

(2012) 06 GAU CK 0161
In the Gauhati High Court
Case No : Criminal Revision No. 445 of 2007

Sri. Bacha Babu Singh

APPELLANT

Vs

M/s. Steel Worth (Pvt.) Ltd. and Others

RESPONDENT

Date of Decision : 28-06-2012

Acts Referred:

Companies Act, 1956 — Section 630
Industrial Disputes Act, 1947 — Section 33

Citation : (2013) 1 GLD 192 : (2013) 1 GLT 469

Hon'ble Judges : I.A Ansari, J

Bench : Single Bench

Advocate : A. Bhattacharyya, Mr. P. Kalita and Ms. S. Baruah, for the Appellant;
D. Das, Addl. PP, Assam for the Opp. Party No. 3 and Mr. U.K. Nair for the Amicus Curiae, for the Respondent

Judgement

I.A. Ansari, J.—I have heard Mrs. A. Bhattacharjee, learned counsel for the petitioner, and Mr. D. Das, learned Additional Public Prosecutor, Assam. Notice has appeared on behalf of the complainant-opposite party Nos. 1 and 2. I have also heard Mr. U.K. Nair, learned counsel, who has appeared as amicus curiae. The material facts, leading to this revision, may, in brief, be set out as under:

(i) The petitioner was a workman of M/s. Steels Worth (Pvt.) Ltd. (hereinafter referred to as "the company"), a company registered under the Companies Act, 1956. The company has a residential colony for accommodation of its workmen. The petitioner, while working as a workman of the company, was allotted, on his request, a residential quarter, during the course of his employment, subject to the condition that, on cessation of his employment, the petitioner shall accordingly hand over the possession of the said residential quarter to the company. However, the company terminated the service of the petitioner, w.e.f. 19.05.2001, for alleged gross misconduct committed by the petitioner and dismissed him from service. On termination of the petitioner's employment as indicated hereinbefore, the company directed him to vacate the said residential quarter. As the petitioner refused to vacate the said residential quarter, a

complaint was made by the company seeking a prosecution of the petitioner, in terms of Section 630 of the Companies Act, 1956 (in short, "the Companies Act"). The complaint gave rise to CR Case No. 55 of 2002.

(ii) While the said complaint case was pending, the petitioner raised an industrial dispute. By a notification, dated 11.02.2002, the State Government made a reference, namely, Reference No. 5 of 2002, to the Industrial Tribunal, at Dibrugarh, the issues framed for adjudication being as under:

(1) Whether the termination of Shri Bacha Babu Singh by the management of M/s. Steels Worth (Pvt.) Ltd. is justified?

(2) If not, is Sri Bacha Babu Singh entitled to be reinstated in his service with full back wages, or what relief is he entitled to?

(iii) When the Reference was pending adjudication before the Industrial Tribunal, at Dibrugarh, the petitioner, who was facing prosecution in CR Case No. 55 of 2002, sought for stay of his prosecution by filing a revision, which gave rise to Criminal Revision 22(4)/2002. This revision was, however, dismissed by the learned Sessions Judge, Tinsukia, and the complaint case accordingly proceeded.

(iv) During the course of trial, the particulars of offence, u/s 630 of the Companies Act, were explained to the petitioner. The petitioner denied that he had committed the offence alleged to have been committed by him. The trial culminated into judgment and order, dated 08.01.2004, whereby the learned Additional Chief Judicial Magistrate, Tinsukia, convicted the accused-petitioner for offence punishable u/s 630 of the Companies Act and sentenced him to pay fine of Rs. 500/- and, in default, to suffer simple imprisonment for a period of one month with further direction that the convicted person, i.e., the petitioner herein, shall deliver/hand over possession of the said residential quarter to the company within two months and, in default thereof, suffer imprisonment for a term of one year.

(v) Aggrieved by his conviction and the sentence, passed against him, the petitioner preferred an appeal, which gave rise to Criminal Appeal No. 9(1)/2004. By judgment and order, dated 20.07.2004, the learned Sessions Judge, Tinsukia, dismissed the appeal.

(vi) In the meanwhile, however, the learned Industrial Tribunal, Dibrugarh, delivered its award, on 24.6.2004, in Reference No. 5 of 2002 aforementioned, partly in favour of the petitioner inasmuch as his termination from service by the employer was held to be justified and he (i.e., the petitioner herein) was directed to be reinstated in service, but he was held to be not entitled to his full back wages, notwithstanding his reinstatement in service.

(vii) With the help of this revision, the petitioner has, now, impugned the judgment and order, dated 20.07.2004, passed by the learned Appellate Court upholding the learned trial Court's decision convicting the petitioner and sentencing him, as indicated above, to pay fine and, in default, to suffer

imprisonment and also to deliver/hand over the possession of the said residential quarter to the company.

2. The moot question, which has arisen for determination in the present revision, is:

Whether the petitioner, in terms of the provisions of Rule 66 of the Assam Plantations Labour Rules, 1956 (hereinafter referred to as "the Plantation & Labour Rules") had the right to remain in occupation of the said residential quarter until conclusion of the proceedings, which had commenced, in the Industrial Tribunal, by virtue of the Notification, dated 11.02.2002, aforementioned, which the Government had made, and, if it is so, whether the petitioner could have been made liable to prosecution and suffer consequential punishment as provided by Section 630 of the Companies Act?

3. For the purpose of sustaining this revision, Mrs. Bhattacharya, learned counsel, has contended, referring to Rule 66 of the Plantation Labour Rules, that the conviction of the petitioner, u/s 630 of the Companies Act, is not sustainable in law inasmuch as the case of the present petitioner was squarely covered by Clause (iii) of Sub-Rule (1) of Rule 66 of the Plantation Labour Rules.

4. In support of her above contention, Mrs. Bhattacharya submits that, in the light of Clause (iii) of Sub-Rule (1) of Rule 66 of the Plantation Labour Rules, the petitioner, as a workman, ought to be treated to have been "discharged" from service and since the petitioner had already raised a dispute with regard to his discharge and the dispute, so raised, had been referred to the Industrial Tribunal by the Government's Notification, dated 11.02.2002, aforementioned, the petitioner was entitled to remain in occupation of the residential quarter, in question, until the conclusion of the adjudication of the issues, which had been framed, while making the Reference by the Government's Notification, dated 11.02.2002, aforementioned.

5. In fact, points out Mrs. Bhattacharya, even before the learned appellate Court dismissed the appeal by its judgment and order, dated 20.07.2004, the learned Industrial Tribunal had already rendered its decision, vide award, dated 24.06.2004, holding to the effect, inter alia, that the termination of the petitioner's employment by the management of the company was not justified and that the petitioner was entitled to be reinstated in service without any back-wages. In such circumstances, the conviction of the petitioner and the consequential sentence, passed against him, is, contends Mrs. Bhattacharya, wholly illegal, without jurisdiction and may, therefore, be set aside and quashed by this Court in exercise of its revisional jurisdiction.

6. In order to persuade this Court to hold that, in the present case, the petitioner's dismissal from service should be treated as a discharge from service and that his case needs to be treated to be covered by Clause (iii) of Rule 66(1), Mrs. Bhattacharya has referred to Black's Law Dictionary to show the meaning of the word "discharge", "dismissal" and "termination". In Black's Law Dictionary

(6th Edition), the word, "discharge", means to release; liberate, annul; unburden; disincumber, dismiss, to extinguish an obligation, and to terminate employment of person. The word, "dismissal", means an order or judgment finally disposing of an action, suit, motion, etc., without trial of the issues involved, and release or discharge from employment: The term, "termination of employment" means a complete severance of relationship of employer and workman.

7. Referring to the decision, in *M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, , Mrs. Bhattacharya* has submitted that, in service jurisprudence, the term, "discharge", includes both "punitive discharge" as well as "discharge simpliciter". In both the cases, according to Mrs. Bhattacharya, the relationship between the employer and the workman gets terminated, but the word, "discharge", when used in isolation, would include within its sweep not merely punitive discharge from service, but also discharge simpliciter.

8. Mrs. Bhattacharya, learned counsel for the petitioner, further contends that the word "discharge", appearing in Clause (iii) of Sub-Rule (1) of Rule 66, includes not merely punitive discharge, which amounts to dismissal from service, but also discharge simpliciter, which means mere termination of the contract of employment and, in either case, the Court has the power to examine as to whether the termination of service is a discharge simpliciter or a punitive discharge. In support of her submissions, reliance has also been placed by Mrs. Bhattacharya upon the case of *Commissioner of Sales Tax, Lucknow Vs. D.S. Bist and Sons, Nainital, .*

9. Lending support to the submissions, made by Mrs. Bhattacharya, Mr. U. K. Nair, learned amicus curiae, has taken me through the provisions of Section 33 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act"), to show that the provisions, embodied in Section 33 of the I.D. Act, protect a workman from suffering any alteration, in the conditions of his service, during the pendency of any conciliation proceeding or any proceeding before a Labour Court or Industrial Tribunal, as the case may be, inasmuch as Section 33, points out Mr. Nair, prohibits the employer from altering, with regard to any matter connected with the "dispute", the conditions of service, applicable to a workman before the proceedings, under the I.D. Act, had commenced, if such alteration would prejudicially affect the workman. For better appreciation of Section 33 of the I.D. Act, which the learned amicus curiae, has referred to, the relevant provisions of Section 33 of the I.D. Act are reproduced below:

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) in regard to any matter connected with the dispute, alter, to the prejudice of

the workman concerned in such dispute the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) ***

(2) ***

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute--

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings, or

10. The rule-making authority, points out Mr. Nair, has, undoubtedly, used different expressions under Sub-Rule (1) of Rule 66 of the Plantations Labour Rules, which relates to cessation of employment, yet a careful reading of what Rule 66 embodies gives rise to the inference that a workman, in tea plantation, is covered by Clause (iii) of sub-rule (1) of Rule 66 irrespective of the fact whether the cessation of the workman's employment is by way of discharge simpliciter or punitive discharge. In either case, submits Mr. Nair, if the workman has raised a dispute with regard to his discharge and the matter has been taken to the Industrial Tribunal or Labour Court for adjudication, then, the workman is, in terms of Clause (iii), allowed to retain the house until the time the dispute is finally disposed of by the Tribunal or the Court, as the case may be, if the house had been allotted to him as an incidence to his employment by his employer.

11. Referring to the decisions of the Supreme Court, in M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, , and Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, , Mr. Nair, learned amicus curiae, has contended that the discharge of a workman may be both, simpliciter or punitive in nature, and that the Court is empowered to, if necessary, lift the veil, in a given case, and examine as to whether the discharge of a workman is or is not punitive. This apart, contends the learned amicus curiae, the word discharge, appearing in Clause (iii) of Rule 66 (1), not merely protects the interest of a workman, who has been discharged and whose discharge is not punitive in nature, but also a workman, whose discharge is punitive in nature, provided that the workman has raised a dispute for adjudication by the Industrial Tribunal or Labour Court and, in such a case, Clause (iii) of Sub-Rule (1) of Rule 66 allows such workman to retain the house, which he had been in occupation of as an incidence to his appointment. Seeking to derive strength for the submissions, so made, the learned amicus curiae has also referred to the case of M/s. S.P.B.P. Tea Industries Ltd. v. Desouza I.P., reported in 1997 (2) GLT 579.

12. For the purpose of a clear understanding of what Rule 66 (1) of the Plantations Labour Rules, particularly Clause (iii) thereof, conveys, it is apposite that Rule 66 of the Plantation Labour Rules is first, examined. For this purpose, Rule 66 of the Plantation Labour Rules is reproduced below:

66. Occupation of accommodation after termination of employment.--(1) When a worker dies in the service of the employer, or retires, or goes on transfer, or resigns or goes on leave or when his services are terminated, he or his family may retain the house up to the period as detailed below--

(i) in the case of death, transfer, termination of service, retirement or registration, a period not exceeding two months;

(ii) in the case of leave, for the period of leave; and

(iii) in the case where the discharge of a worker is disputed and the matter has been taken to an Industrial Tribunal or Court, for so long as the case is not finally disposed of.

13. What is, now, pertinent, to note is that Rule 66(1) of the Plantation Labour Rules has to be read in the light of the provisions of Section 33 of the I.D. Act. Since Section 33 of the I.D. Act protects the interest of a workman from suffering, to his prejudice, any alteration in the conditions of his service during the pendency of an industrial dispute, it needs to be borne in mind that an industrial dispute may arise not merely when the discharge of a workman is punitive in nature, but also when a workman's discharge is a discharge simpliciter, because even a discharge simpliciter may give rise to an industrial dispute. The reference, therefore, made by Mrs. Bhattacharya, learned counsel, and Mr. Nair, learned amicus curiae, to the Supreme Court's decision, in *M/s. Lokmat Newspapers Pvt. Ltd. (supra)*, is not entirely misplaced, particularly, when I notice that, in *M/s. Lokmat Newspapers Pvt. Ltd. (supra)*, the Supreme Court has pointed out, in paragraph 39, that the term "discharge" has assumed a wider connotation vis-?-vis the term "dismissed", for, dismissal is punitive in nature, whereas discharge may be punitive or otherwise. The Supreme Court has, therefore, specifically observed, in *M/s. Lokmat Newspapers Pvt. Ltd. (supra)* that:

...In service jurisprudence, the term "discharge" has assumed a wider connotation and may include in its found not only punitive discharge orders but also simpliciter discharge orders where the employer seeks to snap the relationship of employer and workman but without any intention to penalize the workman. He does so because of exigencies of service and employment conditions, which may require him to say goodbye to the workman but without any intention to punish him. Such simpliciter discharge orders call be illustrated as under....

(Emphasis added)

14. Coupled with the above, in *Gujarat Steel Tubes Ltd. (supra)*, the Supreme

Court has pointed out that the form, used for terminating the service of a workman, is not conclusive and the Tribunal has the jurisdiction to enquire into the reasons, which had led to such termination, and if the reasons, given by an employer for terminating the service of a workman, by way of discharge, shows that the termination was for dereliction of duty, then, the discharge is punitive in nature.

15. While considering the provisions, which Rule 66 contains, it becomes clear that Rule 66 allows not only a workman, but also his family members to retain the house, which the workman had been in occupation of, up to a certain specified period. When a workman dies, his legal representatives can continue to retain the house for a period not exceeding two months. Similarly, when a workman goes on leave, then, he can retain the house, under Clause (iii), for the period of leave. Besides these too, when a workman is transferred, his right to retain the house would not exceed a period more than two months from the date of his transfer or release.

16. What is, now, important to note is that, while sub-rule (1) of Rule 66 uses the expression, "when his services are terminated", Clause (i) of Sub-Rule (1) of Rule 66 uses the expression, "termination of service". Rule 66 is silent as to what kind of "termination of service" "would fall within the ambit of Rule 66. Thus, Rule 66 applies to both kinds of workmen, one whose service is terminated by way of punishment or whose service is terminated by way of discharge.

17. In the absence of anything showing to the contrary, the expression "termination of service" shall include, ordinarily, all forms of "termination of service", which would, obviously, include even a discharge simpliciter. If, however, such a meaning is attributed to the expression "termination of service", which appears in Clause (i) of Rule 66(1), then, Clause (iii) of Rule 66(1), which uses the expression "discharge of a worker", would become meaningless and otiose. In order, therefore, to meaningfully construct Rule 66(1), it is necessary that the expression, "termination of service", appearing in Clause (i) Rule 66(1), be treated to exclude the expression, "discharge of a worker". Seen in this light, it becomes clear that irrespective of the fact as to whether a workman suffers discharge from his service as a punitive measure or as a measure of discharge simpliciter, he, in either case, if raises a dispute, with regard to his discharge, which may be punitive or simpliciter, as indicated hereinbefore, and such a dispute is taken to an Industrial Tribunal or a Labour Court, as the case may be, then, the workman will have the right to retain the house, which he had been in occupation of immediately preceding his discharge, until the time the dispute is finally disposed of.

18. In other words, since the term, "discharge", as already discussed above, includes not merely discharge simpliciter, but also a punitive discharge, such as, dismissal from service, Clause (iii) must be deemed to include, within its sweep, both the terms, "discharge" and "dismissal from service".

19. What emerges from the above discussion is that, when a workman, in a tea plantation, is removed from service by way of discharge simpliciter or punitive discharge, which is equivalent to dismissal from service, his interest is protected by Rule 66(1)(iii) until the time the dispute, which the workman has raised, is finally disposed of by the Industrial Tribunal or Labour Court, as the case may be. One may take note of the fact that even if a workman is on probation and he is discharged from his probation, he can impugn such a discharge alleging the same to be not sustainable in law for the reason that his discharge is punitive in nature and not simpliciter and he may, in a given case, call upon the Court or Tribunal, as the case may be, to determine if his discharge, though, apparently, simpliciter is in reality, punitive in nature and the Court or Tribunal, as the case may be, is empowered, in such a case, to lift the veil and determine for itself whether or not the discharge is simpliciter or punitive in nature. In either case, therefore, such a workman will be covered by Clause (iii) of Rule 66(1).

20. While considering this revision, what needs to be borne in mind is that before the petitioner's prosecution for commission of offence, u/s 630 of the Companies Act, culminated into his conviction and the consequential punishment, the petitioner had already raised an industrial dispute with regard to his dismissal from service.

21. Situated thus, it is clear that the provisions, embodied in Clause (iii) of Rule 66 (1), protect the occupation of the house by a workman; who has been dismissed from service if he has already raised an industrial dispute for adjudication. Hence, the conviction of the petitioner and the consequential punishment, imposed on him, cannot be sustained, because such a dismissal would come within the sweep of the term, "discharge", inasmuch as discharge, as pointed out above, covers both kinds of discharge, namely, punitive discharge as well as discharge simpliciter.

22. To sum up, in the light of the position of law, as indicated above, when one reverts to the facts of the present case, what logically follows is that, when the petitioner had, as a workman, raised an industrial dispute, which had already been referred to the Industrial Tribunal, Dibrugarh, for adjudication, by the Government by Notification, dated 11.02.2002, aforementioned, the petitioner's dismissal from service was covered by Clause (iii) of Rule 66(1) of the Plantation Labour Rules, which conferred, on the petitioner, a right to retain the residential quarter, in question, so long as the "Reference", which the Government had made to the Industrial Tribunal, with regard to the dispute, raised by the petitioner, was finally disposed of. What further logically follows from the above conclusion is that the retention of the residential quarter, in question, by the workman (i.e., the petitioner herein) did not amount to contravention of the provisions of Section 630 of the Companies Act and he was, therefore, not liable to prosecution.

23. To put it a little differently, the prosecution of the petitioner for offence, u/s 630 of the Companies Act., was, in the light, of the facts on record and the law

relevant thereto, without jurisdiction, wholly impermissible and, therefore, ought not to have been proceeded with. Consequently, neither the petitioner's conviction nor the sentence, passed against him, can be sustained.

24. Because of what have been discussed and pointed out above, this revision succeeds. The impugned judgment and order, dated 08.01.2004, passed by the learned trial Court as well as the judgment and order, dated 20.07.2004, passed by the appellate Court, are hereby set aside.

25. With the above observations and directions, this Criminal Revision stands disposed of.

26. However, before parting with this Criminal Revision, this Court places on record its appreciation for the able assistance rendered by Mr. U.K. Nair, learned amicus curiae. Send back the LCR.