

(1961) 11 CAL CK 0017
In the Calcutta High Court

Workmen of Containers and Closures, Ltd.	APPELLANT
Vs	
First Labour Court and Others	RESPONDENT

Date of Decision : 21-11-1961

Acts Referred:

Citation : (1962) 1 LLJ 471

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

Bench : Single Bench

Judgement

B.N. Banerjee, J.—One Jhakkar Prosad was a workman employed by the opposite party 4 company. He was charged with misconduct, specified under Rule 18(a), (g) and (q) of the standing orders of the opposite party 4 company, found guilty of the charges and discharged by way of penalty.

2. The propriety of the order of discharge is the subject-matter of the rule.

3. It is not disputed that at the beginning of the month of June 1958, the latrines, meant for the user of the workers of the opposite party 4 company, were closed down for repair to their septic tanks. The company made arrangements with the neighbouring Gouripore Company, Ltd. for user of the latrines of the latter company in a controlled manner and workers were directed to obtain token from the departmental supervisors of the opposite party 4 company before using the latrines of the other company. On 9 June 1958, Jhakkar Prosad was found about to pass out of the gate of the opposite party 4 company, with the object of going to the latrine of the other company, without first obtaining the requisite permission from his supervisor. He was called upon by the labour officer not to go out without first obtaining the permissive token. This led to an altercation, about the genesis of which there are conflicting versions.

4. Jhakkar Prosad stated that he was suffering from diarrhoea and in the morning of 9 June 1958, he felt gripping pain and the necessity of going out on urgent call of nature. He asked the labour officer of the opposite party 4

company to give him a token for using the latrine, but the labour officer refused to give one to him on the pretext that other workers had already gone to the said latrines. Jhakkar Prosad, it is alleged, continued his importunities to go out, whereupon the labour officer abused him and forcibly turned him out of the gate with the help of his security staff.

5. The other version of the incident is that on 9 June 1958, the workers of the tin box department, where Jhakkar Prosad was a sardar, were found visiting the latrines of Gouripore Company, Limited, in large numbers, right from the start of the work in the factory in the morning. This led to a dislocation of work and the responsibility for the dislocation was with Jhakkar Prosad, who was himself allowing large number of workers to visit the latrines at a time. Thereafter, Jhakkar Prosad was himself found going out without a pass and when he was called upon by the labour officer of the opposite party 4 company not to do so, he flared up and shouted back at the labour officer. He is alleged to have said that he would urinate inside the factory premises if he was not allowed to go out. On being asked not to shout in this fashion, he back-chatted again and even went to the length of shouting "shut up" to the labour officer. The labour officer reported the conduct of Jhakkar Prosad to the manager of the opposite party 4 company and the manager suspended Jhakkar Prosad and issued a gate pass to him to go out of the factory. It was noted on the gate pass that there was a charge-sheet issued against him, but he refused to accept the charge-sheet. Jhakkar Prosad confronted the labour officer with the gate pass and took up a somewhat violent attitude. Thereupon, the labour officer asked him to get out and he went out threatening to assault the labour officer outside.

6. Jhakkar Prosad was charged with the following charges:

(a) For necessary repairs of our septic tank, workers of the factory were instructed by the factory notice, dated 5 June 1958, to use the Gourepore latrines as an alternative sanitary arrangement from 9 June 1958, for a period of approximately a fortnight by obtaining tokens from the departmental supervisors to avoid unnecessary rush in the latrines.

On 9 June 1958, at about 8-45 a.m., you were passing out of the gate without permission or without obtaining token from the department, when you were stopped by the labour officer at the gate, and were instructed by him to collect token from the department or permission from the supervisor as four workers of your department were already out to visit the latrines. Without listening to him, you immediately exhibited temper and in an ugly mood demanded token from him, threatened to urinate inside the factory premises, shouted at him saying, "shut up" and behaved with him in a very objectionable, insubordinate and insolent manner.

Your above acts are subversive of discipline and have amounted to misconduct.

(b) You were issued with a charge-sheet on 9 June 1958 at 10 a.m., as per certified standing orders of the factory which you refused to accept. You were

served with a gate pass on the same day at 10-16 a.m., to pass out of the factory as you were suspended forthwith pending farther enquiry. Immediately on receipt of the gate pass, you rushed into the office of the labour officer in a very agitated and violent mood, without permission and demanded a duplicate gate pass from him. When the labour officer was explaining to you the procedure, you were about to pounce at him and behaved towards him again in a very insolent and insubordinate manner, when you were instructed to leave his office, you threatened him to assault outside.

Your above acts are subversive of discipline and have amounted to misconduct.

7. The cause shown by Jhakkar Prosad is annexure C to the petition and is in line with the version of the incident by the petitioner already stated.

8. There was a departmental enquiry held into the charges and Jhakkar Prosad was found guilty of both the charges and discharged from service. The material portion of the findings arrived at by the departmental enquiry is set out below:

After careful enquiry, I am fully convinced that he is guilty of the charges levelled against him. He has been given full scope to explain his conduct and principles of natural justice have been thoroughly followed. In the interest of discipline, exemplary disciplinary action is warranted against him. Dismissal would have been the proper punishment for misconduct as per charge-sheet which has been conclusively proved. I am, however, discharging him with a view to giving him full retiral benefits, if any, in view of his long period of service and that is the least I should do in the circumstances of his case for which I have lost confidence in him.

9. It is stated that the misconduct with which Jhakkar Prosad had been charged fell within the mischief of Rule 18(a), (g) and (q) of the standing orders of the opposite party 4 company, namely:

18 (a) Insubordination or disobedience, whether along or in combination with another or others, to any lawful and reasonable order of a superior.

* * *

(g) Quarrelling, fighting or causing any disturbance among other workers or inciting others to disturbance or violence.

* * *

(q) Filthy or indecent behaviour.

10. In discharging Jhakkar Prosad, it was contended, the opposite party 4 company dealt with him mercifully because under the standing orders of the company, the misconduct which was proved against him, merited dismissal.

11. The dismissal of Jhakkar Prosad caused an industrial dispute between the workers of the opposite party 4 company and the company itself and the Government of West Bengal referred the following dispute to the first labour

court for adjudication:

(1) Is the discharge of Jhakkar Prosad Justified?

(2) To what relief, if any, is he entitled?

12. The first labour court itself took evidence and came to the following conclusions:

(a) The evidence adduced before the Court, in my opinion, is quite sufficient to establish the two charge-sheets against the worker, even if the decision reached at the domestic enquiry is discarded, as contended by the union. I have, however, very carefully gone through the entire proceedings of the enquiry (Ex. L) and found no reason to differ with the enquiry officer in the conclusion he reached. It may be added further that the plea of his having diarrhoea is an after-thought sought to be bolstered up on the strength of a medical certificate. I am convinced that he did not complain of diarrhoea to the labour officer at the gate. Thus, in my opinion, both the charges are brought home to the workman in this case, independently of the domestic enquiry.

(b) Thus I find that, let apart the decision reached at the enquiry, the evidence adduced in this case in Court fully brings home both the charges to this workman and that the punishment imposed upon the workman having regard to his previous conduct as reflected in the proceedings of the enquiry, Exs. L (1) and L (2), is fully justified and I find no reason to interfere. It is difficult to reinstate such a man with black spots in his service report which would mar industrial peace and harmony.

13. The propriety of the award made by the first labour court is being disputed before me, at the instance of the petitioner union.

14. Two points were made before me by Sri Phanindra Kumar Sanyal, learned Advocate for the petitioner. He contended, in the first place, that the labour court was merely entitled to see whether the domestic enquiry was vitiated by want of good faith, victimization or unfair labour practice, basic error or violation of the principles of natural justice or baselessness or perversity of the findings. It was not entitled to bolster up the findings of the domestic enquiry by its own findings arrived at on independent evidence, thus covering up the gaps, defects or lacunae in the findings of the domestic tribunal and he complained that this was exactly what the labour court did in the instant case. He contended, in the next place, that Jhakkar Prosad was discharged by a letter, dated 17 July 1958, with retrospective effect effecting from 15 July 1958. This Sri Sanyal contended, was unworthy of being upheld by the labour court.

15. Technically speaking, Sri Sanyal is right in his contention that a labour court should not independently try to determine whether a workman was guilty of misconduct or whether the misconduct merited dismissal of the workman unless it was satisfied that the domestic tribunal was either unfair or basically wrong in its findings. This does not, however, mean that a labour court must not take

evidence even if it wanted to satisfy itself on independent evidence whether the domestic tribunal had acted unfairly. In the instant case, however, the legalistic grievance made by Sri Sanyal is not of much force because the labour court found firstly, that the findings of the domestic tribunal were right on the materials before it and in the next place also found, on evidence taken by it, that Jhakkar Prosad was guilty of the misconduct with which he had been charged. Even if I discard the finding of the labour court, based on the independent evidence taken by it, as a piece of overdoing, even then the other finding remains that the domestic tribunal was right in finding Jhakkar Prosad guilty of the misconduct and in dismissing him.

16. I, therefore, find no great substance in the first branch of the argument of Sri Sanyal and overrule the contention.

17. Sri Sanyal, however, is right in his grievance that the order of dismissal was bad being retrospective in operation. Annexure B, the letter from the manager of the opposite party 4 company, is dated 17 July 1958. It was by that letter that Jhakkar Prosad was appraised of the order of his discharge from service taking effect from 15 July 1958. The order of discharge being retrospective in nature, is unworthy of being upheld. Sri Sankardas Banerjee, learned Counsel for opposite party 4 company, tried to get rid of this difficulty by contending that this grievance had not been made before the labour court and should not be allowed to be taken for the first time in this Court. I am not inclined to give effect to this argument. It is now settled law that there can be no dismissal or discharge made with retrospective effect. That being the law, the labour court was bound to take judicial notice of it and to give relief to the dismissed workman accordingly. In this context I need only remind myself of the observation of lord Morris in *Raja Har Narain v. Chandurain Bhagwat Kuar* L.R. 18 I.A. 56 at p. 58:

But the statute is there, and the Judges were bound to take judicial notice of it.

18. There is, in my opinion, no difference, in this respect, between statutory law and law otherwise well settled.

19. In the view that I take, I find no fault with the findings whereby Jhakkar Prosad was found guilty of the charges of misconduct and I affirm those findings.

20. I, however, find fault with the order of penalty Imposed on him on the ground that the same was retrospective in operation.

21. In the result, this rule must be made absolute to a limited extent. The order of discharge with effect from 15 July 1958, is set aside and the award of the first labour court is reversed. This will not, however, prevent the opposite party 4 company from imposing appropriate penalty on Jhakkar Prosad on the findings arrived at as to his misconduct. I only make it clear that the penalty, if any, to be imposed on Jhakkar Prosad must not be retrospective in operation.

22. With the order of discharge set aside, Jhakkar Prosad must be deemed to be and to have at all material times been under suspension, as he had been prior to

the order of his discharge, until the disciplinary proceedings against him are concluded by the opposite party 4 company. This, the company must conclude as expeditiously as possible.

23. Let a writ of certiorari issue accordingly. This rule is made absolute to the extent indicated above without any order as to costs.