
(1979) 07 OHC CK 0009
In the Orissa High Court

Prakash Chandra Purohit

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 26-07-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 3, 33
Payment of Wages Act, 1936 — Section 2

Citation : (1979) 48 CLT 317

Hon'ble Judges : J.K. Mohanty, J; Acharya, J

Bench : Division Bench

Judgement

J.K. Mohanty, J.—Petitioner was working as a Material Chaser-cum-Recorder in the Coke-Oven and By-products (Mech.) Department of the Hindusthan Steel Limited (now Steel Authority of India Ltd., Rourkela Steel Plant, Rourkela, O.P. No. 2 (hereinafter called the "company")). The General Manager of the company having been satisfied that the continuance of the petitioner in employment was inexpedient and against the security of the establishment of opp. party No. 2, directed (vide order under Annexure-8) removal of the petitioner from service under Clause 31 of the Standing Orders with effect from 15-10-75. According to opp. party No. 2, under the Standing Orders, petitioner was paid three months' wages inclusive of one month's wages, as required to be paid under the proviso to Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter called the "Act"). Simultaneously opp. party No. 2 filed an application (Annexure-2) before the Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar (Opp Party No. 1) for approval of the action taken by him in view of the pendency of I.D. Case No. 48 of 1967 in which the petitioner was a concerned workman. The Tribunal (O.P. No. 1) by order dated 23-8-76 passed in industrial Dispute Misc. case No. 49 of 1975 approved the action of opposite party No. 2 in removing the petitioner from service with effect from 15-10-75. The petitioner has now come up with this present application under Arts. 226 and 227 of the Constitution of India praying for issue of a writ certiorari quashing the orders under Annexure-8 passed by the

General Manager of the company removing the petitioner from service and Annexure-1 passed by the Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar u/s 33(2)(b) of the Act approving the order passed under Annexure-8.

2. The case of the petitioner is that he is a permanent employee under opp.party No.2 and has put in sincere and meritorious service since his joining in service in the year 1960 and has received several promotions. It is alleged by the petitioner that his services have been terminated in an arbitrary and capricious manner under the guise of exercise of powers under Clause 31 of the standing orders, even though no prima facie case has been made out against him and his removal has been in flagrant violation of the principles of natural justice and the mandatory requirements of Clause 31 of the standing orders and also of Section 33(2)(b) of the Act have not been fulfilled, as he has not been paid his full wages for three months and the wages for one month. It is further alleged that the learned Tribunal has failed to exercise jurisdiction in the matter of scanning the management's action and in accepting the General Manager's recorded satisfaction (not legally proved) as sacrosanct, that the learned Tribunal has failed to appreciate that a mere suspicion without the support of any enquiry or material facts would tantamount to giving sanction to arbitrary action that there was no material before the General Manager from which he would be satisfied that the continuance of the petitioner in employment was not expedient and was against the security of the establishment; and that the Tribunal should have held that the provisions of Clause 31 of the standing orders and Section 33(2)(b) of the Act have not been complied with and the impugned order is otherwise perverse and contrary to law.

3. On behalf of opposite party No. 2, a counter-affidavit has been filed. In the counter it has been, inter alia, stated that when an application is made to the Tribunal for approval of the action taken by the employer, the Tribunal is not to adjudicate the original dispute. The Tribunal is only to examine as to whether the termination is bona fide and it has been done in accordance with the standing orders. The General Manager having been satisfied from the confidential information regarding the petitioner that the employment of the petitioner is not expedient and is against the security of the establishment, removed the petitioner from service as per Annexure-3. The Tribunal examined the entire matter and after taking evidence came to the conclusion that the termination of the petitioner was bona fide and there was absolutely no material on record on the basis of which it can be said that the management had any ulterior motive in throwing the petitioner out of service. The termination of the petitioner was validly done in accordance with the provisions of Clause 31 of the standing orders. The petitioner has been given his wages as required under Clause 31 of the standing orders and no further payment of one month's wages is provided in Section 33(2)(b) of the Act is required and in any view of the matter, the orders under Annexures 1 and 8 cannot be challenged.

4. The first point urged by Mr. Nanda, learned Counsel appearing on behalf of the petitioner, is that the petitioner has not been paid the wages for one month as provided u/s 33(2)(b) of the Act. According to him, his client is entitled to wages for one month in addition to wages for three months under Clause 31 of the Standing Orders. In reply Mr. Das appearing for the company submitted that as the petitioner has already been paid three months' wages as contemplated under Clause 31 of the standing orders, he is not entitled to wages for one month more as claimed now. In support of his contention he cited a decision reported in *State Bank of India Vs. Nanak Chand Jain*, where a similar matter came up for decision of the Supreme Court. The Supreme Court held:

It appears to us that the words "in lieu of notice" in para 521(2)(c) have not the significance which the learned Counsel attributed to them. We do not think that the Sastry Award intended that the services of such an employee could be terminated by giving him three months' notice without paying him three months' pay and allowances. Though the words "in lieu of notice" have been used it is clear that three months' pay and allowances have to be paid in every such case of termination of service. The object in making this provision appears, therefore, to be the same as in the proviso, viz., to give the employee some monetary assistance. It is difficult to see why, therefore, three months' pay and allowance paid under para 521(2)(c) should not be held to include pay for a lesser period as provided under the proviso to Section 33(2).

In our opinion, the payment for a longer period should be held to include payment for the shorter period and where three months' pay and allowances had been paid under the provisions of para 521(2)(c) no further payment of one month's wages under the proviso to Section 33(2) is required.

Sub-clause (ii) of Clause 31 of the Standing Orders, inter alia, provides that the services of a worker may be terminated on giving him three months' notice or wages in lieu thereof in case he is a permanent worker. The object in making this provision is to give the employee some monetary assistance, which is the same as provided in Section 33(2) of the Act. In the circumstances, the payment for a longer period should be held to include payment for the shorter period as decided by the Supreme Court in the aforesaid decision and accordingly it must be held that where three months' wages have been paid to an employee under Sub-clause (ii) of Clause 31 of the standing orders no further payment of one month's wages as provided u/s 33(2) of the Act is required.

5. Mr. Nanda next contended that the petitioner has received a sum of Rs. 1,704.30P. as mentioned in Annexure-3, the order of removal dated 15-10-75. This is not his full wages. He is entitled to get Rs. 465 as basic pay plus Rs. 150.12 as dearness allowance plus Rs. 20 as conveyance allowance, the total amount of Rs. 635.12 P. per month and for three months it will come to Rs. 1,905.36 P. According to him, deduction of Rs. 114 under the provisions of the Additional Emoluments (Compulsory Deposit) Act, 1974 (hereinafter called "A.E.C.D. Act") should not have been made. The petitioner should have also been

paid the conveyance allowance at Rs. 20 per month which have not been paid. The learned Tribunal has wrongly held that the petitioner is entitled only to Rs. 1,671.36 instead of Rs. 1704.30 which is erroneous.

6. Mr. Das, on the other hand, contended that the petitioner is entitled to basic pay of Rs. 465 plus D.A. of Rs. 141.10P. which comes to Rs. 606.10 per month which is apparent from Annexure-10, per month which is apparent from Annexure-10, the pay-slip of September, 1975. He further submitted that according to Sub-clause (g) of Clause 2 of the Standing Orders "wages" means "wages" as defined in the payment of Wages Act, 1936. "Wages" as defined u/s 2(vi) of the Payment of Wages Act, 1936, does not include any travelling allowance or the value of any travelling concession. His further submission is that conveyance allowance/travelling allowance is only given to the employees towards the expenses they incur while going to work. As the petitioner has not actually worked for three months, for which he has been paid the wages, he is not entitled to receive any conveyance allowance There is some force in the contention of Mr. Das and we accept this contention and held that the petitioner is not entitled to conveyance allowance at Rs. 20 per month as claimed. Regarding the deduction of Rs. 114 Mr. Das submitted that the employer is bound to make necessary deductions and deposit the same as per the provisions of the A.E.C.D. Act, otherwise the employer would be liable to be penalised. That apart this amount of Rs. 114 which has been deducted has been deposited in the account of the petitioner and will ensure to his benefit as per the provisions of the A.E.C.D Act and it will not amount to a deduction. We also accept the above argument of Mr. Das that Rs. 114 has been rightly deducted from the wages as required under the provisions of the A.E.C.D. Act and the petitioner cannot make a grievance of the same.

7. Regarding the question whether the petitioner is entitled to D.A. Rs. 150 per month as contended by Mr. Nanda or at the rate of Rs. 141.10P. as contended by Mr. Das, it is seen from Annexure-10, the pay-slip of September, 1975 that the petitioner has been paid dearness allowance at the rate of Rs. 150.12 P. Witness No. 1, who is a Senior Personnel, Office of the Rourkela Steel Plant, Rourkela examined on behalf of opposite party No. 2 has stated:

Ext. A is the pay-slip of the opposite party for the month of September, 1975. The basic pay plus D.A. amount to wages of the workmen. As per Ext. A the "Wages" of the opposite party in September, 1975 were Rs. 615.12 Paise (Rs. 465.00 basic pay and Rs. 150.12 paise D.A.)

Mr. Nanda, therefore, argued that the petitioner is entitled to basic pay of Rs. 465 plus D.A. of Rs. 150.12 paise which comes to Rs. 615.12 p. per month and for three months it will come to Rs. 1,845.36 p., and after deducting Rs. 114 under the A.E.C.D. Act, it will come to Rs. 1,731.36 P. which the petitioner is entitled to receive but he having been paid Rs. 1,704.30 P. a sum, of Rs. 27.06 P. is still due which has not been paid to him. So in that event the petitioner has not been paid his full wages and, therefore, the order of termination is illegal. In

support of his contention Mr. Nanda cited decision of Patna High Court reported in Muzaffarpur Electric Supply Co. Ltd. Vs. S.K. Dutta and Another, , where out of total wages of Rs. 207 per month payable to the employee Rs. 74.40 paise on account of the balance of the famine loan and Rs. 2.10 P. towards the money order commission were deducted and the employee was paid only Rs. 130.50 P. by money order. It was, therefore, held:

Even assuming that the management was justified in deducting the money order commission, we see no justification in law to take the view that the management, in payment of one months wages, had any right to deduct the amount on account of the balance famine loan or any such or similar loan. It has to be pointed out here that the requirement of payment of one month's wages is as pointed out by the Supreme Court in the case of Syndicate Bank Ltd. v. V. Ramnath Bhat (1967) 23 F.J.R. 490 at page 497, "to soften the rigour of unemployment that will face the workman, against whom the order of discharge or dismissal has been passed." If it were to be held that the payment of one month's wages can be made after deducting the previous dues due to the management from the workman, the very purpose of the mandatory requirement will be frustrated or is likely to be frustrated in many cases.

* * * * Even if the offer was unconditional, the subsequent action of the management shows that in the particular circumstances of the case the offer cannot be taken to be payment of full one month's wages to the dismissed workman.

On the above premises, the Hon''ble Court held that the dismissal of the employee was not fit to be approved.

8. In reply Mr. Das referring to Ext. 10 submitted that the petitioner is entitled to D.A. of Rs. 141.10 P., but not Rs. 150.12 P. per month which he has received in the month of September, 1975. So the petitioner is only entitled to Rs. 465 plus Rs. 141.10 P. which comes to Rs. 606.10 P. per month and for three months it will come to Rs. 1,818.30 P., and after deducting Rs. 114 under the A.E.C.D. Act, it will come to Rs. 1,704.30 P. which the petitioner has admittedly received. But in view of the evidence of witness No. 1 and Annexure-10 by which the petitioner has received Rs. 150.12 P as D.A. in the month of September, 1975, it is difficult to accept the argument of Mr. Das. At the close of the argument on 3-7-79 on behalf of the company as affidavit along with Annexure-A/1, a circular dated 23-9-75, has been filed by one Anirudha Acharya, a Legal Assistant, to explain as to how on actual calculations to the balance amount of arrear D.A. of Rs. 9.02 P. was paid along with the D.A. of Rs. 141.10 P. payable to the petitioner for the month of September, 1975 as per the circular under Annexure A/1. Mr. Nanda vehemently objects that no reliance should be placed on the affidavit and Annexure-A/1 filed at a belated stage. In view of the positive evidence of witness No. 1, as already discussed, we are constrained to hold that the petitioner is entitled to D.A. at the rate of Rs. 150.12 P. and his full wages for three months as required under Clause 31 of the Standing Orders have not been paid.

9. Mr. Nanda, appearing for the petitioner, next contended that even though an employer has a right under the contract of employment or under the Standing Orders in force to terminate the services of a workman without assigning any reasons, once the matter comes before the Tribunal in a reference u/s 10(1) or u/s 33 of the Act, the Tribunal has a right and a duty cast on it to see whether the action of the management amounted to colourable exercise of powers or victimisation or mala fide, etc. Before according approval the Tribunal must see that the employer has made out a prima facie case against the workman. If at all the petitioner has committed any acts of misconduct, the provisions of Clause 28 and 30 of the Standing Orders would have been made applicable and proper enquiry should have been made by giving proper opportunity to the petitioner to defend his case instead of taking recourse to Clause 31 of the Standing Orders which is a special and summary procedure and should be resorted to only in exceptional cases where the security of the establishment is involved. Mr. Nanda submitted that there is absolutely no material before the General Manager (O.P. No. 2) to arrive at a finding that it was not expedient and was against the security of the establishment to continue to employ the petitioner. Though opposite party No. 2 was asked to produce all the material evidence on which the order of removal under Annexure-8 was based, the same was deliberately withheld from the Tribunal. On the above grounds, he claims that the order of approval of the Tribunal under Annexure-1 as also the order of removal under Annexure-8 should be quashed.

10. Mr. Das, on the other hand, submitted that the Tribunal, opp. Party No. 1 is not to act as a reviewing Tribunal against the decision of the management; that Annexure-8, the order of removal, is a speaking order and the reason for removal of the petitioner have been clearly stated in the same, that the action of the management is bona fide and there is no question of victimisation or mala fide on the part of the management; that the management is justified in taking resort to the provisions of Clause 31 of the Standing Orders as it was not expedient and was against the security of the establishment to continue to employ the petitioner; that the action has been taken against the petitioner as per the provisions of Clause 31 of the Standing Orders and Section 33(2) of the Act; and that in any event no case has been made out before this Court to interfere with the order of approval of the Tribunal under Annexure-1.

11. It is now well-settled that Section 33 does not confer any jurisdiction on the Tribunal to adjudicate on a dispute, but it merely empowers the Tribunal to give or withhold permission to the employer during the pendency of an industrial dispute to discharge or punish a workman concerned. In deciding whether permission should or should not be given the industrial Tribunal is not to act as a reviewing Tribunal against the decision of the management discharging or giving punishment to the workman, but to see that the employer makes out a prima facie case against the workman. Before according approval, the Tribunal is to see that the employer is not acting mala fide and is not resorting to any unfair labour practice, intimidation or victimisation and there is no basic error or contravention

of the principles of natural justice. In a decision reported in *The Lord Krishna Textile Mills Vs. Its Workmen*, the Supreme Court held;

In view of the limited nature and extent of the enquiry permissible u/s 33(2)(b) all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval is made out by him or not. If before dismissing an employee the employer has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that authority can do is to enquire whether the conditions prescribed by Section 33(2)(b) and the proviso are satisfied or not. 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 paid as required by the proviso, and (d) whether an application has been made as prescribed by the proviso. And 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. Nor is it justified while holding the enquiry to assume powers of an appellate Court which alone is entitled to go into all questions of fact. The question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a Court of facts and may fall to be considered by an appellate Court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the Court is limited as u/s 33(2)(b).

So keeping in view the aforesaid principles laid down by the Supreme Court, it is to be seen how far the petitioner has made out a case for quashing Annexures-1 and 8. In this case though Mr. Nanda has faintly suggested that the action of the employer is mala fide and amounts to unfair labour practice, etc., but he was unable to substantiate this argument and also did not press the above grounds seriously. Mr. Nanda laid stress on the fact that the management has not produced any material whatsoever before the Tribunal or before this Court to establish that it was not expedient and was against the security of the establishment to continue to employ the petitioner. The order of removal under Annexure-8 is based on no materials whatsoever and the management has not made out a prima facie case to attract the provisions of Clause 31 of the standing orders and the learned Tribunal on this ground alone should not have accorded approval to the order of removal under Annexure-8. The relevant portion of Clause 31 of the Standing Orders is quoted below:

31. Special Procedure in certain cases:

* * * * (ii) Notwithstanding anything contained in Standing Order No. 35 where the General Manager is satisfied on the basis of information made available to him for the reasons to be recorded in writing that it is not expedient and is against the security of the establishment of the State to continue to employ any workman, the services of such a worker may be terminated without following the procedure laid down in Standing Order No. 30 on giving him (a) three months' notice or wages in lieu thereof in case he is a permanent worker, and (b) one

month's notice or one month's wages in lieu thereof in case he is not a permanent worker.

Mr. Nanda submitted that from Annexure-8 it is evident that the allegations against the petitioner are that he was directly involved in theft of 10 litres of mobile from HSL Stores on 31-7-75, that he ran two truck in the name of his brothel and stealing of mobile might have been a regular feature with him for his own interest, and that he has been frequently observed by the security staff moving in these trucks and keeping watch at the traffic gate to clear his trucks these trucks with their staff have come to adverse notice in the plant for which they were warned, Assuming that the above allegations are true, by no stretch of imagination it can be held that these acts are detrimental to the security of the plant and that the continuance of the services of the petitioner in the company was not expedient and was against the security of the plant or its estates as found by the General Manager in Annexure-8.

12. Mr. Das refuting the above argument of Mr. Nanda submitted that the satisfaction of the employers cannot be subjected to objective test. The relevant matter is the opinion of the employer and not the grounds on which the opinion is based. The language of Clause 31 of the Standing Orders or as a matter of fact Section 33(2) of the Act leaves no room for the relevancy of a judicial examination as to the sufficiency of the grounds on which the management acted in forming an opinion. As on the very face of the order under Annexure-8 the provisions of Clause 31 of the Standing Orders have been complied with, the Tribunal was satisfied in according approval to the action taken by the employer.

13. As already stated above, the Supreme Court has decided in *The Lord Krishna Textile Mills Vs. Its Workmen*, ., that apart from other things, in view of the limited nature and extent of the enquiry permissible u/s 33(2)(b) of the Act all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval has been made out by him or not. Mr. Nanda argued that no prima facie case has been made out against the petitioner which will justify the Tribunal to accord approval for removal of the petitioner u/s 33(2) of the Act. Even accepting the argument of Mr. Das that this Court is not to act as an appellate authority and should not scrutinise the evidence on which the order under Annexure-8 is based, it is to be seen whether by persuing Annexure-8 it can be construed that a prima facie case against the petitioner has been made out. The allegations in Annexure-8, as stated above, even if found to be true, it is also to be seen whether continuance of the petitioner in employment was not expedient and was against the security of the plant.

14. The meaning of the word "security" as per the Shorter Oxford English Dictionary, Vol. II is:

The condition of being secure. 1. The condition of being protected from or not exposed to danger; safety.

The first allegation that the petitioner was directly involved in theft of 10 litres of mobile from HSL Stores on 31-7-75 can, by no stretch of imagination, be construed to be an act against the security of the establishment. The second allegations that the petitioner runs two trucks in the name of his brother and stealing of mobile might have been a regular feature with him is a mere surmise as would be evident from the word "might" and as there is no specific allegation based on any material. The next allegation is that he has been frequently observed by the security staff moving in these trucks and keeping watch at the traffic gate to clear his trucks and the trucks with their staff have come to adverse notice in the plant. This appears to be too vague and sweeping in nature. Apart from this, Rourkela Steel Plant is also well guarded by the security staff and entry or exit without permission of the security staff is not possible. So even considering the above allegations made against the petitioner to be true, in our opinion, it cannot be held that there was any security risk involved and it was not expedient to continue to employ the petitioner.

15. Mr. Das cited a decision reported in Mohd. Subrati alias Mohd. Karim Vs. State of West Bengal, , which was a case u/s 3 of the maintenance of Internal Security Act, 1971. The Supreme Court has held:

The condition of a person in committing theft of electric copper wires resulting indisruption of electric supplies for several hours in the areas concerned is very relevant for satisfying the authority concerned that it is prejudicial to the maintenance of supplies and services essential to the community and if such authority considers it necessary on this ground to detain him with a view to preventing him from repeating such acts, then, the order of detention would indubitably and legitimately fall within the purview of Section 3 of the Act.

Mr. Nanda submitted that this case has no application to the facts of the present case. He referred to paragraph 7 of the judgment which reads as follows:

The grounds on the basis of which the petitioner has been detained are clear, relevant and germane to the object and purpose for which preventive detention is authorised by the Act. The petitioner is stated to have committed theft of electric copper wires on January 6 and 12, 1972. When he was challenged by the inhabitants of the area he and his associates hurled bombs towards them. The theft of electric wire totally disrupted electric supplies for several hours in the areas concerned. This conduct is very relevant for satisfying the authority concerned that it is prejudicial to the maintenance of supplies and services essential to the community and if such authority considers it necessary on this ground to detain him with a view to preventing him from repeating such acts, then, the order of detention would indubitably and legitimately fall within the purview of Section 3 of the Act....

So in our opinion this case has no application to the facts of the present case.

16. In a decision reported in L. Michael and Another Vs. Johnson Pumps Ltd., it has been held:

The Tribunal has power and, indeed, the duty to x-ray the order and discover its true nature if the object and effect, if the attendant circumstances and the ulterior purpose is to dismiss the employee because he is an evil to be eliminated. But if the management, to cover up its inability to establish by an enquiry, illegitimately but ingeniously passes and innocent looking order of termination simpliciter, such action is bad and is liable to be set aside. Loss of confidence is no new armour for the management otherwise, security of tenure, ensured by the new industrial jurisprudence and authenticated by a catena of cases of this Court can be subverted by this new formula. Loss of confidence in the law will be the consequence of the loss of confidence doctrine.

Loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and motivations. The Court is concerned with that latter and not the former although circumstances, may exist which justify a genuine exercise of the power of simple termination. In a reasonable case of a confidential or a responsible post being misused or a sensitive or a strategic position being abused, it may be a high risk to keep the employee, once suspicion has started on the matter. There, a termination simpliciter may be bona fide, not colourable, and loss of confidence may be evidentiary of good faith of the employer.

Keeping in view the principles laid down by the Supreme Court and after considering the arguments of both parties and the facts and circumstances of the case, we are of the opinion that the order of the Tribunal under Annexure-1 giving approval to the order of removal of the petitioner from service under Annexure-3 cannot be sustained.

17. In the result, therefore, the writ application is allowed and Annexures-1 and 8 are quashed. Healing fee is assessed at Rs. 200.

Acharya, J.

18. I agree.