
(1957) 08 BOM CK 0012

In the Bombay High Court

Case No : Special Civil Application No. 216 of 1957

The Provincial Transport Services

APPELLANT

Vs

Assistant Labour Commissioner

RESPONDENT

Date of Decision : 21-08-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1958) 60 BOMLR 72

Hon'ble Judges : Mudholkar, J;Kotval, J

Bench : Division Bench

Judgement

Mudholkar, J.—This is a petition under Article 226 of the Constitution by the Provincial Transport Services challenging the order of the Assistant Labour Commissioner, Nagpur, dated July 19, 1957, over-ruling the petitioner's contention that the Assistant Labour Commissioner had no jurisdiction to entertain the application made u/s 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, by respondents Nos. 2 to 4.

2. The relevant facts are briefly these : Respondents Nos. 2 and 3 and Nago Fakira, the husband of respondent No. 4, who is now dead, were in the service of the Provincial Transport Services, Nagpur. An enquiry was held against these three persons on a charge of misconduct. It was found by the General Manager that these persons were guilty of misconduct, He, however, ordered that their services should be terminated by giving each of them one month's salary in lieu of notice. Thereafter, these persons made a joint application to the Assistant Labour Commissioner alleging that they were wrongfully dismissed from service and that they were thus entitled to reinstatement. According to the petitioner, the Assistant Labour Commissioner had no jurisdiction to deal with the application of respondents Nos. 2 and 3 and the husband of respondent No. 4 because they were not dismissed from service or discharged from service by way of punishment but their services had been terminated by giving them one month's salary in lieu of notice. It would appear that the actual contention of the

petitioner was that the termination of services of these three persons was in pursuance of a term of the contract of employment, though it is conceded that this has not been put in such clear terms in the objection to the jurisdiction of the Assistant Labour Commissioner raised on behalf of the petitioner. We may point out that even before the Assistant Labour Commissioner three documents were filed which are said to be copies of the contracts of service entered into between the petitioner on the one hand and the employees concerned on the other. It may be that because the point was not raised in very clear terms that the Assistant Labour Commissioner did not apply his mind to it. Another point which was taken on behalf of the petitioner before the Assistant Labour Commissioner was that the latter had no jurisdiction to go into the merits of the order of the General Manager in which he gave his finding that each of the three persons was guilty of misconduct. According to the Assistant Labour Commissioner he could go into the merits of the question for ascertaining whether the action taken against the employees was in accordance with law or otherwise.

3. It may be mentioned that the matter arose prior to the amendment of Section 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947. Sub-section (2) of Section 16 which is relevant reads thus:

If on such reference being made, the Labour Commissioner, after such inquiry as may be prescribed, finds that the dismissal, discharge, removal or suspension was in contravention of any of the provisions of this Act or in contravention of standing order made or sanctioned under this Act, he may direct that the employee be reinstated forthwith or by a specified date or paid such sum not exceeding five hundred rupees by way of compensation as the Labour Commissioner may determine with due regard to the loss of wages....

It is clear from this provision that the jurisdiction of the Labour Commissioner to grant any of the reliefs specified in Sub-section (2) of Section 16 arises only in cases of dismissal, discharge, removal or suspension of an employee, and then again only where such dismissal etc. was (a) in contravention of any of the provisions of the Central Provinces and Berar Industrial Disputes Settlement Act or (b) in contravention of the standing orders made or sanctioned under the Act.

4. It is common ground that no standing orders have yet been sanctioned in respect of the petitioner's undertaking, and so if there was any dismissal, discharge or removal, the question for decision would be whether it was in contravention of any of the provisions of the Act. We may point out that the provisions of the Act would, in this connection, mean Section 42 of the Act and Entry No. 3 in Schedule II of the Act.

5. Before us it was pointed out on behalf of respondents Nos. 2 to 4 that the order on the preliminary objection raised by the petitioner was passed by the Assistant Labour Commissioner without hearing these respondents. Shri Oke states that had he been called upon to reply to the objection, he would have

contended that the engagement of respondents Nos. 2 and 3 and the husband of respondent No. 4 was not on the basis of any express term in the contract and further that the contents of the three documents, which have been filed by the petitioner here and of which copies had been filed before the Assistant Labour Commissioner, were not explained to these persons and that they were not aware as to the terms and conditions embodied in those documents. These are questions which have necessarily to be considered by the Assistant Labour Commissioner before coming to a decision on the question whether the termination of the services of respondents Nos. 2 to 4 by the petitioner was in pursuance of an express term in the contract of employment.

6. Shri Oke relied before us upon a decision of a Division Bench of this Court in *Municipal Corporation of Greater Bombay and Others Vs. Labour Appellate Tribunal of India and Another*, , in which it was observed (p. 417):

...It is true that the form of the order terminating employment is not always decisive of the true nature of the order. If an order in form terminating employment is passed merely to camouflage an order dismissing or discharging from employment, the Labour Court may be entitled to come to the conclusion, having regard to the circumstances in which the order was passed, that the requisite formalities not having been followed the order was unlawful and cannot be given effect to.

Shri Oke points out that in the instant case the charge of misconduct had actually been framed against respondents Nos. 2 and 3 and the husband of respondent No. 4 and the General Manager of the petitioner found that that charge had been established. He also points out that the General Manager has observed in his order:

It is thus clear that the explanations are absolutely unsatisfactory and the employees are liable to be dealt with and punished for their misconduct.

As referred to above, the police have put up criminal case against these three employees for theft and it is pending. The company has lost confidence in them.

It is clear that this is a case of misconduct on the part of the three employees....

Shri Oke says that from these observations it would be clear that the actual action taken was by way of punishment and therefore the termination of services amounts to a dismissal. Since that is so, according to the learned Counsel, the Assistant Labour Commissioner had, indubitably jurisdiction to entertain the application of these persons. He admits that the operative part of the order of the petitioner was that the services of respondents Nos. 2 and 3 and the husband of respondent No. 4 be terminated by giving them one month's salary in lieu of notice, but according to him, this was merely a camouflage, and what was actually done was to punish these persons by dismissing them from service. In our opinion, what is really material is not the antecedent enquiry made by the employer for satisfying himself whether he should continue in service an

employee or not, but what is the actual action taken by him in pursuance of the opinion formed by him. It has been pointed out by the Supreme Court in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, that where an imputation or charge is not in terms made a condition for the exercise of the power of compulsory retirement, the action taken cannot be regarded as punitive. In that case also, it may be pointed out, a formal enquiry was held against a Government servant with regard to certain allegations for his compulsory retirement before action was taken under the Civil Services (Classification, Control and Appeal) Rules, he was also given a notice to show cause and thereafter action was taken by the Government under Note 1 to Article 465-A stating merely that he would be compulsorily retired from service as from a particular date. The operative order only stated this and nothing more. In the present case also the actual order passed with respect to each of the employees only states that his service had been terminated and that one month's salary was to be given in lieu of notice. No doubt, the order also stated that the employee concerned was entitled to know the reasons for the termination of his services and that he could obtain a copy of the finding regarding this if he wanted to have that copy. This fact, however, would not warrant the conclusion that the action taken by the petitioner was merely a camouflage.

7. A perusal of the documents filed by the petitioner would show that where punitive action is to be taken against a particular employee, the petitioner is not required to give notice or one month's salary in lieu of notice while in the instant case this provision was not availed of at all. If these documents are proved, this would be a circumstance to show that the action taken by the petitioner was not by way of punishment but was in pursuance of an alleged term of the contract enabling the petitioner to terminate the services of an employee by giving him notice or by paying him one month's salary in lieu of notice.

8. What the Assistant Labour Commissioner has, therefore, to find out is whether there was a term in the contract between the petitioner on the one hand and each of the employees on the other by virtue of which the former was entitled to exercise his right of terminating the services of the employees after giving them one month's notice or paying them one month's salary in lieu of notice. If the Assistant Labour Commissioner finds that there was such a contract, then clearly the case would fall outside Section 16 of the Act and he would have no jurisdiction to deal with it.

9. We quash the order of the Assistant Labour Commissioner and remit the matter to him for being dealt with according to law. We would point out to him that it will be necessary for him to hear respondents Nos. 2 to 4 on the question of jurisdiction.

10. We, however, make no order as to costs in this proceeding.

11. The original documents filed by the petitioner are directed to be returned.