
(1968) 03 PAT CK 0006
In the Patna High Court

Pure Kustore Colliery

APPELLANT

Vs

Bhajan Dusadh and Others

RESPONDENT

Date of Decision : 08-03-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1969) 1 LLJ 129

Hon'ble Judges : R.L. Narasimham, C.J;B.N. Jha, J

Bench : Division Bench

Judgement

B.N. Jha, J.—This is an application under Articles 226 and 227 of the Constitution of India for quashing the award, dated 15 July 1967, of the Central Industrial Tribunal, Dhanbad, setting aside the termination of the employee Bhajan Dusadh by the petitioner-employers and directing his reinstatement with other consequential reliefs (annexure I).

2. Workman Bhajan Dusadh (opposite party. 1, hereinafter referred to as the workman) was a trammer of No. 4 pit of the colliery of the petitioners. He went home after taking leave from 30 November to 17 December 1964. He applied for extension of his leave by three weeks on the ground that he was suffering from pain in the chest and stomach, but the petitioners refused to grant leave and by their letter dated 21 December 1964, they informed him that extension of leave prayed for had not been granted and directed him to join his duties before 23 December 1964. The workman did not come on that date, but presented himself on duty on 27 January 1965 along with a medical certificate of fitness granted to him by Dr. A. Mukherjee, z.o., Academy of Medicine (Vienna) (Specialist in Ophthalmology), Durga Pharmacy, Lakhisarai, dated 26 January 1985, stating therein that Bhajan Dusadh, village Duddi, Lakhisarai, was suffering from arthritis-knee joints. Ho was under his treatment from 24 December 1964, and that he was fit to join his duty from 27 January 1965. On 29 January 1965, the petitioners served a letter on the workman to show cause as to why he should not lose his lien of his appointment and his name be not placed in the badli list.

The workman showed cause but the petitioners were apparently not satisfied with his explanation and as such, struck off his name from permanent roll and kept him on the badli list.

3. The case of the workman was that he was not keeping good health and was an outdoor patient of Central Hospital of Jagjiwan Nagar, Dhanbad, from 7 to 24 November 1964. He produced the outdoor patient slip (Ex. W. 1). As he was still not well he applied for leave for three months for going home in order to recoup his health but the petitioners only granted him fifteen days' earned leave. When the workman received the letter from the petitioners asking him to join his duties on 28 December 1964, he was still ill and was not in a fit condition to take the journey. After he recovered from his illness he returned to duty on 27 January 1965, with a medical certificate (Ex. W. 2) dated 28 January 1985 from Dr. A. Mukherjee of Lakhisarai. No inquiry was held by the petitioners nor was the workman given an opportunity to substantiate his case as to why he could not resume his duties before 27 January 1935. The workman farther contended that as he was an active member of the Khan Mazdoor Congress branch he was victimized by the petitioners. A list of 36 workmen was filed before the tribunal to show that though they overstayed for more than eight days from 1963 to June 1967 (sic), their services were not terminated because they did not belong to Khan Mazdoor Congress branch. It may be mentioned here that no rebutting evidence by the petitioner-employers was adduced in the case.

4. The contention of the petitioners was that the dispute was not an industrial dispute but it was merely an individual dispute and as such the reference to the tribunal was without jurisdiction. The matter was referred to the conciliation officer by the secretary of Khan Mazdoor Congress branch and the conciliation failed. The dispute was thereafter referred by the Central Government as an industrial dispute. This point, however, was not pressed before the tribunal. Here also Sri Ranen Roy, learned counsel for the petitioners, as usual fairly conceded that it was not possible for him to raise that point in this Court as the matter was not pressed before the tribunal. The petitioners further contended that the workman's story of illness was untrue as he made out different stories at different stages. Initially his case was that he was suffering from pain in chest and stomach and in the medical certificate it was mentioned that he was suffering from arthritis-knee joints-and in the show-cause petition he stated that he was suffering from lackwa and was under the treatment of Dr. A. Mukherjee. It was further contended that as Dr. A. Mukherjee was an eye specialist the medical certificate granted by him could not be relied upon. Lastly, it was urged before the tribunal that as the workman did not turn up within eight days of the expiry of the leave and offer satisfactory explanation the workman automatically lost lien of his appointment and as such his name was struck off from the permanent roll and was kept on the badli list as is provided under order 11 of the standing orders for the workmen of the colliery. There was no case of victimization as under the terms of the standing order the workman was rightly placed in the badli list and the tribunal had no jurisdiction to interfere in the

matter.

5. In support of his case the workman examined himself as W.W. 2 and Rajballav Prasad, secretary of Khan Mazdoor Congress branch (W.W. 1). A number of documents were also filed on his behalf which were marked Exs. W. 1 and W. 2 with the consent of the petitioner-employers. No witness was examined on behalf of the petitioners but Exs. E. 1 to E. 5 were marked with the consent of the workman. The tribunal accepted the case of the workman that he was in fact ill and as such he could not join his duties as required by the employers. As the workman belonged to Khan Mazdoor Congress branch he was victimized. In the result, the tribunal ordered the reinstatement of the workman with full back-wages and other benefits as though his services had been continuous and never terminated.

6. Sri Ranen Roy, learned counsel for the petitioners, submitted that the finding of the tribunal was perverse and as such the order that there was legal evidence on record to show that the workman was actually ill and was not in a position to return to his duties and was under the treatment of a doctor could not be sustained. According to him, the medical certificate of Dr. A. Mukherjee of Lakhisarai was inadmissible in evidence as the doctor was not examined in this case. In that connexion he further submitted that the doctor was an eye specialist and as such the certificate granted by him could not be relied upon and the tribunal should not have relied upon it. He further contended that the only evidence of illness was that of the workman himself. There was nothing to corroborate his testimony. The evidence given by the witnesses has been made annexures to the writ petition. It is not the case of petitioners that there is no evidence before the tribunal to come to the finding that the workman was ill during the relevant period. The medical certificate was admitted in evidence with the consent of the employers. In such circumstances, it could not be said that the medical certificate was not legally admitted in evidence and no reliance could have been placed by the tribunal. The tribunal has given good reasons for accepting the evidence of the workman (W.W. 2) keeping in view the medical certificate granted by Dr. A. Mukherjee which was never challenged by the employers as not genuine. It is true that the tribunal should have in its judgment discussed the evidence given by the workman himself and the evidence of the secretary (W.W. 1) but there is no doubt in my mind that it considered the evidence of the witnesses and rightly came to the finding that the workman could not return to his duties for reasons beyond his control. Sri Roy relied on a decision of the Supreme Court in National Engineering Industries Ltd. Vs. Hanuman, wherein the Supreme Court reversed the decision of the tribunal, which was the subject-matter of appeal. In that case it was held that as the medical certificate was not properly admitted in evidence and there was no corroborative evidence to support the evidence of the workman himself, the finding of the tribunal was taken to be perverse. In such circumstances, the Supreme Court, as a Court of appeal, set aside the finding of the tribunal regarding the illness of the workman. This Court is not a Court of appeal and we

can interfere with the finding of the tribunal only on the ground that the finding was based on no evidence in the case. The tribunal accepted the case of the workman which was supported by his own evidence and by the medical certificate, which was admitted in evidence with the consent of the employers and the genuineness of which was never challenged before the tribunal. In such circumstances, there is no illegality committed by the tribunal. Thus, there is no force in the contention.

7. On the basis of the Supreme Court decision Sri Roy further contended that in terms of the standing order of the colliery the name of the workman was struck off from the roll of permanent workmen and was placed on the badli list and as such the workman was not entitled to any relief in this case. In that case it was held that the workman's services terminated automatically under the standing order and as such application of Section 33(a) was not maintainable for contravention of the provisions of Section 33 of the Act. No question of mala fide was alleged in that case. There was no case of victimization. In the present case the workman alleged that he was an active member of Khan Mazdoor Congress branch the employers took drastic action in this case, whereas in the case of 36 workmen who were not members of Khan Mazdoor Congress branch though absented for more than eight days after the expiry of their leave their names were not transferred to the badli list. Their services were not terminated and their names were not placed, in the badli list. The Supreme Court decision is, therefore, of no assistance to learned counsel for the petitioners.

8. Sri Ranen Roy, further submitted that it is for the management to decide as to what punishment it should impose on the workman for the offence committed by him. The management put the workman in the badli list according to its standing orders as he did not present himself within eight days of the expiry of leave and offer explanation for it. Hence he contended that the tribunal had no jurisdiction to interfere in the matter. In that connexion he drew our attention to a decision of the Supreme Court in the case of *Caltex (India), Ltd. v. Eugene Fernandes and Anr.* 1957 I L.L.J. 1 wherein it has been held that the industrial tribunal has no jurisdiction to consider whether the punishment sought to be meted out by the employer to the workman is harsh or excessive and that the measure of punishment to be so meted out is within the sole discretion of the employer who is to judge for himself which is the punishment commensurate with the offence which has been proved against the workman. It is true that it is for the management to decide as to the measure of punishment it should inflict on the guilty workman provided it is done bona fide. If the punishment given to the workman is actuated by mala fide motive or victimization, the industrial tribunal has a right to go into that question and decide how far the action of the management should be justified in the circumstances of the case. The Supreme Court in the case of *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, has laid down the circumstances in which the industrial tribunal can exercise its powers of interference in the matter of termination of service of workmen by the management and to give relief to him. It has held as follows:

Undoubtedly, the management of a concern has power to direct its own internal administration and discipline, but the power is not unlimited and when a dispute arises industrial tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct the tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere

- (i) when there is a want of good faith,
- (ii) when there is victimization or unfair labour practice,
- (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and
- (iv) when on the materials the finding is completely baseless or perverse.

The tribunal has found, as a matter of fact, as follows:

the workmen have alleged that the termination of the service of the workman was the result of victimization for his being an active member of the union and examined W.W. 1 and W.W. 2 and summoned the membership register. There is no rebuttal evidence. Under the circumstances the allegation appears to be true.

I have held above that this finding of the tribunals is based on legal evidence. In such circumstances, after having come to the above finding the tribunal could interfere in the matter of termination of service of the workman on the ground of victimization. Thus, no question of jurisdiction arises in the present case. The Supreme Court in a recent decision in the case of Hind Construction and Engineering Company, Ltd. v. their workmen 1985 I L.L.J. 462 has held that although it is a settled rule that the award of punishment for misconduct is a matter for the management to decide and if there is any justification for the punishment imposed, the tribunal should not interfere ; but where the punishment is so disproportionate that no reasonable employer would ever have imposed it in like circumstances, the tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. In the present case the management terminated the services of the workman because he overstayed after the expiry of his leave, whereas in the case of other 36 workmen who were not the members of the Khan Mazdoor Congress branch though they overstayed for more than eight days after the expiry of leave but their services were not terminated and they were not put in the badli list. The tribunal found that in the case of this workman the major punishment of termination of service was imposed simply because he was an active member of the union. Therefore, in such circumstances, the punishment was so severe and out of proportion that it itself could be treated as an act of victimization. Hence, the tribunal was justified in interfering with the order of termination of service of the workman passed by the management. Thus, there is no force in the contention of Sri Roy which must be overruled.

9. For the reasons stated above, there is nothing in order of the tribunal which calls for interference by this Court. The application is, accordingly, dismissed. Hearing fee Rs. 100.

R.L. Narasimham, C.J.

10. I agree.