the work-outturn each day. Exhibit W30 also shows that in respect of the notice issued to the workers by the appellant, the union had decided to reply as was indicated in the said communication. The stand taken in the reply was that to insist on the workers signing the list, would amount to altering their conditions of services. At the end of this correspondence, a charge-sheet, Ext. P8, was drawn up against the workmen and the same was entrusted, for the purpose of enquiry to an inquiry officer; an advocate. Exhibit W12 is the charge framed by the inquiry officer. Exhibit P14 is a copy of the inquiry report of the officer dated 2-7-1970 finding the charge proved. On 3-7-1970 Industrial Dispute No. 29 of 1970 was referred to the Industrial Tribunal relating to the question of wages and dearness allowance. Whether by inadvertance or by ignorance, or otherwise acting on the inquiry report dated 2-7-1970 the appellant passed orders of dismissal against the workmen dated 9-7-1970. Exhibit W8 is one such order of termination. Whether realising the mistake, that the order of termination could not be passed during the pendency of the Industrial Dispute without approval of the Tribunal, or otherwise the appellant followed up by Ext. W9 order of termination dated 30-7-1970. It is said, that this was done to cure the infirmity of want of previous approval. Before the said date, i.e., on 28-7-1970, one month's wages had been sent by Money Order. Thereafter, on 30-7-70, an application was filed before the Tribunal u/s 33(2)(b) of the Act for approval of the termination of services of the workmen dated 30-7-1970. The same was dismissed by the Industrial Tribunal, on the ground briefly stated, that the prior order of termination dated 9-7-1970 was effective, and, that during its currency, the later order of termination dated 30-7-1970 would not be operative. The Tribunal also held that the enquiry was defective as the inquiry officer was generally appearing for the management. It was also of the opinion that the punishment of dismissal inflicted on the workmen was totally disproportionate to the offence or misconduct of charges against them. The appellants' writ petition to quash the order of the Tribunal was dismissed by the learned Judge, who, in effect, endorsed this reasoning of the Tribunal. The learned Judge was of the view, that the earlier order of termination dated 9-7-1970 was not a nullity, nor can it be regarded as non est in law, and, so long as the said order was proper and effective, the later order of termination cannot take effect or form the basis for an order of approval from the Tribunal as sought for. The learned Judge was inclined to differ from the finding of the Tribunal that the inquiry officer was biassed, and, therefore, not competent to conduct the inquiry, but at the same time, recorded his view, that, in view of the expressed apprehensions of the workmen, it might have been better that the domestic enquiry was entrusted to some-one else. (The bias alleged against the inquiry officer was on the ground that he was a practising lawyer, who used to accept engagements from the

management.) On the question whether the punishment inflicted was disproportionate to the charge found against the workmen, the learned Judge recorded that it was shockingly disproportionate, and, indicated lack of bona fides on the part of the management. The learned Judge had also ventured certain observations, that it was doubtful whether asking the workers to authenticate a list or to sign to some paper containing a record of the work done day by day, can be considered to be an order of a superior officer in exercise of his lawful authority. The learned Judge indicated that, having regard to the Industrial relationship between the employer and employee such matters should be settled by negotiations and consultation with the union, and, that an attempt to force matters behind the back of the union was bound to cause resentment to the worker. The learned Judge recorded his view thus:

It cannot, therefore, be said that in requesting that they might be permitted to record their remarks before signing the supervisor's entries in the diary sheets, the delinquent workers acted in such a manner as to amount to misconduct, or disobedience or insubordination to the lawful authority of the superior, as to deserve such a severe punishment as dismissal from service. As I have already stated, this Court ordinarily would not have upheld the interference by the Tribunal with the discretion exercised by the management, because it is by and large within the purview of the management's right in a proven case to award the punishment which would meet the occasion, but in this particular case, in the circumstances and on the facts pointed out appears to be that the management lacked bona fides in the exercise of its disciplinary power against the delinquent workers, respondents 2 to 12.

2. We may straightway say, that the learned Judge's observations and findings in regard to the propriety of the request to authenticate or sign the list as a record of the day-to-day work done by the workers, was not justified or correct. The learned Judge stated that these should not have been done behind the back of the union, but only after negotiation with it. We have already, in tracing the facts, referred to Ext. P3 and Ext. W30, before the Tribunal, which will clearly show that the union has been informed about the proposed action of the management and replied expressing its inability to comply with the request. In such circumstances, we cannot sustain the observations made, or, the findings recorded, by the learned Judge, on this aspect of the case. We should record, that the learned Counsel for the respondent, very fairly stated before us, that he would not support the said observations and findings of the learned Judge.

3. We are again unable to endorse the reasoning and observations of the learned Judge in regard to the biased nature of the enquiry officer and the desirability of the enquiry being entrusted on that ground alone to some other person. We are afraid, that these observations of the learned Judge run counter to the drift of the decisions of the Supreme Court in *Dalmia Dadri Cement, Ltd. Vs. Shri Murari Lal Bikaneria*, and, in *Saram Motors v. Viswanath and Anr.* 1964 II L.L.J. 139. Here again, we should record, that the counsel for the respondent, very fairly,

made no attempt to support or sustain the finding or the observation made by the learned Judge on this part of the case.

4. We are also of the view that the learned Judge was wrong in holding that the punishment meted out was shockingly disproportionate to the charge made against the workmen. It appears to us, that this aspect of the matter should not have been considered and pronounced upon either by the Tribunal or by the learned Judge at this stage, where, the only question was of granting approval u/s 33(2)(b) of the Act. The scope of the section has been explained by the Supreme Court in more than one decision. In *Caltex (India) Ltd. Vs. Their Workmen*, it was ruled by the Supreme Court that the Tribunal is not to substitute its judgment on question whether punishment is unduly severe. We may refer also to the decision in *The Lord Krishna Textile Mills Vs. Its Workmen*. It was, there, ruled that, the approving authority has to consider only (a) whether the standing orders justify the order of dismissal, (b) whether an enquiry has been held as provided by the standing order, (c) whether the wages for the month have been made as prescribed by the proviso. It was held that, when all these conditions have been fulfilled by the employer the Tribunal is not justified in refusing to accord approval to the action taken by the employer. It was further pointed out that the Tribunal would not be justified while holding the enquiry to assume powers of an appellate Court which alone is entitled to go into all questions of fact. Thus, it was pointed out, the question about the adequacy of evidence or its sufficiency or satisfactory character are not germane for consideration at the stage of an application u/s 33(2)(b), and, if, on such considerations Tribunal refuses to accord permission, it was ruled, that its order would be patently erroneous. In the light of the principles thus stated, we feel that the Tribunal has exceeded its jurisdiction in holding that the punishment of dismissal was shockingly disproportionate to the charge levelled against the employees. The learned Judge was wrong in endorsing the finding.

5. That leads us to the consideration of the most important and the substantial question that was argued in this case. That is the effect of an order of termination passed in contravention of Section 33(2)(b) of the Industrial Disputes Act. It was the contention of counsel for the appellants that, such an order of termination is inchoate and incomplete, and, in fact, void and of no effect. Strong reliance, in support of this proposition, was placed by counsel on the decision of the Supreme Court in *Tata Iron and Steel Co. Ltd. Vs. S.N. Modak*, It was observed.

In other words, the order being incomplete and inchoate until the approval is obtained, cannot effectively terminate the relationship of the employer and the employee between the appellant and the respondent; and so, even if the main industrial dispute is finally decided, the question about the validity of the order would still have to be tried and if the approval is not accorded by the Tribunal, the employer would be bound to treat the respondent as its employee and pay his full wages for the period even though the appellant may subsequently

proceed to terminate the respondent's services. Therefore, the argument that the proceedings, if continued beyond the date of the final decision of the main industrial dispute, would become futile and meaningless, cannot be accepted.

The passage relied on does lend countenance to the argument of counsel for the appellant that, an order in contravention of Section 33(2)(b) would be void and of no effect. A research into parallel statutory provisions may perhaps support the contention. But, we are afraid, that this aspect of the matter has, now, been placed beyond doubt, at any rate, as far as this Court is concerned, by the recent pronouncement of the Supreme Court in *Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another*, . At page 4, the question for examination was posted thus:

Hence it becomes necessary to consider whether the contravention of Section 33(2)(b) introduces a fatal infirmity in the order of dismissal passed in violation of it so as to render it wholly without force or effect, or despite such contravention, the order of dismissal may still be sustained as valid.

The question was discussed in the light of the provisions of the statute and the authorities; at page 9, paragraph 12, it was recorded:

If the scope of the inquiry u/s 33A is what is has been held to be in the decisions in *Automobile Products of India AIR 1955 S.C. 528*, *Equitable Coal Co.*, and *The Punjab National Bank's* case, the conclusion must inevitably follow that the contravention of Section 33 does not render the order of discharge or dismissal void and of no effect.

At the same page, in paragraph 13, it was stated:

It is, therefore, impossible to accept the argument that the contravention of Section 33 renders the order of discharge or dismissal void and inoperative and if that be so, the only remedy available to the workman for challenging the order of discharge or dismissal is that provided u/s 33A, apart of course from the remedy u/s 10, and he cannot maintain an application u/s 33C(2) for determination and payment of the wages on the basis that he continues to be in service. The workman can proceed u/s 33C(2) only after the Tribunal has adjudicated, on a complaint u/s 33A or on a reference u/s 10, that the order of discharge or dismissal passed by the employer was not justified and has set aside that order and reinstated the workman.

The pronouncement of the Supreme Court in the above decision is clear and categoric and, in the light of the said pronouncement, we cannot agree with counsel for the appellant, that an order of termination in contravention of Section 33(2)(b) is void and ineffective; much the less, can it be held that it is non est in law. While it is true that in the application for approval the appellant made the order of termination dated 30-7-1970 as the basis for the prayer, in law, he is confronted with the difficulty that the prior order of termination is effective and certainly cannot be ignored. That being so, the view taken by the Tribunal in

refusing to approve the order of termination is correct. The learned Judge, against, was right in refusing to quash the order of the Tribunal. We see no ground for interference. We dismiss this appeal with no order as to costs.