

(1969) 02 AHC CK 0002
In the Allahabad High Court

Srivastava (S.P.) and Another	Vs	APPELLANT
Banaras Electric Light and Power Company Ltd. and Others		RESPONDENT

Date of Decision : 27-02-1969

Acts Referred:

Citation : (1970) 1 LLJ 394

Hon'ble Judges : Gyanendra Kumar, J;Gangeshwar Prasad, J

Bench : Division Bench

Judgement

Gangeshwar Prasad, J.—This special appeal originally came up for hearing before a Division Bench consisting of Jagdish Sahai and B.D. Gupta, JJ., who referred a question involved in the appeal to a Full Bench. A Full Bench was accordingly constituted and it recorded its answer to that question-vide Srivastava (S.P.) and Another Vs. Banaras Electric Light and Power Company Ltd. and Others, . The appeal was then laid before us for hearing.

2. The facts are not in controversy. The appellant, S.P. Srivastava, was an employee of respondent 1, Banaras Electric Light and Power Company (hereinafter called the company) and he was employed under a written agreement dated 11 July 1956. Under Clause 7 of the agreement each party was entitled to terminate the contract of service by giving one month's notice to the other party or paying one month's salary in lieu thereof. In December 1956, a certain sum of money was received as bonus not by the employee to whom it had to be disbursed but by someone else. The company reported the matter to the police which conducted an investigation but did not find the case fit for being sent to Court on account of some " technical flaw of law." The police however expressed the opinion that there was some evidence indicating the connivance of the appellant in the wrong disbursement. On 7 September 1957 the company terminated the service of the appellant purporting to act under Clause 7 of the service agreement. That gave rise to an industrial dispute and led to a reference by the State Government to the labour court at Gorakhpur. The labour court held that the notice of termination of service was not in accordance with the terms of

service agreement and it made an award for the reinstatement of the appellant with full wages. A fresh notice of termination of service was then served upon the appellant which again purported to be under Clause 7 of the service agreement between the appellant and the company, and the appellant was paid one month's salary in lieu of a notice for that period. The dispute was again referred to the labour court, Gorakhpur, which, by its award dated 8 October 1959, held that the company had wrongfully and unjustifiably terminated the service of the appellant and that the appellant should, therefore, be reinstated with full wages and allowances, etc. One of the reasons given by the labour court for its award was that although standing Order 20 of the standing orders of the company provided for an opportunity to be given to the employee to explain his position no such opportunity was given to the appellant and the non-compliance of the said standing order vitiated the termination.

3. The company challenged the award dated 8 October 1959 of the labour court by means of a writ petition taking its stand upon the service agreement which, according to the company, prevailed over the standing orders. The stand was accepted as correct by Oak, J. (as he then was), and the writ petition was allowed. The appellant then preferred this special appeal. The question which the Division Bench hearing the appeal referred to the Full Bench was as follows:

In the case of a conflict between the contract of service entered into between the employee and the company and the standing orders of the latter, which would prevail ?

The answer which the Full Bench has given to the question is that

the terms of a standing order would prevail over the terms of a contract which conflict with the standing order.

4. In view of this answer it is no longer in dispute that if there is a conflict between the service agreement and the standing orders of the company in regard to termination of service, the matter will be governed by the standing orders. What Sri Jagdish Swarup, learned Counsel for the company, contended before us was that there was no such conflict and that the standing orders themselves provide for giving effect to the agreement between the parties with regard to the termination of service. In the judgment of the Full Bench it has been clearly stated that the Bench was assuming that there was a conflict. We have, therefore, to consider whether the submission of Sri Jagdish Swarup as to the absence of any conflict is correct. But before we proceed to do so, it is necessary to see the reason for the termination of the appellant's service. The notice dated 7 November 1958 gave no reason at all and stated that the service of appellant was being terminated under the provisions of Clause 7 of the service agreement. The writ petition filed by the company, however, leaves no room for doubt that the reason for the termination was that the company had lost confidence in the appellant. Paragraphs 4 to 7 of the petition narrate the facts connected with the disbursement of a certain amount of bonus to a wrong person

and the conclusion reached by the police as a result of its investigation. Paragraph 8 states that the appellant ceased to enjoy the confidence of the company. Paragraphs 9 to 14 deal with the first termination of the appellant's service and his reinstatement under the first award of the labour court. Then comes Para. 15 which Bets forth in clear and unequivocal terms that

because of the aforesaid circumstances as the petitioner concern had lost all confidence in S.P. Srivastava and continued to have misgiving about his reliability and character it was necessary to terminate his service.

and then goes on to say that the notice dated 27 November 1958 was accordingly served upon the appellant. Therefore despite the silence of the notice as to the reason for, the termination of service, we have before us the reason given by the company itself in the plainest language. It is well-settled that whether or not termination of the service of an employee is in reality in exercise of the power to that effect contained in the contract of service has to be determined on the basis of the facts and circumstances of each case and the form in which the notice or order of termination of the service is clothed is not final and conclusive-*vide* Assam Oil Company Vs. Its Workmen, and Murugan Mills, Ltd. v. Industrial Tribunal, Madras, and Anr. (1935) I L.L.J. 422. In the instant case, however, the reason for termination is not required to be investigated because it is a matter of admission.

5. We may now examine the relevant standing orders which are as follows:

20. The company has at all times a general right to discharge an employee from service not only for proved misconduct but also when the employer has lost confidence in the employee. Provided that an employee before being discharged under this standing order shall be given a chargesheet and an opportunity to explain the charges made against him.

35. The standing orders are general conditions of service applicable to every employee who shall also too subject to any special conditions which may be agreed at the beginning of his service or subsequently. The company reserves the right to alter, add to or rescind those standing orders in accordance with the conditions contained in the Industrial Employment (Standing Orders) Act, 1946.

On the admission of the company itself the case of the appellant clearly fell under standing Order 20, and before the appellant could be discharged thereunder the company was required to give him a chargesheet and an opportunity to explain the charges against him. The contention of Sri Jagdish Swarup was that by virtue of standing Order 35 the company's power to terminate the appellant's service under Clause 7 of the service agreement merely by giving one month's notice or one month's salary in lieu of it remained unfettered and was not subject to the limitation imposed by standing Order 20. We find the contention wholly unacceptable. Standing Order 35 is a general order and has also been described as such in the heading. It is not confined to matters of termination of service but relates to everything connected with the service of

an employee. It emphasizes the fact that there may be matters which have not been dealt with by the standing orders and may only have been provided for in the service agreement between the company and the employee and there may farther be some special conditions applicable to a particular employee under his service agreement in addition to the general conditions applicable to all employees, but it does not provide and cannot be constructed as providing that a term of the service agreement would operate in supersession of the conditions of standing orders. The word "also" occurring in standing Order 35 makes it clear that the standing orders leave scope only for agreements in regard to matters outside the field covered by the standing orders and for special conditions of service supplementing those that have been mentioned therein, but they do not contemplate agreements in derogation of what they have specifically provided. To construe a general provision in standing orders as leaving the employer and the employee free to enter into agreements opposed to their specific provisions is to frustrate the very object of framing standing orders. A construction which results in making a general provision of standing orders nullify a special provision and in depriving an employee of the rights and benefits which the latter intended to safeguard and secure cannot be accepted unless there are express words in the general provision compelling such a construction. In our opinion, the true meaning of standing Order 35 is not that service agreement may override the provisions of standing orders but that, besides being subject to the conditions of service mentioned in the standing orders, the company and its employees shall also be subject to such other conditions as may be agreed upon by them.

6. The result is that Clause 7 of the service agreement, in the general terms in which it is couched, is not a condition contemplated by standing Order 35 and it is patently in conflict with the specific conditions laid down in standing Order 20 in regard to the termination of service of an employee on the ground of loss of confidence in him. That being so, it must, in view of the answer of the Full Bench to the question referred to it, be held that standing Order 20 would prevail over Clause 7 of the service agreement. Admittedly, the requirements of standing Order 20 were not complied with and the termination of the appellant's service was, therefore, manifestly illegal.

7. We may note that there are provisions connected with termination of service in standing Order 15 also, but they are not independent provisions and do not at all affect standing Order 20. Indeed, they were not relied upon by the company either before the Full Bench or before us. It has also to be remembered that even in the notice of termination of service it was stated that the termination was being made under C1. 7 of the service agreement.

8. It would farther appear from the award of the labour court that it also came to the conclusion that irrespective of standing Order 20 of the standing orders, the termination of the appellants service was unjustified and it was solely based upon a suspicion of misconduct which the appellant had no opportunity to clear. The labour court found that

from the procedure of disbursement of bonus explained by the witnesses of the employer, it cannot be said that Srivastava had misappropriated the amount.

In the Information sent to the company by the police as to the result of its investigation a suspicion was cast upon the conduct of the appellant, but the labour court observed that it had nothing before it to show what the basis of the suspicion was. The labour court had, therefore, adequate reasons for holding that the termination of the appellant's service was unjustified and it had the jurisdiction to direct reinstatement of the appellant on that account as well. We are fortified in this view by the decision of the Supreme Court in *U.B. Dutt & Co. (Private), Ltd. v. its workmen (Kozhi-kode Taluk Earcha Mill Thozhilali Union)* (1962) 1 L.L.J. 374. In that case the employer sought to justify an order of termination of service on the basis of Rule 18(a) of its standing orders which empowered the employer to dispense with the service of any employee at any time by giving fourteen days' notice or paying twelve days' wages. Dealing with that claim of the employer, who was the appellant before the Supreme Court, their lordships observed at p. 376:

We are of opinion that this claim of the appellant cannot be accepted, and it is too late in the day for an employer to raise such a claim, for it amounts to a claim "to hire and fire" an employee as the employer pleases and thus completely negatives security of service which has been secured to industrial employees through industrial adjudication for over a long period of time now. As far back as 1952, the Labour Appellate Tribunal had occasion to consider this matter relating to discharge by notice or in lieu thereof by payment of wages for a certain period without assigning any reason: see *Buck-ingham and Carnatic Company, Ltd., etc. v. workers of the company, etc.* (1951) II L.L.J. 814. It was of opinion that even in a case of this kind, the requirement of bona fides is essential and if the termination of service is a colourable exercise of the power or as a result of victimisation or unfair labour practice, the industrial tribunal would have the jurisdiction to intervene and set aside such termination. Further it held that where the termination of service is capricious, arbitrary or unnecessarily harsh on the part of the employer judged by normal standards of a reasonable man, that may be cogent evidence of victimization or unfair labour practice. These observations of the Labour Appellate Tribunal were approved by this Court in *The Chartered Bank, Bombay Vs. The Chartered Bank Employees' Union*, and *Assam On Company v. its workmen* (1960) 1 L.L.J. 687....

Later in their judgment, with reference to Rule 18(a) of the standing orders their lordships said at pp. 377-378:

...Further an employer cannot now press his right purely on contract and say that under the contract he has unfettered right "to hire and fire" his employees. That right is now subject to industrial adjudication and even a power like that granted by Rule 18(a) of the standing orders, in this case, is subject to the scrutiny of industrial courts in the manner indicated above. The appellant, therefore, cannot rest its cases merely on Rule 18(a) and say that, having acted under that rule,

there is nothing more to be said and that the Industrial court cannot inquire into the causes that led to the termination of service under Rule 18(a). The industrial court, in our opinion, has the right to inquire into the causes that might have led to termination of service even under a rule like Rule 18(a) and if it is satisfied that the action taken under such a rule was a colourable exercise of power and was not bona fide or was a result of victimization or unfair labour practice, it would have jurisdiction to intervene and set aside such termination. In this case the tribunal held that the exercise of power was colourable and it cannot be said that that view is incorrect. The appellant failed to satisfy the tribunal when the matter came before it for adjudication that the exercise of the power in this case was bona fide and was not colourable. It could have easily done so by producing satisfactory evidence; but it seems to have rested upon its right that no such justification was required and therefore, having failed to justify its action, must suffer the consequences?.

Even If, therefore, It assumed that the power of the company under Clause 7 of the service agreement is unaffected by the standing order, the position does not charge. The existence of a power to terminate the service of a workman does not make the termination immune from an enquiry by the labour court into its propriety or fairness. If the labour court finds that the power of termination has not been exercised in good faith or fairly, or that it has been resorted to from improper motive or capriciously or arbitrarily, or that the termination operates very harshly and unjustly, it would be justified in interfering with the termination. We may draw attention in this connection to the following observation of their lordships of the Supreme Court in Assam Oil Company Vs. Its Workmen, :

Therefore, we are not prepared to accede to the argument before us by the learned Additional Solicitor-General that wherever the employer purports to terminate the services of his employee by virtue of the power conferred on him by the terms of contract, industrial tribunals cannot question its validity, propriety, or legality.

9. In the instant case the labour court was not satisfied of the fairness and propriety of the termination of the appellant's service and it found the termination to be unjustified. That being so, the award is not liable to be quashed, even If standing order SO is ignored.

10. The result is that the appeal is allowed, the judgment of the learned single Judge is set aside and the writ petition is dismissed. The appellant shall get their costs in proceedings before the learned single Judge and in special appeal from the company, respondent 1.