SUPREME COURT OF INDIA

Hanuman Jute Mills

Vs.

Amin Das

C.A.No.180 and 180A of 1955

(N. H. Bhagwati, S. J. Imam and P. Govinda Menon, JJ.)

16.10.1956

JUDGEMENT

IMAM, J.

1. These appeals by special leave are directed against the decision of the Labour Appellate Tribunal, Calcutta, which reversed the decision of the Third Industrial Tribunal, Calcutta. The appellant had filed applications under Section 33 of the Industrial Disputes Act, 1947 seeking permission of the Tribunal to dismiss the respondents in both the appeals, which permission was granted. Against the orders of the Industrial Tribunal the respondents filed appeals before the Labour Appellate Tribunal.

2. The orders of the Industrial Tribunal disclose that the respondents had been warned on several occasions for their bad work and misbehaviour and with respect to some of them for even acts of violence. Thereafter the respondents absented themselves from work without leave on a particular date and for ten subsequent days, which in itself amounted to misconduct involving the penalty, if sought to be imposed, of dismissal under the Standing Orders of the appellant. The respondents explained their absence as involuntary owing to their arrest by the police and applied for leave of absence which was refused.

3. In appeal the Labour Appellate Tribunal was of the opinion that a substantial question of law arose because it thought that the Industrial Tribunal had not applied its mind to the question whether in proposing to dismiss the respondents the appellant was actuated by improper motive or was resorting to unfair labour practice or victimisation, relying upon the decision of this Court in the case of Atherton West and Co. Ltd., Kanpur, U. P. v. Suti Mill Mazdoor Union, 1953 S C R 780 : (A I R 1953 S C 241) (A). The Appellate Tribunal accordingly entered into the merits and it came to the conclusion that, on the materials on the record, the appellant in proposing to dismiss the respondents was not acting bona fide and the case appeared to be one of victimisation.

4. It was urged on behalf of the appellant that no appeal lay to the Labour Appellate Tribunal as no substantial question of law arose in the appeals filed before it. It was pointed out that the Industrial Tribunal was of the opinion that it could not say that the appellant ought to have condoned the respondents absenting themselves from work if the appellant honestly thought that the respondents had by their past conduct forfeited all claims of leniency and concession and that the appellant could not be blamed if it was not prepared to condone the absence of the respondents.

5. On behalf of the respondents it was pointed out that, having regard to the decision of this Court in the case of Messrs Atherton West and co. Ltd., (A) it was the duty of the Tribunal to enquire and come to the conclusion whether there was a prima facie case made out for the discharge or dismissal of the workmen and that the employer, his agent or manager was not actuated by any improper motive or did not resort to any unfair labour practice or victimisation in the matter of the proposed discharge or dismissal of the workmen. Since the Industrial Tribunal had given no finding that the appellant was not actuated by any improper motive or did not resort to any unfair labour practice or victimisation in the matter of the proposed discharge or dismissal of the respondents, the Labour Appellate Tribunal was justified in holding that a substantial, question of law had arisen in the appeal before it. The finding of the Labour Appellate Tribunal that the appellant's action was not bona fide and it was a case of victimisation was a finding of fact. The decision of the Labour Appellate Tribunal should accordingly be upheld as no question of law arose in the appeals before us.

6. It is not disputed that an appeal lies to the Labour Appellate Tribunal from the decision of the Industrial Tribunal on a substantial question of law and not on a question of fact. It remains, therefore, to consider whether any substantial question of law arose in the appeals before the Labour Appellate Tribunal. The Industrial Tribunal referred in some detail to the materials on the record before it concerning the past conduct of the respondents. The record substantiates what has been stated by the Industrial Tribunal and the materials referred to by that Tribunal have not been seriously questioned before us. The Industrial Tribunal expressed itself as follows in its order in the case of the respondents Amin Das and Kashi Ram: -

"The management of course, if they chose, could have condoned the absence, but I cannot say they ought to have condoned the absence and granted leave, if the Management honestly thought that these two workers had by their past conduct forfeited, all claims of leniency and concession. By the exercise of this discretion of the management to the prejudice of the workmen. I cannot say the management was initially wrong, and in any case it is not certainly for the Tribunal to sit in judgement upon this discretion of the Management. The conduct of these two workmen had been sufficiently trying for the employers and if they, after implication in the criminal case, were detained in hajat, I cannot blame the management if they were not prepared to condone their absence."

In the case of the respondent Golok it expressed itself as follows: -

"This workmen behaved in such a way that he had been sent up by the police on a charge of rioting and the management cannot be blamed if they did not see their way to condone the absence, specially when according to management, the service record of this worker is far from satisfactory. He had been warned twice, and in this view of the matter, I do not think the management had done any grievous wrong so that it should be rectified by the Tribunal."

It is quite clear from these findings that the Industrial Tribunal did examine the question whether the discretion of the appellant to dismiss the respondents was being properly exercised, that the appellant was acting bona fide and its desire to dismiss the respondent was not actuated by any improper motive and that the appellant did not resort to any unfair labour practice or victimisation. It is true that the orders of the Industrial Tribunal are not framed in similar language to what has been said in the case of Messrs. Atherton West and Co. Ltd. (A) but in substance it has complied with the view expressed by this Court. The Industrial Tribunal, at the time it passed its orders, had not before it the decision of this Court in the aforesaid case but it seems to us that its findings

indicate that it kept well within the observations of this Court. The Labour Appellate Tribunal therefore, was in error in thinking that the Industrial Tribunal had not applied its mind to the, question whether in proposing to dismiss the respondents the appellant was actuated by improper motive or was resorting to unfair labour practice or victimisation. This error on the part of the Labour Appellate Tribunal led to a further error in supposing that the appeals before it raised a substantial question of law. In our opinion, no such question arose, having regard to the findings of the Industrial Tribunal, and consequently the appeals were wrongly entertained by the Labour Appellate Tribunal.

7. The appeals are accordingly allowed but without costs and the decision of the Labour Appellate Tribunal is set aside and the orders of the Industrial Tribunal are restored.

Appeals allowed

</html