
(1966) 12 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 576 of 1965

Suman Varma

APPELLANT

Vs

Nava Bharat Karmachari Sangh and Others

RESPONDENT

Date of Decision : 06-12-1966

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 11, 15, 2, 33B, 33B(1)

Citation : AIR 1967 MP 275 : (1967) 14 FLR 419 : (1970) ILR (MP) 292 : (1967) JLJ 456 : (1968) 2 LLJ 280

Hon'ble Judges : P.V. Dixit, C.J.;R.J. Bhawe, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; G.L. Oza and R.K. Verma for Respondent 1, for the Respondent

Final Decision : Partly Allowed

Judgement

1. The petitioner in this case, who is the Manager of "Nava Bharat", a Hindi daily newspaper published from Indore, seeks a writ of certiorari for quashing an award made by the Labour Court, Jabalpur, In a dispute referred to it for adjudication by the State Government u/s 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

2. The order by which the dispute adjudicated upon by the Labour Court was referred to that Court was made by the State Government on 21st October 1968 and ran thus-

"Whereas the State Government is of opinion that an Industrial Dispute exists between the Manager, Nav Bharat, Indore, and the Nava Bharat Karmachari Sangh, Indore, regarding the termination of services of two workmen as specified in the schedule hereto annexed;

And whereas the State Government consider it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the State Government hereby refers the said dispute for adjudication to the Labour Court, Indore, constituted u/s 7 of the said Act.

SCHEDULE

(1) Whether the termination of services by the management of Nav Bharat, Indore. of Shri Kantikumar Shukla and Shri Satyanarayan Pande, sub-editor and compositor, from 16th and 17th August, 1968, respectively was bona fide and legal?

(2) If not, to what relief are they entitled?"

By the impugned award, the Labour Court set aside the order of the Management of "Nava Bharat" terminating Shri Shukla's services, and directed the Management to reinstate Shri Shukla in his former post and pay him all the wages due to him from 16th August 1963, the date on which his services were terminated, upto the date of his reinstatement. The Labour Court held that the order of the Management terminating Shri Pande's services was bona fide and legal and that he was not entitled to any relief. The present petition is concerned only with the matter of termination of Shri Shukla's services

3. The material facts found by the Labour Court are that Shri Shukla was first employed in February 1961 on the editorial staff of "Nav Bharat" as a sub-editor. He left that employment after a year or so, and then again he was employed by the Management to the same capacity on 20th August 1962, Sometime in July or August, 1963, some of the employees of "Nava Bharat" decided to form a Union. A notice embodying this idea was circulated to the employees asking them to collect on 6th August 1962 for preliminary discussions. The preliminary discussions were followed by a meeting held on 15th August 1963 for the establishment of a Sangh, for the election of office-bearers and for taking steps for the registration of the Union. The Union was registered on 31st August 1963 as "Nava Bharat Karmachari Sangh," and that Sangh is the first respondent in this petition. The Labour Court has found that Shri Shukla was the moving spirit behind the formation of the Union and was mainly instrumental in bringing into existence the Union, and that the petitioner, Shri Suman Verma, who is the Manager of "Nava Bharat," did not at all like the formation of the Union. On 14th August 1963 the Management addressed a letter to Shri Shukla intimating to him that the Management no longer needed his services and that his services would stand terminated from 16th August 1963.

4. On these facts, and on the evidence on record, the Labour Court reached the conclusion that the Management of "Nava Bharat" "victimised" Shri Shukla for his activities in bringing into existence a Union of the employees of "Nava Bharat" and that consequently the order of the Management terminating his services was neither bona fide nor legal. The Labour Court stated its conclusion thus:

"Thus, in this case, it is held that K.K. Shukla was an active Union worker, that this work was not to the liking of the management (manager Suman Verma), that his services were terminated abruptly on the very next day when a meeting was held at his house to establish the union and at which the manager had expressed his dislike of the formation of the union and that the reasons for terminating the services of K.K Shukla given in the termination order or in the Court have not been found to be correct or proper In these circumstances, it can well be inferred, in fact it is the only possible inference that Suman Verma. Manager of Nava Bharat, terminated the services of K.K. Shukla because he was actively taking part in the formation of the Sangh. Our Constitution has given the fundamental right in freedom of organisation In organising the Sangh, K.K Shukla and others were only exercising their fundamental rights guaranteed by the Constitution and the action of the manager of Nava-Bharat in victimising K.K. Shukla for these activities was neither bona fide nor legal."

The Court rejected the contention of the Management that Shri Shukla's services were terminated for four reasons, namely, (i) that he took up employment with "Nava Bharat while serving in the Education Department of the Government, (ii) that he used to remain absent every month for prolonged period. (iii) that by organising press-workers, he tried to remain in service by adopting pressure tactics, and (iv) that he deliberately inserted in the issue dated the 6th August 1963 a news-item about the formation of the Union, although the news-item had been withheld by another sub editor. The Management also urged before the Labour Court that Shri Shukla a services were temporary and that the termination of his services by the Management was only in terms of the contract of employment. While negating this contention, the Labour Court observed that the Management had not been able to prove that Shri Shukla was employed on a temporary basis, and that even if his services were temporary and the Management put an end to them in the exercise of its rights under the contract of employment, still the termination was illegal and bad inasmuch as it was "merely a cloak for victimising the employee"

5. Shri Dharmadhikari learned counsel appearing for the petitioner first submitted that the dispute, which was referred to the Labour Court for adjudication by the order dated the 21st October 1963 of the State Government, was a dispute between two bodies, namely, the Manager. "Nava Bharat". Indore and the "Nava Bharat Karmachari Sangh", Indore: that such a dispute between two bodies was totally outside the definition of "industrial dispute" given in Section 2(k) of the Act, and that, therefore, the Government had no power to refer such a dispute to the Labour Court for adjudication u/s 10(1) of the Act and the Labour Court also had no jurisdiction to make any award in the reference Learned counsel relied on Aulia Bidi Factory Burhanpur v. Industrial Tribunal, MP, 1966 MPLJ 354= (AIR 1967 Madh Pra. 44). There is no substance in this contention. It is manifest from the order dated the 21st October 1963 of the State Government referring the dispute to the Labour Court that the dispute that was referred to the Court for adjudication was not one between two bodies,

namely, the Manager of "Nava Bharat" and the "Nava Bharat Karmachari Sangh" without there being any dispute between the employer and the employees. As is clear from the preamble of the order, dated the 21st October 1963, and the schedule to it, the dispute which the Labour Court was called upon to adjudicate was regarding the termination of services of Shri Shukla and Shri Pande.

This dispute, between the Management on the one hand and the two employees on the other, was taken up by the Nava Bharat Karmachari Sangh and it became an "industrial dispute". The reference was, therefore, validly made by the State Government to the Labour Court and that Court had jurisdiction to make an award in the reference made to it. There is a distinction between the present case and the case of *Aulia Bidi Factory and Others Vs. Industrial Tribunal and Others*, , where the Government made a reference to the Industrial Tribunal merely after forming the opinion that an industrial dispute existed between the *Rashtriya Bidi Mazdoor Sangh* and the *Bidi Manufacturer's Association*, Burhanpur, and without forming any opinion on the question whether an industrial dispute as between employers and employees, or between employers and workmen, or between workmen and workmen, existed or was apprehended. The decision in the case of *Aulia Bidi Factory and Others Vs. Industrial Tribunal and Others*, is, therefore, not in point here.

6. It was next urged by the learned counsel that on 16th August 1963, that is to say, on the date on which Shri Shukla's services were terminated, Shri Shukla was not a member of any registered Union of the employees; that the respondent No. 1, the "Nava Bharat Karmachari Sangh" was registered on 31st August 1963; and that this Sangh, which was registered after Shri Shukla's services were terminated, was not competent to espouse the cause of Shri Shukla and convert the individual dispute between him and the Management with regard to the termination of his services into an "industrial dispute". This contention also lacks substance. It is no doubt true that the dispute between a single workman and his employer cannot be an "industrial dispute" unless it is taken up by the Union of employees or a number of workmen in the same establishment (See *Association of Medical Representatives (M and V) Vs. The Industrial Tribunal and Others*, , *Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan*, ; *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, ; *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, ; *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*,) : 1961-2 Lab LJ 436

But it is not necessary that a registered body should sponsor its workman's case to make it an "industrial dispute". Once it is shown that a body of workmen, acting through their Union or otherwise, has sponsored a workman's case, it becomes an "industrial dispute". This is clear from the decision of the Supreme Court in *Newspapers Ltd., Allahabad Vs. U.P. State Industrial Tribunal and Others*, . Here, as has been found by the Labour Court, the Sangh of the employees of "Nava Bharat", had come into existence on 15th August 1963

although it was registered on 31st August 1963. Shri Shukla was thus a member of the unregistered Sangh on 16th August 1963 when his services were terminated. But, as pointed out earlier, it makes no difference whether the Union or the Sangh, which sponsored Shri Shukla's cause, was or was not a registered body on 16th August 1963. As held by the Supreme Court in the case of *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, what is essential for converting a dispute in respect of an alleged wrongful termination of employment into an "industrial dispute" is that before it is referred to the Labour Court or the Tribunal for adjudication, it must be supported by the union of the employees or by an appreciable number of the employees in the same establishment. This condition was clearly satisfied in the present case by the fact that the dispute with regard to the termination of Shri Shukla's services was supported by the "Nava Bharat Karmachari Sangh" of which Shri Shukla was a member on the date on which his services were terminated and which body became a registered body on 31st August 1963.

7. Learned counsel referred us to *Khadi Gramodyog Bhavan Workers v. Industrial Tribunal* (1965) 29 FLR 122 : (AIR 1960 P&H 173) where it has been held that an industrial dispute between a workman and his employer will become an "industrial dispute" as defined by the Act only if the cause of the individual workman is espoused by a trade union of workmen of which such workman was a member on the date of his dismissal and the fact that he became a member after the dismissal will be of no avail to him. It is not necessary for us to determine here whether the membership of a union, entitling it to espouse the cause of a workman, must be one anterior to the date of dismissal or can also be subsequent to it. Here, as pointed out earlier, Shri Shukla was a member of the "Nava Bharat Karmachari Sangh" on 16th August 1963, which was then an unregistered body. The contention of the petitioner that the dispute referred to the Labour Court was an individual dispute and the "Nava Bharat Karmachari Sangh", which was registered on 31st August 1963, was not competent to sponsor that dispute cannot, therefore, be accepted

8. The next contention put forward by the learned counsel for the petitioner was that by the order dated the 21st October 1963 the dispute was referred to the Labour Court, Indore, for adjudication but on 2nd April 1965 the Government passed an order u/s 33B of the Act transferring all proceedings pending in the Labour Courts at Gwalior, Bhopal, Ujjain and Indore to the Labour Court, Jabalpur. It was said that Section 33B only permitted the Government to withdraw any particular proceeding from one Labour Court and transfer it to another, and not the withdrawal of all cases in a Labour Court or tribunal and their transfer to another Labour Court or tribunal.

Learned counsel suggested that the expression "any proceeding" occurring in Section 33B(1) meant any one particular proceeding; and that there should have been an express order specifically withdrawing from the Labour Court, Indore, the reference made to it by the order dated the 21st October 1963 and

transferring it to the Labour Court, Jabalpur We are unable to accept this contention. What happened in the present case was that when the reference was made to the Labour Court, Indore, the presiding officer of that Court was Shri Kanamadikar, who was eligible to exercise powers under the Industrial Disputes Act, 1947 During the pendency of the reference Shri Kanamadikar was appointed as a Judge of the Industrial Court.

His successor Judge of the Labour Court was, however, not eligible to exercise powers under the Act. It, therefore, became necessary to transfer the reference to a Labour Court presided over by a Judge eligible to exercise powers under the Act. The power of transfer conferred by Section 33B could, therefore, be validly exercised for the transfer of all proceedings pending in the Labour Court, Indore, to the Labour Court, Jabalpur. The expression "any proceeding under this Act pending before a Labour Court" occurring in Sub-section (1) of Section 33B is intended to cover every proceeding of whatever character pending in a Labour Court. The word "any" can have one of several meanings, according to the circumstances. It can mean "all", "each", "every", "some" or one out of several". Section 33B(1) does not contain anything to suggest that, for the transfer of any particular proceeding from one Labour Court to another there must be a specific order with regard to the transfer of that particular proceeding. A general order transferring all proceedings pending before a Labour Court to another Labour Court is u/s 33B a valid order of transfer of all those proceedings.

9. It was then argued on behalf of the petitioner that by virtue of Section 14 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, the provisions of the Industrial Employment (Standing Orders) Act, 1946, have been made applicable to every newspaper establishment; that the termination of Shri Shukla's employment by the Management was on the basis of the Standing Orders; and that consequently the question whether the Management acted bona fide or mala fide in putting an end to his services could not arise. This contention must be rejected. It is now well settled by the decisions of the Supreme Court in *Assam Oil Company Vs. Its Workmen*, *The Chartered Bank, Bombay Vs. The Chartered Bank Employees' Union*, *The Management of U.B. Dutt and Co. Vs. Workmen of U.B. Dutt and Co.*, and *The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another*, that even where under the contract of employment or the Standing Orders the employer is empowered to discharge the workman merely by giving notice, and the order of discharge purports to be made in exercise of that power, if is competent for the tribunal to enquire into the actual facts of the case and to determine the circumstances which led to the order, and if the tribunal finds that the action taken was in substance a result of victimisation or unfair labour practice, or a punitive measure for some misconduct, the tribunal can interfere and reverse the order made by the employer. Here the Labour Court has found as a fact that the action taken by the Management of "Nava Bharat" against Shri Shukla was mala fide and was in substance a result of victimisation. This finding of fact cannot be disturbed in these proceedings. If that finding is accepted, as it must be, then

the award of the Labour Court setting aside the order terminating Sri Shukla's services is clearly legal.

10. There remains the question whether even if the order terminating Shri Shukla's services is, as found by the Labour Court, mala fide and illegal, the Labour Court was justified in ordering reinstatement in service of Shri Shukla when on the evidence on record it is aberrantly plain that Shri Shukla has forfeited the employer's confidence. It cannot now be doubted that the tribunal can in exceptional circumstances award compensation to an employee for his illegal termination of service in lieu of reinstatement.

It has been held by the Supreme Court in *Assam Oil Company Vs. Its Workmen*, , *The Punjab National Bank Ltd. Vs. Its Workmen*, and *Management Utkal Machinery Ltd. Vs. Workmen*, *Miss Shanti Patnaik*, that even when the order of dismissal or discharge made by the employer is set aside as being illegal, if it is found that the employee had occupied a position of confidence and that such confidence had been lost by reason of bad work or failure to carry out orders it would not be fair either to the employer or the employee to direct reinstatement and in such a case, relief by way of substantial compensation in lieu of reinstatement would meet the requirements and would be a reasonable and proper order. In the present case, it is obvious from the material on record that Shri Shukla has lost the confidence of the Management and it would not be conducive to the harmonious and smooth running of the newspaper establishment or to the promotion of Shri Shukla's own interests to direct his reinstatement in service.

In our judgment, this is a fit case in which the Labour Court should have awarded compensation for illegal termination of service in lieu of reinstatement. As regards the proper rate of compensation in lieu of reinstatement, the Supreme Court has ruled in *Anglo-American Direct Tea Trading Co. Ltd v. Workmen*. (1961) 20 FLR 523 (SC) that where the order of dismissal or discharge made by the employer is wrongful and unjustified, and for some good reason reinstatement of the workman is not ordered by the Tribunal, it is quite proper to award by way of compensation (a) full wages for the period from the date of the order of dismissal or discharge to the date of the tribunal's order, and (b) one month's average wage for every year of completed service. In the award made by the Labour Court there is already a direction with regard to payment to Shri Shukla of all his wages from 16th August 1963, that is the date of his termination from service, to the date of his reinstatement in service. This direction must, therefore, be modified so as to give to Shri Shukla full wages from 16th August 1963 to 16th August 1965, the date on which the award was pronounced by the Labour Court, Jabalpur. As Shri Shukla had put in less than one year's service when he was discharged, the question of awarding him additional compensation calculated at the rate of one month's average pay for every year of completed service does not arise.

11. For the foregoing reasons, this petition is allowed in part. The direction given

by the Labour Court, Jabalpur. with regard to Shri Shukla's reinstatement in service is quash ed. The direction in the award with regard to payment of wages to Shri Shukla is varied with the modification that the employer shall pay to Shri Shukla all his wages from 16th August 1963 to 16th August 1965. In the circumstances of the case, we leave the parties to bear their own costs of this petition. The outstanding amount of security deposit shall be refunded to the petitioner.