
(1983) 01 PAT CK 0014

In the Patna High Court

Case No : C.W.J.C. No's. 38 and 140 of 1978 (R)

Tata Engineering and Locomotive Co. Ltd.

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 21-01-1983

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25B, 25F

Citation : (1983) 31 BLJR 501

Hon'ble Judges : Satyeshwar Roy, J; Madan Mohan Prasad, J

Bench : Division Bench

Judgement

Satyeshwar Roy and Madan Mohan Prasad, JJ.—In these two writ applications, the award given in Reference Case No. 1 of 1974 by the Labor Court, Jarushedpur, has been challenged. These two writ applications have therefore, been heard together and are being disposed of by this common judgment,

2. Respondent Nos. 3, 4, 5 and 6 in C.W.J.C. No. 38 of 1978 (R) and petitioners (five in number) in C.W.J.C. No. 140 of 1978 (R), were at the relevant time work men of Tata Engineering and Locomotive Company Limited, Jamshedpur (TELCO). In the year 1970, respondent Nos. 3,4,5 and 6 in C.W.J.C. No. 38 of 1978 (R) and petitioners in C.W.J.C. No. 140 of 1978 (R) were arrested by the police on criminal charges. While in Jail, respondent No. 3 (Balwindar Singh) In C.W.J.C. No. 38 of 1978 (R) applied for leave and he was granted eleven days" leave. Balwindar Singh did not join his duty after expiry of the period. Petitioner No. 5, Karam Singh in C.W.J.C. No. 140 of 1978 (R) also applied for leave. But it was rejected. The other workmen never applied for any leave and from the very beginning they were absenting without any permission. Respondent Nos. 3, 4, 5 and 6 in C.W.J.C. No. 38 of 1978 (R) and petitioner Nos. 4 and 5 in C.W.J.C. No. 140 of 1978 (R) were charge-sheeted for continuous absence without permission as provided under Standing Order No. 24 Clause (xi) of the Certified Standing Orders of TELCO and it was served on all of them while they were in jail. Respondent No. 3, Balwindar Singh in C.W.J.C. No. 38 of 1978 (R) and petitioner

Nos. 4 and 5 in C.W.J.C. No. 140 of 1978 (R) submitted their show cause. In the domestic enquiry conducted on behalf of the Management, except petitioner Nos. 4 and 5 in C.W.J.C. No. 140 of 1978 (R) none of the charge-sheeted workmen participated. On the basis of the report of the Enquiring Officer, those workmen were discharged from the service of TELCO.

3. Although petitioner Nos. 1, 2 and 3 in C.W.J.C. No. 140 of 1978 (R) were also absenting from duty continuously without permission, as they had also been arrested by the police, the Management instead of taking any disciplinary action for misconduct, discharged them in exercise of power under Standing Order No. 47.

4. A dispute was raised on behalf of all the workmen regarding to the action taken by the Management and the appropriate Government referred the dispute u/s 10(1)(c) of the Industrial Disputes Act, 1947 (the Act) to the Labor Court, Jamshedpur, who gave the award. The award is Annexure "6" in C.W.J.C. No. 38 of 1978 (R) and Annexure "7" in C.W.J.C. No. 140 of 1978 (R).

5. In C.W.J.C. 38 of 1978 (R) filed by the Management, they have challenged that part of the award by which respondent No. 2 has held that the discharge of respondent Nos. 3, 4, 5 and 6 was invalid and ordered for their reinstatement with back wages. The ground for so holding is that as the domestic enquiry against them was held in their absence i.e., when they were in jail and thus there has been violation of principle of natural justice. Admittedly, all these workmen were arrested by the police on different dates, sometime between May, 1970 and August, 1970. Labor Court has found that none of them was arrested by the police at the instance of the Management. It was urged that the finding that the Management violated the principles of natural justice before discharging respondent Nos. 3, 4, 5 and 6 cannot be sustained in law. It was submitted that these respondents were in jail at the relevant time without any leave granted to them. Charge-sheets were served on them inside jail, dates were fixed in the domestic enquiry while they were in jail and none of the respondents participated in the domestic enquiry. According to the Management in the admitted facts, it was not even incumbent on it to hold any domestic enquiry by serving a formal charge on the workmen. Further the Management was not bound to defer the domestic enquiry till the workmen were released. Reliance was placed in *Burn and Co., Calcutta Vs. Their Employees*, . and *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, . In reply it was contended on behalf of the workmen that since they were arrested at the instance of the Management the latter cannot be heard to say that there was no necessity even to issue a formal charge and to hold a domestic enquiry till the workmen are released from jail.

6. There may be two reasons why the workmen could not participate in the domestic enquiry, for the conduct of the Management, the workmen, proceeded against were prevented from attending the domestic enquiry or the workmen could not participate in the domestic enquiry for reasons for which the Management cannot be held responsible. As noticed above, the finding of fact by

the Labor Court, on the basis of the evidence led by the parties, is that the workmen were arrested by the police not at the instance of the Management. The counsel appearing on behalf of the workmen tried to challenge this finding. This finding is based on evidence. That finding, therefore, must be upheld. That being the position, it must be held that the Management cannot be held responsible for the arrest of the workmen. Consequently, the law laid down in the Supreme Court cases (supra) relied on behalf of the Management shall apply with all force to these cases. Therefore, the finding of Labor Court with regard to respondent Nos. A, 4, 5 and 6 in C.W.J.C. No. 38 of 1978 (R) cannot be sustained.

7. In C.W.J.C. No. 140 of 1978 (R), the finding of Labor Court has been challenged by the workmen by which it has upheld the order of the Management passed under Standing Order No. 47 with regard to petitioner Nos. 1, 2 and 3 and the order of discharge of petitioner Nos. 4 and 5 by the Management after serving charge-sheet and holding domestic enquiry.

8. The petitioner Nos. 4 and 5 in C.W.J.C. No. 140 of 1978 (R) were also arrested by the police. Petitioner No. 5 applied for leave but it was rejected. Both were charge-sheeted for absence without permission or leave. They filed show cause stating that their absence was not willful. Meanwhile they were released. Domestic enquiry was held against both and they participated in it. They were found guilty of willful absence without leave or authority. The Labor Court upheld the order of the Management.

9. On behalf of these petitioners it was submitted that the circumstances under which they could not join their duties were beyond their control. Therefore, the Management could not have terminated their services. Petitioner No. 4 did not apply for leave, and petitioner No. 5's application for leave was rejected. The Labor Court on the basis of evidence has found that the Management was not responsible for their arrest. Since they were arrested under criminal charges, it cannot be said that their absence was for reasons beyond their control. We do not find any reason to differ with the finding of the Labor Court by which their order of discharge has been upheld.

10. It was contended on behalf of the workmen in C.W.J.C. No. 140 of 1978 (R) that in view of the fact that petitioner Nos. 1, 2 and 3 joined TELCO on various posts on different dates prior to 1968, they could not have been discharged in violation of Section 25-F of the Act. Admittedly, Section 25-F of the Act has not been complied with regard to these petitioners. However, it was contended on behalf of the Management that this plea was not taken before the Labor Court by the workmen and, therefore, they should not be allowed to raise this plea in this writ application. From the award it appears that this point was not raised before the Labor Court. So far foundation facts for raising this issue are concerned, we find that in paragraph-5 of the writ application C.W.J.C. No. 140 of 1978 (R) it has been stated that the petitioners were appointed by TELCO on various posts in different departments prior to 1968. A counter affidavit has been filed on

behalf of the Management, but this paragraph has not been traversed. The assertion in paragraph-5 of the writ application, therefore, must be held to have been accepted as correct by the Management.

11. Further, in paragraph 16 of the counter-affidavit filed on behalf of the Management, it has been stated that Section 25-F of the Act shall have no application with regard to petitioner Nos. 1, 2 and 3 as they were discharged from service on account of their absents without leave and were not retrenched. The Management, therefore, was not bound to comply with the provisions of Section 25-F of the Act.

12. As already noticed above, the service of petitioner Nos. 1, 2 and 3 were terminated in exercise of the power under Standing Order No 47. No reason has been assigned for terminating their services. In the *The State Bank of India Vs. Shri N. Sundara Money*, . it has been held that the termination of service for any reason whatsoever shall amount to retrenchment as defined in Section (2)(oo) of the Act. Under the provisions of Section 25-F of the Act if a workman has been in continuous service for not less than one year, he cannot be retrenched save and except in compliance with the provisions of that section. Section 25-B of the Act defines "continuous service." According to the interpretation given to Section 25-B of the Act by the Supreme Court in *Employers in Relation to Digwadih Colliery Vs. Their Workmen*, . in a period of twelve calendar months 240 days shall be deemed to be continuous service for one complete year. In this case, the petitioner Nos. 1, 2 and 3 joined their services in TELCO prior to 1968, and their services were dispensed with in June, 1970. All these petitioners, therefore, were in continuous service for more than 240 days when their services were dispensed with. Their services were not dispensed with for misconduct. Admittedly, before terminating their services the Management did not comply with the provisions of Section 25-F of the Act. It must, therefore, be held that the termination of services of petitioner Nos. 1, 2 and 3 shall be deemed to be void in the eyes of law.

13. It was contended on behalf of the Management that the services of the petitioner Nos. 1, 2 and 3 were terminated in June, 1970. Reference under the Act was made in 1974. At no stage prior to the filing of the writ application C.W.J.C. No. 140 of 1978 (R) the workmen raised the question of noncompliance of Section 25-F of the Act. This Court, therefore, should not direct the Management to pay back-wages. The non-compliance of Section 25-F of the Act was admittedly raised for the first time in the writ application. As noticed above the Management did not traverse in their counter-affidavit that petitioner Nos. 1, 2 and 3 did not join TELCO prior in 1968. All that has been said on their behalf in the counter-affidavit is that as the termination of service of petitioner Nos. 1, 2 and 3 was by way of discharge simplicitor and not retrenchment, Section 25-F of the Act had not application. The management, therefore, in their counter-affidavit contested the point raised on behalf of these petitioners. We, therefore, find no reason to deprive these petitioners (Petitioner Nos. 1, 2 and 3) of the

back-wages, since we have held that the termination of service of these petitioners shall be deemed, in the eyes of law, to be not est.

14. No either point was raised by the parties.

15. In the result, C.W.J.C. No. 38 of 1978 (R) is allowed and that part of the award by which the termination of service of respondent Nos. 3, 4, 5 and 6 have been held to be bad by the Labor Court is set aside. C.W.J.C. No. 140 of 1978 (R) is allowed in part so far the petitioner No, 1, 2 and 3 are concerned. The petitioner Nos. 1, 2 and 3 shall be re-instated with back wages from the dates their services were terminated. Any amount that has been paid to them in pursuance of the provisions of Standing Order No. 47 shall be adjusted towards their dues before making any further payment. The application of petitioner Nos. 4 and 5 is dismissed. There shall be no order for costs.