
(1964) 07 KL CK 0030
In the High Court Of Kerala
Case No : O.P. No. 755 of 1963

The Kanan Devan Hills Produce Co. Ltd. APPELLANT
Vs
The Workmen of the Kannan Devan Hills Produce Co. Ltd. and RESPONDENT
Others

Date of Decision : 13-07-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F

Citation : AIR 1965 Ker 106 : (1965) 10 FLR 216 : (1969) 1 LLJ 483

Hon'ble Judges : P.T. Raman Nayar, J

Bench : Single Bench

Advocate : P.K. Kurien, V. Desikan, K.A. Nayar and K. Sukumaran, for the Appellant; M.M. Cherian, (for No. 1) and Govt. Pleader (for Nos. 2 and 3), for the Respondent

Final Decision : Allowed

Judgement

P.T. Raman Nayar, J.—This is an application under Article 226 of the Constitution for quashing the award made by the 2nd respondent Labour Court under the Industrial Disputes Act directing the reinstatement of a workman, a driver by the name of Rao, who had been discharged by the petitioner company under standing Order 19(1) of its Standing Orders which provides for what has come to be known as discharge (or termination) simpliciter.

2. Rao was appointed on Probation on 3-3-1959 and was deputed to drive the car of the Staff and Industrial Relations Manager of the company who gave evidence before the Labour Court as E. W. 1. He was confirmed a month later but on 5-1-1960 his services were terminated under Standing Order 19 (1) on charges -- I use the word, "charge" as meaning any kind of imputation, not as confined to imputations of misconduct -- of bad, Indeed dangerous, driving -- faulty judgment of the width of the car leading to damage on one occasion, taking blind corners on the wrong side of the road and delayed braking leaving it

to the agility of the other users of the road to avoid an accident, being the more serious of his faults --and of inability to travel as a passenger in the car without becoming violently sick. On this an Industrial dispute was raised by the workmen of the company represented by their Union, and the question referred to the Labour Court for adjudication was, "Termination of the service of Shri S.V. Rao." The Labour Court held that the termination was wrongful, and, as we have seen, has directed the reinstatement of the workman..

3. This is the second time that the matter is coming before this Court. On the first occasion the Labour Court had awarded compensation to the workman holding that his discharge was improper. This it did on two mutually irreconcilable grounds, the first, a ground that had not even been pleaded, namely, that the discharge amounted to retrenchment and was in violation of Section 25F of the Industrial Disputes Act, and the second that the discharge was really a dismissal for misconduct which had not been established. This Court quashed the award and remitted the case to the Labour Court for fresh determination on the only issue that really arose, namely, whether the discharge was in bona fide exercise of the contractual power in Standing Order 19(1).

4. In holding (as it now has, in this second determination) that the discharge was not a bona fide but a colourable exercise of that power, the Labour Court proceeded on two assumptions, both it seems to me equally wrong, the first that the charges against the workman were of misconduct, and, the second, that, if the reason for a discharge is misconduct, then the very fact that resort was had to discharge simpliciter, instead of to punishment after due inquiry, necessarily spells victimisation and unfair labour practice. In this view there was no need for it to go into the question--which it did not--whether the reason alleged was true and sufficient. Now, whether or not the first assumption can be said to be an error of law, it seems to me that the second is -- and a patent error at that.

5. (I might mention that the Labour Court also observed that there was some force in the argument of counsel for the Union that the fact that the employer company did not, when, it found that Rao's driving of a car was unsatisfactory, give him a chance to prove his mettle on heavy vehicles (of which the company owns some and for driving which Rao holds a licence) and the further fact that, on Rao's discharge, the driver of a personal friend of E.W. 1 was appointed in his stead, betrayed a want of bona fides. I see no force whatsoever in this argument, but, since the award is not based on an acceptance of this argument, I do not think it necessary to consider it further.)

6. The Labour Court thought that the charges of bad driving were charges of misconduct--but, not, it would appear, the charge of getting violently sick when travelling in the car as a passenger, though, with regard to this, it seems to have accepted the curious argument that it was no part of the duty of a driver to travel in a car as a passenger--because the workman had given no cause for complaint during his one month's probation and because, although he had been twice warned in writing of the defects in his driving, he had shown no

improvement. Therefore, his conduct amounted to deliberate 2nd wanton bad driving in wilful disobedience of orders, and that was misconduct. As I have already Indicated, I do not think that this inference follows: more, it is not necessary to say since, in law, it seems to me to make no difference whether the charges were of misconduct or of something not amounting to misconduct.

7. That takes us to the second assumption made by the Labour Court, The law is that, even though the contract of employment might give the employer the power in discharge a workman without assigning any reason-- in this particular case, However, the provision in Standing Order 19 (1) requiring that reasons shall be communicated to the workman concerned unless such communication would expose the employer to civil or criminal action, implies that there must be reasons--yet, if the discharge gives rise to an industrial dispute, it would be for the employer to show that the discharge was in bona fide exercise of his contractual powers. If the discharge is

"capricious, arbitrary or unnecessarily harsh on the part of the employer judged by the normal standards of a reasonable man, that may be cogent evidence of victimisation or unfair labour practice".

in other words, of mala fides. (B. and C. Mills Ltd. v. Their Workmen, [1951] 2 Lab LJ 314 (L. A. T. 1--Cal), a decision of the Labour Appellate Tribunal which has been repeatedly cited with approval by the Supreme Court (see The Chartered Bank, Bombay Vs. The Chartered Bank Employees' Union, , Assam Oil Company Vs. Its Workmen, and U.B. The Management of U.B. Dutt and Co. Vs. Workmen of U.B. Dutt and Co.,

Therefore, if the inference of lack of bona fides is not to be drawn, the employer will have to show that the discharge was for reasonable cause, although, even so, it might be open to the workmen to show, if they can, that what seems an apparently reasonable cause is only an ostensible and not the true cause and that the true cause is something else, as, for example, the trade union activities of the workman concerned, in which case the discharge would amount to victimisation and unfair labour practice and therefore be mala fide.

Now, if something that falls short of misconduct can be reasonable cause for termination simpliciter, as ex hypothesi it can, I fail to see any logic in saying that something more serious, namely, misconduct, cannot furnish a reasonable cause, and that termination for misconduct must be secured by dismissal by way of punishment for which far more severe action it can furnish reasonable cause. Misconduct seems to me an a fortiori case and the utmost that can be said in a case of discharge simpliciter for misconduct is that the tribunal would

"be justified in dealing with the dispute on the basis that, despite its appearance to the contrary, the order of discharge is in effect an order of dismissal".

(Per Gajendragadkar J. as he then was, in : Assam Oil Company Vs. Its Workmen, What the employer has to show and what an industrial tribunal has to

consider and decide is whether there was reasonable cause irrespective of whether or not that cause amounts to misconduct.

8. If an employer dismisses a workman for misconduct without any inquiry it would still be open to him to satisfy an industrial tribunal that he acted in bona fide exercise of his power of dismissal (which after all is also a contractual power) by adducing evidence before the tribunal and proving the misconduct, See *Phulbari Tea Estate Vs. Its Workmen*, . Why then should he be precluded from establishing his bona fides in a like manner when, instead of dismissing the workman for the misconduct, he takes the far less drastic course of a termination simpliciter? I can think of no satisfactory reason--as we have seen the utmost that can be said is that the tribunal should. In deciding the case, look upon the so called discharge as a dismissal for misconduct.

9. I think that what the Supreme Court said in : *The Management of U.B. Dutt and Co. Vs. Workmen of U.B. Dutt and Co.*, , is direct authority for the view I am taking. In that case the employer, who had commenced a disciplinary inquiry against the workman concerned on a charge of misconduct, abandoned the inquiry and proceeded to discharge the workman under the discharge simpliciter provision in its Standing Orders, namely, Rule 18(a). This is what their Lordships said:

"In any case even if the inquiry was not held by the appellant (the employer) and action was taken under Rule 18(1) it is now well-settled, in view of the decision cited above (the reference is apparently to : *Assam Oil Company Vs. Its Workmen*, that the employer could defend the action under rule 18 (a) by leading evidence before the tribunal to show that there was in fact misconduct and therefore the action taken under Rule 18(a) was bona fide and was not colourable exercise of the power under that rule."

10. It is contended that the following observation of the Supreme Court in : *The Chartered Bank, Bombay Vs. The Chartered Bank Employees' Union*, , on which the Labour Court has placed reliance justifies the assumption it made:

"The form of the order of termination is not conclusive of the true nature of the order, for it is possible that the form may be merely a camouflage for an order of dismissal for misconduct. It is therefore always open to the tribunal to go behind the form and look at the substance; and if it comes to the conclusion, for example, that though in form the order amounts to termination simpliciter it in reality cloaks a dismissal for misconduct, it will be open to it to set it aside as a colourable exercise of the power."

(The power referred to is the power of termination simpliciter under provisions like standing Order 19(1) in the present case).

This argument misses the significance of the words,, "camouflage" and, "cloak" which to my mind indicates some ulterior motive for resorting to a discharge simpliciter instead of to a dismissal after due inquiry. And, if a termination

simpliciter is, in truth, only a cloak for a dismissal, it does not automatically follow that it is to be set aside as a colourable exercise of power. It is only open to the tribunal to set it aside as a colourable-exercise which means that it has to find at least part of the colour otherwise than in the cloak.

11. The finding of the Labour Court that the discharge in this case was not bona fide proceeds on a wrong view of the law. Therefore I set aside its award and direct it to decide the matter afresh in the light of what has been said in this judgment. The sole issue is, as it was told on the previous occasion, whether the discharge was in bona fide exercise of the contractual power in Standing Order 19(1), in other words, whether it was for reasonable cause. The first and the most important step would be to decide whether the cause alleged (what I have called the charges) is true -- this the Labour Court has not done. The next, if the cause is found to be true, would be to consider whether the cause is sufficient, which it would not be if termination for such a cause could be described as capricious, arbitrary or unduly harsh. There is no doubt the allegation of bias and ulterior motive, but that, in a case like the present, would scarcely be material except in assessing the evidence adduced by the employer in proof of the cause alleged.

12. Whether fresh evidence is to be allowed is entirely a matter within the discretion of the Labour Court.

13. There will be no order as to costs in this Court.