
(1961) 07 CAL CK 0008
In the Calcutta High Court

Titagarh Jute Factory Co., Ltd.

APPELLANT

Vs

Third Industrial Tribunal and Others

RESPONDENT

Date of Decision : 11-07-1961

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33A, 38

Citation : (1962) 1 LLJ 328

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—The petitioner company is the owner of a Jute mill at Titagarh, known as the Titagarh Jute Mill 2. The respondent 2 was a worker under the petitioner company, being a durwan employed in the said mill. Between the petitioner company and its workers, an industrial dispute, at the material time, was pending before the third industrial tribunal, on the following issues:

- (i) Supply of coal and firewoods to workers:
- (ii) supply of boots and putties;
- (iii) overtime wages for dak durwans; and
- (iv) fixation of permanent complement of durwans.

2. On 26 March 1958, respondent 2 was on leave. At about 4 p.m. on that date he was, it is alleged, caught by several workers with stolen hessian and bags and hessian cloth, sewn in a bed-role, while trying to escape by the mill gate. Although caught, respondent 2 subsequently managed to escape and thereafter fled to his native place. The act of respondent 2 amounted to misconduct, punishable with dismissal, under Rule 14(c)(ii) of the standing order of the petitioner company.

3. For the misconduct alleged, respondent 2 was served with a charge-sheet and was called upon to show cause. The respondent 2 filed a written explanation denying the charge altogether. At the enquiry held on the charge, respondent 2

was found guilty and was dismissed by the petitioner company, by an order, dated 5 May 1958. Thereafter, by a letter, dated 6 May 1958, the petitioner called upon respondent 2 to collect his dues as also one month's wages payable under the proviso to Section 33(2)(b) of the Industrial Disputes Act (hereinafter referred to as the Act).

4. Since the misconduct was not connected with the dispute pending before the tribunal, the petitioner company filed, as required under the proviso to Section 33(2)(b) of the Act, an application before the tribunal, on 13 May 1958, for approval of the action taken by them against respondent 2.

5. The address of respondent 2, as recorded in his service book, was given as his address in the aforesaid application. The notice of the said application, sent to respondent 2 by the tribunal under registered post, was, however, received back by the tribunal with the endorsement "left." Thereupon, the tribunal struck off the aforesaid application, on 1 July 1958, with the following observation:

The record is put up for order. The notice sent by registered post to the opposite party received back unserved with the postal mark "Left." In the circumstances no action is possible. The application u/s 33(2) of the Act is therefore struck off.

6. According to the petitioner company, no intimation of the non-service of the notice was given to the petitioner by the tribunal and no opportunity was given to the petitioner to arrange for a fresh service of the notice. This, in my opinion, was unfortunate, particularly because the address of the respondent 2, given by the petitioner, was admittedly the correct address. The tribunal, by a process of short circuit, avoided giving its decision on the application either approving or disapproving the dismissal.

7. Thereafter, the tribunal made its award on the industrial disputes pending before it, on 23 May 1958, and the same was published in the Calcutta Gazette on 19 June 1958. On 16 July 1958, respondent 2 filed an application u/s 33A of the Act before the same tribunal alleging, inter alia, that the petitioner company had contravened Section 33(2) of the Act by not applying before the tribunal for approval of their action in dismissing him. By the aforesaid application, the respondent prayed for his reinstatement and arrears of wages accrued due for the period of his dismissal.

8. The petitioner raised a preliminary objection to the maintainability of the application on the ground that there had been no violation of the statutory provisions inasmuch as the petitioner company had applied for approval before the tribunal and had also offered a month's wages to respondent 2. The tribunal refused to hear the objection as a preliminary objection and took up the application for hearing on merits. By its award, dated 20 December 1958, which was published in the Calcutta Gazette on 15 January 1959, the tribunal allowed the application, directed reinstatement of respondent 2 and also directed payment of wages which accrued due to him during the period of dismissal. In course of its award, the tribunal observed as follows:

The language of the proviso to Section 33(2) of the Industrial Disputes Act is "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." The word "unless" and "has been" in this proviso are extremely significant, and they clearly indicate that the workman in question could be discharged or dismissed only after the wages had been paid and the application had been made. If it was intended otherwise, a period of time from the date of discharge or dismissal would also have been prescribed for compliance with the aforesaid conditions and things would not have been left in an uncertain and fluid state. To hold that the discharge or dismissal would be regular even though the wages were offered or the application made after such discharge or dismissal would, it is clear, amount to doing violence to the natural meaning of the proviso and particularly the words "has been" which have been used twice in it. I accordingly find that there has been, contravention of the mandatory provision of Section 33 of the Industrial Disputes Act. A further fact of which I have to take notice is that the application which was submitted by the employer on 13 May 1958 was not pursued by him, with the result that it was struck off on 1 July 1958. There is thus no approval by this tribunal of the dismissal of the worker in terms of Section 33(5), and, as there is no approval, the workman's complaint u/s 33A becomes clearly maintainable."

* * *

I have considered the statements and I find no basis for the finding of guilt on those materials. The finding of guilt is, in my opinion, clearly perverse. From the manner in which the management proceeded in the matter there can be no doubt that it was not acting bona fide but was playing into the hands of its employees who, purported to have made the statements on 26 March 1958, apparently to serve their own purpose. The fact that after dismissal the opposite party did not proceed with the application u/s 33(2) to hearing would also suggest lack of bona fides. I am, therefore, of opinion that the dismissal is unjustified and wrongful.

9. Against the aforesaid award, the petitioner moved this Court and obtained the present rule.

10. Two points were argued before me in support of this rule:

(i) the offer of wages for one month to respondent 2 by the petitioner, made on 6 May 1958, was sufficient compliance with the provisions of the proviso to Section 33(2)(6) of the Act;

(ii) the striking off of the application by the tribunal amounted to neither approval nor disapproval of the action taken by the company in dismissing respondent 2 and the tribunal was in error in making the striking off of the application, a point against the petitioner company. The language of Section 33 of the Industrial Disputes Act has no clarity for its virtue. I set out the material

portion of the section hereinbelow:

33. (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 workman 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) alter, 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, that workman;

(c) 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.

11. On the language of the section, doubt often arises as to the consequences of the striking off of an application without decision on its merits. In a case in *Lakshminarayana Rao (K.) Vs. State of Madras and Others*, , *Rajagopala Ayyangar, J.*, of the Madras High Court observed:

The foundation of a tribunal's award u/s 33A is a "contravention" of Section 33. and there cannot be a contravention of that provision, when the employer applies for permission, but the tribunal refuses to decide whether the permission should be granted or not. Section 33A is a penal provision and cannot be held to be attracted to a case where an application preferred by the employer is refused to be decided on the merits. The tribunal cannot say to an applicant u/s 33 that Ms Petition is not maintainable or refrain from deciding it on the merits and at the same time entertain a complaint u/s 33A based on the allegation that the employer has failed to obtain a permission u/s 33, and award relief on such a footing.

12. I respectfully agree with the view expressed by his lordship. But even then I have to consider the argument advanced on behalf of respondent 2, as to why I should not follow that decision in the facts and circumstances of the instant case.

It was contended that the order of dismissal was made on 5 May 1958, and the application for approval was filed on 13 May 1958. Since the application for approval was not made before or simultaneously with the making of the order of dismissal, it was contended that there was a violation of the provision of the proviso to Section 33(2)(b) of the Act and that merited instant dismissal of the application. It was further contended that the offer for payment of wages had not been made before the making of the order of dismissal and that made the order of dismissal bad and unworthy of approval by the tribunal. The first branch of the objection made on behalf of respondent 2 finds support from a judgment of Chainani, C.J. (V.S. Desai, J., sitting with him), in the case of Premier Automobiles Ltd. Vs. Ramachandra Bhimayya Polkam, where his lordship observed that an application required to be made by an employer under the proviso to Section 33(2) must be made before the action was taken and it was not correct to infer from the use of the word "approval" that the legislature intended that such an application should be made after the action was taken. The aforementioned view did not find favour with this Court. Sinha, J., in Metal Press Works Ltd. Vs. Deb (H.R.) and Others, observed:

In my opinion, at least this much is clear that it was not contemplated that the application should be made for approval before effecting the dismissal or discharge. I do not think that the words "action taken by the employer" can be said to be ambiguous. This will also be apparent from the rules framed under the Act, in exercise of the power conferred by Section 38. Rule 70 lays down how applications u/s 33 are to be made. Sub-rule (2) of Rule 70 lays down that an employer seeking the approval of the conciliation officer, board, labour court or tribunal, as the case may be, of any action taken by him under Clause (a) or Clause (b) of Sub-section (2) of Section 33 shall present an application in form M. Form M contains a heading where the applicant has to mention the action already taken under Clause (a) or Clause (6) of Sub-section (2) of Section 33. In my opinion, if we are to construe the words "action taken" as "action proposed to be taken," then not only have we to change the wordings in the section itself, but in Rule 70 and in form M. In my opinion, this is not permissible. The idea in the minds of the framers of the Bill resulting in the amendment was that in the case of discharge or dismissal of workmen for any misconduct not connected with the dispute, pending reference, the discharge or dismissal can be effected provided two conditions were satisfied. One is that the workmen have been paid wages for one month, and an application is made simultaneously by the employer to the authority before whom the dispute was pending, for approval of the action taken. The word "simultaneously" must of course be taken reasonably and we should not import into it a split-second timing. It should be done at once and without any delay. It has been suggested in some quarters that a month's time would be reasonable time. Perhaps this is derived from the fact that one month's wages is to be paid to the workman as a condition precedent. In my opinion, If the employer waits for one month, the action can scarcely be said to be simultaneous, by any stretch of Imagination. The application must be made

quickly and without a time-lag. Modi, J., in the case of Associated Cement Companies Ltd. (Lakheri Cement Works) Vs. Industrial Tribunal and Another, held that it should be done the next day. This is much nearer the mark than the decision of Bhandarl, J., who held that an order of discharge or dismissal may be made before making the application, but in a form so as to take effect at a future date. This latter interpretation seems to be unacceptable. What should be the time-lag between the discharge or dismissal and the making of the application depends on the facts of each case.

* * *

In such enquiries, the tribunal can treat an application out of time, as a valid application, if it is satisfied that on the merits there is a case in favour of the employer and against the employee. In such a case the delay may be treated to be merely a technical breach. It is not as if the first question to be asked is as to the technical compliance with the form of the application. As has been pointed out by the Supreme Court itself, wide power in that behalf is conferred by Section 33(5). Under that sub-section, the authority concerned is required to hear the application and pass orders in relation thereto, as it deems fit. In this respect, the test to be applied is not any different from the tests laid down in respect of Sections 22 and 23 of the Labour Appellate Tribunal Act. As was held by the Supreme Court in *The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others*, , the question of a breach of Section 22 may be regarded as a technical breach only, if the merits of the case are abundantly clear.

13. In the instant case the point that the application for approval was made too late was not taken before the tribunal. The company had no opportunity to explain why the application for approval was filed about one week after the making of the order of dismissal. There may have been good reason for the delay, which I do not know. Since I respectfully agree with the observations of Sinha, J., that the application for approval need not be made prior to the order of dismissal and since there may have been sufficient reason for condoning the short delay in making the application and since the point was not taken before the tribunal, in the proceeding u/s 33A of the Act, I am not inclined to allow respondent 2 to take this point for the first time in this rule.

14. So far as the other objection of respondent 2 is concerned, I hold, on a parity of reason, that the offer of payment of one month's wages on the very next day of the order of dismissal was sufficient compliance with the provisions of the statute.

15. Since I hold against respondent 2 on both the objections, I feel no difficulty in following the judgment of the Madras High Court in *Lakshminarayana Rao (K.) Vs. State of Madras and Others*, and I hold that there was no contravention of the proviso to Section 33(2)(b) of the Act by the petitioner in dismissing respondent 2.

16. The dismissal being lawful, respondent 2 was not entitled to any relief in Ms

application u/s 33A of the Industrial Disputes Act. In the view that I take, I have to quash the order of the tribunal directing reinstatement of respondent 2 and payment of wages which accrued due to him during the period of dismissal.

17. The rule is made absolute without any order as to costs.

18. Let the writ of certiorari issue quashing the award made by the tribunal, a copy whereof is annexed to the petition marked with a letter "K"