
(2014) 10 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Special Appeal(Writ) No. 102/2000 in Civil Writ Petition No. 5909/1996

Shankar Lal Manath

APPELLANT

Vs

The Judge, Industrial Tribunal

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 31(1), 33, 33(2)(b), 33(2)(b)

Citation : (2014) 10 RAJ CK 0037

Hon'ble Judges : Sunil Ambwani, Acting C.J.;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : Babulal Gupta and Ankul Gupta, Advocate for the Appellant; Mukesh Kumar Verma, Advocate for the Respondent

Judgement

1. We have heard learned counsel appearing for the parties.
2. This intra-Court Special Appeal arises out of a judgment passed by learned Single Judge on 03.04.1998, in S.B. Civil Writ Petition No. 5909/1996- Shankar Lal Manath v. The Judge, Industrial Tribunal and another, by which he has dismissed the writ petition, arising out of an order passed by the Industrial Tribunal, Jaipur, dated 09.09.1996, on an application filed by the Corporation under Section 33 (2)(b) of the Industrial Disputes Act, 1947 (for short, "the Act"), giving approval for termination of the services of the appellant, dated 20.02.1991, on the ground of misconduct.
3. During pendency of a general reference before the Industrial Tribunal, an application was presented by the Regional Manager, Rajasthan State Road Transport Corporation, Udaipur under Section 33(2)(b) of the Act, for approving the termination of the services of the workman on 20.02.1991, on the ground of misconduct, on which a domestic enquiry was held against the workman, serving as conductor, for carrying 14 passengers without ticket, on 25.10.1989, on Vijaynagar-Dungarpur road.

4. The appellant-workman, in his reply to the application, submitted that the domestic enquiry was held in violation of the principles of natural justice, and that he was not given one month's salary in compliance with the Proviso to Section 33(2)(b) of the Act, which is a condition precedent for approval, to be given by the Industrial Tribunal.

5. The Industrial Tribunal proceeded to hold that the domestic enquiry was held after providing an opportunity to the workman, and in which, it was established that he was carrying 14 passengers without ticket, which is misconduct for a conductor, serving in the Corporation. The Industrial Tribunal, despite objections raised by the appellant-workman that he was not given one month's salary in terms of the Proviso to Section 33(2)(b) of the Act, did not record any finding on such compliance. In paragraph 8 of its order, the Tribunal stated that so far as compliance of three requirements under Section 33(2)(b) of the Act is concerned, the representative of the respondent has not challenged the compliance of the conditions by clean heart. The Industrial Tribunal has reiterated the same observations in paragraph 12, and approved the order of termination, with the findings that in the domestic enquiry, the principles of natural justice were followed, and the allegations were established against the appellant-workman.

6. Learned Single Judge dismissed the writ petition against the order of the Industrial Tribunal, dated 09.09.1996, with the finding that there is no error in the order of the Tribunal, so as to call for any interference of the Court, more so when the petitioner has still a remedy of raising an industrial dispute before the Conciliation Officer against his termination. In the preceding para, he observed that the Tribunal, after having gone through the record, has held that there was compliance of the mandatory provisions of Section 33(2)(b) of the Act, and thus, in view of the limited jurisdiction of the Tribunal, the Tribunal accepted and approved the application for termination of the services of the workman, which was made by the Corporation vide its order dated 20.02.1991.

7. We do not find that either the Tribunal, or learned Single Judge, considered the question of compliance of the Proviso to Section 33(2)(b) of the Act inasmuch as though both, the Tribunal as well as learned Single Judge, observed that the conditions prescribed in the Proviso, have to be complied with. They did not record any finding as to whether the appellant-workman was paid one months wages, which is a condition precedent, for making an application, for the employer to apply for permission of the authority, to which the proceedings are pending.

8. Learned counsel appearing for the appellant-workman has relied on the observations made by the Supreme Court in para 12 of the judgment in Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another, , in which the conditions, on which permission under Section 33(2)(b) of the Act can be given, were discussed, quoted as

"12. The position that emerges from the above quoted decisions or this Court may be stated thus : In proceedings Under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and, the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. Vs. Ram Prabesh Singh and Others, , Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [1961] 2 L.L.J. 511, Hind Construction & Engineering Co. Ltd. v. Their Workmen, Workmen of Messrs Firestone Tyre & The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, , and Management of Eastern Electric and Trading Co. Vs. Baldev Lal, that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay Wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant: the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on Its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."

9. The judgment in Lalla Ram's case(supra), has been followed by the Constitution Bench of the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, , in which, in paragraph 13, it was held as follows:--

"13. The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of Section 33 invites a punishment

under Section 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1000/- or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in other way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to case out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman."

10. Learned counsel appearing for the appellant further submits that burden to prove that one months wages were paid, which is a pre condition for filing an application under Section 33(2)(b) of the Act, is on the employer. He has relied upon the judgment in *Bharat Electronics Ltd., Bangalore Vs. Industrial Tribunal, Karnatak, Bangalore* and another, .

11. It is submitted that that neither the Industrial Tribunal, nor learned Single Judge has considered, as to whether domestic enquiry was held in just and proper manner, and that there was sufficient evidence to prove the charges against the appellant. He submits that the findings with regard to the domestic enquiry, to be held in accordance with law, after serving the principles of natural justice, should have been considered by the Tribunal, before giving approval for termination of the services. Learned counsel for the appellant has further relied upon the judgment of the Supreme Court in *Rajasthan Rajasthan State Road Transport Corporation and Another Vs. Bhik Nath*, , in which it was stated that

where the respondent bus conductor being found to have not issued tickets to certain passengers on two occasions, circulars of appellant-Corporation giving rise to presumption that whenever a passenger has not issued a ticket, such non-issuance would be deemed to have been with a view to defraud the Corporation, such circulars were required to be placed on record, even assuming existence of such circulars, they would at the most give rise to a presumption which could be rebutted.

12. We have considered the submissions of the learned counsel for the parties, and perused the record.

13. In the Office Order dated 20.02.1991, passed by the Regional Manager of the Corporation, after giving details of the domestic enquiry and discussing the evidence as well as the documents on record, it was found that the appellant-workman was not only given an opportunity of defence, but his statement as well statements of the witnesses led by him, were also considered. It was found that he had allowed 14 passengers in the bus, out of which he had received the fare from 9 passengers, and for the remaining 5 passengers, fare was got paid at the time of inspection. The non-payment of fare by these 5 passengers, was also in the knowledge of the conductor. In the enquiry report, a finding was recorded that the conductor had deliberately not collected the fare from these passengers. It was his duty to first issue the ticket, and to make the entries in the way-bill, before the bus was allowed to continue with the forward journey. A finding was recorded that the appellant had deliberately allowed 14 passengers to travel in the bus, out of which he had received the fare from 9 passengers, but had not issued tickets to them, and to the remaining 5 passengers, tickets were issued at the time of inspection. These facts were proved by the oral evidence as well as documentary evidence, namely way-bill, which did not bear any entries of issuance of the tickets.

14. The Regional Manager of the Corporation, after perusing the enquiry report, which is based upon oral as well as documentary evidence, further found that the charges against the appellant, in the charge-sheet No. 2908, dated 17.11.89, were proved. He also considered the previous conduct of the appellant, in which he was given opportunity to improve his conduct with regard to carrying passengers unauthorizedly, but he did not improve himself, and in the circumstances, an order was passed giving punishment of termination of service, and forfeiting the remaining wages/allowances during the period he was under suspension. In the last paragraph of the order, the Regional Manager had noticed that the appellant was sanctioned one month's notice pay in advance.

15. We have perused the photocopy of the original letter dated 20.02.1991, passed by the Regional Manager of the Corporation, annexed to the writ petition, in which a note has been made that notice pay was sent by Money Order.

16. The order of the Industrial Tribunal has discussed the necessary facts for arriving at a conclusion that the domestic enquiry was held fairly and in which,

an opportunity of defence was provided to the appellant. The Tribunal has discussed the charges, evidence, and the enquiry report as well as the conclusions drawn by the Disciplinary Authority. We do not find any error in the order of the Industrial Tribunal, by which it was observed that the enquiry was held in just and proper manner, after serving the principles of natural justice.

17. So far as payment of one month's wages to the appellant is concerned, which is also a condition for exercising power under Section 33(2)(b) of the Act, the finding recorded by the Tribunal is not satisfactory. The Tribunal has not specifically recorded a finding that one month's salary was, in fact, paid to the appellant. The material on record regarding the sanction of one month's pay, and an endorsement on the order that one month's pay was sent by Money Order, however has not been denied by the appellant. We do not find any averments either in the reply given by the workman on in the writ petition, and even in the Special Appeal, that one month's pay was not received by him.

18. Although, we find that the burden for payment of one month's pay lies on the employer, in view of the judgment of the Supreme Court in *Bharat Electronics Limited v. Industrial Tribunal, Karnataka, Bangalore And Another*(supra), in the present case, the material on record, namely the order by which one month's pay was sanctioned and an endorsement on the order that one month's pay was sent by Money Order, is sufficient to establish, in the absence of any specific denial, that the notice pay was paid to the appellant.

19. In view of the order and the endorsement of remittance of one month's pay by Money Order, a bald assertion made by the appellant that the conditions in the Proviso to Section 33(2)(b) of the Act, were not satisfied, cannot be accepted.

20. We do not find any error in the order passed by the Industrial Tribunal and the judgment of learned Single Judge, to interfere in this Special Appeal.

21. The Special Appeal is dismissed.