
(1961) 02 P&H CK 0009
In the Punjab And Haryana At Chandigarh

Trustees of "Tribune"	Vs	APPELLANT
Industrial Tribunal and Another		RESPONDENT

Date of Decision : 01-02-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33

Citation : (1961) 2 LLJ 615

Hon'ble Judges : Grover, J

Bench : Single Bench

Judgement

Grover, J.—This is a petition under Articles 226 and 227 of the Constitution of India for quashing of the order of the Industrial Tribunal, Patiala, made on 26 October 1960, declining to grant approval of the order of the general manager of "Tribune" dated 7 July 1960, dismissing Om Parkash respondent 2, who was working as a copyholder.

2. Respondent 2 was appointed a copyholder some time in the year 1952 and on 27 May 1960 he was working as a copyholder in the job section of the press. It is common ground that he belonged to the clerical staff and was governed by the standing orders for clerical workmen (annexure B) which had been certified under the Industrial Employment (Standing Orders) Act, 1946. Certain incidents happened on the morning of that day. It appears that the general manager had passed an order prohibiting the entry of press workers into the Tribune premises before ten minutes of the commencement of their duty hours. Om Parkash, who was not a press worker but, as stated before, belonged to the clerical staff, is said to have reached the outer gate at 9-40 a.m. and, according to the management, he made an entry in defiance of the order which had been made by the general manager. This was done in spite of the time-keeper-cum-gate-keeper on duty whose name was Bhagwan Das having informed him that he was thereby infringing the office orders relating to entry into the premises. This incident formed the subject-matter of charge 1 out of the charges which were

ultimately framed against respondent 2. It was also alleged that two press workers, Daya Chand and Ram Lal had entered the premises in spite of having been informed by Bhagwan Das of the orders. Tara Chand, office manager, sent back Daya Chand but Ram Lal managed to slip out himself. At the gate Ram Lal met respondent 2 and informed him that Tara Chand had said that entry was prohibited in the premises whereupon respondent 2 said: "Let us see who stops. Come on." Respondent 2, Om Parkash, then went to the visitor's (also called rest) room and he was there informed by Daya Chand that he had been turned out by Tara Chand. On this, respondent 2 abused Tara Chand who was not present there. Bhagwan Das, the gate-keeper, made a report, Ex. M. 1, the same day to the general manager about the first two incidents. Tara Chand also made a report which has been filed as annexure G to the petition. Certain , other employees, namely, Karam Singh, Brij Lal and Manohar Singh submitted their reports, Exs. M. 3, M. 4 and M. 5 with regard to what they had witnessed in the visitor's room. On 28 May 1960, the general manager, after taking into consideration the reports mentioned before, framed the following charges:--

(1) On 27 May 1960 at 9-40 a.m. you indulged in disorderly behavior at the gate by forcibly entering the premises before time despite the fact that the time-keeper-cum-gate-keeper on duty informed you that you were thereby infringing the office orders relating to entering the premises

(2) On the same day:

(i) At about the same time 9-40 a.m. you incited Sri Ram Lal, a distributor employed in the job section to infringe instructions issued by me to gate-keeper-cum-time-keeper to admit workers not earlier than ten minutes before commencement of duty.

(ii) Later on while sitting in the rest-room between 9-40 a.m. and 10 a.m. in the presence of and within the hearing of some other workers, you indulged in filthy abuse against Sri Tara Chand Kapila office manager, who had earlier directed some workers to abide by the instructions as to entering the premises, and thus tried to undermine the position of the officer concerned, and also insulted and abused him. The acts as above alleged to have been committed by you amount to acts of misconduct punishable with dismissal understanding orders for press workmen, Clause 10 entitled "Misconduct," Sub-clauses (5), (8) and (9).

Accordingly, you are hereby required to tender your explanation to aforesaid charges of misconduct by Monday, 30 May 1960, 10 a.m.

After respondent 2 had submitted Ms reply, Om Parkash was informed on 13 June 1960, by the general manager that his explanation was not satisfactory and that an enquiry into the charges would be held by him on June 1860. The general manager, however, wrote a letter on 16 June 1960, saying that the enquiry would be held on 21 June 1960, by K.D. Bhardwaj, advertisement manager. That letter was delivered to respondent 2 on June 1960. On 17 June 1960, Om Parkash submitted an application for copies of the reports which had been made against

him and of the standing orders. The tribunal has stated that the general manager did not supply those copies to him but it is admitted before me that the copies were supplied and this statement in the order of the tribunal is incorrect.

3. Respondent 2 was the joint secretary of a union called "the Tribune Employees union." On 18 June 1960, he applied to the general manager to appoint some other enquiry officer as he did not expect Bhardwaj to do justice to him because he was a member of the rival union "The Tribune Workers' Union." That application was dismissed by the general manager on 18 June 1960. It is stated in the order of the tribunal that on that very day respondent 2 submitted an application to Diwan Badri Das, Chairman of the Tribune Trust, asking him to intervene so that some other officer who was not biased and was free from the influence of the rival union would hold the enquiry. Copy of that application was sent to Bhardwaj as also to the general manager. It may be mentioned that although the learned counsel who appeared for the management stated that no such application was sent to Diwan Badri Das, there is no such denial in the affidavit which has been filed on behalf of the management nor has any affidavit been produced of Diwan Badri Das to that effect. Bhardwaj started the enquiry on 20 June 1960. Respondent 2 made a prayer before him for an adjournment for the purpose of awaiting the orders of the chairman on his application. Bhardwaj declined to accede to the request on the ground that the chairman had been moved with inordinate delay. The enquiry concluded on 21 June 1960 and respondent 2 was held guilty of all the charges. The enquiry officer made a report on 23 June 1960. It was not until 7 July 1960 that the general manager made the order of dismissal after accepting the findings of the enquiry officer as correct. As an industrial dispute was pending between the management; and the workers, an application was made u/s 33(2) of the Industrial Disputes Act, 1947, for approval of the above action. The tribunal found that the reports which had been made by the various employees of the Incident did not justify the framing of charge 1 and charge 2 and it was observed in particular about charge 1 that it was more or less "suggestive of the way in which the general manager's mind was working." As regards charge 2 while finding that there was no material for that charge and the general manager had apparently indulged in prejudiced conjectures, the tribunal proceeded on to say:

The general manager refused to supply Om Parkash with the copies he had applied for on 17 May 1960, and thereby created a handicap in the preparation of his defence.

This statement is apparently incorrect and, as will be presently discussed, the learned counsel for the management laid a great deal of stress on this incorrect assumption which, according to him, considerably affected the mind of the tribunal. In respect of what was called charge 3, the tribunal considered that Sub-clause (9) of Clause 10 of the standing orders for press workmen could not be invoked against respondent 2 as admittedly he belonged to the clerical staff. The tribunal further came to the conclusion that Tara Chand had not been abused

face to face and no mental pain or injury was alleged to have been caused to Tara Chand and for that reason the matter was not covered by Sub-clause (9) of Clause 10 of the standing orders. The tribunal also expressed the view that the enquiry had not been held in a fair manner and that the evidence had been recorded not by the enquiry officer himself but by the office stenographer, Satya Pal, and that respondent 2 was not allowed to submit written arguments. The concluding portion of the tribunal's order must be set out in its entirety:

For all the foregoing reasons I hold that the enquiry was not fair, that, the charges were untenable, that the conclusions of the enquiry officer were unjustified, that Om Parkash was found guilty of having infringed standing orders that could not be applied to him, that all the facts and circumstances taken collectively give rise to the inference that there were mala fides behind Ms trial and that he had been victimized.

Before the contentions that have been canvassed before me by the learned Counsel for the management and respondent 2 are disposed of, it will be useful to refer to the precise scope of the powers of the tribunal when approval is sought of an order made by the management of dismissal or discharge of a workman u/s 33(2) of the Industrial Disputes Act as also the considerations and circumstances in which such approval should be withdrawn or accorded. Although there is a volume of case-law on this point, it is necessary to refer only to some of the latest pronouncements of their lordships of the Supreme Court. In *The Punjab National Bank Ltd. Vs. Its Workmen*, It has been observed at p. 678 that

where an application is made by the employer for the requisite permission u/s 33, the jurisdiction of the tribunal in dealing with such an application is limited. It has to consider whether a prima facie case has been made out by the employer for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts to victimization or an unfair labour practice, the tribunal has to limit its enquiry only to the question as to whether a prima facie case has been made out or not. In these proceedings it is not open to the tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the tribunal grant permission which it may deem to be fair. It has merely to consider the prima facie aspect of the matter and either grant the permission or refuse it according as it holds that a prima facie case is or is not made out by the employer.

In *The Management of the Bangalore Woollen Cotton and Silk Mills Co. Ltd. Vs. B. Dasappa, M. T.* represented by the Binny Mills Labour Association, after referring to an earlier case *Martin Burn Ltd. Vs. R.N. Banerjee*, and the observations made therein, the law was stated in the following words (at p. 41):

The settled position in law, therefore, is that permission should be refused if the tribunal is satisfied that the management's action is not bona fide or that the

principles of natural justice have been violated or that the materials on the basis of which the management came to a certain conclusion could not justify any reasonable person in coming to such a conclusion. In most cases it will happen where the materials are such that no reasonable person could have come to the conclusion as regards the workman's misconduct that the management has not acted bona fide. A finding that the management has acted bona fide will ordinarily not be reached if the materials are such that a reasonable man could not have come to the conclusion, which the management has reached. In every case, therefore, it would be proper for the tribunal to address itself to the question, after ascertaining that the principles of natural justice have not been violated, whether on the materials on which the management has reached a conclusion adverse to the workman, a reasonable person could reach such a conclusion.

It will have to be seen whether the tribunal in the present case kept all the above principles in mind.

4. The other question which cannot be overlooked is the scope of interference in matters like these under Article 226. It is axiomatic that this Court cannot sit in appeal against the tribunal's order. It is not the petitioners case that there is any question of excess or absence of jurisdiction and the only ground on which the order in question has been assailed by the learned Counsel for the management is one of an error apparent on the face of the record. In *Nagendra Nath Bora and Anr. v. Commissioner of Hills Division* AIR 1958 B.C. 398 their lordships pointed out that the principle underlying the jurisdiction to issue a writ or order of certiorari, was no more in doubt, but the real difficulty arose in applying the principle to the particular facts of a given case. Applying the test that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions could hardly be said to be an error apparent on the face of the record, their lordships held that the rival contentions showed the alleged error as far from self-evident and there could be no Interference by certiorari. As regards the scope of power under Article 227, which has been invoked in the present case also, their lordships have observed that, however wide it may be than the provisions of Section 115 of the Code of Civil Procedure, the High Court cannot in exercise of its powers under that section assume appellate powers to correct every mistake of law. But, in an earlier decision. *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, it was laid down that the error apparent on the face of the record in the context of that case must mean an assumption of facts which were not borne out by the record. That aspect will, also, have to be kept in mind.

5. With regard to the charges that were framed, the initial approach of the tribunal has been to examine each charge with reference to the reports which were submitted by the other employees in respect of the incidents that took place on the material date with a view to first finding out whether there was any basis or jurisdiction for framing those charges. The tribunal says that the report

and the statement of Bhagwan Das, the gate-keeper before the enquiry officer did not contain" a single word" of allegation in them on which either charge 1 or charge 2 could at all be "built." It is further pointed out that Bhagwan Das did not have any talk with the respondent Om Parkash and the suggestion of stopping him at the gate did not arise as the prohibitory order of the general manager did not apply to him as he was not a press workman but was a member of the clerical establishment. The tribunal proceeds to state that the whole charge was thus groundless and suggestive of the way in which the general manager's mind was working. The learned Counsel for the management has referred to Ex. M. 1 which was the report submitted by the gatekeeper, Bhagwan Das, In which it is mentioned that Om Parkash came about twenty minutes before the time when entry was permitted and when Ram Lal told him that entry was prohibited, he enquired as to who had said that on which he replied that Tara Chand had said so. Om Parkash then answered by saying, "Come with me," in other words" Come on" and then both of them went inside the cigarette room. Bhagwan Das appeared as M.W. 1 before the enquiry officer and he made a similar statement there. In the report which was submitted by the enquiry officer, dated 23 June 1960, he did not refer to Ex. M. 1 at all and relied on the statements of Bhagwan Das, M. 1, Sukh Ram, agency inspector, M.W. 3 and DurgaDas, machineman, M.W. 5. According to the enquiry officer, they deposed to have seen Om Parkash forcing his entry into the premises before the permissible entry time in spite of the protest of the gate-keeper. The tribunal does not refer to the evidence of the other witnesses on whom the enquiry officer had relied with respect to charge 1. The learned Counsel for the management submits that according to the law as laid down by the Supreme Court all that the tribunal had to see was whether on the evidence produced before the enquiry officer a prima facie case had been made out by the management for the dismissal of Om Parkash with respect to the charges which had been framed against him and thus the approach of the tribunal was wholly erroneous. He could not, however, suggest any infirmity in the conclusion of the tribunal that Om Parkash not being a press workman could not be covered by the order which had been made by the general manager and that Bhagwan Das, the gate-keeper, never told Om Parkash not to enter owing to the order of the general manager.

6. As regards charge 2, it is pointed out on behalf of the management as mentioned before that the tribunal has stated in the order that the report, Ex. M. 1, and the statement of Bhagwan Das before the enquiry officer did not contain a single word of allegation on which that charge could be "built." Now, charge 2 was split up into two parts. So far as the first one is concerned relating to Om Parkash having incited Ram Lal, the tribunal does not appear prima facie to be right in Baying so because in Ex. M. 1 there is a positive statement about Om Parkash having asked Ram Lal to come on with him in spite of his having been told by Bam Lal that Tara Chand had informed him that going inside was prohibited (before a particular time). Although the tribunal has reproduced the relevant portion from Ex. M. 1, it is not possible to see how, if the facts alleged

wore correct, there was no incitement to Ram Lal to commit a breach of the order. The tribunal seems to have made a fine technical distinction by saying that according to that part of the charge there was no allegation that Om Parkash had instigated Ram Lal to disobey the order of Tara Chand. Even if Ram Lal did not tell Om Parkash that it was the order of the general manager, it cannot be said that there had been no incitement on the part of Om Parkash to commit a breach of a certain order. The tribunal further considered that the general manager had discriminated between Om Parkash and Ram Lal inasmuch as the latter had defied the general manager's order twice and yet no action was taken against him. The tribunal then proceeded to observe:

There was no material for this charge and the general manager apparently indulged in prejudiced conjectures. The general manager refused to supply Om Parkash with the copies he had applied for on 17 May 1960 and thereby created a handicap in the preparation of his defence.

It is not disputed before me that the copies had in fact been supplied to respondent Om Parkash and it is apparent that the tribunal proceeded to give decision with regard to the aforesaid charge on at least one assumption, which was wholly incorrect.

7. The second part of charge 2, together with the concluding portion appears to have been considered by the tribunal under the heading "Charge 3," It has been said in the impugned order that the words of the charge suggest that respondent Om Parkash had abused Tara Chand in his absence as also that insult and abuse had been hurled upon him face to face. There being nothing in the reports, Exs. M. 3, M. 4 and M. 5, or in the statement of Tara Chand or of any other witness that Tara Chand had been insulted and abused in his presence, the tribunal characterized that part of the charge as apparently baseless. The learned Counsel for the management has submitted with a good deal of force that there is nothing in the language of the charge in question--it may not particularly be lucid--to indicate that there was any such allegation as has been understood by the tribunal, namely, that Tara Chand had been insulted and abused By Om Parkash face to face. Neither in the reports made to the general manager by the other employees nor in the evidence which was produced before the enquiry officer any such position was ever adopted by any one which would lend support to the view of the tribunal that the second part of charge 2 contained the allegation of Tara Chand having been insulted and abused in his presence by Om Parkash. On the contrary, the gravamen of the charge was that Om Parkash had used foul abusive language while he was in the cigarette or rest room. The learned Counsel for Om Parkash, respondent, has not been able to point to any portion of the charge from which the conclusion of the tribunal can be supported. The last words in the second part of the charge are: "and also insulted and abused him." This has reference to what is stated in preceding part of the charge and cannot be divorced from the context to be taken to mean that it contained an allegation of Tara Chand having been insulted and abused face to face.

8. The tribunal proceeded to observe rightly that Sub-clause (9) of Clause 10 of the standing orders for press workmen under which mis-conduct had been alleged against Om Parkash in the concluding portion of charge No. 2 did not apply to him as he was a press worker. It is pointed out on behalf of the management that in the standing orders for clerical workmen there is a provision in identically the same words as in the standing orders for press workmen. That provision is contained in Clause 9 of the standing orders for clerical workmen, and under the heading "Misconduct," for which punishment of dismissal can be inflicted, the following acts are specified:--

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) Drunkenness, riotous or disorderly behaviour within the press and office premises and/or while on duty.

(6) * * *

(7) * * *

(8) Anywhere within the trust's estate, committing or inciting others to commit breaches of the law or rules of She trust or the commission of any other act inimical to the interest of the trust or its employees.

(9) Alone or in combination with others, any where within the trust's estate, causing or threatening to cause mental and/or physical pain or injury to other employees.

Even while considering the question of mis-conduct under Sub-clause (9) of Clause 10 of the standing orders for press workmen, the tribunal expressed the view that Tara Chand had not said in his evidence that he had been abused or insulted either in his presence or in his absence and therefore he could not be said to have suffered any mental pain or injury and that he had not even said that he had been informed by anybody that Om Parkash had abused or insulted him in his absence. The tribunal undoubtedly decided this point on the erroneous assumption that the gravamen of the second part of charge 2 was that insult and abuse had been hurled upon Tara Chand face to face. It is true that Clause 10 of the standing orders for press workmen did not apply to Om Parkash but the tribunal did not take into consideration the corresponding provision in the standing orders for clerical workmen which was in Identically the same language. There can be no doubt that the general manager and the enquiry officer appeared to be wholly oblivious of the fact that they were charging under and applying the standing orders for press workmen when Om Parkash was governed by similar orders for clerical workmen, but it is said that they by itself could be the result of either an oversight or lack of bona fides. The learned Counsel for

the management submits that there could be no question of wrong standing orders having been deliberately applied when there were in existence similar orders by which Om Parkash was admittedly governed and no extraneous or other motives could be attributed to the general manager for the aforesaid mistake which appears to have been caused by inadvertence. If the tribunal had taken into consideration all these matters and then come to some conclusion with regard to the same it would not have been open in these proceedings to re-examine that finding but the consideration by the tribunal was clearly affected by the wrong and unwarranted assumptions to which reference has already been made and by the tribunal not applying its mind to the fact that the standing orders applicable to Om Parkash were in identically the same language as those which had been wrongly made applicable.

10. The learned Counsel for the respondent, Om Parkash, submits that even if the tribunal proceeded to base the conclusion on certain erroneous assumptions, so long as the enquiry had been held not to have been fairly conducted and the charges had been found to be untenable and Om Parkash had been found guilty of having infringed the standing orders that could not be applied to him, there ought not to be and cannot be any interference by this Court as an inference of mala fides would arise and also it had been established that Om Parkash had been dismissed by way of victimization. On the other hand, the learned counsel for the management lays emphasis on the wrong approach of the tribunal inasmuch as the tribunal never kept in mind the methods and the tests indicated by their lordships of the Supreme Court for discovering whether the management had acted bona fide or not. It is pointed out that the tribunal never addressed itself to the question whether the materials on which the management had reached a conclusion adverse to the workmen a reasonable person could reach such a conclusion. In this connexion the learned Counsel for the management had laid a great deal of emphasis on the decision of the tribunal with regard to the second part of charge 2 which was dealt with by the enquiry officer and the tribunal as charge 3. The enquiry officer had believed the evidence of Karam Singh, M.W. 4, Brij Lal, M.W. 6 and Manohar Singh, M.W. 7, who deposed in their evidence before him as also in their written reports to the filthy abuse alleged to have been uttered by Om Parkash in respect of Tara Chand, the office manager. It is suggested that the standing orders by which Om Parkash was governed would have covered a case of this kind under Sub-clause (5) of Clause 9 as it would fall under the words "disorderly behaviour." The tribunal, however, never looked into the evidence which was given either before the enquiry officer or of one witness, Karam Singh, who had been produced before the tribunal itself with regard to the aforesaid charge which it was open to the management to produce in order to remove any lacuna in the evidence led at the enquiry. The position taken up on behalf of the management is that even if the first charge had been found to be untenable, that could not be said either about the second part of the second charge (treated as charge 3) or about the first part of the second charge in which incitement had been established. It is urged that in respect of these

charges at least, there was evidence which had been believed by the management about which it was not possible to say that the materials were such that a reasonable person could not have come to that conclusion and further these charges were covered by one or other of the acts constituting misconduct within the meaning of Clause 9 of the standing orders for clerical workmen by which Om Parkash, respondent, was admittedly governed. If the tribunal had made the correct approach, approval could have been accorded to the order of dismissal even if prima facie case had been made out with regard to one of these charges. It does appear to me that the approach of the tribunal particularly with respect to the whole of charge 2 was not in consonance with what has been laid down by their lordships of the Supreme Court and though the view expressed by the tribunal relating to certain facts and matters may not suffer from any infirmity, the main and final conclusion was cumulatively coloured and affected by assumption of some material facts which were not borne out by the record and by the failure to apply the correct principles; thus disclosing an error self-evident and apparent on the face. Consequently, the impugned order must be quashed by certiorari under Article 226 of the Constitution.

11. In exercise of my powers under Article 227, I direct that the tribunal should give a fresh decision on the petition u/s 33 of the Industrial Disputes Act and dispose of the same in accordance with law. In the peculiar circumstances of the case, the parties will be left to bear their own costs in this Court.