
(1988) 11 OHC CK 0024

In the Orissa High Court

Case No : O.J.C. No's. 3131 to 3136 of 1988

Tata Refractories Limited and Another

APPELLANT

Vs

Nrupamani Ping and Another

RESPONDENT

Date of Decision : 29-11-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33(2), 33A

Citation : (1989) 67 CLT 385 : (1993) 3 LLJ 824

Hon'ble Judges : V. Gopalaswamy, J;G.B. Patnaik, J

Bench : Division Bench

Judgement

G.B. Patnaik, J.—These six writ applications at the instance of the employer have been filed challenging the order of the Industrial Tribunal dated 20th of August, 1988, and the said order of the Tribunal has been annexed as Annncsurc-1 to each of the writ applications.

2. Opposite party No. 1 in each of the writ applications filed an application before the Industrial Tribunal u/s 33A of the Industrial Disputes Act (hereinafter referred to as the "Act") impugning the order of termination passed by the employer in contravention of Section 33 of the Act. It is not necessary for us to state facts in detail and it is an admitted fact that the order of termination of opposite party No. 1 in each of the cases was passed by the employer while Industrial Dispute Case No. 56 of 1986 was pending before the Industrial Tribunal. The workman made the allegation in the application u/s 33A that the Employer terminated the service in contravention of Section 33 of the Act. The Employer-petitioner appeared before the Tribunal and filed objection, which has been annexed as Annexure-5. One of the stands in the objection is that the services of the opposite party-workman had not been terminated for any misconduct, but it is a case of loss of confidence and, therefore, Sub-section (2) of Section 33 of the Act cannot be attracted in any manner. Before the Tribunal, on Employer's prayer, the question of maintainability of the application was taken up as a preliminary issue. The same having been decided against the Employer-petitioner by order

dated 20-8-1988, the Employer has approached this Court. Since the fact as well as the question of law involved is one and the same, these applications are taken up together.

3. The only contention raised by Mr. Das, the learned counsel for the petitioners, is that the termination in question is not for any misconduct connected with the dispute, nor a punishment so as to attract Section 33(2)(b) of the Act and actually, the Employer having lost confidence in the employee has passed the order of termination which is permissible under the industrial law. It is thus contended that there being no contravention of Section 33 of the Act, Section 33A has no application and, therefore, the tribunal will have no jurisdiction to entertain the complaint in question.

Mr. Patnaik, the learned counsel appearing for opposite party No. 1, on the other hand contends that the order itself clearly demonstrates that the termination is on account of the misconduct of the employee and since such a termination has been made during the subsistence of the industrial dispute, there has been a contravention of Section 33 of the Act and, therefore, the Tribunal was fully justified in holding the petition maintainable.

4. Before considering the rival submissions, we think it appropriate to extract a passage from the judgment of the Supreme court in the case of D.P. Maheshwari v. Delhi Admn. and Ors. AIR 1984 SC 153 : LLJ 1984(II) 425 where the supreme Court deprecated the practice of deciding some issue preliminarily without deciding the dispute on merits and dragging the matter for years together:-

"It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issue first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter

from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must, therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeying up and down. It is also worth while remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues".

However, the Tribunal having fallen to the trap of the Employer and having decided the question of maintainability as a preliminary issue, the legality of which is being assailed in these applications, we are called upon to consider the correctness of the decision of the Tribunal.

5. The tribunal in coming to the conclusion that the termination even for loss of confidence would be a termination for misconduct has relied upon two decisions of the Supreme Court in *L. Michael and Another Vs. Johnson Pumps Ltd.*, and *Chandu Lal v. The Management of Pan American World Airways Inc.* LLJ 1985(II) 181. In *L. Michael's* case, referred to supra, the Supreme Court has indicated that loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and motivations. Therefore, in a reasonable case of a confidential or responsible post being misused or a sensitive or strategic position being abused, it may be high risk to keep the employee, once suspicion has started and a disciplinary enquiry cannot be forced on the matter. But when a termination order is based solely on the ground of loss of confidence and the same is not a colourable one, then it may be difficult for a Court to interfere, but such belief or suspicion of the employer should not be a mere whim or fancy and it should be bona fide and reasonable and must rest on some tangible basis and the power has to be exercised by the employer objectively in good faith, which means honestly with due care and prudence. In the other case, namely *Chandu Lal v. Management, M/s. P.A. Airways Inc.* it was observed by their Lordships:

"...Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence. In any view of the matter this amounts to a dereliction on the part of the workman and, therefore, the stand taken by the management that termination for loss of confidence does not amount to a stigma has to be repelled. In our opinion it is not necessary to support our conclusion by

reference to precedents or textual opinion as a commonsense assessment of the matter is sufficient to dispose of this aspect..."

According to Mr. Das, the learned counsel for the petitioners, in both the aforesaid cases, the Supreme Court was considering the legality of an award passed by the tribunal in a reference u/s 10 of the Act and, therefore, the said observations are of no application in deciding the issue involved in the present case. It is true that in the two cases referred to above, reference had been made by the appropriate Government to the tribunal u/s 10 of the Act, but for that reason alone, it is difficult for us to accept the submission of Mr. Das for the petitioners that the ratio of the aforesaid cases has no application to the present case. That apart, if the order of termination passed in the present case is examined, it is difficult to hold that Section 33(2)(b) is not attracted to the said order. At this stage, we would extract a portion of the order of termination:-

"....The Union assured that your behaviour upon your re-employment would give the Company no cause for concern. However, your subsequent conduct is contrary to the assurances given at the time of re-employment. The management has, therefore, reason to believe that if you are allowed to continue in service, there is a grave apprehension of damage to the person and property of the Company".

This being the basis of the order of termination, we are unable to accept the submission of Mr. Das, the learned counsel for the petitioners, that the termination order will not come within the ambit of Section 33(2)(b) of the Act. We do not find any legal infirmity in the order of the tribunal in rejecting the petitioners' contention and holding the application u/s 33A of the Act to be maintainable. Accordingly, we are not inclined to entertain these writ applications which are, therefore, dismissed. We make no order as to costs.

V. Gopalswamy, J.

6. I agree.