
(1964) 08 CAL CK 0015
In the Calcutta High Court
Case No : Civil Revn. No. 2917 of 1963

Ram Chandra Paul

APPELLANT

Vs

Titaghur Paper Mills and Others Kankinarrah

RESPONDENT

Date of Decision : 07-08-1964

Acts Referred:

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

Citation : AIR 1965 Cal 378 : 69 CWN 537 : (1965) 2 LLJ 226

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : S.N. Gorai, Tapa Prasad and Bejoy Basanta Koley, for the Appellant;
Bejoy Kumar Bhose and Dilip Kumar Banerjee, for the Respondent

Judgement

P.B. Mukharji, J.—This Rule was taken out by the petitioner workman directed against the Award of the fifth Industrial Tribunal against him on his complaint u/s 33(A) of the Industrial Disputes Act and the Award is dated the 13th May, 1963 published in the Calcutta Gazette of the 20th June, 1968.

2. The findings of the Tribunal may be summarised briefly. The Tribunal holds that there has been contravention of Section 33 of the Industrial Disputes Act. The Tribunal also holds in favour of the petitioner that no fair and proper enquiry was held in connection with the second charge sheet. These are points held in favour of the petitioner. But the points held against the petitioner by the Tribunal are serious and on the question of merits.

3. The Tribunal held as a fact that the petitioner was grossly negligent in passing the bill for Rs. 7,457.12 nP. and has caused damage to the company. In fact, the Tribunal says, "I am afraid the absence of verification was due to gross negligence, if not mala fide and deliberate action." The Tribunal also holds on the merits that the offence is very serious and that dismissal was not too severe a punishment for such an offence. The Tribunal's finding is expressed in the following terms:

"I find that Shri Paul is really guilty of the charge levelled against him by the Company and he deserved the punishment of dismissal."

The other findings of the Tribunal are that there was breach of the proviso of Section 33(2)(b) inasmuch as one month's wage provided therein was not actually paid. Hence the Tribunal's order was in these terms:

"So there is no escape from the conclusion that the order of dismissal passed by the management was to that extent illegal or inoperative. But I have already shown that the Company had sufficient reason for taking disciplinary action against Shri Paul because he was guilty of a major misdemeanour. So in view of these circumstances I think Shri Paul is not entitled to an order of reinstatement in spite of the fact that there was contravention of the provisions of Section 33 of the Act. But nevertheless I think Shri Paul should not be deprived of his substantive right created by Section 33 of the Act. Accordingly I direct that the order of dismissal passed by the Management should stand but the Company must pay three months' wages as compensation to Shri Paul "

4. The petitioner has moved this court under Article 227 of the Constitution and obtained this Rule. That was an unfortunate step for having regard to the arguments made on behalf of the petitioner the case was more appropriate for a Writ under Article 226 of the Constitution. Mr. Gorai, learned Counsel for the petitioner, however, argued that the Tribunal went beyond its own bounds and therefore, the application under Article 227 of the Constitution was competent. It is unnecessary to decide the point because I am satisfied on the merits that this Rule must fail.

5. The first point of the learned counsel for the petitioner is that the Tribunal treating a complaint u/s 33(A) of the Industrial Disputes Act is limited only to the adjudication of the question whether there has been a contravention of the provisions of Section 33 of the Act. It is contended that the moment it is decided by the Tribunal that there has been a contravention, such as in this case, its jurisdiction ceases and he cannot go into any other questions. This argument was supported by a reference to the words "on receipt of such complaint that Tribunal shall adjudicate upon the complaint" used in Section 33(A) of the Act. It is argued that the word "complaint" means contravention of the provisions of Section 38 of the Act. The argument, in my opinion, is fallacious. The opening words of Section 33(A) of the Act show that where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a tribunal, then the aggrieved employee may make complaint in Writing. That complaint in this case is illegal discharge of the employee during the pendency of the Industrial proceeding and not merely the question whether there has been a contravention of Section 33 of the Act. If it were so, then it will lead not only to inconvenience but also to ineffectiveness for the entire proceeding u/s 33A which the Parliament has introduced. The whole object of Section 33A of the Act is that the complaint is to be decided as if it were a dispute referred to or pending before the Tribunal in accordance with the provision of this Act This is not a

complaint u/s 10 of the Industrial Disputes Act by the Government. It is a complaint by the aggrieved employee aggrieved by the contravention of Section 33 of the Act. The argument that the Tribunal u/s 33(A) should only consider the fact of contravention and decide nothing else must fall for many reasons. I shall state these reasons briefly as hereunder.

6. A reference u/s 10 of the Act can only be made by the appropriate Government. If the aggrieved employee's complaint u/s 33A is not decided on its merits, then the aggrieved employee will have to wait upon the pleasure of the appropriate Government to make a reference of that industrial dispute to an Industrial Tribunal. If it does not, then the aggrieved employee would be without any remedy. To meet that situation, Mr. Gorai for the petitioner tries to argue that the Tribunal dealing with a complaint u/s 33A of the Act when it finds that there has been a contravention of Section 33 should immediately send and refer that finding to the Industrial Tribunal before whom the dispute is pending. That argument has no substance because u/s 33(2)(b) the complaint in this case is that the employee has been discharged for a misconduct "not connected with the dispute" pending before the Industrial Tribunal. Therefore, that Tribunal dealing with the pending Industrial dispute will have no jurisdiction and is not in seisin of the subject matter of complaint in writing u/s 33(A) which is discharged for a misconduct not connected with that pending dispute. That is the reason why I think that to accept the petitioner's interpretation on this point will be to make the whole of Section 33A completely useless and nugatory. On the other hand, the words "as if it were a dispute referred to or pending before" the Tribunal in Section 33A mean that the Tribunal dealing with a complaint u/s 33A is empowered to treat it as an industrial dispute and decide it as such. That industrial dispute is not the limited question of whether there has been a contravention of Section 33A of the Act or not, but whether there has been illegal discharge of a workman during the pendency of any proceeding before a Tribunal. The whole question of legality or illegality of the discharge of the employee is in issue u/s 33A and is to be disposed of as an industrial dispute independently of the Tribunal u/s 10 of the Act dealing with a pending dispute. Indeed, if there is no contravention of Section 33 of the Act, Section 38A does not at all operate and therefore, the fact of contravention of Section 33 gives jurisdiction to entertain the proceeding u/s 33A of the Industrial Disputes Act. On the question of application u/s 33A, I have expressed generally my views in the case of *Mcleod and Co. Vs. Sixth Industrial Tribunal, West Bengal and Others*, and I consider it unnecessary here to repeat what I said here. All that I need cite at this stage is the subsequent Supreme Court decision in the case of *the Delhi Cloth and General Mills Co. Ltd. Vs. Shri Rameshwar Dyal and Another*, . This present argument of the learned counsel for the petitioner cannot succeed after that decision. It is now clearly laid down by the Supreme Court in that decision; that in an enquiry u/s 33A, the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of Section 33 of the Act by the employer. The Supreme Court holds that after such contravention is

proved, it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the Tribunal has to consider because the complaint made by the employee is to be treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered u/s 33A of the Act. See the observations of Wanchoo, J., at page 691 of that report, Delhi Cloth and General Mills Co. Ltd. Vs. Shri Rameshwar Dyal and Another, .

7. Reliance is placed by the learned counsel for the petitioner on the Supreme Court decision in the case of Strawboard Manufacturing Co. Vs. Gobind, where Wanchoo, J., observes that three things are contemplated under the proviso to Section 33(2)(b) of the Industrial Disputes Act and the employer's conduct must show that these three things under that proviso are parts of the same transaction. This, however, does not help the petitioner. In fact, this observation goes to show that there has been a contravention of Section 33 as is contemplated in Section 33A. Indeed, the Tribunal finds in favour of the petitioner in that respect

8. I, therefore, overrule the arguments on this point made on behalf of the petitioner.

9. On merits it was urged on behalf of the petitioner that he has been prejudiced by reason of the fact that there are two charge sheets and the domestic enquiry confused the two. Before dealing with this argument, it may be necessary just to state the point on which this argument is based. The first charge related to a breach of the standing orders under Clause 18(d)(ii) and (iii). They covered the charges of "theft, fraud or dishonestly in connection with the employer's business or property and wilful damage to or loss of the employer's goods or property." This was the charge sheet on the 20th August, 1962 but there was another charge sheet on the 2nd October, 1962, That charge sheet relates to the breach of the standing order under Clause 18(d)(ix) which deals with "negligence and habitual neglect of work." The main fallacy of the petitioner's argument on this point is that there were in fact no two charges. One charge was superseded by the other. The second charge sheet, as it is called, expressly uses the word "supersession" of the previous charge. It has been argued that before it begins with the words "in continuation" therefore, the word "supersession" is not effective. That point is without substance. The word "supersession" is unequivocal and clear and the word "continuation" only means this that the proceedings relate to the same fact, the negligent passing of the bill for Rs. 7,457.12 nP. and causing loss to the Company employer. The petitioner's complaint that the evidence on the first charge has been confused with the evidence on the second charge sheet is completely answered by the fact that the Tribunal on that ground considered the enquiry not to be fair and proper and therefore, the Tribunal himself considered the entire evidence oral and documentary on the point as he had a right to do on the basis of the decision of the Supreme Court in the case of Delhi Cloth and General Mills Co. Ltd. Vs. Shri Rameshwar Dyal and Another, . Besides, the fact remains that the petitioner

himself submitted explanation on the so-called second charge sheet and gave evidence on these points. The petitioner, therefore, is not prejudiced at all.

10. For the petitioner another point has been advanced, namely that the departmental enquiry was conducted by different enquiring officers. The tribunal, however, has found against the petitioner on that fact. The Tribunal has found that Bhatnagar was the only person who conducted the departmental enquiry and the fact is that all the departmental proceedings in Exhibit E series show that the entire proceedings before the Tribunal had been recorded by Bhatnagar and no one else. The inspiration for this argument was that certain notices were issued against the petitioner on behalf of the Management in Exhibit 1 series signed by different persons but that is irrelevant because these notices do not relate actually to the departmental proceedings.

11. It was also urged on behalf of the petitioner, that a particular challan was not produced by the Company before the Tribunal. This point has been noticed by the Tribunal but then there is no question of the Tribunal exceeding the bounds so that this Court could interfere under Article 227 of the Constitution. The fact is that the petitioner was charged with negligence and the record is that the petitioner admitted in this examination-in-chief that it was his duty to verify the bill with the goods registration sheet and receipted delivery of challan before passing the bill for payment. He has not done that. He did not verify the bill with the goods registration sheet and therefore the non-production of the challan cannot exonerate him. In fact, the Tribunal holds on this point against the petitioner by saying "he had absolutely no right to pass the bill for payment without verification thereof with reference to the goods registration sheet".

12. For these reasons, this Rule must fail and is discharged.

13. There will be no order as to costs.

14. The ad interim order is vacated.