

(1966) 04 P&H CK 0004
In the Punjab And Haryana At Chandigarh

Tin Printers (Private) Ltd.

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 28-04-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 33

Citation : (1967) 2 LLJ 677

Hon'ble Judges : S.K. Kapur, J

Bench : Single Bench

Judgement

S.K. Kapur, J.—By this writ petition the petitioners have challenged the order of the Industrial tribunal, Delhi, dated 31 August 1964. declining to accord approval to the petitioners of the action taken by them In dismissing Ved Parkash (respondent 2). This order was passed by the Industrial tribunal on an application by the petitioners u/s 33(2)(b) of the Industrial Disputes Act, 1947. The petitioner-company has a factory situated at Najafgarh Road, New Delhi, and Is engaged In the printing of metal sheets. Respondent Ved Parkash was engaged by the petitioners as a lithographer In the factory, having Joined service on 1 June 1960. On three occasions charges were framed against respondent Ved Parkash. On 23 June 1962, he was charged for habitually coming late to the factory and ultimately, by an order dated 26 March 1963, he was administered a warning. He was again charesheeted on 5 July 1962, for not properly carrying out certain work en-trotted to him and after an enquiry It was ordered on 28 March 1963 that he should not be paid wages for the period of suspension from 10 September 1962 to 31 March 1963. The third charge was given to him on 7 July 1962, out of which the present proceedings arose. After an enquiry he was ordered to be dismissed from 1 April 1963, and the application for approval u/s 33(2)(b) of the Industrial Disputes Act was made by the petitioners In view of the pendency of Industrial Dispute No. 326 of 1962 before the tribunal.

2. One more fact which needs mention Is that for the suspension period of July and August 1962, respondent Ved Parkash made an application for recovery of

wages before the Payment of Wages Authority. He made another application before the same authority for payment of wages for the period from 1 September 1962 to 31 March 1963, and the said authority passed an order in favour of respondent Ved Parkash directing payment of wages for that period. The tribunal thought that the two previous chargesheets dated 23 June 1962 and 5 July 1962, would have a bearing on the present case and he, therefore, decided to examine the parties and, accordingly, Eeshav Datt, enquiry officer and a director of the petitioner-company, as well as Ved Parkash (respondent 2), were examined by it on 22 July 1964. The reply to the application u/s 33(2)(b) of the Industrial Disputes Act was filed by respondent Ved Parkash on 20 May 1963, and on 5 September 1963, he made another application for amendment of the reply whereby he sought to include an additional plea, namely, that he having already been punished with a fine of Rs. 100 in connection with the charge-sheet dated 7 July 1962 he could not be punished by the tribunal again. This plea was based on the written statement filed on behalf of the petitioner-company by Keshav Datt, enquiry officer, in the above-mentioned proceeding before the authority under the Payment of Wages Act. In the said written statement, a plea appears to have been taken by the petitioner-company that respondent Ved Parkash had been twice punished with a penalty of Rs. 100 each time and that penalty was still recoverable. The object of this allegation in the written statement must have been to enable the petitioner-company to claim a set-off against the money claimed by respondent Ved Parkash. It appears from the impugned order that Keshav Datt made a categorical statement that he never recommended punishment of fine in any of the enquiries, but admitted the abovementioned written statement having been filed before the authority constituted under the Payment of Wages Act. He further stated that the paragraph relating to the imposition of penalty was wrong and sought to explain it on the ground that this was dictated by the advocate of the petitioner-company and he signed it without realizing the implications of the statement. The tribunal, inter alia, held;

It is clear from these statements that a false plea was admittedly taken by Sri Keshav Datt, enquiry officer, in matters connected with the opposite party workman that a fine of Rs. 100 each had been imposed in the two enquiries on him.

The tribunal proceeded to observe:

It is not only surprising that such a patently false and absurd plea was taken by the enquiry officer who was also a director of the company but it also shows to what unscrupulous length the management was prepared to go in opposing an application of the workman for payment of suspension period wages. It is impossible to accept the bona fides of an enquiry officer-cum-director of the company, who is prepared to act in such an unscrupulous manner.

On the basis of the aforesaid finding and on the basis of the finding that there was an inordinate delay in holding the enquiry and in the making of the report, the industrial tribunal came to the following conclusion:

As for the enquiry record Sri Gupta has argued that it bears the signatures of Ved Parkash and his representative Faqlr Chand but I cannot look Into the record since the entire case is vitiated by the behaviour of the enquiry officer as shown above and the manner In which the case was handled by the management. It is impossible to resist the conclusion that the manner and timings of the enquiries and of the enquiry officer's reports and of passing of the final orders by the management on the three chargesheets, above referred to, was part of a plan to harass the workman by depriving him of his suspension wages and to terminate his services In a mala fide manner. In this case, there is a clear want of good faith and also unfair labour practice. In the circumstances, I am unable to accord approval for the action taken by the management and fine application Is rejected.

The question has to be viewed from two points of view, namely:

(1) Has there been a violation of natural justice inasmuch as the petitioners were not given a proper opportunity to meet the case found against them ?

(2) Is the conclusion of the Industrial tribunal based on evidence or, In other words, Is the conclusion of victimization and lack of good faith a possible conclusion from the factors taken by the Industrial tribunal Into consideration ?

I think the answer on both the points must be in favour of the petitioners. In the written statement filed before the Industrial tribunal the only relevant allegation is contained In Para. 5. The said paragraph reads as under;

That Para. 5 of the application la denied. The chargesheet was served on 7 July 1962 and the explanation was submitted on 11 July 1962, by the opposite party. However no enquiry was fixed till 12 November 1962, and the opposite party was kept under Illegal suspension. It may be mentioned that there was a strike in the factory of the applicant-company and other companies against the highhandedness of the management in assaulting a worker who also is the leader of the union In the factory from 15 October to 23 October 1962. The opposite party played a leading role. In the strike to the utter disgust of the management. The management, with a view to victimize the opposite party, on 7 November 1962, fixed up the enquiry for 12 November 1962.

It is denied that the enquiry was fair or any opportunity was given to the opposite party to defend himself. The enquiry was a make-believe show. The enquiry was closed on 23 November 1962. No report of the enquiry officer was submitted nor any decision conveyed to the opposite party till 1 April 1963. The opposite party and the Engineering Mazdoor Union repeatedly requested the management to give Its decision and put an end to the Illegal suspension of the opposite party.

3. The reading of the paragraph shows that the grievance of respondent Ved Parkash was twofold:

(1) The management fixed an enquiry for 12 November 1962, with a view to victimize Ved Parkash who had played a leading part In the strike in the factory

from 15 October to 23 October 1962.

(2) The enquiry was a make-believe show and no opportunity was given to Ved Parkash to defend himself.

4. It may be pointed out that in the application for approval the petitioner-company had specifically stated In Para. 5 that Ved Parkash had participated in the enquiry and cross-examined the witnesses. It also appears from the Impugned order that the petitioner-company pointed out to the tribunal that the enquiry record bore the signatures of Ved Parkash and his representative, Faqir Chand, which the tribunal declined to look into. In the application filed by Ved Parkash on 6 September 1963, he Bought amendment of his written statement and prayed for addition of the following paragraph :

That the management has already imposed a fine of Rs. 100 on the opposite party on account of the charges which are now the baffles of the order of dismissal. The management Is not competent to punish the opposite party twice on the same charges. The application is, therefore, Incompetent.

5. So far as this allegation is concerned, it is clear that this does not amount to an objection that the enquiry was vitiated by reason of personal bias of the enquiry officer. The question, therefore, is: Did respondent Ved Parkaah at any stage raise an objection that the enquiry stood vitiated by reason of a collateral infirmity, namely, the personal bias of the enquiry officer? I say so because the enquiry could be held to be illegal either due to the bias of the enquiry officer or it is was ordered by the management for a collateral purpose or If there was any illegality or Irregularity in the conduct of the enquiry proceedings about which there is no finding by the tribunal. Both the findings on which the decision is based, namely, the wrong statement by the enquiry officer and delay in holding the enquiry and making the report relate to the conduct of the enquiry officer, yet the allegation made by Ved Parkash, so far as the enquiry officer is concerned, was only regarding the conduct of the enquiry itself. As has been discussed elsewhere in this judgment these lapses on the part of the enquiry officer could not form the foundation for a finding that the management ordered the enquiry for a collateral purpose. The net result is that there la no allegation regarding the personal bias of the enquiry officer so that the enquiry could not be held vitiated on this ground and the collateral purpose attributed to the management in ordering the enquiry could not be founded on the factors relied upon by the tribunal. I am not unmindful of the fact that the pleadings In Both matters have not to be read strictly, but it is equally true that the pleadings must be such as to give sufficient notice to the other party of the case It is called upon to meet. It must consequently be held that there has been a violation of natural justice. I am also of the opinion that the Impugned order is based on no evidence. The tribunal never directed Its attention to finding out as to whether the enquiry WM ordered only with a view to punish or penalize respondent Ved Parkash or because he had committed the wrong alleged. No Judicial mind could legitimately conclude from the aforesaid lapses on the part of an individual, the

enquiry officer, that the management charge-sheeted the said respondent and directed an enquiry against him, not because he had committed the alleged wrong but because the management wanted to get rid of him.

6. It has been argued on behalf of the petitioners, relying on a decision of the Gujarat High Court In *Dhrangadhra Chemical Works Ltd. Vs. Industrial Tribunal (I.G. Thakore) and Another*, that the Industrial tribunal, while dealing with an application u/s 33(2)(b) cannot consider as to whether there was unfair labour practice or victimization. The Gujarat High Court In the abovementioned case decided, following certain observations of the Supreme Court in *The Lord Krishna Textile Mills Vs. Its Workmen*, that where the action of the management is mala fide or amounts to unfair labour practice or victimization, the industrial tribunal would have a right to interfere only when an industrial dispute arises, but these considerations are outside the scope of enquiry in an application for approval. The learned Counsel for the respondent has, on the other hand, referred to *The Lord Krishna Textile Mills Vs. Its Workmen*, and says that the Supreme Court did consider the question of victimization while dealing with an appeal against an order u/s 33(2)(b) and if such enquiry was out of place in such applications, the Supreme Court would not have considered the merits of the plea. This argument is sought to be supported by another judgment of the Supreme Court in *Central India Coalfields, Ltd., Calcutta v. Ram Bllas Shobnath* 1961 I L.L.J. 646 Yet another judgment relied upon by the learned Counsel for the respondent is a Judgment of this Court in *Gopal Paper Mills Limited Vs. The Industrial Tribunal, Punjab, Patiala and Others*, .

7. I have considered these authorities and the position appears to me to be that u/s 33(2)(b) the employer may punish the workman whether by dismissal or otherwise provided he complies with the proviso to the said sub-section. While according approval the tribunal has to consider whether or not the order of dismissal is valid and legal. Where no proper enquiry has been held or dismissal is mala fide or by way of victimization, I see no reason why the tribunal cannot go into that question while considering an application u/s 33(2)(b). After all the tribunal has to approve the action taken by the management. An action taken not for any legitimate reason but by way of victimization would not be an action properly taken u/s 33(2)(b). The observations of their lordships of the Supreme Court in *Bharat Sugar Mills Ltd. Vs. Shri Jai Singh and Others*, lends support to the view that I have taken. It was observed at p. 648:

... when an application for permission for dismissal is made on the allegation that the workman has been guilty of some misconduct for which the management considers dismissal the appropriate punishment, the tribunal has to satisfy itself that there is a prima facie case for such dismissal. Where there has been a proper enquiry by the management itself, the tribunal, it has been settled by a number of decisions of this Court, has to accept the findings arrived at in that enquiry unless it is perverse and should give the permission asked for unless it has reason to believe that the management is guilty of victimization or has been

guilty of unfair labour practice or is acting mala fide ...

8. The learned Counsel for the petitioners then contends that if the tribunal was not satisfied with the fairness of the enquiry, it should have called for evidence on merits and decided the controversy itself, namely, whether or not the workman was guilty of the alleged misconduct. The learned Counsel for the respondent/on the other hand, says that the petitioners never asked for an opportunity to lead evidence on the merits of the charge. In view of my decision on the other point it is not necessary to resolve this controversy with the result that this petition must be accepted and the Impugned order of the tribunal dated 31 August 1964, set aside. There will be no order as to costs.

9. Since the quashing of this order of the tribunal will leave the application u/s 33(2)(b) of the Industrial Disputes Act, 1947, pending, the matter will go back to the tribunal for decision In the light of the above observations. The parties will appear before the tribunal on 18 May 1966.