

(1959) 10 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 663 of 1959

The Premier Automobiles Ltd.

APPELLANT

Vs

Ramchandra Bhimayya and Another

RESPONDENT

Date of Decision : 15-10-1959

Acts Referred:

Industrial Disputes (Bombay) Rules, 1957 — Rule 63(2)
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1960) 62 BOMLR 199

Hon'ble Judges : Chainani, C.J; V.S. Desai, J

Bench : Division Bench

Advocate : B. Narayanswami, for the Appellant; H.R. Gokhale, for the Respondent

Judgement

Chainani, C.J.

(1) The petitioner is a company registered under the Indian Companies Act. Respondent No. 1 was employed by the petitioner as a fitter in its repair workshop. There was a dispute between the company and its workmen in regard to bonus for 1956-57. This was referred for adjudication to the second Respondent u/s 10(2) of the Industrial Disputes Act, 1947. During the pendency of the proceedings before the Tribunal, the first respondent was dismissed by the petitioner on 10th October 1958. The charge against him was that he had thrown stones at the staff Manager's car on 5th May 1958. On 19th November 1958 the petitioner made an application to the second Respondent for granting its approval to the action taken by it u/s 33(2) of the Act. The Tribunal took the view that the application should have been made before the first respondent was dismissed. As the application was made after the order of dismissal had been passed, the Tribunal refused to grant its approval to the action taken by the petitioner against the first respondent and rejected the application made by the petitioner. This order made by the Tribunal is being challenged before us in the present petition.

(2) Mr. Narayanswami, who appears on behalf of the petitioner, has urged that the view taken by the Industrial Tribunal that the petitioner should have made an application to the Tribunal before the order of dismissal was passed, is erroneous, in order to decide this question it is necessary to consider the relevant provisions of the Act. Section 33 of the Act was in the following terms before it was amended in 1956:

"During the pendency of any conciliation proceedings before a Tribunal in respect of any industrial dispute, no employer shall

(a) alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) discharge or punish whether by dismissal or otherwise any workmen concerned in such dispute, save with the express permission in writing of the conciliation officer, Board or Tribunal, as the case may be."

This section imposed an absolute ban on an employer from altering the conditions of service to the prejudice of any workman or punishing him during the pendency of the industrial dispute, except with the prior permission of the authority before which the dispute was pending. The result of this provision was that the employer could not take any action against a workman even for gross misconduct, which had no connection whatsoever with the pending industrial dispute. The Legislature, therefore, considered it necessary to amend this section. The reasons for the amendment made in 1956 were stated as follows in the statement of objects and reasons:

"4. The existing provisions of Section 33 of the Act prohibit during the pendency of any conciliation proceeding or proceeding before a Tribunal any change being made in the conditions of service of, or any action being taken against, the workmen concerned in the dispute except with the express written permission of the authority concerned. The number of applications for such permission is frequently large and their disposal takes time. Employers have complained that they are therefore prevented from taking action even in obvious cases of misconduct and indiscipline unconnected with the dispute till long after the offence has been committed. It is proposed to alter the existing provisions so as to provide that, where, during the pendency of proceedings an employer finds it necessary to proceed against any workman in regard to any matter unconnected with the dispute, he may do so in accordance with the Standing Order applicable to the workman, with the Standing Order applicable to the workman, but where the action taken involves discharge or dismissal, he will have to pay the workman one month's wages and simultaneously file an application before the authority, before which the proceeding is pending, for its approval of the action taken. Protection on the lines of the existing provisions will continue to be available to all workmen in regard to any matter or misconduct connected with the dispute."

Sub-sections (1) and (2) of the new section 33 are in the following terms:

"(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute.

(a) after, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, the workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

Subsection (5) of section 33 provides that where an employer makes an application under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, as expeditiously as possible, such order in relation thereto as it deems fit. Section 33A states that where an employer contravenes the provisions of Section 33 during the pendency of proceedings before an Industrial Tribunal, any employee aggrieved by such contravention may make a complaint in writing, in the prescribed manner, to such Tribunal and on receipt of such complaint that Tribunal shall adjudicate upon the complaint, as if it were a dispute referred to or pending before it, in accordance with the provisions of the Act and shall submit its award to the appropriate Government and the provisions of the Act shall apply accordingly. Section 31 makes the contravention of the provisions of section 33 punishable with imprisonment or with fine or with both.

(3) The new Section 33, which was in force at the material time, draws a distinction between matters and misconduct connected with the pending industrial dispute and matters and misconduct which are not so connected. If the employer wishes to make any alteration in regard to any matter connected with

the dispute or if he wishes to punish any workman for any misconduct connected with the dispute, then he cannot do so, unless he has first obtained the permission of the authority before which the dispute is pending. No change or law has, therefore, been made in this respect, Sub-Section (2) permits an employer to alter the conditions of service in regard to any matter not connected with the dispute or to punish a workman for any misconduct not connected with the dispute. The right given to the employer is, however made subject to certain safeguards provided in the interest of the workmen. These safeguards are dismissed, unless two conditions have been complied with. These conditions are that the employer should pay to the employee concerned wages for one month and that he should make an application to the authority, before which the industrial dispute is pending, for its "approval of the action taken" by him.

(4) The question, which arises for determination, is whether the application to the authority should be made before the order of dismissal or discharge has been made or whether such an application can be made even after the workman had been dismissed or discharged. The proviso begins with the words ". . . no workman shall be discharged or dismissed, unless . . . an application has been made by the employer to the authority. . . ." The word "unless" indicates an intention of making what follows as conditions precedent. The words "has been made" also suggest that the application must be made before dismissal or discharge takes place. Consequently, if the words used in the first part of the proviso are taken into consideration, there can be no doubt that the making of an application is a condition precedent to discharge or dismissal. The difficulty is created by the words which follow. "for approval of the action taken by the employer." These words clearly imply that action must precede approval. The two parts of the proviso, therefore, appear to be in conflict and we will have to consider whether it is possible to harmonize them.

(5) Mr. Narayanswami, on behalf of the petitioner, has relied strongly on sub-section (5), which also refers to an application made under sub-section (2) as an application "for approval of the action taken by him." These words undoubtedly support his argument that the application, which is required to be made under the proviso, is an application for the approval of the action, which has been already taken, and not of the action which is proposed to be taken. He has also urged that as the object of enacting sub-section (2) was to permit an employer to take action in regard to matters not connected with the pending industrial dispute, without the prior permission of the authority concerned, that object would be defeated if an employer is required to make the application before he can discharge or dismiss any workman. Under sub-section (5) the authority is required to dispose of the application made to it under sub-section (2) as expeditiously as possible, and it has, therefore, been contended that the Legislature could not have intended to permit an employer to dismiss or discharge a workman only during the short period which would elapse between his making an application under sub-section (2) and an order being made on it.

Mr. Narayanswami has also relied on sub-rule (2) of Rule 63, which provides that an employer seeking the approval of the Tribunal of any action taken by him under clause (a) or clause (b) of sub-section (2) of Section 33 shall make an application in Form XVIII to such Tribunal. Form XVIII contains the following words:

"The workman/workmen discharged/dismissed under clause (b) of sub-section (2) of Section 33 has/have been paid wages for one month. It is prayed that the following action taken be approved namely:-"

According" to this Form also the application for approval should be made after action has been taken.

(6) Mr. Gokhale on behalf of the "first respondent has, on other hand, contended that more weight should be given to the first part of the proviso to sub-section (2), which makes it quite clear that an applications to the authority for its approval must precede discharge or dismissal. He has urged that on the interpretation suggested on behalf of the petitioner, the part of the proviso will be rendered meaningless, for it would then not be necessary for the employer to fulfil the conditions, which, according to the proviso, must be satisfied before action is taken against a workman. Mr. Gokhale has also contended that the proviso enacts safeguards effective. Neither the Act nor the rules la down any period within which an application under sub-section (2) may be made by an employer. It an employer does not make such an application the remedy of the aggrieved workman is either to prosecute the employer u/s 31 or to file a complaint u/s 33A. In a proceeding instituted under either of these sections, it will be necessary for the workman to establish that the employer has contravened the provisions of section 33. This, it is urged, will be almost impossible, because the employer can always come forward and say that the was going to make be accepted and the complaint might be held to be premature, a there is no provision in the Act or in the rules prescribing an period for makig an application under sub-section (2) of Section 33. Mr. Gokhale had, therefore urged that the object of the Legislature would be defeated, if the interpretation contended for on behalf of the petitioner is accepted.

(7) There is considerable force in the arguments advanced by both Mr. Narayanswami and Mr. Gokhale and having regard to the wording of the proviso, it is possible to take both the views. After careful consideration, we feel that the better view is the one taken by the Tribunal. There is apparent conflict between the first and the last part of the proviso. The duty of the Court is to resolve this conflict, to bring about harmony between the different parts of the proviso and to see that no part of its is rendered redundant or superfluous. The object f the amendment made in 1956 was to permit an employer to take action in matters not connected with the pending industrial dispute. The absolute ban, which previously existed, was modified and removed in respect of matters not connected with the dispute. Some restrictions were, however, imposed on the right, which was given to the employer, and soem safeguards were provided for

the benefit of workmen. These safeguards are contained in the proviso and they are to operate only in cases of dismissal or discharge. We must, therefore, give such an interpretation to the proviso as will carry out the object of the Legislature and as will make these safeguards effective and not illusory. There is no provision either in the Act or in the rules prescribing the time within which the application for approval is to be made by the employer. In the absence of any provision on this point, the Court may hold that the application should be made within a reasonable time. What is reasonable time cannot be precisely defined and it is possible to take different views on this question. Consequently, if we were to accept the interpretation suggested on behalf of the petitioner, it would be difficult to say when the employer has contravened the provisions of Section 33. An employer may, after taking action against a workman, never make an application to the authority concerned for approval of the action taken by him or may unduly delay the making of such an application. If an employee files a complaint either u/s 31 or u/s 33A of the Act, the employer may successfully avoid the proceedings taken against him by making an application soon after the complaint is filed and then contending that he had not contravened the provisions of sub-section (2). The safeguards contained in the proviso will, therefore, be rendered ineffective. Moreover, the interpretation suggested on behalf of the petitioner can only be given by ignoring the first part of the proviso, which makes the two conditions mentioned in it as conditions which must be satisfied before action is taken. It is true that the words, which are contained in the last part of the proviso and in sub-section (5) "approval of the action taken by the employer" suggest that the application may be made after action has been taken. But in order to bring these words in harmony with the remaining part of the proviso, the words "action taken" will have to be construed as "action proposed to be taken." It is open to the Court in cases where there is a manifest contradiction of the apparent purpose of the enactment or where the literal construction is likely to lead to a result not intended by the legislature, to modify the meaning of the words, if necessary even by departing from the rules of grammar or by giving an unusual meaning to particular words, see Maxwell on the Interpretation of Statutes. Tenth Edition, p. 229. We do not think that much importance can be attached to Form XVIII on which the petitioner has relied. This Form, which is prescribed by the rules, cannot control the meaning of the section. Sub-section (1) of Section 33 requires the employer to obtain the previous "permission" of the authority concerned. The corresponding word used in sub-section (2) is "approval." This is evidently because the employee before the authority has made its order on his application. All that is required of him is that he must make an application for approval to the authority concerned before he passes the order of dismissal or discharge. It would therefore not be correct to infer from the use of the word "approval" in sub-section (2) that the Legislature intended that the application under this sub-section should be made after action has been taken.

(8) We are accordingly of the opinion that the Industrial Tribunal was right in

holding that the application for approval should have been made by the petitioner company before the order dismissing the first respondent was passed. The Tribunal was therefore, justified in refusing to accord its approval to the action taken by the petitioner. The rule will consequently be discharged. No order as to costs.

(9) Rule discharged.