
(2015) 01 BOM CK 0215

In the Bombay High Court

Case No : Writ Petition Nos. 2523, 2557, 2558, 2559 and 2563 of 2006

States People Pvt. Ltd.

APPELLANT

Vs

Gangaram Rajayya and Others

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33, 33(2)(b)

Citation : (2015) 147 FLR 785 : (2016) LLR 169

Hon'ble Judges : R.P. Sondurbaldota, J

Bench : Single Bench

Advocate : R.S. Pai and T.R. Yadav, for the Appellant; Arshad Shaikh, Netaji Gawade and Nishant Vyas i/by. Sanjay Udeshi and Co., Advocates for the Respondent

Final Decision : Allowed

Judgement

R.P. Sondurbaldota, J.—The above five petitions, filed by the employer, give rise to following common questions of law :-

(i) What is the scope of the enquiry to be undertaken under Section 33(2)(b) of the Industrial Disputes Act ("I.D. Act" for short), for grant of approval for dismissal of an employee?

(ii) What are the constituents of the wages payable under the proviso to Section 33(2)(b) of the Industrial Disputes Act?

(iii) Whether the employer is liable to pay under the proviso to Section 33(2)(b) of the I.D. Act, the entire arrears of wages, if any, due ?

2. The facts required to be stated for answering the above questions are that, the petitioner had filed applications under Section 33(2)(b) of the Industrial Disputes Act (I.D. Act for short), against the respondents to the petitions, for approval of action taken by it of their dismissal from service on the charges of misconduct. Domestic enquiry had been held into the charges of misconduct

against them and the enquiry officer had found them guilty of all the charges. During the pendency of the enquiry the respondents had been suspended from service. In view of the findings of the enquiry, the petitioner served order of dismissal from service upon the respondents along with payment of wages of 34 days towards one month's notice pay as per the proviso to Section 33(2)(b) of the I.D. Act. On the same day, it filed applications for approval of the action in the Industrial Tribunal where the reference i.e. Reference I.T. No. 53 of 1996 was pending. The Tribunal by the orders impugned in the petition, rejected the applications, primarily on the ground that, the payment made to the respondents was short of the mandatory payment. The Tribunal also found that the domestic enquiry conducted by the petitioner against all the respondents was fair and proper. In two of the petitions, the findings of the enquiry were also found to be proper, whereas, in the remaining three petitions, the findings on the charges were held to be perverse and it was further held that the punishment of dismissal from service on such charges was illegal.

3. Mr. Pai, the learned Advocate appearing for the petitioner, submits that the Tribunal was clearly in error in enquiring into the merits of the domestic enquiry. He argues that the Apex Court, by its various decisions, has laid down the scope and extent of the enquiry under the provision and that the Tribunal in the orders impugned in the petitions, has exceeded the limitations. Mr. Shaikh, the learned Advocate appearing for the respondents, on the other hand, seeks to support the orders by submitting that the I.D. Act being a beneficial and social legislation, the Tribunal was justified in looking into the merits of the domestic enquiry. According to him any constraints on the enquiry by the Tribunal would be contrary the objects and purpose of the I.D. Act. Both the counsel have cited decisions of the Apex Court and decisions of this court in support of their respective submissions.

4. Before advertng to the decisions cited, it would be convenient to reproduce Section 33(2)(b) of the I.D. Act, which is the subject matter of the interpretation in the petitions. The same reads as follows :-

"33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.-

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied between him and the workman]-

(a) ...

(b) for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has

been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

5. Mr. Pai, relies upon the following decisions of the Apex Court in support of his argument on the matters to be considered by the Tribunal for approval under Section 33(2)(b).

(i) Cholan Roadways Limited Vs. G. Thirugnanasambandam, (2005) 1 ACC 143 : AIR 2005 SC 570 : (2005) 104 FLR 440 : (2005) 1 JT 116 : (2005) 1 LLJ 569 : (2005) 3 SCC 241 : (2005) SCC(L&S) 395 .

(ii) Air India Ltd. Vs. L.R. Solanki and Another, (2005) 4 ALLMR 429 : (2005) 5 BomCR 241 : (2005) 3 MhLj 974 .

(iii). Syndicate Bank Ltd. Vs. K.R.V. Bhat, AIR 1968 SC 231 : (1968) 16 FLR 39 : (1968) LabIC 207 : (1967) 2 LLJ 745 : (1968) 1 SCR 327 .

(iv). Caltex (India) Ltd. v. Eugene Fernandes and another, reported in 1957 Supreme Court Vol.I Labour Law Journal

6. In the facts of Cholan Roadway's case (supra), the application for approval by the employer was rejected with a finding that the domestic enquiry conducted was not fair and proper and was vitiated on account of failure of the enquiry officer to observe the principles of natural justice by not examining certain witnesses. The Apex Court held that, the jurisdiction of the Industrial Tribunal under Section 33(2)(b) is limited and that it cannot be equated with the enquiry under Section 10 of the I.D. Act which provides for reference of disputes to Boards, Courts or Tribunals. The relevant observations at paragraphs-18 and 19 of the decision read as follows :-

"18. The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in Martin Burn Ltd. Vs. R.N. Banerjee, AIR 1958 SC 79 : (1958) 1 LLJ 247 : (1958) 1 SCR 514 . While exercising jurisdiction under Section 33(2)(b) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regards the validity or otherwise of the domestic enquiry held against the delinquent; keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act. In Martin Burn's case, (supra) this Court stated :

"A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that, the Tribunal considering this

question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record (See *Buckingham and Carnatic Co. Ltd. v. The Workers of the Company* (1952) Lab.AC. 490(F)).

"19. It is further trite that the standard of proof required in a domestic enquiry vis-a-vis a criminal trial is absolutely different. Wherein in the former ""preponderance of probability"" would suffice; in the later, ""proof beyond all reasonable doubt"" is imperative."

7. In *Air India's* case (supra), the Apex Court reiterated that, in an approval application filed before the Tribunal u/s 33(2)(b), the Tribunal has to consider, as to whether prima-facie case has been made out as regards the validity of the domestic enquiry held against the delinquent and in determining whether prima-facie case has been made out, the relevant consideration is, whether on the evidence led, it was possible to arrive at the conclusion that can be arrived at on the evidence. In other words, the Tribunal ought not to substitute its own judgment for the decision in question, if the view that had been taken by the disciplinary authority is, a possible view on the matter. The Apex Court quoted with approval, its earlier decisions in *Cholan Roadway's* case as also in *Martin Burns* case. The Court also considered the expression "wages" to hold that, the expression has been defined to mean, all the remuneration capable of being expressed in terms of money and it would be payable to a workman in respect of his employment or of work done in such employment, if the terms of employment, expressed or implied, were fulfilled. The intention of the Legislature noted by the Apex Court for interpreting Section 33(2)(b) was as follows :-

".The intention of the legislature in incorporating this provision was noted by the Supreme Court in *Syndicate Bank Ltd. Vs. K.R.V. Bhat*, AIR 1968 SC 231 : (1968) 16 FLR 39 : (1968) LabIC 207 : (1967) 2 LLJ 745 : (1968) 1 SCR 327 as being to soften the rigor of unemployment that will face the workman, against whom an order of discharge or dismissal has been passed. The wages of one month, the Supreme Court has held, are conceptually for the month to follow the month of unemployment; wages for the month following the date of dismissal and not a repetitive wage of the month previous to the date of dismissal."

8. The observations in the decision in *Syndicate Bank's* case (supra) need not be separately noted, they having been quoted in *Air India's* case. In *Caltex India's* case (supra) while considering a similar application, the Apex Court referred to its earlier decisions to hold as follows :-

"We have clearly laid down there that the industrial tribunal has no jurisdiction while entertaining an application under S.33 of the Industrial Disputes Act, 1947, to consider whether the punishment sought to be meted out by the employer to the workman is harsh or excessive. The measure of punishment to be so meted out is within the sole discretion of the employer who is to judge for himself what

is the punishment commensurate with the offence which has been proved against the workman. The only jurisdiction which the industrial tribunal has under S.33 is to determine whether a prima facie case for the meting out of such punishment has been made out by the employer and the employer is not actuated by any mala fides or unfair labour practice or victimization. Once the industrial tribunal came to the conclusion in the present case that the enquiry which was conducted by the appellants was fair and no principles of natural justice had been violated in the conduct of the enquiry and the appellants bona fide came to the conclusion that dismissal was the only punishment which should be meted out by them to the first respondent, the industrial tribunal had no power to substitute another punishment for the one which was sought to be meted out by the appellants to the first respondent nor to impose any conditions on the appellants before the requisite permission could be granted to them."

9. Mr. Shaikh relies, on the other hand, upon the decision of the Apex Court in *Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another*, AIR 1978 SC 1004 : (1978) 36 FLR 258 : (1978) LabIC 716 : (1978) 1 LLJ 507 : (1978) 3 SCC 1 : (1978) 3 SCR 82 : (1978) 10 UJ 185 on the aspects to be considered in approval application under Section 33(2)(b). At para-12 of the decision, the Apex Court after looking into its several other decisions, stated the position in law that emerges from the decisions considered by it in the following terms. It held that, 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 bonafide conclusion that the employee was guilty and that the dismissal did not amount to unfair labour practice and was not intended to victimize the employee ?

(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 reasonable time has to form part of the same transaction, applied to the authority before whom the main industrial dispute is pending for approval of the action taken by him ?

If these conditions are satisfied, the Industrial Tribunal had to grant approval for the action taken. The Industrial Tribunal was not to assume the role of an appellate authority while considering the application for approval and exceed the well-defined limits of its jurisdiction in refusing to accord its approval of the action taken against the appellant. This decision cited by Mr. Shaikh, in no way dilutes the argument of Mr. Pai. In fact, it supports his argument on the limited scope of enquiry into the application.

10. The position of law that emerges from the above decisions of the Apex Court is that the intention of the legislature in incorporating Section 33(2)(b) this provision is to soften the rigor of unemployment that will face the workman, against whom an order of discharge or dismissal has been passed. Hence while exercising jurisdiction the Tribunal is only required to see whether a prima case has been made out as regards the validity of the domestic enquiry held against the employee and that the Tribunal has not to substitute its own judgment for the judgment in question. The Tribunal has to only satisfy itself that the domestic enquiry held by the employer was fair and proper and the rules of natural justice were followed by giving adequate opportunity of hearing to the employee. Once that is established, the Tribunal cannot enter into any further enquiry as regards the propriety of the findings given by the enquiry officer and the punishment of dismissal from service awarded by the employer, as the same would amount to acting like an appellate authority over the decision of the employer.

11. In the case on hand, the Tribunal has clearly exceeded its jurisdiction by enquiring into the propriety of the inference drawn by the enquiry officer by holding in three of the applications that the inference of guilt drawn by the enquiry officer was perverse and by holding in all the applications, that the punishment was excessive. It is to be noted that, it was not even the case of the employee that, the action taken by the employer lacked bonafides or was by way of victimization. Therefore, there was no occasion for the Tribunal to look any further into the matter beyond ensuring that the enquiry conducted was fair and proper and in accordance with the principles of natural justice.

12. This brings us to the next question of, the payment to be made to the employee at the time of dismissal from service. The proviso to Section 33(2)(b) is clear and unambiguous. It refers to payment of wages of one month to the employee. The purpose of making this payment, has already been clarified in *Air India's* and *Syndicate Bank's* case (supra). It is only to soften the rigors of unemployment what would face the workman on dismissal from service. The payment of wages of one month would prevent destitution and help the employee to sustain himself during the search for employment. In the case on hand, the employer has paid wages for 34 days to the employee by way of one month's salary. Mr. Pai, submits that, the addition of wages of 4 days into the notice pay is by way of abundant caution, so as to avoid any dispute as regards the calculation of days of service of one month. This payment, according to him is complete compliance with the proviso to Section 33(2)(b).

13. Mr. Shaikh, per-contra submits that, on the date of dismissal from service, each employee was entitled to receive wages for the work done for varying periods and the employer was duty bound to pay wages for the work done by the employee at the time of dismissal from service. Therefore, in addition to giving one month's wages, it was necessary for the employer to pay the wages for the work done earlier. He submits that, the Tribunal had therefore correctly adjusted the amount paid to the employee towards the past wages and held that the

payment made alongwith the order of dismissal was short and not in accordance with the proviso to Section 33(2)(b).

14. In the circumstances, it is now required to be seen whether the Tribunal could do any such adjustment of the payments to the employee in its limited jurisdiction under Section 33(2)(b). The answer for the question must necessarily be in the negative. Ordinarily, an employer is not required to seek approval of any authority or the Court while dismissing employee on the ground of misconduct. On dismissal from service, the only remedy available to the employee, is to challenge the order of dismissal by resorting to Section 10 of the I.D. Act. It is only in the exceptional circumstance of pendency of proceedings in respect of an industrial dispute that, the employer needs to seek approval of the authority before whom the proceedings are pending. The proviso to Section 33(2) (b) has been added only for the purpose of ensuring that no prejudice is caused to the employee for prosecuting the proceedings in respect of the industrial dispute. The proviso merely serves the purpose of ensuring a fair, reasonable and actual opportunity of hearing to the employee in such proceedings. In other words, it is to prevent sabotaging of the proceedings by dismissing an employee from service during it's pendency. Therefore, the enquiry into the act of the employer dismissing the employee from service under Section 33(2)(b) is not same as the enquiry under Section 10 of the I.D. Act, which is challenge to the action of dismissal from service. Even after grant of approval of action of dismissal to the employer, the employee can always proceed under Section 10 of the I.D. Act to challenge the same. Similarly, if an employee has any other claim against the employer towards any past wages or any other dues, he is not without remedy or recourse in law for claiming the same even after the approval for dismissal is granted by the Court. Therefore, the exercise of adjustment of the amount done by the Tribunal towards the past dues of the employee was clearly without jurisdiction.

15. Mr. Shaikh, made an attempt to argue that, though the proviso to Section 33(2)(b) is clear and unambiguous in its terms, the Court by keeping in mind, the fact that it is a social, beneficial legislation, must give an extended meaning to the term "wages of one month" by holding that the employer must clear all the dues pending as on that date before dismissing the employee. He relies upon three decisions of the Apex Court, on his argument, in support of the extended interpretation of the proviso. The first decision cited is of, the Constitution Bench of the Apex Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., AIR 2001 SC 3527 : (2001) 91 FLR 182 : (2001) 7 JT 268 : (2001) LabIC 3656 : (2001) 2 LLJ 1087 : (2001) 5 SCALE 626 : (2001) 7 SCC 1 : (2001) SCC(L&S) 1121 : (2001) 4 SCT 1 : (2001) AIRSCW 3574 : (2001) 6 Supreme 602 . The observations of the Apex Court, in this decision, infact supports the petitioner rather than the respondent. The Apex Court observes that, the rule of literal interpretation has to be adhered to the provision which is clear and unambiguous. The relevant observations at para-25 and 102 reads as follows :-

"25. It is a well-settled proposition of law that the function of the Court is to interpret the Statute to ascertain the intent of the legislature-Parliament. Where the language of the Statute is clear and explicit the Court must give effect to it because in that case words of the Statute unequivocally speak the intention of the legislature. This rule of literal interpretation has to be adhered to and a provision in the Statute has to be understood in its ordinary natural sense unless the Court finds that the provision sought to be interpreted is vague or obscurely worded in which event the other principles of interpretation may be called in aid. A plain reading of the said phrase, under interpretation, shows that it is lucid and clear. There is no obscurity, no ambiguity and no abstruseness. Therefore, the words used therein must be construed in their natural ordinary meaning as commonly understood."

"102. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature."

Similar, are the observations in the second decision cited by Mr. Shaikh in B. Premanand and Others Vs. Mohan Koikal and Others, AIR 2011 SC 1925 : (2011) 129 FLR 439 : (2011) 4 JT 130 : (2011) 3 SCALE 598 : (2011) 4 SCC 266 : (2011) 1 SCC(L&S) 676 : (2011) AIRSCW 2546 : (2011) 2 Supreme 598 .

16. For the reasons above, it is held that, the scope of enquiry under Section 33(2)(b) of the I.D. Act, to be undertaken for grant of approval for dismissal of an employee is limited to see whether, prima-facie, the domestic enquiry held by the employer was fair and proper and in accordance with rules of natural justice. Once that is established, the Tribunal cannot enter into further enquiry as regards the propriety of findings of the enquiry officer and the punishment of dismissal. Further, the wages payable thereunder cannot be extended beyond the period of one month. If the employee has any claim against the employer, either towards past wages and any other dues that do not form part of the wages, he needs to file appropriate proceedings to recover the same.

17. The petitions are allowed. The orders impugned in the petitions are set aside. The application for approval being Application (IT) No. 19 of 1997, Application (IT) No. 20 of 1997, Application (IT) No. 23 of 1997, Application (IT) No. 24 of 1997, Application (IT) No. 25 of 1997 filed by the petitioner are allowed.