

(1955) 08 BOM CK 0020

In the Bombay High Court

Case No : Spl. Civil Application No. 1133 of 1955

Shantaram Ramchandra Gorne (Bombay Fine Worsted Manufacturers)

APPELLANT

Vs

Labour Appellate Tribunal of India and Another

RESPONDENT

Date of Decision : 23-08-1955

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1955) 08 BOM CK 0020

Hon'ble Judges : M.C. Chagla, J;Desai, J

Bench : Division Bench

Judgement

Chagla, J.—The petitioner is an employee of the second respondent company. There was a strike among all the employees of the second respondent company which lasted between 9 August 1951 and 15 August 1951. This strike was declared to be an illegal strike by the labour court on 17 September 1951. In respect of this strike eighteen employees, among whom was the petitioner, were proceeded against by the second respondent company on the ground of misconduct and a chargesheet was served upon them, and the charges against them were that they shouted slogans, incited workers to go on strike, took active part in the strike declared illegal by the labour court picketed at the mill gate, and threatened and abused women labour and loyal workers. Pending the enquiry these eighteen employees were suspended. The result of the enquiry was that 11 employees were dismissed on 1 October 1951 and 7 were dismissed on 3 October 1951. On 25 October 1951 the representative union of these employees approached the second respondent company complaining of this order being made. On 25 February 1952 as no reply was received from the second respondent company the union approached the company again. As no redress was obtained on 24 May 1952 the representative union applied to the labour court under S. 78 for a declaration that the order of dismissal passed by the employer was improper and illegal and that the employees should be reinstated. On 23 September 1952 the labour court held that the inquiry was proper and

decided in favour of the second respondent company. An appeal was preferred to the industrial court on 7 December 1952. The industrial court held that the inquiry was not proper and that the mandatory provisions of the standing orders has not been complied with. Having held this, it is considered the matter on merits and came to the conclusion that with referred to give employees the order of dismissal should be converted into an order of discharge and the order of dismissal with regard to the thirteen employees should be confirmed. The employees went in appeal to the Labour Appellate Tribunal and the Labour Appellate Tribunal has confirmed the decision of the industrial court [vide 1955 - I L.L.J. 637] and one of the aggrieved employees has come before us on this petition under Act. 227 of the Constitution.

2. The jurisdiction of the Labour Appellate Tribunal depends upon there being a substantial question of law involved in the decision of the industrial court. If no substantial question of law was involved, no appeal would lie and the Labour Appellate Tribunal would have no jurisdiction to hear the appeal. Therefore, in entertaining the appeal and disposing it, the Labour Appellate Tribunal assumed them a substantial question of law was involved in the decision of the industrial court. Persuasion the judgment of the Labour Appellate Tribunal with respect we find no indication what so ever as to what was the question of law they were dealing with and what was their decision on the question of law. We will presently point out what view was taken any the industrial court and how the Labour Appellate Tribunal has delay with that view. The industrial court very properly took the view that the inquiry held by the second respondent company and the procedure followed by the second respondent company were extremely improper and in clear contravention of the provisions of the standing order. The employees filed a written statement in answer to the chargesheet and the inquiry officer asked them to produce evidence in support of their written statement and as they did not produce any evidence, the note that was made by him was "No evidence is produced, therefore, the written statement is dismissed," and he proceeded to convict the employees of the offences with which they were charged. We do not except that a layman is expected to have a legal sense or to understand judicial propriety or what the rules of natural justice are. But even a layman should have realised that you do not call upon an accused person to prove his innocence, and you do not hold that the prosecution case is established because the accused cannot produce any evidence. The inquiry is even more shocking when on realises that no evidence whatever was led on behalf of the employers, then no opportunity was given to the employees, then no opportunity was given to the employees to cross-examine the witnesses and merely because the employees could not lead any evidence that the inquiry officer came to the conclusion that the charges against the employees were established. Therefore, in our opinion, the industrial court was perfectly right in holdings that this was not an equity at all and that the mandatory provisions of the standing order were not complied with. Having come to this conclusion, the industrial court considered the matter on merits and it held that inasmuch as the employees had

pleaded guilty to having participated in an illegal strike, under the standing order it constituted misconduct and therefore according to the industrial court the question was what was the proper punishment that should be meted out to all these employees that had participated in the illegal strike ? On the evidence it was found that thirteen out of the eighteen employees had participated in two previous illegal strikes. Therefore, with regard to these thirteen employees it confirmed the order of dismissal. With regard to other five, inasmuch as they have not participated in the earlier strikes, if converted the order of dismissal into an order of discharge.

3. Various questions of law clearly arise on this decision of the industrial court, to which our attention has been drawn by Mr. Nargolkar and which were specifically raised in the memo of appeal before the Labour Appellate Tribunal. The first question is whether the industrial court was justified in going into the question of misconduct by the employees on the ground that they had participated in an illegal strike when the employers themselves did not choose to charge their employees with that misconduct. The evidence before the industrial court makes it amply clear that the second respondent company acted very fairly and reasonably. Inasmuch as all the employees had struck, the employers could not dismiss the whole lot of them. They did not wish to proceed against all of them for misconduct and therefore they only wanted to pick out those employees who had taken an active part in the sense of picketing or shouting slogans or inciting people not to work or abusing those who worked. Therefore, the case of the employers against these eighteen employees was not that they have stayed away from work, but by their various activities they had taken an active part in the strike. The charge that they had merely taken part in the strike was not put against them, and the point of law which Mr. Nargolkar suggests is that by not charging them with that specific act which constitutes misconduct under the standing orders, the employers condoned the act of misconduct and did not make any grievance of the misconduct, and the question is whether the industrial court in law was justified in holding the employees guilty of a misconduct with regard to an act which the employees themselves have overlooked and condoned.

4. The industrial court also considered the previous activities of the employees, and what is contended by Mr. Nargolkar is that you do not consider previous convictions till you have convicted a person of the offence with which he is charged, and according to Mr. Nargolkar if the industrial court held that the enquiry was not properly conducted and that the order of dismissal passed by the second respondent company was illegal, no question arose of considering the previous conduct or activity of these employees. But the more substantial question of law which Mr. Nargolkar has suggested and which again clearly arises, is whether it was incumbent upon the industrial court, once it came to the conclusion that the order of dismissal was illegal and improper, to set it aside. Mr. Nargolkar says that under S. 78(1)(a) the labour court has been given the power to decide disputed regarding the propriety and legality of an order passed by an employer acting or purporting to act under the standing orders, and according to

Mr. Nargolkar if the labour court is satisfied that the order passed is improper or illegal, then it is incumbent upon the labour court to declare that order to be improper and illegal and to give the necessary consequential relief. Mr. Nargolkar also says that if a mandatory provision of the standing order passed as a result of non-compliance of that standing order must be declared to be illegal and improper, and according to Mr. Nargolkar, if the labour court fails to do that under S. 78, in an appeal the industrial court under S. 57 must give effect to the provisions of S. 78. As against the Mr. Vimadalal has contended that matter under S. 88, the industrial court has very wide power and it may pass such order as it may deem fit, and it is urged that labour courts and industrial courts do not function in the same way as civil courts and wide powers are conferred upon these courts to decide matters themselves even though they may not have been properly decided as between the parties. Whether one view is correct or the other, we will not express any opinion about it, but the fact remains that this point of law also arises and it should have been decided by the Labour Appellate Tribunal.

5. When we turn to the judgment of the Labour Appellate Tribunal, with very great respect, we are really surprised that the Labour Appellate Tribunal do not seem to think that the inquiry held by the second respondent company was extremely improper. They almost suggest that there was nothing very seriously wrong with that inquiry, we have pointed out the nature of the inquiry, we have pointed out how the burden of proving the innocence was thrown upon the employees, and it is indeed surprising that the Labour Appellate Tribunal has really decided is that there was no want of bona fides on the part of the employees and that on the materials that they were in agreement with the order passed by the industrial court. They have also said that the action of these employees was such as to amount to an organised attack on discipline. We do not understand where they get this finding from, when the industrial court had held that the inquiry with regard to the charges framed against the employees was not proper and the order passed was illegal. The utmost that the industrial court has found is that the employees took a part in an illegal strike, but there is no suggestion in the judgment of the industrial court that these employees were parties to any attack on discipline, whether organised or not. But apart from this as we said earlier, there is no suggestion or indication anywhere in the judgment of the Labour Appellate Tribunal that they were called upon to decide any question of law, nor have they made any attempt to decide any question of law. They seemed to have treated this appeal as an appeal on merits and they contended themselves with expressing their agreement with the decision of the industrial court, that is not the jurisdiction which is vested in the Labour Appellate Tribunal. If they took the view that there was no question of law, they should never have entertained the appeal. If they did not entertain the appeal, their duty was to consider what was the substantial question of law on which their jurisdiction was founded and to have proceeded to decide the question of law. Under Art. 227 it would have been open to us to decide these questions for

ourselves and to pass a substantive order, but we do not think it is right that we should so. If the law of the land sets up a tribunal and confers jurisdiction upon that tribunal to decide certain questions, it would not be right to decide those questions. The law required that these questions should be decided by that particular tribunal.

6. Therefore, we think that the proper order to make in this case is to set aside the order of the Labour Appellate Tribunal and send the matter back for them to consider, in the light of this judgment, the questions of law raised in the appeal and to decide those questions. The second respondent company must pay the costs of the petitioner.