

(1958) 12 KL CK 0010
In the High Court Of Kerala

Sundareswaran

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 01-12-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1959) 1 LLJ 510

Hon'ble Judges : N. Varadaraja Ayyangar, J

Bench : Single Bench

Judgement

N. Varadaraja Ayyangar, J.—This is a petition under Article 226 of the Constitution by Mr. N. Sundareswaran, proprietor, N. S. Tin Factory, Quailing. The complaint is directed against an award dated 11 September 1957 and published in the Kerala Gazette dated 24 September 1957, passed by the respondent 1, Industrial Tribunal, Trivandrum, in dispute connected with the retrenchment by him of certain workers of his tin factory represented by the respondent 2, the Tin Factory Workers' Union.

2. The tin factory is engaged in the business of making tin cans used for packing cashews that are exported from India. There are three different sections in the factory, viz., the tinkering section, the machine section and the sundry section. Each section has its category of workers. The tinkering section which is concerned with tin making has 28 men called tinkers. On 4 June 1955 the petitioner put up notice retrenching twelve tinkers. Six of them accepted compensation and left service. The rest approached Government through the union and got the matter referred to the respondent 1 tribunal. Evidence was let in on both sides and eventually the tribunal passed the award in question filed as Ex. A, reinstating the six workers concerned with back wages at the rate of Rs. 20. The main ground taken by the petitioner before this Court is that the tribunal has exercised jurisdiction arbitrarily in that it ignored material and important facts and the award was in consequence wrong and also suffered from error apparent on the face of the record. The prayer was accordingly made for issue of

a writ of certiorari quashing it. The respondent 2 union has appeared to contest.

3. Now the only ground which it would appear was stated in the notice for retrenchment dated 4 June 1955 was " long and continuous shortage of work in the section." By Ex. D letter of protest dated 9 June 1955 the union questioned the above assumption and further complained that the workers were being overworked before and after the retrenchment. Before the tribunal the long and continuous shortage was explained to be the fall in production for a period of five of six months immediately preceding the notice and evidence was also sought to be let in as to a fall in the average daily production subsequent to the retrenchment. The tribunal examined the figures of the total production in the first halves respectively of 1954 and 1955 and found that there had not been any appreciable fall and that except for an unprecedented rise In one particular month, viz., April 1954, there had been appreciable rise or a steady upward trend as months passed in 1955. In the tribunal's opinion, the contrast, if at all, between the production figures before and after the retrenchment also relied on by the management could not be helpful. The tribunal, therefore, came to the conclusion that the ground alleged in the retrenchment notice had not been made out.

4. There were however two more grounds which the management raised, one in their reply statement and the other at a still later stage during the course of the arguments, which also the tribunal considered on the merits notwithstanding the preliminary objections raised by the union, and ultimately found against. The first of these was that the twelve workmen retrenched were surplus to requirements because each workman could solder 250 tins per day and so not more than 16 on the whole were necessary for finishing the 3,600 tins which the accounts showed was the average production per day. But the management themselves admitted that there was no question of increase in the cost of production arising from the retention of all the workmen for the payment was made only on a piece-rate basis. And again, in the view of the tribunal, the average based on the year's production was bound to be misleading. For the demand for the product here fluctuated from day to day and month to month depending on the cashew export requirements. On the other hand, there was was the complaint supported by the evidence before the tribunal about causing the workmen to do overtime work without giving them overtime wages. The management no doubt denied this flatly but the tribunal found from the figures of production in certain months that the allegation was not without basis.

5. The second of the supplemental grounds was that some of the old workmen clamored for more work to enable them to earn more and the management could not but yield to such legitimate demand. But the petition said to be presented in this behalf was not produced. And it also appeared that one of the junior workmen whom the management themselves admitted should have been included in the retrenchment cub mistakenly omitted so to include, was one of the signatories. The tribunal therefore found this ground to be lacking in bona

fides and not made out. In this connection, the tribunal also considered a petition u/s 33 filed by the management and praying for sanction to discharge two junior workmen in place of two seniors included among the twelve workers retrenched and dismissed it as not maintainable. The tribunal wound up its award by remarking that in the absence of any ground to support the retrenchment, the management must really have indulged in victimization particularly in the face of the circumstance that 4 of the 12 retrenched workers consisted of office-bearers of the union.

6. The question when an adjudicator can interfere with a retrenchment of workmen effected by the management has been the subject of several decisions. As stated by the Labour Appellate Tribunal in *Viswamithra Press v. workmen of Viswamithra Press and Ors.* 1952 I L.L.J. 181:

It is the prima facie right of the management to determine its labour force and the management would be the best judge to determine the number of workmen who would become surplus on the ground of rationalization, economy or other reasons on which the retrenchment can be sustained. Where in effecting the retrenchment, the management acts in a bona fide manner, the number retrenched by it ought to be accepted.

In a later case *Sri Sudersan Banerjee and Ors. v. MacLeod Company, Ltd.* 1954 I L.L.J. 174 the Labour Appellate Tribunal indicated the two circumstances in which the adjudicator could go into as follows:-

Whether a case for retrenchment has been made out, that is to say, that the grounds for saying that there is surplus labour, has been made out by the employer, and secondly, even if such a ground has been made out, whether the employer has acted bona fide in the matter of retrenchment.

Reference may also be made to *J.K. Iron and Steel Co. Ltd., Kanpur Vs. The Iron and Steel Mazdoor Union, Kanpur*, The learned Judges held that

the only right the workman has, when his services are lawfully terminated after service of due notice and so forth, is to question the order on only two grounds-

(1) that he has been discharged for reasons not connected with his employment, and

(2) that the reason of discharge communicated to him is not genuine.

And they indicated that it was wrong to say that retrenchment is a measure of last resort and

that an employer must continue to lay off his workmen, however uneconomical that may be to the business, still less that he must lay them off in rotation and thus affect other workmen who would not be affected by a legitimate order of retrenchment. That cuts at the root of the above principle.

In the above case the learned Judges set aside the award of the adjudicator

because they found that instead of drawing up issues he proceeded at once to record evidence and entered upon a rambling enquiry which embraced questions which had not been raised at all. On the only point on which the parties were really at issue, namely, the good faith of the management, the findings were in favour of the company, and finally he based his conclusions on " some airy view " of what he considered would be a good thing for the workmen.

7. Judged by the above tests it seems to me that the Ex. A. award is beyond challenge and can well sustain. Learned counsel based his attack on the award mainly on the ground that the tribunal has totally misled itself by thinking

(1) that because of the piece-rates system that prevailed, the retention of the workmen cannot be uneconomical;

(2) that the average production based on the years" returns was not a safe test;

(3) that the allegation as to overtime working was not without basis; and

(4) that office-bearers of the union should properly have been consulted before the retrenchment measure was adopted and the award must in consequence go.

It seems to me on the other hand that these steps in the reasoning cannot be said to be wrong and even otherwise cannot form a basis for interference by this Court in the exercise of its jurisdiction under Article 226. Indeed the tribunal placed in its fore-front and correctly the principle that should guide it in the determination of the matter and in my judgment has not failed to abide by it in actually coming to its conclusion.

8. The result is that the petition falls. It is therefore dismissed with costs. Counsel's fee Rs. 150.