

(1975) 10 CAL CK 0011
In the Calcutta High Court

Saraswati Tea Co. Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-10-1975

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33

Citation : 80 CWN 746

Hon'ble Judges : Sudhamay Basu, J;S.K. Mukherjee, J

Bench : Division Bench

Advocate : Monotosh Mukherjee, A.M. Dhar and P.K. Khaitan, for the Appellant;Sukumar Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against an order made by a learnedingle Judge on February 12, 1973, by which he discharged a Rule. The petitioner before the learned Judge, who is the appellant before us, challenged an Award dated August 27, 1969 passed by the Judge, Sixth Industrial Tribunal, West Bengal.

2. One Anil Kumar Chakraborty, the respondent no. 3 was a compounder employed by the appellant. On September 10, 1965, certain charges were brought against him by the appellant by a charge sheet. The charges were (i) that he was inciting the workers to surround the manager"s residence so that by intimidation the manager might be forced to run away form the garden. (ii) that he took the money from the workers for the appellant"s medicines although the medicines were to be given to workers free of cost. (iii) that he was carrying on business by selling medicines of the garden hospital. (iv) that he was conducting a propaganda against the appellant to disrupt the administration of the garden and (v) that by inciting workers to resort to hooliganism he was sabotaging the peaceful running of the garden administration.

3. The respondent was called upon to explain in writing why he should not be dismissed from service. He was also informed that if his explanation were found

unsatisfactory he would be given a chance to adduce evidence in the departmental enquiry, the date of which would be intimated to him.

4. The respondent submitted an Explanation by a letter dated September 14, 1965 which was not found satisfactory by the appellant. The appellant replied by a letter dated September 14, that the respondent had skipped over the charges just to evade any explanation. By the said letter intimation was given to the respondent that a departmental enquiry would be held on September 15, at the office of the Manager at 7-30 A.M. The respondent was called upon to defend himself at the Enquiry. Thereafter, an Enquiry was held by one Robi Roy, a Director of the appellant company on the appointed date. On the same date, an intimation was served on the respondent by which he was informed that in the departmental enquiry he was found guilty of the charges under the relevant standing orders, and therefore, dismissed from service with effect from 16th September, 1965.

5. Thereafter, the Union raised a dispute on the validity of the order of dismissal. On the failure of certain conciliation proceedings, the Labour Department, Government of West Bengal referred the dispute to the Sixth Industrial Tribunal by an order dated June 24, 1968 u/s 10 of the Industrial Disputes Act. The issue before the Tribunal was as follows :-

6. Is the termination of service of Shri A. K. Chakraborty, compunder, justified? To what relief, if any, is he entitled?

7. At the hearing before the Tribunal, the respondent No. 3 gave evidence. On behalf of the management six witnesses were examined. It was stated on behalf of the management that most of the witness examined before the tribunal also gave evidence at the domestic enquiry. The management claimed that there was, in fact, a fair and proper enquiry.

8. One Nadalal Sitani deposed on behalf of the management that the original records of the Enquiry proceedings had been lost in the Jalpaiguri floods, but a carbon copy of the Report of the Enquiring Officer and the records of proceedings were ultimately found in the garden. The carbon copy was filed before the Tribunal on the second day of the hearing.

9. In the statement filed on behalf of the Union it was stated that the Enquiry was arranged in indecent haste. The respondent no. 3 was not given any opportunity of defending himself or of cross-examining the appellant's witnesses or of being represented by a person of his own choice. The management on the other hand claimed in its statement that the domestic enquiry was duly held at which the Respondent no. 3 gave evidence. As the offences of which the respondent was found guilty were grave, he was dismissed from service on the recommendation of the Enquiring Officer. The allegation that principles of natural justice were not observed was denied by the management.

10. The respondent no. 3 in his evidence before the tribunal stated that he

attended the enquiry at the appointed time at the manager's office but there was no enquiry at all. He was simply told on the site that he was dismissed. He was asked no question nor was any statement of his recorded by any one. No witness was examined at all. In cross-examination he denied that he accepted any money for medical treatment of any worker or that he took money for medicines. He denied the charge of inciting the workers to hold any strike or surround the residence of the manager to force him to leave the garden. He stated in the Enquiry, he reached the office at 11 A.M. and was there for a few minutes. He repeated that no enquiry had taken place at all.

11. Neither the Director Robi Roy who held the enquiry nor the Manager of the Company was produced by the management before the tribunal for giving evidence. It was stated in course of evidence that the manager had left the employment of the appellant.

12. Ananta Bijay Roy Chowdhury, the first witness produced by the management deposed that when he gave evidence, Chandra Lama, Pravu Dayal, Janak Mistry and the respondent No. 3 were present.

13. Amarendra Nath Dutt, an independent witness deposed that the enquiry was duly held. He also corroborated that Ananta Bijay was the first witness to give evidence. Pravu Dayal and Janak Mistry gave evidence of misconduct committed by the respondent No. 3. Pravu Dayal said that on August 1, 1968 the respondent visited the labourer's quarters to incite them against the management. He deposed that Chandra Lama had told him that the respondent exhorted the workers to besiege the godown.

14. It was admitted by one of the witness, that the respondent had not taken any money from him for medicines. None among the persons, whose names appears in Exhibit "B" from whom the respondent was alleged to have taken money, gave evidence. Janak Mistry deposed that the respondent had actively incited the workers in his presence to besiege the godown and the office. He said that the respondent had taken Rs. 40/- from him for supplying medicines.

15. The Tribunal appears to have been of the opinion that no enquiry was held at all, although in the written statement filed on behalf of the Union it was conceded that there was an enquiry, though the enquiry was not fair. In not accepting the common case, the tribunal therefore, proceeded on the basis of a third case for which there was no basis. Surely, it was for the Tribunal to determine whether there was a fair enquiry or not. It was not open to the Tribunal to decide whether an enquiry was held at all. It seems to us that in holding that there was no enquiry, the Tribunal was, in the main, influenced by the non-production of the original report and the late disclosure of the carbon copies. The fact that annexures to the original Report were produced before the Tribunal along with carbon copies of the Report induced the Tribunal to doubt the story of the loss of the original Report and the authenticity of the carbon copy. Moreover, the thumb impressions claimed to have been subscribed on the carbon copy, were treated

as suspect. The learned Tribunal thought that it was unusual for any one to subscribe thumb impressions on a carbon copy. No attempt was made at the hearing to prove or disprove the authenticity of the thumb impressions. Witness had no clear recollections on the subject. The learned Tribunal found that although one of the witnesses had deposed that he was the first witness, it appeared from the carbon copy that he was the last. For all these reasons, the Tribunal rejected the evidence of the carbon copy and held that the Enquiry proceedings suffered from infirmities and irregularities and concluded that no fair domestic enquiry was held.

16. In rejecting the carbon copy of the Report and the record of the proceedings, it seems to us that the Tribunal was less than fair to the management. If the management wanted to fabricate a Report and record of Enquiry proceedings, and those who subscribed their thumb impressions were accessories to such a course, they could have fabricated an original document with equal facility. The fact that those whose thumb impressions appeared on the carbon copy, deposed that they did not recollect whether they had given their thumb impressions on the carbon copy or not, made it amply clear that they were not giving evidence at the behest of the management. It was therefore unlikely that they subscribed their thumb impressions on a document brought into existence subsequently on the eye of the Enquiry. In our judgment, the thumb impressions support the authenticity of the carbon copy. There is nothing improbable in the original report perishing in the floods. It is also possible that the carbon copy of the Report and the annexures survived. In our opinion, late disclosure by itself did not justify the rejection of the carbon copy. It is common case that an enquiry was held. It is hardly possible that an enquiry was held but no report of the enquiry was made or no record of the proceedings was maintained. We are therefore, of the opinion that the Tribunal was not justified in rejecting the Report and the record of the enquiry proceedings.

17. The Tribunal on a consideration of the evidence, came to the conclusion that the management had failed to prove the charges brought against the respondent. Why, the tribunal asked itself, should the respondent incite the workers on the evening of August 2, after the strike was over. He would have done it, if he did it at all, on the eve of the strike. Moreover, there was no corroboration of the evidence of Ananta Bijay that the respondent admitted that he had incited the workers. There was inconsistency between the evidence of Ananta Bijay and the evidence of Janak Mistry who deposed that the act of incitement took place on the 1st of August and not on the 2nd which was a hartal day. There was also no corroboration of the evidence of Janak Mistry that the respondent took money for medicines. He could not remember exactly the month in which he paid Rs. 40/- to the respondent for the medicines he supplied to him. He said it was in Chaitra or Baisakh. This, the Tribunal thought, made his evidence "tenuous". The Tribunal appears to have thought that in the absence of corroboration, his evidence was unacceptable. Corroboration in our opinion, is desirable in such a case, but not indispensable.

18. The Tribunal had deprecated the hurry with which the enquiry took place and the letter of dismissal followed it. Notice of the enquiry was delivered to the respondent on 14th September. The Enquiry was held on the 15th. He was called upon to defend himself. By the earlier letter of 10th September 1965, the Manager had communicated to the respondent that if the explanation given by him in answer to the charge sheet were found unsatisfactory, he would be given a chance to adduce evidence in the departmental enquiry, the date of which would be intimated to him on receipt of the reply. When the respondent was informed by the letter of the 14th that the enquiry would be held on the 15th he did not ask for time orally or in writing. He had been specifically told that he was free to adduce evidence well in advance and yet he chose not to adduce any except his own. In these circumstances, it cannot be said that no opportunity was given to the respondent of adducing evidence. Moreover, the respondent did not ask for adjournment of the hearing. It is true that the management served the order of dismissal shortly after the enquiry but that is hardly any reason why the Court should interfere with the order.

19. In the case of Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, , S. K. Das J. speaking for the Court observed :

Undoubtedly, the management of a concern has power to direct its own internal administration and discipline, but ht power is not unlimited an when a dispute arises, Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief.

20. In cases of dismissal on misconduct, the Tribunal does not, however, act as a Court of Appeal and substitute its own judgment for that of the management. It will interfere (i) when there is a want of good faith, (ii) when there is victimization or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice and (iv) when on the materials, the finding is completely baseless or perverse.

21. In the present case, it seems to us that the Tribunal has dealt with the case as if it were a Court of Appeal. Not only has evidence been meticulously assessed afresh but the adequacy of evidence has also been gone into. The Tribunal, in our opinion, has exceeded the bounds of its legitimate functions and substituted its own evaluation of evidence for the evaluation of evidence by the domestic Court of Enquiry.

22. In the present case, as we have said, it cannot be held, that there was no enquiry. Moreover, there is no material on the basis of which it can be held that the enquiry was not fair or that the principle of natural justice were disregarded at the enquiry on that respondent did not have adequate opportunity of defending himself or of adducing evidence. The respondent does not appear to have deposed before the tribunal that he sought representation or that the opportunity to cross-examine was denied to him.

23. Mr. Monotosh Mukherjee, appearing in support of the appeal urged that in

any event, having regard to the facts and circumstances of the case, the gravity of the offence with which he has been charged, namely traffic in medicine, the Tribunal, ought not to have directed re-instatement even if it come to the conclusion that the dismissal was unjustified. He relied on a decision of the Supreme Court in *Ruby General Insurance Co. v. Chopra* (1970) 1 L.L.J. 63.

24. In that case, the management conceded that the order of termination of the respondent, a stenographer, was punitive in character and invalid, but it was contended that the relief of re-instatement granted by the tribunal was unjustified. The Supreme Court, following the decision in *Assam Oil Company Ltd. v. Its Workmen* (1960) 1 L.L.J. 587 held that though industrial adjudication may not regard a wrongful dismissal as one amounting to termination of service resulting only in right to damages as under the law of master & servant and would ordinarily direct re-statement, it can refuse to order reinstatement when such a course is not fair, proper, or is inexpedient depending upon the facts and circumstances of each case. Having regard to the fact that the employee was a stenographer holding a position of trust and confidence and also to all other circumstances of the case, re-instatement was refused. In *Shalimar Rope Works Ltd. v. State of West Bengal & Ors.* (1965) 1 LL.J. 625 B. N. Banerjee, J. and in *Modern Woodcrafts Ltd. v. Modern Woodcrafts Employees' Union* (1969) 1 LL.J. a learned single Judge of the High Court of Kerala expressed similar views and declined to direct re-instatement.

25. Mr. Mukherjee also relied on a decision of the Supreme Court in *The Hindusthan General Electrical Corporation Ltd. v. Biswanath Prasad & Ors.*, AIR 1971 1 SC 417. There G. K. Mitter, J. speaking for the Court, observed that the sections do not lend themselves to the construction that as soon as the Labour Court, Tribunal etc. finds that there has been a violation of section 33 it should award re-instatement. Learned Counsel also relied on an earlier decision of the Supreme Court in *Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others*, . In that case, Shelat, J. in delivering the judgment of the court said: "The Tribunal has the discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make re-instatement inexpedient or improper. The Tribunal has therefore to exercise its discretion judicially and in accordance with well-recognised principles in that regard and has to examine carefully the circumstances of each case and decide whether such a case is one of those exceptions to the general rule. If the Tribunal were to exercise its discretion in disregard of such circumstances or the principles laid down by this Court it would be a case of either of no exercise of discretion or of one not legally exercised. In either case, the High Court in the exercise of its discretion can interfere.

26. In the present case, it appears from the Explanation submitted by the respondent that on a previous occasion, worker had complained against him for trafficking in medicine but the Director forgave him, as he himself stated, for the commission of the offence. The implication is that the respondent admitted the

justice of the complaint and asked for pardon.

27. In awarding reinstatement, the Tribunal does not appear to have taken the special circumstances of the case into consideration, which can only be described as a case of failure to exercise discretion, where discretion lies.

28. The respondent, a compounder, held position of trust and confidence in an important branch of administration. He was placed in charge of distribution of medicines free of cost to the workers. The question of health of the workers which has a bearing on production and efficiency of the garden, was directly involved. The humanitarian aspect of the case ought not to be ignored either. In these circumstances, even if the tribunal were of the opinion, as it was, that termination of service of the respondent No. 3 was wrongful, the Tribunal was not justified, in our opinion, in making the order for reinstatement.

29. The learned Judge, in a very short judgment, has affirmed the order of the tribunal. In his judgment, he has not gone into the merits of the finding of the Tribunal. We have therefore addressed ourselves to the consideration of the Award in some detail.

30. In the view we have taken, the appeal is allowed. The order of the learned Judge as also the Award of the Tribunal are set aside. There will be no order for costs.

31. Having regard to the order we have made, the appellant will be at liberty to withdraw the monies it has deposited pursuant to the ad-interim orders made by the Appellate Court.

Sudhamay Basu, J. : I agree.