

(1996) 10 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : C.W.P. No"s. 497, 541, 548 etc. of 1995

Ranger Breweries

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 17-10-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 33A, 33F

Citation : (1998) 3 LLJ 321 : (1997) 1 ShimLC 182

Hon'ble Judges : R.L. Khurana, J;P.K. Palli, J

Bench : Division Bench

Advocate : S.S. Kanwar and Devyani Kuthiala, for the Appellant; Shyma Dogra, D.A.G. and J.L. Kashyap, for the Respondent

Final Decision : Allowed

Judgement

P.K. Palli, J.—These writ petitions involve common questions of law and fact and are directed against the same order, therefore, these petitions are proposed to be disposed of by a common judgment. Facts are taken from Civil Writ Petition No. 497 of 1995, Ranger Breweries v. State of H.P. and Ors..

2. Challenge here in these writ petitions is made to an order dated April 21, 1995 (Annexure P-9) passed by the Labour Court, Himachal Pradesh, Shimla. Union of workmen of the petitioner had raised certain demands and in sequence thereof, a reference was desired to be made to the Labour Court.

3. Reference was now being made by respondent No. 1 resulting into the filing of Writ Petition No. 703/1991 which was filed by the Union seeking Mandamus against Respondent No. 1 to refer the dispute to the Labour Court and to declare the lock out as illegal and unjustifiable. The writ petition was finally disposed of with certain directions by the Hon'ble Division Bench of this Court vide order/judgment dated December 23, 1991 which has been placed on the record of this case as Annexure P-1.

4. It will be relevant here to refer to direction No. (2) in the said judgment

wherein it was said that the twelve workmen who are members of the union against whom disciplinary proceedings have been initiated by the second respondent in that case, shall participate in them and the second respondent shall take a decision in the matter expeditiously. Thus, the petitioner was at liberty to proceed with the enquiry and decision which was directed to be taken by it expeditiously. In the meantime, a reference u/s 10 of the Industrial Disputes Act, 1947 concerning demands and the suspension of the employee and other workers, was made to the Labour Court and was pending there.

5. Enquiry was initiated against the workmen and notices were issued to all the suspended workmen including Respondent No. 3, in the present petition, calling upon them to appear in the enquiry and file their reply etc. It is said that Respondent No. 3 never associated himself in any enquiry nor ever appeared there and remained absent. It is also said that this was done despite the directions handed down by this Court in the judgment referred to above as Annexure P-1. Evidence was recorded, report was submitted by the Enquiry Officer which has been placed as Annexure P-3. It is said that as per enquiry report, there was gross misconduct on behalf of the workmen including Respondent No. 3. The matter was reported even to the police vide First Information Report No. 342/91 registered under Sections 147/149/323/427 of the Indian Penal Code. The First Information Report is placed as Annexure P-5. It was in the aforesaid situation that Respondent No. 3 and the other workmen were suspended and this was to be followed by a domestic enquiry.

6. After receipt of the above said enquiry report Annexure P-3, a decision was taken that Respondent No. 3 be dismissed from service as he was found guilty alongwith the other workmen for indulging in the riotous and disorderly behaviour in the premises and having actively participated in beating the staff members and workers who were on deputation from Haryana Distillery.

7. As the matter was already pending before the Labour Court on a reference, Respondent No. 3 and other workmen moved a complaint u/s 33-A of the Industrial Disputes Act raising a grievance against the order of dismissal (Annexure P-6) and this complaint has been placed on record of this case as Annexure P-7. The petitioner filed a detailed reply to this complaint, copy of which is placed as Annexure P-8. It is this complaint that stands disposed of vide impugned order.

8. It is contended by the learned Counsel appearing for the petitioner, Mr S. S. Kanwar, that no evidence was placed on record by Respondent No. 3 or other workmen in support of the complaint Annexure P-7 nor any issue was framed whether the order terminating the services of Respondent No. 3 and other workmen was invalid and consequently liable to be set aside.

9. It is also urged that the petitioner was not afforded any opportunity to lead evidence and in fact the evidence was to be led by the petitioner only after the closure of evidence of Respondent No. 3 which situation never arose. It is

pointed out that even the complainant never appeared in support of his complaint although the petitioner has placed on record of the Labour Court as many as 54 documents (Ext. R-1 to Ext. R-54) to show that the action taken by the management was perfectly valid and justified in the peculiar facts and circumstances of the case. Even the reply filed by the petitioner (Annexure P-8) has been completely ignored and the impugned order has resulted in manifest injustice which has been passed in utter violation of the relevant provisions of the Act.

10. Learned Counsel appearing for the respondents, in reply, has stated that the workmen had rightly resorted to the provisions of Section 33-A of the Industrial Disputes Act by moving a proper application and the order of dismissal was passed in haste and could not be passed without obtaining prior approval of the Labour Court.

11. It is next contended that the Labour Court was right and justified in ordering the reinstatement of the workers including Respondent No. 3 vide impugned award. It is denied that these workmen physically or otherwise assaulted the staff and workers who were on deputation with the petitioner. It is also denied that any notice in respect of the enquiry was ever issued to the workmen. The enquiry, according to the learned Counsel, was only illusory and a device to throw them out of employment by the management. Proper procedure, as established under the relevant law and rules, was not followed .

12. After having heard the learned Counsel for the parties and after scanning the material placed on the record by them, we are of the opinion that these writ petitions deserve to be allowed.

13. Undisputedly, the matter with regard to suspension and ultimate dismissal was subject matter of the reference, which was pending before the learned Labour Court. The dispute that is being presently raised, was very much connected with the reference. Under the provisions of Section 33(1) (b) of the Industrial Disputes Act, it was obligatory on the part of the management to seek approval and permission of the Labour Court as required under law, otherwise the very purpose of this provision shall stand defeated and would become redundant. It is the violation of Section 33(1) (b) which gives a cause of action to the aggrieved workmen to file a complaint as envisaged by Section 33-A of the Act. In order to understand the controversy, the two provisions are reproduced hereunder:

"33. Conditions of service, etc , to remain unchanged under certain circumstances during pendency of proceedings--(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before (an arbitrator or) a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,--

(a) x x x x

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending."

"33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings --Where an employer contravenes the provisions of Section 33 during the pendency of proceedings (before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal), any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner,--

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute ; and

(b) to such arbitrator, Labour Court; Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly."

14. A perusal of the aforesaid provisions makes out that the Presiding Officer of the Labour Court would specifically enquire in order to decide the complaint in the manner as if it was a dispute referred to or pending before it in accordance with the provisions of the Industrial Disputes Act. It is true that no permission or approval in the present case has been obtained as is the requirement u/s 33 of the Act, still it was incumbent upon the Labour Court to adjudicate upon the question of dismissal or any other major penalty which is imposed by the employer. In our view, the Labour Court has not kept these provisions in view while passing the impugned order. A perusal of the order reveals that the order has been passed in haste by mis-interpreting the provisions of Section 33-A of the Act. We find from the record that no care was taken to frame a specific issue into the validity or otherwise of the order of dismissal of the workmen. Even the complainant has not appeared in support of the complaint nor any care was taken to peruse the reply filed by the management (Annexure P-8).

15. All what impressed the Labour Court to pass the impugned order, was that since the management had failed to obtain prior permission or approval of the Court before ordering dismissal of the workmen, they were straightway liable to be reinstated and the order terminating their services was liable to be quashed straightway. In our considered opinion, the procedure adopted by the Labour Court is unheard of. Section 33-A (b) of the Act specifically directs the Labour Court to decide the complaint in the same manner treating it to be a dispute having been referred to it in accordance with the provisions of the Industrial Disputes Act. Courts, while dealing with such matters, are required to keep in

mind the spirit of the Act and the other attending provisions and only thereafter an order is to be passed on merits. The Labour Court, on the face of it, has decided the controversy in a feverish haste and in cursory manner. The manner in which the controversy has been disposed of, deserves to be deprecated as the impugned award is not only against the settled principles of law but is also against the principles of natural justice, equity as well as fair play. The order can safely be termed as arbitrary also.

16. Even if the parties had led no evidence, the Labour Court was under an obligatory duty to examine the order of dismissal as to whether the same was legal or valid or violates the settled principles of law or otherwise suffers for want of good faith, victimisation, unfair labour practice or management has been guilty of a basic error or violation of the principles of natural justice and it was further to be examined whether on the basis of the material placed, the finding is baseless or perverse. Guidelines in this respect have been laid down by the Hon"ble Supreme Court in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*,

17. In the impugned order, there is no reference that the petitioner had filed a detailed reply to the complaint and that the same has been looked into. Simply because the approval or permission was not taken from the Court before ordering the termination of the services of the workers, the order could not be straightway set aside consequently leading to their reinstatement. The order of dismissal, whether the same was passed in contravention of Section 33 of the Act or not, was subject matter of adjudication either by virtue of reference u/s 10 (1), or on account of a complaint filed by the workmen u/s 33 of the Act.

18. As we look at the things, the order of dismissal appears to have been made after an enquiry by following proper procedure. This enquiry was quite in consonance with the directions handed down by this Court in the judgment Annexure P-1. The scope of Sections 33 and 33-A of the Act has been examined in numerous judgments passed by the Apex Court as well as various High Courts of the country. Reference can usefully be made to some of the decisions reported in *The Punjab National Bank Ltd. Vs. Its Workmen*, . *The Hindusthan General Electrical Corporation Ltd. Vs. Bishwanath Prasad and Another*, *Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another*, . and 1994 I LLJ I 106 Ori., *Guru Charan Mohanly v. Mgt of Orissa Commercial Transport Corporation Ltd. and Anr.*

19. In the present case, Section 33 (1) of the Act has no application. Section 33 (2) deals with dismissal and discharge of a workman for misconduct which is not connected with industrial dispute, during the pendency of any conciliation proceedings before conciliation officer or a Board, unless he had been paid wages as required therein. It is u/s 33-A that a workman who has" been ordered to be dismissed or discharged, a complaint has to be made in writing before the concerned authority that the management has contravened the provisions of Section 33 and that too during the pendency of the proceedings before the

Labour Court or other authorities mentioned therein. This complaint has to be dealt with as if it is a dispute referred to or pending before the Labour Court and has to be decided according to the provisions of the Act as said above. A perusal of the relevant provisions of the Act and the above quoted case law, makes out that the workman, who makes a complaint u/s 33-A of the Act, has not to wait till a reference of an industrial dispute is made by a competent authority u/s 10 of the Act. This complaint moved u/s 33-A is to be treated in the manner a dispute is dealt with as envisaged u/s 10 of the Act. No decision can be straightway given that since there has been violation of Section 33, it would result in instant reinstatement. Care has to be taken to follow procedural law and other requirements which are necessary as required by Section 10 of the Act.

20. It was, thus, incumbent upon the Labour Court to examine the merits of the order of dismissal passed by the petitioner. Assuming, in a given situation the requisite permission or approval as prayed for by the employer is given, the question would still arise as to whether the matter terminates there and if not, how could a permission or approval granted, result into the order of dismissal being declared violative. It, thus, necessitates to examine the validity or otherwise of the order of dismissal and in no situation, the management would be denied an opportunity to place such material before the Labour Court as would justify the action taken by the employer. It is only after the order of dismissal is examined on merits that a decision would follow whether an order of reinstatement should be passed in the given circumstances or not.

21. In view of what has been said above, the impugned order cannot be sustained and is hereby quashed. The case is remitted back to the Labour Court to adjudicate upon the dispute with regard to the question whether the dismissal of the workmen was proper in law or not. The matter would be examined afresh on merits and it be disposed of in accordance with well settled principles of law and the rules on the subject.

22. As the matter has already taken considerable time to reach finality, the Labour Court is directed to decide the matter as expeditiously as possible, preferably, within six months from the date the parties put in appearance before the Labour Court. The parties, through their learned Counsel, are directed to appear before the Labour Court on November 11, 1996, whereafter the Labour Court shall proceed to dispose of the matter in the light of the observations made hereinabove in this judgment. The records of the case are directed to be sent back forthwith.

23. These writ petitions are allowed with costs which are assessed at Rs. 2,000 in each case. Copy of this judgment be also placed on the other connected writ petitions.