

(1968) 04 KL CK 0006
In the High Court Of Kerala

Stanley Mendex

APPELLANT

Vs

Glovanola Binny Ltd. and Others

RESPONDENT

Date of Decision : 03-04-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33A

Citation : (1968) 2 LLJ 470

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Judgement

V. Balakrishna Eradi, J.—The petitioner has come forward with this writ petition seeking to quash an award made by the industrial tribunal, Calicut, dismissing a compliant put in by him u/s 88A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

2. The petitioner had been appointed as a welder in the service of respondent-company on probation, the period of probation being one year commencing from 27 May 1964. On 24 May 1965, the management proposed to terminate the petitioner's employment with effect from 24 May 1965 which date marked the end of the probationary period, the reason stated by the management being that the petitioner's work was found to be unsatisfactory. The petitioner sought to challenge this order before the industrial tribunal on the ground that it was passed in violation of the provisions of Section 83 of the Industrial Disputes Act inasmuch as an Industrial dispute-Industrial Dispute No. 48 of 1966-was pending before the tribunal wherein the first issue related to the question of confirmation of probationers. There was also a further allegation put forward by the petitioner that the order passed by the management was lacking in bona fide and that in reality it constituted an act of victimization.

3. The management contended before the tribunal that the petitioner was liable to be dismissed in limine on the ground that the case fell completely outside the scope of Section 33 of the Act. It was urged by them that their action in terminating the services of the petitioner at the end of the probationary period

did not in any manner constitute a change in the conditions of service of the petitioner and amounted to nothing more than the exercise of their right under the contract to terminate the services of a probationer at the end of the period of probation on the ground of his unsuitability to be absorbed into regular service. The tribunal upheld this contention put forward by the management and hence dismissed the complaint.

4. On behalf of the petitioner his learned Counsel relied on the decisions of the Supreme Court in *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, and *Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik*, as supporting his contention that even in the case of the discharge of a probationer at the end of the probationary period it is open to the employee so discharged to approach the industrial tribunal either with an industrial dispute or with a complaint in a proper case u/s 33A and request the tribunal to scrutinize the real character of the order of discharge by probing into its bona fides and to find out whether it was really an act of victimization disguised as an innocuous order of discharge of a probationer.

5. In a complaint made to the tribunal u/s 33A, the primary question that falls to be considered by the tribunal is whether there has been a contravention by the employer of the provisions of Section 33 of the Act, and it is only in case it is found that there has, in fact, been such contravention that occasion arises for the tribunal to embark upon a further adjudication of the complaint on its merits; in other words, the tribunal has to be satisfied initially that there has, in fact, been a contravention by the employer of the provisions of Section 33 by effecting during the pendency of other proceedings before it, an alteration to the prejudice of the workman concerned, of the conditions of his service which were applicable to him immediately before the commencement of such proceedings.

6. The main question, therefore, which arises for consideration, is whether in terminating the services of a person who had admittedly been appointed only on probation, the termination being effected only at the end of the probationary period, such discharge from service can be said to amount to an alteration of the conditions of service of the employee concerned. In my opinion, such action taken by the employer will not constitute an alteration of the terms and conditions of service of the employee, but is only an implementation of the very terms and conditions under which he was employed.

7. Counsel for the petitioner sought to rely on two decisions of the Supreme Court, but neither of them deals with the case of discharge of a probationer at the end of the period of probation. In *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, the employee concerned had been discharged during the currency of the period of his probation in purported exercise of a power reserved with the employer to terminate the employment even during the probationary period without assigning any reasons. Even in dealing with such a case their lordships observed thus at p. 1]:

It appears clear to us that without anything more an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months had expired except on the ground of misconduct or other sufficient reasons in which case even the services of a permanent employee could be terminated. AT the end of the six months" period the employer can either confirm him or terminate his services, because his service is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination, the employee continues to be in service as a probationer.

Thus, their lordships have clearly drawn a distinction between cases of termination of employment of probationers before the period of probation had expired and cases where the employer exercises his inherent right either to confirm or to terminate the employment of the probationer at the end of the period of probation. Tarak Nath Ghosh Vs. The State of Bihar and Others, is also a case where a probationer was discharged during the period of probation and their lordships held that in the case of such termination in the exercise of a contractual right the management may have to terminate the employment of the probationer even during the period of probation, it is open to the industrial tribunal before whom a dispute is raised under the Act to enquire whether the order of termination had been effected is the bona fide exercise of the power so conferred on the management by the contract. This decision does not throw any light on the question as to whether the discharge of a probationer at the end of the period probation would constitute an alteration of the terms and conditions of employment of the employee. Neither of the aforesaid decisions, therefore, is of any real help to the petitioner.

8. In the view that I have expressed regarding the exact scope of Section 33, viz., that the discharge of a probationer at the end of the period of probation will not, in law, amount to an alteration of the conditions of his service to the prejudice of such employee, it has to be held that the tribunal was perfectly right in dismissing the complaint. The original petition fails and is dismissed, but I make no order as to costs.