
(1977) 08 KL CK 0009
In the High Court Of Kerala

Premier Tyres Ltd.

APPELLANT

Vs

V.A. Abraham and Others

RESPONDENT

Date of Decision : 04-08-1977

Acts Referred:

Citation : (1978) 1 ILR (Ker) 14 : (1978) 2 LLJ 177

Hon'ble Judges : V.P. Gopalan Nambiar, C.J;K.K. Narendran, J

Bench : Division Bench

Judgement

V.P. Gopalan Nambiar, C.J.—This is an appeal against the judgment of a learned Judge of this Court dismissing O.P. No. 1652 of 1973, filed to quash the award Ext. P1 of the Industrial Tribunal, Calicut. The issue referred for adjudication to the Tribunal was the termination of service of Shri V. A. Abraham. The case of the employer was that the termination was a plain case of action simpliciter under Standing Order 3 (marked as Ext. W 9) before the Tribunal and not a case of punitive action of termination for misconduct. The Tribunal found in effect that it was really the latter, and not a case of innocuous termination under the provisions of the standing orders. Therefore, by Ext. P1 award, it directed the management to pay substantial compensation in lieu of reinstatement, namely, two months' wages for each completed year of service, or any part thereof in excess of six months.

2. In paragraph 16 of its award, the Tribunal discussed the contention of the management that the order of termination was only one of discharge simpliciter and not a punitive action with any stigma attached to it. Posing the question whether the order was innocuous or punitive, it answered that the management's contention that the order was an innocent order of termination issued on the basis of the conditions of service cannot hold good.

3. The learned Judge before whom the award was canvassed in writ proceedings also held in paragraph 17 :

Reading the order Ext. P4 in a reasonable way no one could come but to the

conclusion that the employee was found " to be undesirable which must necessarily import an element of punishment which is the basis of the order and is its integral part". It is not a simple order of discharge without casting any aspersion against the first respondent or attaching any stigma to his character.

In paragraph 18, the learned Judge recorded :

In this case the Tribunal has held that the management's case that he is incompetent, insufficient and that he is a person who is not fit to repose any confidence has not been proved. Nothing has been placed before me to show that in coming to this conclusion the Tribunal has committed any error as such.

We may notice the order of discharge filed in these proceedings as Ext. P4. The same reads as follows :

21st March, 1970

Mr. V.A. Abraham,

Security Officer

We regret to inform you that your services will not be required from 23-3-1970.

Your services are being terminated because of inefficiency and we are convinced that you are incapable of performing your duties efficiently. Besides, we have lost confidence in you and we are not prepared to hand over the running of the Security Department to you.

You will be getting a month's salary as notice pay. This along with all other dues can be collected from the Accounts Department at any time convenient to you.

Sd. Resident Director

On the basis of Ext. P4 and on the findings recorded by the Tribunal and by the learned Judge, we can find little scope for any argument that the order of discharge was innocuous and not offensive or punitive. Still less do we find any ground for interference with the findings recorded by the learned Judge. But counsel for the appellant very strenuously argued that it is open and permissible for the management to take action by resorting to the contractual term of termination even in a case where misconduct has been disclosed or proved, and that nothing more had happened in this case. On the facts disclosed, we find it difficult to accede to the contention that resort in this case was really had to the contractual term and not to the disciplinary powers Of the management. The question would really be, whether there was a real and genuine resort to the contractual term of termination, or whether such term was merely a convenient cloak or device to conceal the punitive action taken against the workmen. On the terms of Ext. P4 and on the findings recorded by the Tribunal and by the learned Judge, we are satisfied that the proceedings taken against the workman were really punitive in character. Exhibit P4 letter appears to us to be disingenuous. The letter states the causes of termination to be, inefficiency, incapacity to

perform duties efficiently, and loss of confidence. Such detailed statement of grounds has no place in a plain and simple case of consensual termination under the provisions of a contract. The enumeration of the grounds may not by itself be decisive of the nature of the action, but is undoubtedly a circumstance to be taken into account. Counsel for the appellant stated that the grounds had to be disclosed even for action under Clause 36 of the standing order which provided for termination, the relevant portion of which is as follows :

36.(1) Except where the contract of service otherwise provides the employment of a permanent workman shall not be terminated without giving one month's notice in writing either by the employer or the workman in the case of monthly rated workman and two weeks' notice in the case of other workmen or one month's or two weeks' pay as the case may be in lieu of notice. The reasons for the termination of service shall be recorded in writing and shall be communicated to the workman, if he so desires at the time of discharge.

It will be noted that the requirement of communicating reasons to the workman is only if the workman so desires at the time of discharge. We agree with the findings recorded by the Tribunal and by the learned Judge that the case was really one of termination for misconduct,

4. On the above finding and conclusion on facts, it would really be unnecessary to deal with any question of law. But the same was elaborately argued ; and, in fairness to counsel, we may record our view.

5. Counsel for the appellant argued that even in cases where a misconduct of the workman concerned is disclosed but the same had not been subjected to an investigation and enquiry with opportunity afforded to the workman to substantiate the allegations or the charges, it is still open to the management to take resort to the contractual term and bring about the termination of his service with the uninvestigated picture of misconduct still before it. As authority for the proposition counsel cited to us the decision in *The Tata Engineering and Locomotive Co. Ltd. Vs. S.C. Prasad and Another*, , The relevant passage reads as follows:

The company had two alternatives either to act under Standing Order 47, or to take disciplinary action and hold a domestic enquiry. But the latter course would have meant that the company would have to launch into an enquiry almost parallel to the one which was going on before the committing Magistrate. If the company, in these circumstances, preferred the former it would not be reasonable to say, as the Tribunal did, that the company should have charged the workman with misconduct and held an enquiry. The fact that it did not do so but exercised its power under Standing Order 47 cannot render the order mala fide or one passed in colourable exercise of its power to discharge a workman from service if such power was properly exercised. There have been instances as in *Jabalpur Electric Supply Co. Vs. Sambhu Prasad Srivastava and Others*, , where on a question arising whether the power exercised was one for simple discharge

or was punitive for a misconduct it was held that it was the former even though an investigation had proceeded the order. Considering all the circumstances we are satisfied that the company properly and justifiably exercised its power to terminate the services of Dubey. There was no warrant for the Tribunal to come to the conclusion that it had acted mala fide or to victimise Dubey. Its order in regard to Dubey must, therefore, be set aside.

We are unable, from the above, to reduce the proposition in the extreme form in which counsel for the appellant would commend for acceptance, viz., that even where misconduct is disclosed or proved, it is still open to proceed under the contractual term. To countenance such an argument may well lead to the result that, even the clearest case of termination for misconduct can masquerade as one under the contractual term. And, in any event, the observations do not foreclose the duty and the responsibility of the Courts to x-ray the order of termination and find out its true nature and effect. Quite apart from that, the decision has been considered by this Court in *James George v. General Manager, United Commercial Bank, Calcutta* and *Ors.* I.L.R (1975) Ker 538, to be noticed presently.

6. The next decision relied on by counsel for the appellant was that of a learned single Judge of this Court in *Premier Tyres Ltd. Kalamassery v. The Workmen of Premier Tyres Ltd.* 1973 II L.L.J. 597. The learned Judge there laid down that it is open to the management to terminate the services of an employee for misconduct by virtue of its powers under the standing orders without conducting any enquiry against him. There was an appeal against the said judgment in W.A. No. 306 of 1973. The learned Judge posed the question whether the termination of services of the employee on payment of wages for one month will be valid when the reason for termination is the misconduct of the employee. Discussing the position in the light of this question, the learned Judges observed :

So it is open to doubt whether an employer can terminate the service of an employee on the ground that he has committed misconduct by a termination simpliciter. Further the Standing Order No. 40 provides that " no order of punishment shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him and in every case of dismissal and when circumstances appear to warrant it the Management will institute independent enquiries before dealing with the charges of misconduct against the "workmen". This provision and Order No. 36 should be harmoniously read and is so done, the termination for misconduct can only be after holding an enquiry in the manner provided for that purpose. Hence both on the general principles of natural justice and the provisions of the standing orders, a termination simpliciter on the ground of misconduct is not valid.

The Division Bench refused to sustain the reasoning of the learned Judge that there could be a termination simpliciter under the contractual term, for misconduct. But the decision of the learned Judge was sustained on the second

ground on which it was rested, viz., that the termination was justified by the de novo enquiry before the Tribunal. We regret to observe that the decision of the Division Bench is not reported, while that of the learned Judge is. In view of the above decision of the Division Bench, no reliance can be placed on the proposition laid down by the learned Judge in 1973 II L.L.J. 597, Counsel next relied on the decision in *Air India Corporation, Bombay v. V.A. Rebellow and Anr.* 1972 XI L.L.J. 501, for the proposition that loss of confidence does not necessarily imply misconduct. On the proved facts and the circumstances of the case, this aspect of the matter is really irrelevant and does not assume importance. We may also point out that the decision cited loses its force in view of the later decision of the Supreme Court in *L. Michael and Another Vs. Johnson Pumps Ltd.*, - vide paragraphs 16 and 21.

7. Counsel for the respondents very rightly drew our attention to *James George v. General Manager, United Commercial Bank, Calcutta and Ors.* ILR (1975) Ker. 538, where a Division Bench of this Court, of which one of us (myself) was a member, considered almost a similar question with respect to the provisions of Section 18(1) and (2) of the Shops and Commercial Establishments Act. The position was discussed in paragraphs 3 to 6 of the judgment. We posed the question, in paragraph 3, and stated :

3. But we were strongly pressed with the argument that even if misconduct were disclosed it was still open to the employer to terminate with one month's notice under the earlier part of Section 18(1). It was said that judicial decisions have recognised and sanctioned this position. To the decisions relied on for the purpose., we shall now turn..

Thereafter, referring to *The Tata Engineering and Locomotive Co. Ltd. Vs. S.C. Prasad and Another*, we said as follows in paragraph 6 ;

6. Nor does the decision in *The Tata Engineering and Locomotive Co. Ltd. Vs. S.C. Prasad and Another*, , assist the respondent. That case was strongly pressed with respect to the facts disclosed against one of the employees, viz., Dubey, whose services were terminated without any enquiry. We shall consider this in some detail. Under Standing Orders 24 to 26 the company could terminate for misconduct after enquiry. Under Standing Order 47, it could terminate without enquiry by giving one month's notice or wages in lieu of notice. There was a criminal charge against Dubey before the Magistrate's Court, of having grievously assaulted one of the officers of the company. The case had been committed by the Magistrate and was pending trial. It was then that Dubey's services were terminated on ground of loss of confidence under Standing Order 47. On analysis of the background and facts the Supreme Court observed :

The company had two alternatives, either to act under Standing Order 47, or to take disciplinary action and hold a domestic enquiry. But the latter course would have meant that the company would have to launch into an enquiry almost parallel to the one which was going on before the committing magistrate. If the

company, in these circumstances, preferred the former it would not be reasonable to say, as the Tribunal did, that the company should have charged the workman with misconduct and held an enquiry. The fact that it did not do so but exercised its power under Standing Order 47 cannot render the order mala fide or one passed in colourable exercise of its power to discharge a workman from service if such power was properly exercised. There have been instances as in Jabalpur Electric Supply Co. Vs. Sambhu Prasad Srivastava and Others, , where on a question arising whether the power exercised was one for simple discharge or was punitive for a misconduct it was held that it was the former even though an investigation had preceded the order. Considering all the circumstances we are satisfied that the company properly and justifiably exercised its power to terminate the services of Dubey. There was no warrant for the Tribunal to come to the conclusion that it had acted mala fide or to victimise Dubey. Its order in regard to Dubey must, therefore, be set aside.

Correctly understood, we think the case falls in its proper canvas, and cannot support the broad proposition of counsel for the respondent-Bank that for misconduct there can be a termination without enquiry.

8. The decision of Raman Nayar, J., in The Kanan Devan Hills Produce Co. Ltd. Vs. The Workmen of the Kannan Devan Hills Produce Co. Ltd. and Others, on which counsel for the appellant placed reliance, was considered and doubted by the Division Bench in W.A. No. 306 06 1973. In the light of the decisions noticed, we are of the opinion that the question of law commended to us for acceptance by counsel for the appellant cannot be accepted in the form in which it has been posed ; viz., that even where misconduct is disclosed or proved, there can be a discharge simpliciter under a contractual term. On the facts and circumstances disclosed, we find no ground for interference with the finding that the termination was for misconduct. We dismiss this appeal with no order as to costs.