
(1961) 10 KL CK 0027
In the High Court Of Kerala

Puthumana Estate

APPELLANT

Vs

Poulose and Another

RESPONDENT

Date of Decision : 24-10-1961

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33A

Citation : (1962) 2 LLJ 153

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Judgement

C.A. Vaidialingam, J.—In this writ petition Mr. Manuel T. paikeday, learned Counsel for the petitioner, challenges the award of the industrial tribunal, Ernateulam, in I.D. No. 9 of 1960 and published in the State Gazette dated 18 October 1960. The ultimate result of the directions given in the said award is that workman concerned should be reinstated and that he should also be given a compensation in the sum of Rs. 100 in view of the fact that back-wages were not being awarded in his favour.

2. This award is attacked by Mr. Paikeday learned Counsel, on two grounds. The first ground of attack is that the order or communication issued by the management in this case, Ex. A dated 8 February 1960, to the workman concerned has been misinterpreted and misunderstood by the tribunal as amounting to one of discharge from service. On this aspect Mr. Faikeday urged that the management has not discharged the petitioner from service, but they have discharged him only from the service as a tapper with liberty to offer employment in items of work available with the management. The second and more serious attack against the award is that the tribunal has proceeded solely to find out whether the management in this case has conducted a proper and bona fide inquiry before taking action by way of discharge under Ex. A and once the tribunal comes to the conclusion that there has been no such enquiry, it has come to the conclusion that the order evidenced by Ex. A cannot be sustained. This approach made to the decision of the case, according to Mr. Paikeday, is

erroneous, because notwithstanding that there has been no Inquiry as such by the management, nevertheless, there was a duty and obligation on the part of the tribunal to investigate the question as to whether the action taken by the management is justified in the circumstances of this case and that aspect has not been investigated by the tribunal.

3. In order to appreciate the contentions that have been raised by Mr. Paikeday, learned Counsel for the petitioner, it is desirable to set out a few facts. There was admittedly an Industrial dispute pending before the tribunal as I.D. No. 33 of 1959 regarding the bonus and other leave facilities of the workers concerned and there cannot be any controversy that the respondent 1, the worker concerned, was also interested in that industrial dispute. Pending this dispute, it is the case of the respondent 1 that the management, without taking the permission of the tribunal as required u/s 33 of the Industrial Disputes Act, has unjustifiably discharged him from service by the order dated 8 February 1960, namely, Ex. A. Alleging this; the respondent 1 filed a complaint before the industrial tribunal on 7 March 1960 u/s 33A of the Industrial Disputes Act.

4. No doubt, the management appears to have filed a statement setting out that on prior occasions there has been a warning issued to the particular workman concerned that his work as a tapper was very unsatisfactory and they have also stated that the management also took action on an earlier occasion by way of discharging the workman concerned, but due to the intercession of the concerned union of which the respondent 1 was a workman, the latter was taken back in service, but nevertheless, as there has been no improvement in the quality of the work and as the property of the petitioner, namely, the trees in question, were suffering because of the conduct of the workman concerned, they took action by way of discharging him from service by issuing notice, Ex. A. So far as this aspect is concerned, the learned Government Pleader appearing for the State, and Mr. M.M. Cherian, learned Counsel appearing for the respondent 1, urged that it cannot be stated that the tribunal has proceeded solely or exclusively on the basis that its jurisdiction is only confined to find out in such circumstances as to whether there has been an enquiry conducted by the management before terminating the services of the employee in question. On the other hand, in particular, Mr. M.M. Cherian, learned Counsel for the respondent 1, very strenuously urged that a reading of the award will clearly show that after coming to the conclusion that there has been no enquiry as was obligatory on the part of the management before the order Ex. A was passed the tribunal has also considered the question as to whether on the materials on record the action taken by the management can be justified. The learned Counsel also urged that there has been absolutely no misinterpretation or misunderstanding of the nature of the notice issued under Ex. A which can only be understood to be a termination of service of the petitioner. The point sought to be urged in this Court by Mr. Paikeday, learned counsel, namely, that there has been no termination of service of the respondent 1 as such, but there has been only a termination of service of the respondent 1 as a tapper, cannot certainly be

accepted. if the management intended only the termination of the services of the respondent 1 as a tapper. Mr. M.M. Cherian urged that there was absolutely no necessity on the part of the management to have issued a notice like Ex, A at all; whereas on the other hand, when the party turned up for work, it would have been within the rights of the management to have straightaway allotted and posted him for doing other types of work; and it is not the case of the management that they did allot him the other type of work which the workman concerned refused according to the lawful directions of the management. I am not impressed with the contention of Mr. M.M. Cherian or the learned Government Pleader that the tribunal has adverted to the other aspect mentioned earlier, namely, that the tribunal has independently considered the question as to whether the action taken by the management in the circumstances of this case is Justified or not. I will advert to this aspect presently, because both the learned Counsel have relied upon certain decisions on that point.

5. So far as the first contention of Mr. Paikeday, namely, that there has been a thorough misunderstanding or misinterpretation placed upon the notice Ex. A and that his clients were always willing and prepared to provide alternative employment for the workmen concerned, it is not possible for me to accept this contention. So far as this is concerned, in my view, the tribunal has properly considered the various matters mentioned in Ex. A and has ultimately come to the conclusion that it does amount to a termination of the service of the workman concerned as a tapper. In this connexion. I am also of the further view that Mr. M.M. Cherian is well-founded in his contention that if it is the case of the management that they did not want to terminate the employment of the workman as such, there was absolutely no necessity to issue a notice like Ex. A. In question and that on other hand, the management could have, if it was within their rights, directed the employee in question to do other work and it has to be accepted. No doubt, the management has taken up the position that the workman concerned was only a common employee and he should be asked to do any type of work that the management wanted.

6. No doubt, if that was the case that the management wanted to set up, it was perfectly open to the management. But I am not satisfied that in the circumstances in this case, the management can be permitted to go beyond the terms of Ex. A. Even according to the statements filed by the management, the workman has been with them for over five years. There is absolutely no evidence on record to show that the management, during the period when he was in its employ, asked him to do any work other than that of tapping. Therefore, one must proceed on the basis, for the purpose of this proceeding, that the respondent 1 was employed only as a tapper and he was bound to do only tapping and Ex. A has been properly understood by the tribunal as a termination by the management of the services of the respondent 1 concerned. Therefore, the first contention of Mr. Paikeday has to be rejected.

7. So far as the second contention is concerned, as I mentioned earlier, that relates to the question as to whether the tribunal has independently considered the material or evidence on record and expressed a view one way or the other, as to the action taken by the management under Ex. A regarding the termination of services of respondent 1.

8. A reading of the award of the industrial tribunal and especially Para. 6 of the award leaves no room for doubt, in my view, that the tribunal proceeded on the basis that the only question that arises for consideration is to find out whether the management has conducted a proper and bona fide inquiry before it took disciplinary action as evidenced by Ex. A. The learned Government Pleader, in my view, is correct when he states that evidently all parties including the tribunal proceeded on the basis that the approach is to be made only to find out whether there has been a proper inquiry by the management or not. In fact, Mr. M.M. Cherian, learned counsel, also drew my attention to the fact that the petitioner himself does not make any grievance even in the writ petition filed in this Court that, apart from finding out whether there has been an enquiry or not, there is a duty on the part of the tribunal to investigate the matter independently and come to a conclusion whether the management in this case was justified in taking action or not. In view of the fact that the legal position is now settled by a decision of the Supreme Court. I do not think that one should stand on technicalities and shut out the argument based upon the aspect placed before me by Mr. Paikeday.

9. Coming back to the award itself, I do not find any discussion so far as the actual action taken by the management is concerned and in Para 6 of the award the only point that is considered by the Industrial tribunal is regarding the question as to whether there has been an inquiry conducted by the management before it terminated the services of the employee under Ex. A. On this point as it stood, the tribunal has come to the conclusion that there has been a gross violation of the basic principles that should guide an employer in taking disciplinary action against the workman, because there has been no inquiry at all conducted by the management and on this basis the tribunal further comes to the conclusion that the action of the management must be considered to be arbitrary and unjustifiable and the complainant has to be reinstated. Apart from that, there is absolutely no other discussion which will enable this Court to come to the conclusion that the tribunal has also independently considered the merits of the claim made by the management for taking disciplinary action as against the workman concerned.

10. Then the question is, what is the effect of the management not having conducted an inquiry in circumstances like this. The position in that respect has been now laid down by their lordships of the Supreme Court in the decision in *The Punjab National Bank Ltd. Vs. Its Workmen*, . At p. 682 their lordships observe:

There is one point which still remains to be considered and that is the effect of

the bank's default in not holding an enquiry in the present case. if the bank has not held any enquiry, it cannot obviously contend before that tribunal that it has bona fide exercised its managerial functions and authority in passing the orders of dismissal and that the tribunal should be slow to interfere with the said orders. It is true, as we have already pointed out, that if the employer holds a proper enquiry, making a finding in respect of the alleged misconduct of the employee and then passes an order of dismissal, the tribunal would be slow to interfere with such an order and would exercise its jurisdiction within the limits prescribed by the Court in the case of *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, :

But it follows that if no enquiry has in fact been held by the employer, the issue about the merits of the impugned order of dismissal is at large before the tribunal and, on the evidence adduced before it, the tribunal has to decide for itself whether the misconduct alleged is proved, and if yes, what would be the proper order to make in such a case; the point about the exercise of managerial functions does not arise at all.

From the extract quoted above from the judgment of the Supreme Court it follows that if no inquiry has, in fact, been held by the employer, the issue about the merits of the impugned order of dismissal must be considered to be at large before the tribunal and the tribunal, on the evidence placed before it, has to decide for itself whether the action taken by the management in such circumstances is justified or not.

11. To the same effect there is a recent decision of the Supreme Court in *Orissa Cement, Ltd. v. Adikanda Sahu* 1960 1 L.L.J. 518. There again Mr. Gajendragadkar, J., delivering the judgment on behalf of the Bench observes at p. 519:

If no enquiry was held by the appellant, it has produced evidence before the tribunal to support its case, and as we have just indicated, that case has been held proved by both the tribunals.

12. Therefore, from the principles laid down by the Supreme Court in the two decisions referred to above, it follows that the function of the industrial tribunal, in such circumstances, does not come to a close when once it comes to a decision that there has been no enquiry conducted by the management before taking disciplinary action against the workman concerned. There is a further obligation and duty on the part of the industrial tribunal to consider from the materials placed before it to investigate the question and come to a conclusion as to whether the notice taken by the management in the circumstances is justified or not.

13. To the same effect there is also a decision of the learned Chief Justice and Mr. Venkatadri, J., of the Madras High Court in *The Management of the Coimbatore Murugan Mills Ltd., Coimbatore Vs. The Industrial Tribunal, Madras and Another*, . There the question is whether the tribunal in this case has adverted to this aspect

and come to a conclusion one way or the other, regarding the action taken by the management. As I mentioned earlier, there is nothing in the award to indicate that the tribunal has really applied its mind to this aspect of the matter. As pointed out by the learned Government Pleader, this aspect has not been approached either by the tribunal itself or by the concerned parties appearing before the tribunal.

14. Therefore, the award of the industrial tribunal will have to be set aside and the matter directed to be reinvestigated by the tribunal in the light of the observations and directions contained in this judgment.

15. At this stage, I may also mention that Mr. M.M. Cherian, learned Counsel for respondent 1, has urged that because respondent 1 is a member of the Estate Committee and he was one of the witnesses examined in the main dispute itself, that aspect may have also operated in the mind of the management when they took disciplinary action under Ex. A and no doubt., Mr. M.M. Cherian relied upon the observations of the tribunal to the effect that this participation may have also been in the mind of the management when they arbitrarily discharged the worker concerned. So far as this is concerned, Mr. Paikeday very strenuously controverted all the matters mentioned by the tribunal in Para. 7 of the award. I am not satisfied that this finding contained in Para. 7 of the award could be stated to have been the finding arrived at by the tribunal after a careful consideration of the allegation, if any, made by respondent 1 as well as the objections to that allegation that may have been made by the management, that the action of the management is arbitrary inasmuch as it has not conducted an enquiry.

16. When once the main ground on which the award is passed, falls to the ground, the other incidental finding will have also to be set aside. No doubt, there is a relief granted to the workman which does not really now arise because the question of discharge of the workman as ordered by the management under Ex. A will have now to be reinvestigated by the tribunal on the materials that may be placed before it.

17. While setting aside the award in question. I further direct that the tribunal will Investigate for itself and come to a conclusion regarding the legality or otherwise of the action taken by the management under Ex. A. In making such an investigation, the tribunal will have to proceed on the basis that the workman concerned is employed only as a tapper and that the termination of his services has also been as that of a tapper. I am adverting to this aspect, because I have already rejected the first contention of Mr. Paikeday that it was open to the management to allot any type of work to this particular worker.

18. The question as to whether any further statement or additional evidence should be permitted has also been considered by me and notwithstanding that the learned Counsel for respondent 1 desires the fresh inquiry to be limited only to the evidence already on record. I do not think that for a satisfactory disposal

of the matter such a restriction should be made in the circumstances of this case.

19. Therefore, the inquiry will be taken up by the tribunal afresh on the basis of the directions in this judgment and it is open to the tribunal to call upon the parties to file either additional or supplementary statements and also permit them to adduce oral and documentary evidence limited to the point that it has now to consider in the light of the directions contained in this judgment. Parties will bear their own costs.