
(1960) 04 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 778 of 1958

Superintendent, Erumeli Estate

APPELLANT

Vs

Labour Court, Quilon

RESPONDENT

Date of Decision : 05-04-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 15

Citation : AIR 1961 Ker 44

Hon'ble Judges : M.A. Ansari, C.J;T.C. Raghavan, J

Bench : Division Bench

Advocate : K.P. Abraham, George Kurien, Thomas Vellapally, E.M. Jacob and T.K. Kochuthommen, for the Appellant; Government Pleader, V. Viswanatha Menon and V.N. Gopalakrishnan Nair, for the Respondent

Final Decision : Allowed

Judgement

Ansari, C.J.—This writ petitioner is the Superintendent of the Travancore Rubbers Ltd., and his employer had newly constructed a cooly line consisting of seven rooms. Before the construction had been completed, seven of the coolies employed by the Estate entered and each occupied a room. This happened on the night of 27-12-1950, and at the same time two other workers unauthorisedly occupied what had been till then filled by two out of the seven employees who had without permission occupied the new rooms.

The writ petitioner's case is that they did it without permission, that the unauthorised conduct resulted in hindering the construction, that next morning the petitioner asked them to vacate, that only one obeyed by vacating the new room he had occupied, and that the others failed notwithstanding repeated demands by the petitioner on December 28, 29 and 30, 1956. The next part of the petitioner's case is that thereafter notices were served individually on the workers to attend an enquiry to be held at 10 A. M. on 1-1-1957, that these notices stated the workers being liable to dismissal, should the misconduct be

proved and that the workers refused to vacate, did not attend the enquiry and were dismissed.

The writ petitioner also avers that the eight workers" left only after the police came on the spot on a complaint by the petitioner, and that soon after an industrial dispute developed between the Estate and the Workers" Union called Akhila Kerala Plantation Labour Union; The Government had referred the dispute to the Labour Court, Ernakulam, for adjudication, and on its abolition, the aforesaid case was transferred to the Labour Court, Qulin. The issue so referred and later transferred reads as follows:

"Whether the dismissal of the following workers is justified? To what reliefs are they entitled, if their dismissal is

(a) justifiable

(b) not justifiable?....."

2. Before the "Court, the case on behalf of the Union was that the plantation was dominated by influential Malayalee families, that any attempt to organise the workers was resisted by them, and that from 1949, efforts were being made to organize workers which were being smashed by brutal attacks. The case of the Union further was that the new line, had been apportioned among the workers, who occupied the line that the Superintendent later heard about the occupants paying Union dues, that he thereafter assaulted the new occupants, that the workers protesting committed hartal, that the management effected four days" cut in their wages, and that the eight workers alone were dismissed, but those who sided with the management were not.

The last part of the Union"s case was that the dismissal was illegal, that the workers had not violated any standing orders, that they had not committed any offence, that no reasonable cause was shown for the dismissals, that the dismissals were on untrue, illegal and insufficient grounds and were meant to victimise the workers.

3. The Court has found¹ that there was a pro per enquiry into the charges against the workers and agreed with the finding of the domestic Tribunal that all the concerned, workers were liable for mis- conduct in having disobeyed the order of the Superintendent, but the Court thought that the punishments in the case were unduly harsh, and the workers did. not merit such sentences in the circumstances of the case. The concluding part of the award on this point is relevant, and we would quote it:

"Sometimes punishment itself will give an indication of victimisation. Further there is evidence in this case to show that one of the workers who occupied the lines along with the dismissed workers is still allowed to remain there, and he happens to be a member of a rival Union. After all the lines are constructed for their residence and it may be true that they have occupied the same anticipating sanction of the Superintendent. . It is also in evidence that there is no register in

the Estate to show that quarters are allotted to them by the Superintendent. There is also nothing on record to show that, their past record of service is, bad or blameworthy in any way".

4. On these grounds the court has set aside the dismissal orders against the workers, has converted them into those of suspension and has directed the workers to be reinstated with continuity of services, but without back wages. The writ petitioner seeks to vacate the aforesaid part of the award on the ground that it is vitiated by error of law. After hearing the arguments we enquired of the writ petitioner's advocate whether the employer would reinstate the workers, and he has stated that should they apologise, they would be reinstated, but his information was about the dismissed workers having been employed elsewhere.

The Advocate of the Union has expressed that he was not able to get the necessary information concerning the willingness of the dismissed employees for being re-engaged on the aforesaid condition and they were not engaged elsewhere. In these circumstances the petition must be decided on the merits of the legal question arising for adjudication. The writ petitioner's advocate has urged that the jurisdiction in disputes of this nature is limited and the Court has erred on assuming the responsibility of determining what would be the adequate punishment in the case.

It is clear that the Union's case on behalf of the dismissed employees was of their having innocently occupied the new lines, of being assaulted, of being dismissed without enquiry and without opportunity to explain and that such case has not been accepted by the Court. Therefore the short issue to be determined in this petition is whether consistently with the aforesaid finding, the order of reinstatement on the ground of the punishment being harsh could have been passed.

In making the order, the Court has relied on *Sitapore Sugar Works Ltd. Vs. State of Bihar and Others*, where it has been held that in order to protect an employee against vindictive or capricious action on the part of the management, it is open, under the Act, to the Tribunal, to examine the findings of the management on the charge of misconduct under the Act or the Standing Orders to assure itself that there is evidence to support the finding.

Nobody disputes the correctness of this part of the decision; but the learned Judges have further held that the management's conclusion is liable to be reversed, if the Tribunal be of the opinion that the punishment is so unjust as to call for remedy in the interest of justice, and that even if the Tribunal finds that it ought not to interfere with the findings of the management concerning the charge having been proved it must next consider whether it should interfere with the punishment; the Tribunal's discretion to decide what punishment, in the circumstances of each particular case should be meted out to the guilty workman being absolute.

With respect to the learned Judges; we think there is considerable judicial

opinion against the Tribunal having any such jurisdiction. We would first cite the cases where a different view has been taken; and then deal with the argument advanced before us on behalf of the Labour Court, that the Tribunal's authority when adjudicating on disputes referred u/s 10 of the Industrial Disputes. Act is wider than where sanction is sought u/s 33; for in the former class of disputes the Tribunal must observe the paramount duty of "conciliation to achieve which those disputes are referred to it.

5. To begin with the decisions taking the view different from the Sitapore Sugar Works Ltd. Vs. State of Bihar and Others, there are three decisions of this Court. In K.K. Raghavan Vs. Industrial Tribunal, Ernakulam, Viadialingam, J., delivering the Judgment of the Division. Bench, has held that the Tribunal does not sit as Court of Appeal over the decisions of the Domestic: Tribunals on disputes referred u/s 33 of the Act, and that when enquiring whether to give the sanction for the dismissal, the Tribunal should consider whether the management be guilty of any unfair labour practice or victimisation and whether the management has made out a prima facie case for giving permission.

The learned Judge has further held that the Tribunal after reaching a conclusion favourable to-the management has no jurisdiction to refuse the permission or to go into the unreasonableness of the punishment imposed by the employer or to substitute a different one. In Superintendent Nellikai Estate Vs. Their Workmen, the same leaned Judge has again emphasised the management's right to direct its own internal administration and discipline.

He further reiterates that the Tribunal does not act as as a court of appeal and was bound to interfere only where there be want of good faith or victimisation or unfair labour practice, or the management be guilty of a basic error or violation of a principle of natural justice, or where on the materials the finding be completely baseless or perverse. Mr. Justice M.S. Menon has in S. N. V. Sadanam v. Hotel Workers" Union 1959 Ker LT 685 held that the Labour Court had erred in awarding compensation in spite of its categorical conclusion concerning the discharge of the employee being justified.

Coming to decisions by other High Courts in Abdul Khader v. Consolidated Coffee Estates (1959) 2 Lab LC 193 the facts were that the petitioner was employed by the owner of a coffee estate, and his duty consisted in driving a truck having been notified at the time of his appointment that He should not permit any other person to travel in (he truck. The management had charged him with having permitted another to ride On a tiller attached to the truck, there was an enquiry at which his knowledge was established and he was dismissed. "

On a dispute having arisen, the matter was referred to the Tribunal, which held the dismissal to be harsh and unjustifiable. The employer went in appeal before the. Labour Appellate, Tribunal, where a question arose whether an appeal would lie. The Appellate Authority overruling the , objection found that there was no justification for the Tribunal's interference with the dismissal order.

Thereafter a writ petition was filed which was dismissed. Another; learned Judge of the same High Court" in *Combodia Mills Ltd. v. Industrial Tribunal* (1959) 2 Lab LJ 80: (AIR 1959 MP 532) has held that the responsibility for the conducts of an enter prise rests on the management and also the responsibility for maintaining disciplined that the Industrial Tribunal not" a Court of appeal in disciplinary master and cannot interfere except in the cases enumerated by the Supreme Court.

The same learned Judge in *Coimbatore Cotton Mills Ltd. v. Central Govt. Industrial Tribunal* (1959) 2 Lab LT 512 has reaffirmed the same principle. At this stage it may be mentioned that though the aforesaid decisions had been given in connection with the proceedings u/s 33, we think for reasons that we will presently mention that no substantial distinction can be built between such proceedings and those u/s 10. In support of this view we would also cite *Sandanasami Pillai Vs. Ponnuswami (C.) and Others*, where Balakrishna Ayyar, J., was dealing with a writ petition of the employer who had dismissed his employee which had resulted in an industrial dispute and reference to the Tribunal. The Tribunal found deliberate disobedience, but thinking the order to be harsh and" unjustifiable directed reinstatement with continuity of service but without payment of back wages.

The learned Judge held that there was no jurisdiction in the Tribunal to substitute its Own punishment for that imposed by the management. The Patna" view has not been followed in *National Tobacco Co. of India Ltd. and Others Vs. Fourth Industrial Tribunal and Others*, to which the Advocate for the Court has very fairly drawn our attention. There Sinha, J., after citing several Supreme Court authorities has observed as follows at p. 316 (of Cal WN) : (at p. 254 of AIR):

"In such a case, could the Tribunal ignore the results of the managerial enquiry and decide the matter entirely on its own? In such a case, could it interfere on the ground of harshness of the punishment? It has been argued that in the case mentioned above, the Tribunal can go into the whole matter and grant appropriate relief. It is contended that where no question of granting permission arises, the Tribunal can, and must necessarily go into, the whole matter and grant appropriate relief. In other words, once there has been a reference to the Tribunal u/s 10, it must go into the whole matter and its hands are not tied by the results of the domestic enquiry."

6. The learned Judge then observed at p. 320 (of Cal WN): (at p. 256 of AIR) as follows :

"In other words, where there has been a managerial enquiry, and provided that" the rules of" natural justice have been observed, and that there has been a full and fair enquiry, and in the absence of any basic error, mala fides, victimisation or unfair labour practice, the conclusion arrived at by the domestic forum cannot be disturbed. The Tribunal in such cases does not sit as a Court of Appeal and is not entitled to deal with the case ignoring the proceedings before the domestic

forum, and the conclusion arrived at by the Enquiring Officer".

7. Most of the aforesaid decisions holding the jurisdiction of the Labour Tribunal not to be that of the Appellate authority rest on the pronouncements of the Supreme Court. The majority of the pronouncements deal with the powers of the Labour Tribunal when permission is being asked under section 33 of the Industrial Disputes Act. . These are: United Commercial Bank Ltd. Vs. Secretary, U.P. Bank Employees Union and Others, , Caltex (India) Ltd. Vs. E. Fernandes and Another, Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup, Hanuman Jute Mills Vs. Amin Das and Another, The Punjab National Bank Ltd. Vs. Its Workmen, and Martin Burn Ltd. Vs. R.N. Banerjee,

But the Supreme Court has applied the same test in Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, when dealing with the case of Abharani Debi. She was a nurse and the charge against her was of having incited a sweeper not to attend to duty on the morning of September 5, 1953. An enquiry was held and she was found guilty of the charge but the Tribunal found the charge against her to be completely baseless and the enquiry report against her made a mountain of a mole-hill. Before the Labour Appellate Tribunal, the Company did not argue the case and dealing with this matter, S. K. Das, J., observes at p. 138 thus :

"Undoubtedly the management of a concern has power to direct its own internal administration and discipline but the power is not unlimited and when a dispute arises Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the Tribunal does not, however, act as a court of appeal and substitute its own judgment for that of the management. It will interfere (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and (iv) when on the materials the finding is completely baseless or perverse. In our view Abharani's case comes under Clause (iv) above".

It is therefore clear that the principles limiting the Tribunal's power when dealing with permission u/s 33 have been applied to the Tribunal's power when dealing with disputes u/s 10, and the dismissal has been set aside on the ground of its being covered by one of the several heads on which alone the Tribunal has jurisdiction to interfere. It follows that the argument that authorities dealing with the Tribunal's powers when dealing with applications u/s 33 of the Act should not be relied when determining the aforesaid Tribunal's powers over disputes referred to them u/s 10 of the Act is no longer tenable, for the pronouncement of the Supreme Court in Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, is against it.

It further follows that the jurisdiction of the Labour Tribunal in disputes referred to it is circumscribed by its being allowed to investigate and satisfy itself on

enumerated points. One such point is that it must be satisfied on the procedure followed by the employer being fair, honest and not in violation of principles of natural justice. The next to that the conclusions arrived at should not be perverse. The next is that the motive for the inquiry must be bona fide and the enquiry be not vitiated" by victimisation, or unfair labour practices.

Should the Tribunal be satisfied that all the aforesaid vitiating grounds do not exist, any interference by it would not be justified, for otherwise the Tribunal would then be acting as an appellate authority over the management's decision. It is further clear that the view of the Patna High Court concerning the uncontrolled discretion being vested in the Tribunals in the disputes referred to them, is not shared by the majority of the other High Courts and should not be followed.

8. The learned Advocate for the Labour Court has next relied on *Buckingham and Carnatic Mills Ltd. v. Their Workmen* (1951) II L LJ 314, where it has been stated that ordinarily the management should have the right of deciding the appropriate punishment in each case, but the decision is liable to revision if it is so unjust that a remedy is called" for in the interests of justice. He therefore, argues that the Labour Court can vary the punishment should it be found to be harsh in the circumstances of the case, We find some difficulty in accepting the view aforesaid as correct.

The majority of the judicial pronouncements is against vesting the Labour Tribunals with appellate powers and we feel revising sentences on the ground of harshness would mean, reviewing the adequacy of the punishment in the circumstance of a particular case which is a form of the appellate power. That apart, Conferring such a power would be contrary to the accepted principle of the inquiry by such Tribunals being confined to certain well known grounds, in which such a power is not included.

9. It was next argued before us that exercise of jurisdiction under Article 226 is circumscribed and conclusion on facts should not be interfered with. Reliance in this connection has been placed on *United Commercial Bank Ltd. Vs. Secretary, U.P. Bank Employees Union and Others*, where it has been held that whether a discharged employee is to be reinstated in service, or whether compensation would be an adequate relief, is a matter for the discretion of the Industrial Tribunal and when they have exercised it in any particular way, it should not be interfered with in appeal unless there are reasons for such interference.

We " do not take Their Lordships in the case , as exiling exercise of jurisdiction under Article 226, where the award be tainted with error of law appearing on the face of the record, should we be satisfied about such an error. We are satisfied that in this case" the award can be set aside by a writ of certiorari.

10. The third ground urged in support of the award is that the Court has in proceeding u/s 10 to ascertain more fully whether the several heads tainting the exercise of the management's power, exist, and the harshness of the sentence is

some evidence of there having been victimisation in the" case. The acceptance of this argument, however, would not save the award, for where the management" order of dismissal is tainted with victimisation, the whole proceedings should be set aside and the direction should not be one of mere reinstatement with no back wages.

The Labour Court has in this case found the punishment to be out of all proportion, but it has given no finding on there being victimisation in the case, Indeed it has not found anything against the apprehension apparently entertained by the Estate that conduct of the nature, of which the employees had been found guilty, would seriously impair the discipline among the workers of the Estate, "Moreover had the Court found the dismissal to be so vitiated, it would not have ordered mere reinstatement without back wages. Therefore this ground, urged for upholding the award, also fails.

11. Having regard to all the circumstances of the case, we think that this is a fit case where the award should be set aside. Accordingly the Writ petition is allowed, and the award is vacated. But having regard to the circumstances of the case, we direct the parties to bear their costs.