
(1961) 10 CAL CK 0003
In the Calcutta High Court

Titaghur Paper Mills Co., Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-10-1961

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 33, 33A, 6

Citation : (1962) 1 LLJ 192

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

Bench : Single Bench

Judgement

B.N. Banerjee, J.—Under the petitioner company respondent 3, Sudhir Kumar Sen Gupta, was a junior supervisor, outside department, in mill 1 of the company.

2. At a time when an industrial dispute between the petitioner company and its workmen over payment of profit-sharing bonus for 1954-55 was pending before an industrial tribunal, respondent 3 was charged with misconduct, namely:

(i) for having allowed a suspended worker to continue to work in the mill and to draw his wages, being all the time aware of the suspension of the said worker;

(ii) for having falsely identified another person as Suraj Maharaj in order to enable him by false personation to withdraw provident fund money belonging to the said Suraj Maharaj; and

(iii) for having helped a person to impersonate as Lakhman, a worker in the petitioner's mill, and to work as such.

3. At the departmental enquiry held against respondent 3, he was found guilty of all the charges and thereafter there was a letter of dismissal, dated 10 January 1958, sent to him which was to the following effect:

You have been found guilty of all the charges as embodied in our charge letter quoted above and accordingly you are hereby dismissed with immediate effect.

We are submitting an application to the tribunal for the approval of the order of

dismissal and in the meantime you are offered one month's salary and allowances.

With regard to your provident fund dues", please address a letter to the trustees of the Titaghur Paper Mills Clerks" and Workers" Provident Fund through us requesting settlement.

4. The petitioner alleges that although one month's wages payable to respondent 3, under the proviso to Section 33(2) of the Industrial Disputes Act (hereinafter referred to as the Act), had been offered to and kept available to him, respondent 3 did not accept the same. On 29 January 1958, the petitioner filed an application, u/s 33(2) of the Act, for approval of the action taken against respondent 3 before the Fifth Industrial Tribunal, before which the dispute as to bonus between the petitioner and Its workmen was pending. Inasmuch as respondent 3 had refused to accept his wages, even though offered, the petitioner remitted the money to respondent 3 by money order, on 3 January 1958. The respondent 3 contested the said application by filing a written statement.

5. As a counterblast to the application made by the petitioner, respondent 3 filed an application u/s 33A. of the Act, on 30 March 1959, fourteen months after his dismissal. The Fifth Industrial Tribunal heard the application filed by the petitioner, u/s 33 of the Act, on two preliminary objections raised by respondent 3, namely, that the application deserved to be dismissed

(a) for non-payment of a month's wages to respondent 3;

(b) for belated filing of the application for approval of the order of dismissal made against respondent 3

both constituting violation of the provisions of the proviso to Section 33(2) of the Act. The tribunal gave effect to both the preliminary objections, being of the opinion that the tribunal's approval of the action taken by the employer must be obtained as a condition precedent or, at the worst, an application for approval shall have to be made simultaneously with the action taken by the employer and being further of the opinion that mere offer of wages by the employer to the workman was not enough and in case of non-availability of the workman, attempt must be made forthwith to remit the money to the workman by post. The remittance of the wages to the workman (respondent 3) having been made seventeen days after the order of dismissal and two days after filing of the application, u/s 33(2) of the Act, the tribunal came to the conclusion that the petitioner had not complied with the provision of proviso to Section 33(2) of the Act.

6. After having upheld the two preliminary objections, the Fifth Industrial Tribunal directed that the application u/s 33(2), filed by the petitioner, and the application u/s 33A, filed by respondent 3, be tried together later on merits.

7. The Fifth Industrial Tribunal, however, could not adjudicate the two

applications on merits, because by a notification, dated 8 September 1959, the State Government withdrew the reference from the Fifth Industrial Tribunal and transferred the same to the Second Industrial Tribunal.

8. The Second Industrial Tribunal took up the hearing of the two applications, as by way of trial on evidence, and took both oral and documentary evidence. On such evidence the industrial tribunal found that the charges against respondent 3 had not been proved.

9. The tribunal further found

(i) that the charges against respondent 3 could not be framed even under the standing orders of the petitioner company;

(ii) that the domestic board of enquiry (euphemistically called a Court of enquiry) had not been constituted legally u/s 2(f) read with Section 6 of the Act;

(iii) that the board of enquiry though required to conform to the principles of natural justice as in a criminal Court, wrongly placed the onus upon respondent 3 to disprove the charges:

(iv) that the board of enquiry should not have placed any reliance on the opinion of the expert from the finger-print bureau on the thumb-impression of Suraj;

(v) that respondent 3 may have been falsely implicated as a result of his trade union activities; and

(vi) that there was want of good faith on the part of the petitioner in bringing the charges against respondent 3 and this was done only to victimize Mm.

10. In the result the tribunal held that the petitioner company had not only contravened the provisions of Section 33(2) of the Act but that the order of dismissal itself was wrongful. The tribunal, therefore, ordered reinstatement of respondent 3 and also directed the petitioner to pay him half of the wages, including dearness allowance, etc., from the date of his dismissal until reinstatement.

11. The award made by the tribunal is being challenged in this rule at the instance of the petitioner company.

12. In my opinion, the two preliminary objections were not correctly decided. The approval of the tribunal is not a condition precedent to an order for dismissal or discharge. The words "action taken" in Section 33(2) of the Act cannot be taken to mean "action proposed to be taken." It is no doubt true that the application for approval by the tribunal shall be made without delay, but what should be the time lag between the dismissal or discharge and the making of the application depends on the facts of each case. In the instant case, between the order of dismissal and the making of the application, a period of nineteen days elapsed. No objection as to the belatedness of the application was taken, by respondent 3, in his written objection. The petitioner company, therefore, had no

opportunity to explain why the application for approval was made after nineteen days of the making of the order of dismissal. There may have been good reasons for the delay, which do not appear. If the petitioner company had opportunity to explain the delay, it might have satisfied the tribunal about a sufficient pause and the tribunal might have condoned the delay. The view expressed by the tribunal that such an application must either precede or, at the worst, must be made simultaneously with the making of the order of dismissal, is not a correct view of the law and cannot be sustained (vide *Titagarh Jute Factory Co., Ltd. v. Third Industrial Tribunal Civil Revision Case No. 441 of 1959*).

13. The tribunal was also wrong in holding that the failure on the part of the petitioner company to tender the wages to respondent 3 by money order before the filing of the application, brought it within the mischief of the proviso to Section 33(2) of the Act. It appears from the letter, dated 10 January 1958 (annexure 4 to the petition), that respondent 3 had been offered his wages along with the communication of the order of dismissal to him. The respondent 3, however, did not collect his wages, as offered. There is no particular procedure prescribed for payment of wages under the proviso to Section 33(2) of the Act. No employer can compel a workman to accept his wages in terms of Section 33(2) proviso of the Act, if he will not himself do that. Therefore, if the wages had been kept ready for acceptance by the workman and if the workman was so informed, that must be deemed to be equivalent to payment even if the workman did not, in fact, accept the same. Therefore, the remittance of the wages to the workman, by money order, after the filing of the application for approval, is not a matter of much consequence because even prior to that the wages were kept ready for the workmen to accept.

14. I, therefore, hold that the order of dismissal was not liable to be disapproved on either of the two preliminary grounds, as urged on behalf of respondent 3.

15. Having thus cleared the ground of the preliminary objections, I now turn to that portion of the award which considers the petitioner's application, u/s 33(2) of the Act, on merits. It is well known proposition of law that powers of the industrial tribunal in the matter of a dismissal of a workman are not unlimited. It has no power to act as a Court of appeal and substitute its own Judgment for that of the employer or the management. It would interfere only when in the matter of dismissal:

- (i) There has been a want of good faith; or
- (ii) there has been victimization and unfair labour practice; or
- (iii) the management has been guilty of basic error or the violation of principles of natural Justice; or
- (iv) on the materials the findings are completely baseless or perverse.

16. Reference in this connexion need only be made to the two decisions of the Supreme Court in *Indian Iron and Steel Co., Ltd. and Another Vs. Their*

Workmen, and Titagarh Paper Mills Co., Ltd. v. Ram Naresh 1961 I L.L.J. 511. In the instant case, the tribunal did not examine the findings of the domestic board of enquiry from the above point of view but came to its own findings on the charges on evidence taken by itself, This the tribunal was not entitled to do. I do not mean that under no circumstances can a tribunal take evidence in such matters. But where an enquiry had been held on evidence by a domestic board of enquiry, a tribunal should not ignore the findings of the domestic board of enquiry altogether and try to come to Its own findings on the charges on independent evidence led before it. The tribunal may nevertheless take evidence only to satisfy itself whether or not the findings and the order made by the domestic board fall within the mischief of all or any of the fourfold blameworthiness hereinbefore mentioned.

17. For the reasons aforesaid, I have to ignore the findings on the merit of the charges made by the tribunal on consideration of fresh evidence led before it.

18. It is now necessary for me to examine six other defects, in the order of dismissal, found by the tribunal. The tribunal found that the charges as made could not be framed even under the standing orders of the petitioner company. In my opinion, the tribunal wholly went wrong in coming to that finding. Order 19(6)(7) of the standing orders of the petitioner company is to the following effect:

The manager may, on sufficient grounds, dismiss any operative for the following; acts or omissions or commissions:

(1) * * * (2) * * * (3) * * * (4) * * * (5) * * * (6) * * * (7) theft, fraud or dishonesty in respect of the company's properties.

19. The charge made against respondent 3 definitely imputed fraud or dishonesty in respect of company's properties on respondent 3. Therefore, there is nothing in the standing orders of the company which stood against in the framing of the charges against respondent 3.

20. The tribunal found in the next place that the domestic board of enquiry (euphemistically called the Court of enquiry by the petitioner) had not been constituted in accordance with Section 2(f) read with Section 6 of the Act. In this respect the tribunal was entirely mistaken. Section 2(f) read with Section 6 of the Act has little to do with the constitution of a domestic board of enquiry. A Court of enquiry constituted under the Act has not to conduct any domestic enquiry but has to enquire into matters appearing to be connected with or relevant to an industrial dispute for the purpose whereof it may be set up by the appropriate Government.

21. Thirdly, the tribunal found that the domestic board of enquiry was to approximate its procedure as in a criminal Court. This was again wrong. The rules of natural justice require that there must be an orderly course of procedure adopted by a domestic board of enquiry and no more than that. In my opinion,

the procedure before the domestic board of enquiry set up by the petitioner was not disorderly. Evidence was recorded by the board and respondent 3 was given opportunity to cross-examine witness. The third criticism made by the tribunal against the board of enquiry must, therefore, fail.

22. In the fourth place, the tribunal found fault with the board because it proceeded on the opinion of a finger-print expert on the thumb-impression of Suraj. This criticism is also without substance. Evidence Act does not apply to investigations before domestic boards of enquiry or tribunals. Reference in this context may be made to two decisions of this Court in *Harchura Tea Estate Vs. Labour Appellate Tribunal of India*, and in *Leonard Biermans Workers' Union Vs. Second Industrial Tribunal and Others*, . That being the position in law, there is no reason why the opinion of the finger-print expert could not be utilized by the board of enquiry.

23. Fifthly, the tribunal held that respondent 3 may have been falsely implicated in the charges because of his undesirable trade union activities. The finding is half-hearted and is based on surmises and conjectures. I am not prepared to make much of the finding.

24. Lastly, the tribunal found that respondent 3 had been victimized and that there was want of good faith in the petitioner in ordering his dismissal. The finding as to want of good faith was the conclusion reached by the tribunal on the basis of its own finding on the charges against respondent 3.

25. Since I have already decided that the aforesaid findings must be ignored, the basis for the conclusion goes. The criticism as to victimization was made on the ground that the punishment inflicted on respondent 3 was disproportionate to his offences even if proved. In my opinion, this criticism is without substance because the offences, with which respondent 3 had been charged, were of sufficient gravity to merit the penalty imposed.

26. For the reasons aforesaid, I hold that the tribunal was wrong in withholding approval on the application filed by the petitioner and in allowing the application by respondent 3 for his reinstatement. The award, therefore, deserves to be quashed and I order accordingly.

27. Let a writ of certiorari issue in terms of this judgment. This rule is made absolute without any order as to costs.

28. Civil Rule No. 4411 of 1959.--The respondent 3 in this rule, Shyamadhan Mukherjee, was charged along with respondent 3 in Civil Rule No. 4410 of 1959 for allied offences. The board of enquiry held a joint enquiry against him along with respondent 3 in the other rule and found him guilty of the charges. He was ultimately ordered to be dismissed.

29. The points involved in this rule are admittedly the same as in the other rule and the same order will, therefore, govern this rule also.