
(1989) 12 AHC CK 0060
In the Allahabad High Court
Case No : C.M.W.P. No. 10510 of 1981

Ram Asrey and Others

APPELLANT

Vs

Labour Court II and Another

RESPONDENT

Date of Decision : 16-12-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Employment (Standing Orders) Act, 1946 — Section 13A
Constitution of India, 1950 — Article 226
Industrial Employment (Standing Orders) Act, 1946 — Section 13A
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Industrial Employment (Standing Orders) Act, 1946 — Section 13A

Citation : (1991) 2 LLJ 427

Hon'ble Judges : B.N. Misra, J

Bench : Single Bench

Advocate : K.P. Agarwal, for the Appellant; Standing Counsel and V.B. Singh, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Misra, J.—Ram Asrey, Farid Ahmad and Iqbal Ahmad, petitioner Nos. 1,2 and 3 respectively, have filed this writ petition under Article 226 of the Constitution praying for quashing the Award dated March 24, 1981 (Annexure "7" to the writ petition) and for setting aside the orders of dismissal dated May 1, 1971 passed by Ms. Elgin Mills Co. Ltd. (Mill No. 2), respondent No. 2 against the petitioners.

2. Facts may be briefly stated. The Petitioners Nos. 1 and 2 were working as Turners and petitioner No. 3 was working as a Welder under respondent No. 2. On the allegation that the petitioners had assaulted one Junior Officer on April 22, 1971 around 5.30 p.m. in front of the factory gate, the petitioners were charge-sheeted and a domestic inquiry was held against them. On completion of the inquiry, the petitioners were found guilty and dismissed from service on May 1, 1971, vide Annexure "16", a copy of the dismissal order in respect of petitioner No. 1.

3. Being aggrieved by the orders of dismissal, the petitioners raised an industrial dispute through their Union. Conciliation proceedings followed, but the same ended in failure. On receipt of the conciliation failure report, the State Government referred the following dispute to the Labour Court (II) Kanpur on September 22, 1971:-

^^D;k lsok;kstdks }kjk ifjf"k"V esa mYysf[kr Jfedksa dks fnukad 1&5&71 ls dk;Z ls oafpr@i`Fkd fd;k tkuk mfpr ,oa oS/kkfud gS \ \ ;fn ugha] rks lEc/kr D;k ykHk@{kfriwfrZ ds vf/kdkjh gS rFkk vU; fdlh fooj.k lfgr A

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1- Jh jke Hkk[kjs Jh ckcwyky Vjuj 10, tujoy esdsfudy"kk

2- ** Qjhn vgen ** eks- "ksj ** 8, ** **

3- ** bDcky vgen **eqUus fe;k osYMj 13, ** **

The reference was registered as Adjudication Case No. 373 of the 1971. Parties appeared before the Labour Court, filed their written statements and also adduced evidence. By its order dated May 21, 1973 the Labour Court found that the domestic inquiry held against the petitioners was not fair and proper and was against the principles of natural justice. Respondent No.2 challenged that order in Civil Misc. Writ Petition No. 6065 of 1973 which was dismissed by order dated February 19, 1980 passed by this Court without expressing any opinion on merits of the case. Thereafter, adjudication proceedings recommenced and further evidence was led by respondent No. 2 before the Labour Court which proceeded to examine for itself if the charges against the petitioners had been proved. The concerned Junior Officer and one Amar Singh were examined as witnesses for respondent No. 2 and the three petitioners examined themselves in support of their respective cases. On the consideration of the oral and documentary evidence adduced before it, the Labour Court held that the charges against the petitioners had been proved and, accordingly, upheld the orders of dismissal passed against the petitioners by its Award dated March 24, 1981, (Annexure "7" to the writ petition).

4. Sri Arvind Kumar, learned counsel appearing for the petitioners, urged before this Court that the findings recorded by the Labour Court are not supported by the evidence which had been led before it. Learned counsel placed before the Court the evidence of the witnesses. It was also pointed out that the statement of the concerned Junior Officer before the Labour Court was inconsistent with the statement made by him in the First Information Report (enclosure "A" to Annexure "3" appended to the writ petition). The Labour Court has considered all the evidence led before it and has come to the finding that the charges against the petitioners have been proved. On scrutiny I find that the findings are not perverse, nor liable to be interfered with on the ground that they are based on no evidence. Moreover, as is well known, the 3 jurisdiction of this Court under

Article 226 of the Constitution is a limited one. The jurisdiction is merely supervisory, not appellate. On consideration, therefore, it must be held that no case has been made out by the petitioners justifying interference with the findings recorded by the Labour Court.

5. It is further urged on behalf of the petitioners that according to Standing Order No.23 governing the workmen of respondent No.2 and extracted in paragraph No. 15 of the writ petition, the alleged act of assault having taken place outside the Mill premises, does not constitute "misconduct" as provided in the Standing Order. In this context reference has been made to a decision of the Supreme Court reported in Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut wherein the scope and ambit of Standing Orders applicable to the workmen of Glaxo Laboratories Ltd. were considered and it was held (para 12) (pp 21-22):

"..... If any misconduct committed anywhere irrespective of the time- place content where and when it is committed is to be comprehended in Clause 10 merely because it has some remote impact on the peaceful atmosphere in the establishment, there was no justification, for using the words of limitation such as "committed within premises of the establishment or in the vicinity thereof. These are words of limitation and they must cut down the operation of the clause. Therefore, these words of limitation must receive their due share in the interpretation of Clause 10 and Clause 10 cannot receive such a construction as to make the words of limitation wholly redundant."

6. In the present case the relevant Standing Order applicable to the petitioners provides :-

"23- The following acts or omissions will be treated as misconduct: -

(i) Drunkenness, fighting, riotous or disorderly behaviour likely to cause a breach of the peace or conduct endangering the life or safety of any other person or any act subversive of discipline and efficiency within the Mill premises.

(z) Any habitual breach of Standing Orders and any other act of misconduct."

According to the evidence and finding given by the Labour Court, the act of assault took place right in front of the factory gate around 5.30 p.m. just when the concerned Junior Officer was coming out of the factory after finishing his day's work. Sri V.B. Singh, learned counsel appearing for respondent No. 2, submitted that though the assault by the petitioners on the concerned Junior Officer took place just in front of the factory gate, the consequence of such disorderly behaviour was likely to cause breach of the peace endangering the life and safety of the employees including the Junior Officer and was subversive of discipline and efficiency within the Mill premises. According to learned counsel, even if the assault itself took place in front of the gate, the consequence of that assault manifested itself within the factory. In support of this contention reliance is placed on a decision of the Supreme Court reported in (Mulchandani Electrical

and Radio Industries Ltd, v. The Workmen):

"The words "within the premises or precincts of the establishment" refer not to the place where the act which is subversive of discipline or good behaviour is committed but where the consequence of such an act manifests itself."

Bearing in mind the principles enunciated in the two decisions of the Supreme Court referred to above and also keeping in view the fact that in the present case the assault had taken place right in front of the factory gate as soon as the concerned Junior Officer came out of the factory after finishing his day's work, it must be held that the assault amounted to misconduct being connected with the performance of the Junior Officer's duty and subversive of discipline and efficiency within the Mill premises.

7. For reasons aforesaid, the writ petition must fail and is dismissed. In the facts of this case parties are left to bear their own costs.