
(1959) 10 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No. 663 of 1959

Premier Automobiles Ltd.

APPELLANT

Vs

Ramachandra Bhimayya Polkam

RESPONDENT

Date of Decision : 15-10-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(2), 23, 31, 33, 33(2)

Citation : AIR 1960 Bom 390 : (1960) 1 FLR 160 : (1960) 1 LLJ 443

Hon'ble Judges : H.K. Chainani, C.J;V.S. Desai, J

Bench : Division Bench

Judgement

Chainani, C.J.—The petitioner is a company registered under the Indian Companies Act. Respondent 1 was employed by the petitioner as a fitter in its repair workshop. There was a dispute between the company and its workmen in regard to bonus for 1956-57. This was referred for adjudication to respondent 2 under S. 10(2) of the Industrial Disputes Act, 1947. During the pendency of the proceedings before the tribunal, respondent 1 was dismissed by the petitioner on 10 October, 1958. The charge against him was that he had thrown stones at the staff manager's car on 5 May, 1958. On 19 November, 1958 the petitioner made an application to respondent 2 for granting its approval to the action taken by it, under S. 33(2) of the Act. The tribunal took the view that the application was made after the order of dismissal had been passed, the tribunal refused to grant its approval to the action taken by the petitioner against respondent 1 and rejected the application made by the petitioner. This order made by the tribunal is being challenged before us in the present petition.

2. Mr. Narayanaswami, who appears on behalf of the petitioner, has urged that the view taken by the industrial tribunal, that the petitioner should have made an application to the tribunal before the order of dismissal was passed, is erroneous. In order to decide this question it is necessary to consider the relevant provisions of the Act. Section 33 of the Act was in the following terms before it was amended in 1956 :

"During the pendency of any conciliation 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 workmen concerned in such disputes;

save with the express permission in writing of the conciliation officer, board or tribunal, as the case may."

3. This section imposed an absolute ban on an employer from altering the conditions of service to the prejudice of any workman or punishing him during the pendency of the industrial dispute, except with the prior permission of the authority before which the proceedings were pending. The result of this provision was that the employer could not take any action against a workman even for gross misconduct, which had no connexion whatsoever with the pending industrial dispute. The legislature, therefore, considered it necessary to amend this section. The reasons for the amendment made in 1956 were stated as follows in the Statement of Objects and Reasons :

"4. The existing provisions of S. 23 of the Act prohibit during the pendency of any conciliation proceeding or proceeding before a tribunal any change being made in the conditions of service of, or any action being taken against, the workmen concerned in the dispute except with the express written permission of the authority concerned. The number of applications for such permission is frequently large and their disposal takes time. Employers have complained that they are therefore prevented from taking action even in obvious cases of misconduct and indiscipline unconnected with the dispute till long after the offence has been committed. It is proposed to alter the existing provisions so as to provide that, where, during the pendency of proceedings an employer finds it necessary to proceed against any workman in regard to any matter unconnected with the dispute, he may do so in accordance with the standing order applicable to the workman, but where the action taken involves discharge or dismissal, he will have to pay the workman one month's wages and simultaneously file an application before the authority before which the proceeding is pending, for its approval of the action taken. Protection on the lines of the existing provisions will continue to be available to all workmen in regard to any matter or misconduct connected with the dispute."

4. Sub-sections (1) and (2) of the new S. 33 are in the following terms :-

"(1) During the pendency of any conciliation proceeding before a conciliation officer or a board or of any proceeding before a labour court or tribunal or national 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 workmen 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, the 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."

5. Sub-section (5) of S. 33 provides that where an employer makes an application under the proviso to Sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, as expeditiously as possible, such order in relation thereto as it deems fit. Section 33A states that where an employer contravenes the provisions of S. 33 during the pendency of proceedings before an industrial tribunal, any employee aggrieved by such contravention may make a complaint in writing, in the prescribed manner, to such tribunal and on receipt of such complaint that tribunal shall adjudicate upon the complaint, as if it were a dispute referred to or pending before it, in accordance with the provisions of the Act and shall submit its award to the appropriate Government and the provisions of the Act shall apply accordingly. Section 31 makes the contravention of the provisions of S. 33 punishable with imprisonment or with fine or with both.

6. The new S. 33, which was in force at the material time, draws a distinction between matters and misconduct connected with the pending industrial dispute and matters and misconduct which are not so connected. If the employer wishes to make any alteration in regard to any matter connected with the dispute, or if he wishes to punish any workman for any misconduct connected with the dispute, then he cannot do so, unless he has first obtained the prior permission of the authority before which the dispute is pending. No change of law has, therefore, been made in this respect. Sub-section (2) permits and employer to alter the conditions of service in regard to any matter not connected with the dispute or to punish a workman for any misconduct not connected with the

dispute. This right given to the employer is, however, made subject to certain safeguards provided in the interest of the workmen. These safeguards are contained in the proviso to Sub-section (2) which requires that no workman shall be discharged or dismissed, unless two conditions have been complied with. These conditions are that the employer should pay to the employee concerned wages for one month and that he should make an application to the authority, before which the industrial dispute is pending, for its "approval of the action taken" by him.

7. The question, which arises for determination, is whether the application to the authority should be made before the order of dismissal or discharge has been made or whether such an application can be made even after the workman had been dismissed or discharged. The proviso begins with the words "... no workman shall be discharged or dismissed, unless ... an application had been made by the employer to the authority ..." The word "unless" indicates an intention of making what follows as conditions precedent. The words "has been made" also suggest that the application must be made before dismissal or discharge takes place. Consequently, if the words used in the first part of the proviso are taken into consideration, there can be no doubt that the making of an application is a condition precedent to discharge or dismissal. The difficulty is created by the words which follow, "for approval of the action taken by the employer." These words clearly imply that action must precede approval. The two parts of the proviso, therefore, appear to be in conflict and we will have to consider whether it is possible to harmonize them.

8. Mr. Narayanaswami, on behalf of the petitioner, has relied strongly on Sub-section (5) which also refers to an application made under Sub-section (2) as an application "for approval of the action taken by him." These words undoubtedly support his argument that the application, which is required to be made under the proviso, is an application for the approval of the action, which has been already taken, and not of the action which is proposed to be taken. He has also urged that as the object of enacting Sub-section (2) was to permit an employer to take action in regard to matters not connected with the pending industrial dispute, without the prior permission of the authority concerned, that object would be defeated, if an employer is required to make the application before he can discharge or dismiss any workman. Under Sub-section (5) the authority is required to dispose of the application made to it under Sub-section (2) as expeditiously as possible, and it has, therefore, been contended that the legislature could not have intended to permit an employer to dismiss or discharge a workman only during the short period which would elapse between his making an application under Sub-section (2) and an order being made on it. Mr. Narayanaswami has also relied on sub-rule (2) of rule 63, which provides that an employer seeking the approval of the tribunal of any action taken by him under Clause (a) or Clause (b) of Sub-section (2) of S. 33 shall make an application in form XVIII to such tribunal. Form XVIII contains the following words :-

"The workman/workmen discharged/dismissed under Clause (b) of Sub-section (2) of S. 33 has/have been paid wages for one month.

It is prayed that the following action taken be approved, namely :-"

According to this form also the application for approval should be made after action has been taken.

9. Mr. Gokhale on behalf of respondent 1 has, on the other hand, contended that more weight should be given to the first part of the proviso to Sub-section (2) which makes it quite clear that an application to the authority for its approval must precede discharge or dismissal. He has urged that on the interpretation suggested on behalf of the petitioner, this part of the proviso will be rendered meaningless, for it would then not be necessary for the employer to fulfil the conditions which, according to the proviso, must be satisfied before action is taken against a workman. Mr. Gokhale has also contended that the proviso enacts safeguards for the workmen and that we should, therefore, construe it in such a manner as will make the safeguards effective. Neither the Act nor the rules lay down any period within which an application under Sub-section (2) may be made by an employer. If an employer does not make such an application, the remedy of the aggrieved workman is either to prosecute the employer under S. 31 or to file a complaint under S. 33A. In a proceeding instituted under either of these sections, it will be necessary for the workman to establish that the employer has contravened the provisions of S. 33. This, it is urged, will be almost impossible, because the employer can always come forward and say that he was going to make such an application. Such an argument might be accepted and the complaint might be accepted and the complaint might be held to be premature, as there is no provision in the Act or in the rules prescribing any period for making an application under Sub-section (2) of S. 33, Mr. Gokhale has, therefore, urged that the object of the legislature would be defeated, if the interpretation contended for on behalf of the petitioner is accepted.

10. There is considerable force in the arguments advanced by both Mr. Narayanaswami and Mr. Gokhale and having regard to the wording of the proviso, it is possible to take both the views. After careful consideration, we feel that the better view is the one taken by the tribunal. There is apparent conflict between the first and the last part of the proviso. The duty of the Court is to resolve this conflict, to bring about harmony between the different parts of the proviso and to see that no part of it is rendered redundant or superfluous. The object of the amendment made in 1956 was to permit an employer to take action in matters not connected with the pending industrial dispute. The absolute ban, which previously existed, was modified and removed in respect of matters not connected with the dispute. Some restrictions were, however, imposed on the right, which was given to the employer, and some safeguards were provided for the benefit of workmen. These safeguards are contained in the proviso and they are to operate only in cases of dismissal or discharge. We must, therefore, give such an interpretation to the proviso as will carry out the object of the legislature

and as will make these safeguards effective and not illusory. There is no provision either in the Act or in the rules prescribing the time within which the application for approval is to be made by the employer. In the absence of any provision on this point, the Court may hold that the application should be made within a reasonable time. What is reasonable time cannot be precisely defined and it is possible to take different views on this question. Consequently, if we were to accept the interpretation suggested on behalf of the petitioner, it would be difficult to say when the employer has contravened the provisions of S. 33. An employer may, after taking action against a workman, never make an application to the authority concerned for approval of the action taken by him or may unduly delay the making of such an application. If an employee files a complaint either under S. 31 or under S. 33A of the Act, the employer may successfully avoid the proceedings taken against him by making an application soon after the complaint is filed and then contending that he had not contravened the provisions of Sub-section (2). The safeguards contained in the proviso will therefore, be rendered ineffective. Moreover, the interpretation suggested on behalf of the petitioner can only be given by ignoring the first part of the proviso, which makes the two conditions mentioned in it as conditions which must be satisfied before action is taken. It is true that the words, which are contained in the last part of the proviso and in Sub-section (5) "approval of the action taken by the employer" suggest that the application may be made after action has been taken. But in order to bring these words in harmony with the remaining part of the proviso, the words "action taken" will have to be construed as "action proposed to be taken." It is open to the Court, in cases where there is a manifest contradiction of the apparent purpose of the enactment or where the literal construction is likely to lead to a result not intended by the legislature, to modify the meaning of the words, if necessary even by departing from the rules of grammar or by giving an unusual meaning to particular words; see Maxwell on the Interpretation of Statutes, 10th Edn., p. 229. We do not think that much importance can be attached to form XVIII on which the petitioner has relied. This form, which is prescribed by the rules, cannot control the meaning of the section. Sub-section (1) of S. 33 requires the employer to obtain the previous "permission" of the authority concerned. The corresponding word used in Sub-section (2) is "approval." This is evidently because the employer is given the right to dismiss or discharge an employee before the authority has made its order on his application. All that is required of him is that he must make an application for approval to the authority concerned before he passes the order of dismissal or discharge. It would therefore, not be correct to infer from the use of the word "approval" in Sub-section (2) that the legislature intended that the application under this sub-section should be made after action has been taken.

11. We are accordingly of the opinion that the industrial tribunal was right in holding that the application for approval should have been made by the petitioner company before the order dismissing respondent 1 was passed. The tribunal was, therefore, justified in refusing to accord its approval to the action

taken by the petitioner. The rule will consequently be discharged. No order as to costs.