
(1975) 12 KL CK 0004
In the High Court Of Kerala

Workmen of Premier Tyres Limited

APPELLANT

Vs

Premier Tyres Limited

RESPONDENT

Date of Decision : 19-12-1975

Acts Referred:

Industrial Disputes Act, 1947 — Section 33

Citation : (1976) 2 LLJ 251

Hon'ble Judges : V. Balakrishna Eradi, J;G. Viswanatha Iyer, J

Bench : Division Bench

Judgement

G. Viswanatha Iyer, J.—The appellant, Premier Tyres Employees Union representing the workmen of Premier Tyres Ltd., raised an industrial dispute over the termination of service of one typist-clerk of the company. The order of termination of this employee reads as follows:

Of late, it has been observed that you have been behaving in an abnormal manner in the office during working hours. It has also been observed on quite a number of times that you have been questioning the instructions of your superiors with regard to your work. It has become a habit with you to quarrel with your co-workers and officers. Your behaviour generally has been insolent and you have been warned several times against this kind of behaviour.

Today particularly, while you were engaged in work and when some papers were handed over to you for typing, you suddenly lost your temper and rushed upto Mr. T.M.G. Nedungadi and shouted at him. When you were asked by him to keep quiet, you started shouting at the pitch of your voice. On hearing this, when Mr. K.S. Padmanabhan also asked you to keep quiet, you rebuked him using obscene language and rushed violently to the Director's cabin.

In the circumstances, we are constrained to feel that your presence in the office will jeopardize the general discipline and the smooth running of the office. It has, therefore, been decided to terminate your service forthwith. You will be paid a month's salary in lieu of a month's notice, which can be collected from the

The dispute was referred to the Labour Court, Quilon, for adjudication. The Labour Court, by the award, filed in the case as Ext. P1 held, that the termination of services of the employees was really a punishment, that the action taken against him was justified on the evidence adduced before it, and that the employee is not, therefore, entitled to reinstatement but he is entitled to get his wages till the date of order since the termination of his service was not proceeded by a domestic enquiry. The latter part of this award was challenged by the company in the original petition and the learned single Judge quashed the award of the Labour Court in so far as it directed the payment of the wages for the period from the date of termination to the date of award for two reasons: namely, that the termination of services even for misconduct on payment of a month's salary in lieu of a month's notice is a termination valid under the standing orders of the company and that even assuming that the termination of service for misconduct is not permissible in the manner it was done by the company, since the company has justified its action before the Labour Court by letting in satisfactory evidence in support of it, there is no scope for a direction to pay the employee his wages from the date of termination of his services till the date of the award. The correctness of this decision is questioned in this writ appeal.

2. The first point that arises for consideration is whether the termination of service of the employee of this company on payment of the wages for one month in lieu of one month's notice will be valid if the reason for termination is misconduct of the employee. Rule 36(1) of the standing orders of the company reads as follows:

Except where the contract of service otherwise provides the employment of a permanent workman shall not be terminated without giving one month's notice in writing either by the employer or the workman in the case of monthly-rated workmen and two weeks notice in the case of other workmen or one month's or two weeks' pay as the case may be in lieu of notice. The reasons for the termination of service shall be recorded in writing and shall be communicated to the workman, if he so desires at the time of discharge.

According to the company, the service of an employee can be terminated for any reason including misconduct under this rule and such a termination is not a punishment. But the doctrine that a master can hire and fire an employee is not allowed full scope in industrial adjudications. In the case of an adjudication of an Industrial Dispute, adjudication does not mean adjudication according to the strict law of master and servant. The dispute or difference between employer and workmen connected with the employment or non-employment of any person constitutes an industrial dispute, and adjudication of such a dispute will not be satisfactory and promote industrial peace if it is based on an interpretation of the contract of employment only. This view was taken by the Federal Court in AIR 1949 111 (Federal Court) . The argument that whenever the employer purports

to terminate the services of his employee by virtue of the power conferred on him, by the terms of the contract, Industrial Tribunals cannot question its validity, propriety or legality, is not accepted for the reason that just as an employer's right to exercise his option in terms of the contract, has to be recognised, so is the employee's right to expect security of tenure to be taken into account. On this principle the employer's power to terminate, is very often scrutinized to see whether the power conferred by the contract has been exercised bona fide. So the jurisdiction of the Industrial Court, in respect of an industrial dispute, is wider than that of an ordinary civil Court. In exercise of that jurisdiction it is open to an Industrial Court to go into the reason for terminating the services of an employee. The extent to which the Industrial Court will go into such a matter is stated by the Supreme Court in *Assam Oil Company Vs. Its Workmen*, . At page 590, the principle is stated thus:

If the contract gives the employer the power to terminate the services of his employee after a month's notice or subject to some other condition, it would be open to him to take recourse to the said term or condition and terminate the services of his employee; but when the validity of such termination is challenged in Industrial adjudication, it would be competent to the Industrial Tribunal to enquire whether the impugned discharge has been effected in the bona fide exercise of the power conferred by the contract. If the discharge has been ordered by the employer in bona fide exercise of his power, then the Industrial Tribunal may not interfere with it; but the words used in the order of discharge and the form which it may have taken are not conclusive in the matter and the Industrial Tribunal would be entitled to go behind the words and the form and decide whether the discharge is a discharge simpliciter or not. If it appears that the purported exercise of the power to terminate the services of the employee was in fact the result of the misconduct alleged against him, then the Tribunal will be justified in dealing with the dispute on the basis that despite its appearance to the contrary the order of discharge is in effect an order of dismissal.

It is further observed thus:

It may also appear in some cases that though the order of discharge is couched in words which do not impute any misconduct to the employee, in substance it is based on misconduct of which according to the employer, the employee has been guilty; and that would make the impugned discharge a punitive dismissal. In such a case fair play and justice require that the employee should be given a chance to explain the allegation weighing in the mind of the employer and that would necessitate a proper enquiry. Whether or not the termination of services in a given case is the result of the bona fide exercise of the power conferred on the employer by the contract or whether in substance it is a punishment for alleged misconduct would always depend upon the facts and circumstances of each case. In this connexion it is important to remember that just as the employer's right to exercise his option in terms of the contract has to be recognised so is the

employee's right to expect security of tenure to be taken into account.

In view of this pronouncement of the Supreme Court the correctness of the decision of Raman Nayar, J. (as he then was) in *The Kanan Devan Hills Produce Co. Ltd. Vs. The Workmen of the Kannan Devan Hills Produce Co. Ltd. and Others*, is, with respect, open to doubt. According to this decision for misconduct, two courses are open to an employer, a less drastic course will be termination simpliciter and the other course will be dismissal by way of punishment, after holding an enquiry and what is required is only bona fides on the part of the employer, and if that is challenged in an industrial dispute, the employer will have to justify his action. The reason is stated thus by the learned Judge at page 485.

Now, if something that falls short of misconduct can be reasonable cause for termination simpliciter as, exphypothesi it can, I fail to see any logic in saying that something more serious, namely, misconduct, cannot furnish a reasonable cause,.... Misconduct seems to be an a fortiori case and the utmost that can be said in a case of discharge simpliciter for misconduct is that the Tribunal would

"be justified in dealing with the dispute on the bias that, despite its appearance to the contrary, the order of discharge is in effect and order of dismissal." (Per Gajendragadhar, J. as he then was) in *Assam Oil Company Vs. Its Workmen*, .

A termination of service for misconduct is always a punishment and it is now a well-recognised principle of natural justice that nobody shall be punished for misconduct without giving him an opportunity of being heard. This procedural requirement is read into the exercise of the power to punish for misconduct. So it is open to doubt whether an employer can terminate the services of an employee on the ground that he has committed misconduct by a termination simpliciter. Further the Standing Order No. 40 provides that "no order of punishment shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him and in every case of dismissal and when circumstances appear to warrant it the management will institute independent enquiries before dealing with the charges of misconduct against the workmen". This provision and Order No. 36 should be harmoniously read and if so done, the termination for misconduct can; only be after holding an enquiry in the manner provided for that purpose. Hence both on the general principles of natural justice and the provisions of the standing orders, a termination simpliciter on the ground of misconduct is not valid.

3. But all these aspects are not relevant in a case where ex facie the order shows that the termination of service was for misconduct. In such a case, it cannot in any event be supported under Rule 36 of the standing orders. In this case reason given for termination of the service is misconduct as can be seen from the order quoted above. This cannot be characterised as a termination simpliciter. Hence the first reason given by the learned single Judge, with respect, is not correct,

4. Then, we have to consider whether it is open to the employer to justify his action when an industrial dispute arises on this question of termination and the matter is referred for adjudication. That is permitted for it is now fairly well-settled by a series of decisions of the Supreme Court that he can let in evidence before the Industrial Court and defend his action. If the Industrial Court comes to the conclusion that there was misconduct on the part of the employee, it can uphold the termination. It is not necessary to cite all the decisions, for, all the earlier decisions on the question have been referred to by Vaidialingam, J., in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, . In paragraph 29, the principles have been formulated in ten rules. Of these rules, Rules 1, 2, 4, 5, 8 and 9 which are in the following terms alone are relevant for the present purpose:

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the standing orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases

where the punishment is so harsh as to suggest victimisation.

Admittedly in this case no enquiry was held. The order of termination *ex facie* shows that the service of the employee was terminated for misconduct. So the management was obliged to justify its action before the Labour Court. The reason given in the order of termination has been substantiated by the management by placing all the evidence before the Labour Court and the Labour Court has found that the action of the management was justified. This part of the award is also not now challenged by the appellant. Therefore, it has to be held that the action taken to terminate the service of the employee is *bona fide*. From this it follows that the termination of service of the employee took effect on the date it was passed and communicated.

5. The next question is whether the Labour Court was right in directing the management to pay the wages for the period from the date of the termination of the service to the date of the award. The Labour Court has relied apparently on two decisions of the Supreme Court to come to the conclusion that the management must pay the wages for the period referred to above. The two decisions are *Sasa Musa Sugar Works (P) Ltd. Vs. Shobrati Khan and Others*, and *Phulbari Tea Estate Vs. Its Workmen*, . The first case was one u/s 33 of the Industrial Disputes Act, 1947. During the pendency of a reference for adjudication of an industrial dispute if the management has to take action against an employee for misconduct the permission of the Industrial Court is required. It is only the permission of the Court that will be effective to terminate the services of an employee. The management suspended an employee and then asked for permission to dismiss him from service. It did not hold any domestic enquiry or order termination of service and practically converted the proceedings u/s 33 into the enquiry which normally the management should have held before applying to the Industrial Tribunal. In such a situation the Supreme Court held that the management is bound to pay the wages of the workmen till a case for dismissal was made out in the proceedings u/s 33. In the next case also the dismissal was found to be unjustifiable and consequently the Tribunal ordered the management to pay the wages. In *P.H. Kalyani Vs. Air France Calcutta*, , a case u/s 33 of the Act, the Supreme Court distinguished the above two cases and held that when the Labour Court on the evidence justified the action of the employer its approval of the order of dismissal would relate back to the date of the order. The first Supreme Court case was distinguished there on the ground that the relationship of employer and employee continued till the date of the award. In a case where no proceedings u/s 33 are pending the principle of the later Supreme Court case must apply with greater force. The appellant has not cited any authority to show that even in a case where the action of the management is justified before the Labour Court the wages must be paid till the date of the award. The order of termination became effective from the date of the order. Therefore, there is no question of payment of any compensation for the period up to the date of the award. The learned single Judge was, therefore, right in distinguishing on facts the above two Supreme Court cases and holding that the

management is not bound to pay any wages to the employee.

6. In the result, the writ appeal fails. It is dismissed; but in the circumstances, we make no order as to costs.