
(1996) 02 P&H CK 0123

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. No's. 1100, 1101, 1103, 1104, 1105 and 1114 to 1117 of 1991

Ranbaxy Laboratories Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 24-02-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 23, 24

Citation : (1996) 2 LLJ 403 : (1996) 113 PLR 128

Hon'ble Judges : R.P. Sethi, J; R.L. Anand, J

Bench : Division Bench

Advocate : H.L. Sibal and P.K. Mutneja, for the Appellant; P.S. Patwalia and Namit Kumar, for the Respondent

Judgement

R.L. Anand, J.—Where mere instigation due to trade union activities even in an illegal strike as defined and envisaged under Sections 23 and 24 of the Industrial Disputes Act, 1947 (for short "the Act") without resorting to violence , gives right to the management, under the Certified Standing Orders having the force of law, to terminate the services of the workmen, is an important point involved in the present L.P.A. Nos. 1100, 1101, 1103, 1104, 1105 and 1114 to 1117 of 1991, which are going to be disposed of by a common judgment on account of the fact that the common question of law and fact is involved in all the L.P. As. which have come for determination and decision before us. The facts can be described as follows:

2. The private respondents of all the writ petitions were the office bearers of the Union known as Ranbaxy Employees Union a registered body and were serving with the present appellant M/s. Ranbaxy Laboratories Ltd., carrying on its business at Mohali There in after called the Company"), The record shows that there was a settlement dated September 10, 1981 between the management and the workers, which settlement was arrived at with the intervention of the Labour Authorities (Reconciliation Officer) and the said settlement was enforceable upto June 30, 1984 in which it was undertaken on behalf of the

workmen-private respondents that they would not resort to strike etc. In spite of the commitment the workmen served., a demand notice dated November 10, 1982 upon the Company and when the demands were not accepted the workmen agitated and ultimately went on strike with effect from December 15, 1982 and this strike continued upto April 20, 1983, when it was called off and the private respondents reported for duty on the same day, but they were refused entry, while a number of other workmen were allowed to resume duty. The management started disciplinary proceeding against the private respondents on the ground that they allegedly instigated the continuance of the strike. They were charge-sheeted on December 21, 1982. The charge-sheet was not personally served upon them and it had to be published in the newspapers. The private respondents did not participate in the inquiry proceedings and before the Inquiry officer and the latter conducted the ex-parte inquiry proceedings against them. It may be mentioned that the Inquiry Officer did not take any steps to enforce the presence of the private respondents nor did he give them any opportunity to take part in the inquiry proceedings. The management however, issued notices even in the newspaper calling upon the private respondents to participate in the inquiry, which was being conducted by Shri S.K.Hiraji, Advocate. On the basis of the report of the Inquiry Officer the services of the private respondents were terminated and in this manner an industrial dispute arose, which was referred to the Labour Court for adjudication and respondent No. 1 ie., the Presiding Officer Labour Court, framed the following issues for the disposal of the reference:-

1. Whether there has been fair and proper inquiry?
2. Whether the order of termination of services of the workmen was justified and was in order?
3. Relief.

The parties led oral and documentary evidence before the Labour Court and while returning the finding on issue No. 1, the Labour Court held that the Inquiry Officer should have made personal efforts by sending notices to the workmen and should have taken other steps himself to secure their presence in the inquiry proceedings. His not doing so, is against the principles of natural justice, which requires that before starting inquiry proceedings the Inquiry Officer is to take every step . For this reason the ex parte inquiry made by the Inquiry Officer was not fair and proper. In short, the findings on issue No. 1 went in favour of the private respondents. The management when afforded the opportunity to prove the misconduct on the part of the private respondents in the Labour Court itself, gave evidence which was also rebutted by the private respondents, but the findings on issue No. 2 went against the private respondents and in para 24 of the award dated September 11, 1987 the Presiding Officer, Labour Court, held:

"Thus the workman is proved to have taken part in an illegal strike in contravention of the provisions of Section 23(c) of the Industrial Disputes Act,

1947. Such taking part in an illegal strike by a workman has been held to be an act of mis-conduct on the part of the workmen in para 18 of the certified Standing Order Ex.W-1 and the punishment for which has been provided in Para No. 19 of the Standing Orders to be the dismissal of such an employee."

In the light of the findings given on issue No. 2 the Presiding Officer, Labour Court, finally held that the workmen ie., the private respondents of these appeals were not entitled to any relief.

3. Aggrieved by the award dated September 11, 1987 the private respondents filed separate Writ Petition Nos. 4610, 1490, 1035, 1933, 1938, 1939,1940, 1941,3631 and 3642 of 1988. The learned Single Judge vide judgment dated August 28, 1991 while delivering the main judgment in Civil Writ Petition No. 1490 of 1988 came to the conclusion and the relevant portion of the findings of the learned Single Judge is as follows:

"Taking into consideration the aforesaid facts proved on the record, I am of the considered view that it is a clear case of mere participation in the illegal strike and in the absence of sufficient proof regarding vandalism, violence or sabotage, the termination of services of the workmen was not justified. Even if there was no earlier settlement, which was valid and in force at the time of strike, during the pendency of which the strike resorted to by the workmen was illegal, the management was still not competent in law to terminate their services on that basis."

Reliance was placed, while returning the above findings on the judgment reported as The Coca Cola Factory Workers Union v. The Management of Punjab Beverages Pvt. Ltd. Chandigarh 1987 Lab. IC 607. Consequently, all the Civil Writ Petitions were allowed and the award dated September 10, 1987 of the Labour Court was set aside by holding that the Presiding Officer was neither justified in passing such award nor it was in accordance with law. All the private respondents were reinstated into service with full backwages and other benefits to which they were entitled in law.

4. Not satisfied with the judgment of the learned Single Judge dated August 28, 1991 now the management (Company) has filed the present L.P. As, on the main plea that the misconduct on the part of the workmen is squarely proved under Regulation 18 of the Standing Order and the Standing Order No. 19 gives ample power to the management to terminate the services of such delinquent workmen. It is also the stand of the appellants that the strike was not only illegal but unlawful on account of the settlement which was binding upon the private respondents. The private respondents not simply participated in the illegal strike but also instigated their co-workers to continue with the illegal and unlawful strike and those acts on the part of the private respondents constituted a gross misconduct authorising the management to terminate their services. On the contrary the standing of the private-respondents in the writ petitions was that mere participation in an illegal and unjustified strike per se was not sufficient to

impose punishment of termination of services of a workman and that the management must establish that the worker in question indulged in vandalism and/or instigated violence or sabotage. In the instant case there was no such allegations against the workmen nor such alleged allegations were proved against them, and, therefore, the Labour Court was not justified in upholding the action on the part of the management. The decision to go on strike was taken by all the workers unanimously. The strike was total and complete. The action of the management was discriminatory. 130 workers had gone on strike. Out of them only 13, who were office bearers of the Union, were victimised with the above background of facts, the point for determination is whether the findings of the learned single Judge should be affirmed or that of the Labour Court.

5. We have heard Sarvshri H.L. Sibal, Senior Advocate, and Shri P.K. Mutneja, Advocate, appearing on behalf of the appellant, and Shri P.S. Patwalia, Advocate, on behalf of the private respondents, and with their assistance we have gone through the record of the case.

6. It was vehemently argued by the learned counsel for the appellant that the learned Single Judge had erred while returning the finding that it was a case of mere participation by the workmen and that the penalty of dismissal could not be passed by the management. The learned counsel submitted that the private respondents (workmen) not only participated in the illegal strike but also instigated the loyal workers to participate in the strike, which was illegal in terms of Sections 23 and 24 of the Industrial disputes Act. The conduct of the private respondents either in participation of the illegal strike, or in the instigation for participation in the illegal strike amounted to misconduct of the highest nature as understood in the Certified Standing Order Regulation No. 18 and it empowers the management to award the punishment of dismissal from service as per Regulation No. 10 of the Certified Standing Order. On the contrary the main argument of Shri P.S. Patwalia was that until and unless some overt act is proved or alleged by the management on the part of the workers while participating in the strike, the order of the dismissal was not justified on the part of the management and even the Labour Court erred in putting a seal on the action of the Management. Mr. Patwalia submitted that the judgment of the learned Single Judge is not contrary to law or facts because from the facts and evidence led by the management before the Labour Court the only case of participation on the part of the workmen could be made out and the learned Single Judge has rightly placed reliance on the citation reported as the Coca-Cola Factory workers Union v. The management of Punjab Beverages Pvt. Ltd., Chandigarh and Anr. (supra).

7. Before we advert to the case law which has been referred before us on behalf of the appellant, it will be useful for us first to make out the premises on which we can proceed further. It is the common case of the parties that respondents-workmen were the office bearers of the employees Union. There was a settlement dated September 10, 1981, which was valid upto June 30, 1984 and the said settlement was binding upon the workers as well as upon the

management by which the workmen could not proceed on strike and in spite of that demand notice was served upon the management and the said demand notice was the subject-matter of the agreement dated September 10, 1981. In the light of the above, the strike of the workmen could be declined as illegal in accordance with the provisions of Sections 23 and 24 of the Act. Section 23 of the Act lays down that no workmen who is employed in any industrial establishment can go on strike in breach of contract; and Section 24 expressly lays down that a strike which is commenced in contravention of Section 23 will be considered illegal. There is no difficulty on our part to hold that the act on the part of the workers or the leaders of the union when they proceed on strike or when they prompted the loyal workers to proceed on strike was an illegal act. Also it is established and conceded before us that as per Regulations 18 and 19 of the Certified Standing Orders the instigation on the part of the workmen amounts to misconduct which can be visited with a penalty of dismissal. Even the learned Single Judge was of the view that there was a settlement arrived at between the workmen and the management dated September 10, 1981, which was valid upto June 30, 1984. Also the learned Single Judge was of the view that the private respondents served a demand notice dated November 10, 1982 on the management and that when the demands were not accepted, the workmen agitated and ultimately proceeded on strike with effect from December 15, 1982 and the strike continued upto April 20, 1983. When the management was required to prove the misconduct before the Labour Court, the private respondents while giving their statements admitted that they not only participated in the strike but also instigated and prompted the other workers not to resume duty; rather the loyal workers participated in the strike, which according to us was definitely illegal.

8. Now the point which survives for our determination is whether with the above premises we are in a position to reverse the findings of the learned Single Judge when he held that it was a case of mere participation on the part of the workmen, who were the office bearers of the Union, or not. The joint effort of Shri Sibal and Shri Mutneja was to convince us that the conduct on the part of the private respondents was so aggravating that firstly they continued with the illegal strike and secondly they instigated the loyal workers for the continuation of the illegal strike and this conduct is of the gravest nature and the management was justified in passing the order of dismissal and the Labour Court has also rightly endorsed the act of punishment. In support of their contention, the counsel at the first instance relied on *Mill Manager, Model Mills Nagpur Ltd. v. Dharam Dass etc.* 1958 1 LLJ 539. It was submitted that in the cited case it was held by the Hon'ble Supreme Court that the workmen participated in an illegal strike like the present one and the Apex Court upheld the orders of punishment when the management dismissed the workmen from service by exercising the powers under the Certified Standing Orders. Our attention was invited to the judgment, which is reproduced as follows at p. 543.

"In our opinion, the entire approach to the principle question arising in the case

by the State Industrial Court was quite wrong and contrary to the provisions of the Act. The State Industrial Court erred in law in setting aside the orders of dismissal passed by the appellant against those respondents who were not employed to work a Calender machine when, on its own findings, they had gone on strike as also in the case of the respondents who were deputed to work a calender machine because their act amounted to an illegal strike. Under the provisions of the Standing Orders of the Model Mills Ltd., all the respondents were guilty of misconduct. The appellant had acted within his justification, under the Standing Orders, in dismissing them. There was no justification for the respondents to go on an illegal strike".

Then our attention was drawn to the citation reported as India General Navigation and Railway Co. Ltd., Calcutta and Another Vs. Their Workmen and Another, . Our attention was invited to para Nos. 17, 19 and 24 of this authority and for our purposes we consider it our duty to quote the following lines:

"... The law has made a distinction between a strike which is illegal and one which is not but it has not made any distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. The distinction is not warranted by the Act, and is wholly misconceived, specially in the case of employees in a public utility service. Every one participating in an illegal strike is liable to be dealt departmentally, of course, subject to the action of the Department being questioned before an Industrial Tribunal, but it is not permissible to characterise an illegal strike as justifiable. The only question of practical importance which may arise in the case of an illegal strike, would be the kind or quantum of punishment, and that, of course has to be modulated in accordance with the facts and circumstances of each case. Therefore, the tendency to condone what has been declared to be illegal by statute must be deprecated, and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers. There may be reasons for distinguishing the case of those who may have acted as mere dumb driven cattle from those who have taken an active part in fomenting the trouble and instigating workmen to join such a strike, or have taken recourse to violence"

"To determine the question of punishment, a clear distinction has to be made between those workmen who not only joined in such strike, but also took part in obstructing the loyal workmen from carrying on their work, or took part in violent demonstrations, or acted in defiance of law and order, on the one hand, and those workmen who were more or less silent participators in such a strike, on the other hand. It is not in the interest of the Industry that there should be a wholesale dismissal of all the workmen who merely participated in such a strike. It is certainly not in the interest of workmen themselves. An Industrial Tribunal, therefore, has to consider the question of punishment, keeping in view the over-riding consideration of the full and efficient working of the Industry as a whole. The punishment of dismissal or termination of services has, therefore, to be

imposed on such workmen as had not only participated in the illegal strike, but had fomented it and had been guilty of violence or doing acts detrimental to the maintenance of law and order in the locality where the work had to be carried on"

The combined reading of the above lines would show that the Hon" ble Supreme Court had laid down a clear distinction even in a case of illegal strike regarding the roles which have been played by the various workmen. In para 24 it has been categorically held by the Hon"ble Supreme court that the punishment of dismissal or termination of services should be imposed on such workmen as had not only participated in the illegal strike but had fomented it and had been guilty of violence or doing acts detrimental to the maintenance of law and order in the locality where the work had to be carried on. Admittedly, in the present case there was no overt act on the part of the workmen in order to establish that they indulged in any violence vis-a-vis the Management or that they committed any acts of destruction regarding the machinery. Also there, is no allegation of the management before the Labour Court nor any evidence has been led and possibly it could not be led in the absence of the charge sheet that the private respondents tried to cause any violence or bodily injury to the co-workers or to the management. In the absence of this evidence or allegations or the charge-sheet, it will be difficult for us to hold that the management was justified in dismissing or terminating the services of the workmen who on account of their trade union activities merely participated or instigated the loyal workers to continue with the illegal strike. If an arrow interpretation is given, as argued by the learned counsel for the appellant, in our opinion, the trade union activities will come to a stand still. Strike is a weapon in the hands of the workmen through which only they can call upon the management to come to a compromise table. The Industrial Dispute Act was legislated with the object to ensure social justice to both the employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationships between the parties. The object of the Act is to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and by the process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The Act is not intended only to make provision for investigation and settlement of industrial dispute but also to serve industrial peace so that it may result in more production and improve the national economy. The provisions of the Act have to be interpreted in a manner which advances the object of legislation contemplated in the statement of objects and reasons. While interpreting different provision of the Act, attempt should be made to avoid industrial unrest, to secure industrial peace and to provide machinery to secure the end. In dealing with industrial disputes the courts are supposed to emphasise the doctrine of social justice, which is founded on basic ideal of socio-economic equality as enshrined in the preamble of our Constitution. While construing the provisions of the Act, the Courts are supposed to give a construction which would help in achieving the

object of the Act. No doubt, the Standing Order of the management arms it to take the bread and butter of a workman, but the theory of penology must be rational and to achieve this object even the Hon''ble Supreme Court in the citation reported in *India General Navigation and Railway Co. Ltd. and Anr. v. Their Workmen* (supra) has drawn a clear distinction. The Apex Court has laid stress that distinction had to be drawn between those who were responsible for creating the trouble and for those who merely acted as a dumb driven cattle and did not take any active part in fomenting the trouble. No doubt the workmen admitted before the Labour Court that they instigated the loyal workers in the continuation of the illegal strike, yet in our view, without evidence or allegations of violence it will not be proper to hold that the act of instigation was such that justifies the management to pass the orders of dismissal qua the workmen.

9. The learned counsel for the appellant that referred to the citation reported as *I.M.H. Press, Delhi v. Additional Industrial Tribunal, Delhi and others* 1961 I LLJ 499. Even in this authority in which the earlier two citations referred to above were discussed, the Hon''ble Supreme Court held that mere taking part in an illegal strike without anything further would not necessarily justify the dismissal of all the workmen taking part in the strike. Before resorting to an act of dismissal qua the workmen a judicious approach is required on the part of the management as well as on the part of the Labour Court because a leader of the workmen would always have the tendency to persuade his co-workers to continue with the strike or to the leading of the strike in order to compel the management to come to a compromising table. The learned counsel for the appellant drew our attention to yet another authority of the Hon''bie Supreme Court reported as *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, but in our view the position of law remains the same as held in *India General Navigation and Railway Co. Ltd* (supra). Once we come to this conclusion that the act on the part of the private respondents did not exceed beyond the sphere of participation, then the ratio of *The Coca-Cola Factory Workers Union v. The Management of Punjab Beverage Pvt. Ltd.* (supra) holds good where it was laid down that mere participation in all illegal and unjustified strike per se is not sufficient to impose punishment of termination of service.

10. Learned counsel for the appellant then submitted that it cannot be said that it was a case of mere participation perse nor it would be justified on our part to hold; in view of the express admission of the workmen that they instigated the loyal workers to continue with the illegal strike; as at no point of time these private respondents showed a remorse even before the labour Court for their acts of omission and commission. We are inclined to accept the argument of the learned counsel for the appellant to this extent. We have held above that the workmen instigated the loyal workers to participate in the illegal strike, but they did not resort to violence. This act on the part of these workmen, to our opinion, disentitles them to full backwages as awarded by the learned single Judge. Rather such workmen who instigated the loyal workers should be awarded 50%

backwages from the date of the demand notice.

11. With the above discussion now we have to determine the role of each private respondent before us in different L. P. As against Mange Singh (respondents in L.P.A. 1101 of 1991), Om Pal (respondent in L.P. A. No. 1105 of 1991), and Bhopal Singh (respondent in L.P.A. No. 1116 of 1991) there is no allegation of the management that these three workmen instigated their colleagues or that they indulged in acts of fomenting violence or strikes. Their case only remains of mere participation and their act and conduct is covered within the ratio of *The Coca Cola Factory Workers Union v. The Management of Punjab beverages Pvt. Ltd.* (supra). Thus there is no escape from the conclusion that the order of termination of the services of these three respondents passed by the management was illegal and these respondents are liable to be reinstated into service with full back-wages and other benefits to which they would have been entitled, had their services not been terminated by the award of the Labour Court. With regard to the private respondents of L.P.A. Nos. 1100, 1103, 1104, 1114, 1115 and 1117 of 1991, these workmen are also entitled to be reinstated into service, as held by the learned Single Judge, but keeping in view their role in persuading others to continue with the illegal strike, they are held entitled only to the payment of back wages to the extent of 50 percent from the date of demand notice with continuity of service.

12. The net result is that Letters Patent Appeal Nos. 1101, 1105 and 1116 of 1991 fail in toto and are hereby dismissed. The Letters Patent Appeal Nos. 1100, 1103, 1104, 1114, 1115 and 1117 of 1991 are allowed in part and the judgment of the learned Single Judge is modified to the limited extent that the private respondents of these six appeals shall get 50 percent backwages from the date of demand notice with continuity of service. For all other intents and purposes, the judgment of the learned Single Judge is hereby affirmed. There shall be no order as to costs in all the Letters Patent Appeals.