SUPREME COURT OF INDIA

Tractors (India) Ltd.

Vs.

Md. Sayeed

C.A.No.94 of 1957

(B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.)

15.04.1959

JUDGEMENT

GAJENDRAGADKAR J.:

1. This appeal by special leave arises out of applications made by the Tractors (India) Ltd., (hereinafter called the appellant) before the Third Industrial Tribunal, West Bengal, Calcutta, under S. 33 of the Industrial Disputes Act (hereinafter called the Act) for permission to dismiss 9 of its durwans amongst whom were included the two respondents. On 20-4-1955 the tribunal allowed the applications made by the appellant and granted it permission to dismiss the two respondents and six other durwans. The respondents challenged the said order by preferring an appeal to the Labour Appellate Tribunal of India at Calcutta (Appeal No. Cal. 132 of 1955). This appeal was allowed on 11-6-l956 and the appellant's applications for permission were rejected. It is against this order that the present appeal has been filed by the appellant.

2. The appellant is a company carrying on business as engineers and dealers in earthmoving equipments and agricultural equipments. For the protection of its properties it has to maintain a watch and ward staff consisting of durwans. In April 1954 the appellant instituted a form of watchman's clock the special keys of which when turned in record on a paper-dial the time at which the durwan is present at certain picked points on the perimeter of the appellant's premises. These keys are five in number and they are placed at five most important points in the appellant's perimeter. The arrangement was that the durwans had to make four complete circuits of the appellant's perimeter in the course of one hour. The object of this arrangement was to ensure that the appellant's perimeter was regularly and diligently patrolled during the hour of darkness. This arrangement had been explained to the said durwans by the appellant's service manager, respondent 1, and it worked satisfactorily until June 1954.

3. In June 1954 the clock had to be sent for repairs and cleaning; it was duly returned repaired and cleaned in July 1954 and was handed over to the durwans on 5-7-1954 at about 4-30 p. m., with instructions to resume their normal operations during the hour of darkness.

4. On 6-7-1954, the head-clerk of the workshop found that the removeable paper-dial, when taken out, did not show any punch-holes and that indicated that the circuit duty had not been carried out correctly. On enquiry the service manager was told by respondent 1 who was then the head-durwan that the durwans would not resume the working of the clock unless an umbrella was supplied to them for protection against rains. Consistently with the stand thus taken by the durwans the circuit

duty was not carried out as required even on 6-7-1954. That is why on 7-7-1954, a new umbrella was handed over to respondent 1; even so the circuit duty was not performed on July 7 because it was discovered on July 8 that the paper-dial showed no punch-holes. On July 8 a petition was received by the appellant which had been signed by all the durwans on July 7. In this petition the durwans had made certain demands and had stated that they would only operate the punch-clock provided the said demands were granted by the appellant.

5. The appellant was not inclined to accept the imposition of conditions as suggested by the petition and so it decided to issue an office order to be served on each durwan individually bringing it to his notice that he had to do his duties during the hour of darkness and operate the watchman's clock as directed. Ten written office orders were accordingly prepared and they were entrusted to the office bearer Ajamdar Pandav for delivery to each one of the durwans. Only one of the durwans, Latif Khan, accepted the said order but the others refused to take it.

6. Though the respondents had thus shown a spirit of insubordination the appellant's acting service manager called respondent 1 to the office and asked him to take over the watchman's clock. Respondent 1, however, refused to comply with the result that the security arrangements were not enforced even on the night of July 8.

7. When the appellant found that the durwans were determined not to obey its lawful order issued by the appellant's acting service manager, it decided to take action against them for their gross misconduct. Accordingly on 9-7-1954 charge-sheets were issued to the said durwans including the respondents and an enquiry was held on July 12. Evidence was taken at the said enquiry and full opportunity was given to the durwans to adduce evidence and also to cross-examine the witnesses who had sworn against them. No evidence was adduced by the durwans and they did not choose to cross-examine the witnesses either. As a result of the enquiry the appellant was satisfied that the charge framed against the durwans had been substantiated and that they were guilty of serious misconduct. The appellant took into account the fact that the durwans were members of the staff responsible for the safety of the factory and the appellant's property. The appellant accordingly decided to dismiss the said durwans.

8. At the material time, however, an industrial dispute was pending before the Third Industrial Tribunal of West Bengal, Calcutta, between the appellant and its workmen, and so the appellant filed applications under S. 33 of the Act before the said tribunal. The tribunal was satisfied that the appellant had held a proper enquiry and that on the evidence adduced at the enquiry the appellant was justified in dismissing the respondents. On this view the tribunal granted permission to the appellant to dismiss the respondents. The Labour Appellate Tribunal, however, was inclined to take the view that the refusal on the part of the durwans to accept the communication addressed to them could not be said to be a deliberate act of disobedience because the communication was written in English and the durwans did not know English nor were they told what it contained. It is on this finding that the appellate tribunal reversed the order of the tribunal under appeal. The appellant contends that the appellate tribunal has exceeded its jurisdiction in interfering with the order passed by the tribunal.

9. There is no doubt that under S. 7 (1) (a) of the Industrial Disputes (Appellate Tribunal) Act, 1950, an appeal against the order passed under section 33 could lie only if it involved a substantial question of law. The respondents had urged before the appellate tribunal that their appeal raised a substantial question of law because the tribunal had travelled beyond the implication of the charge-sheet and its order was erroneous inasmuch as it had not considered the inherent contradiction

between the affidavit filed by the appellant and the evidence before the tribunal. This latter contention has been rejected by the appellate tribunal, and we think rightly. It, however, took the view that the tribunal's conclusion that the respondents were guilty of deliberate insubordination was wrong and it thought that the fact that the respondents did not know what the official communication contained should serve as an extenuating circumstance. In our opinion, in coming to this conclusion, the Labour Appellate Tribunal exceeded its jurisdiction. The simple question of fact which had to be tried by the tribunal under S. 33 was whether a prima facie case had been made out by the appellant against the respondents. The scope of the tribunal's jurisdiction in entertaining applications made by the employer under S. 33 as been frequently considered by this Court. There is no doubt that in exercising its jurisdiction under S. 33 the tribunal is not sitting in appeal over the decision of the employer. This position was clearly recognised by the tribunal when it dealt with the present applications; and so it passed an order in favour of the appellant when it was satisfied that the appellant had held a proper enquiry and that the conclusion reached by it could not be said to be mala fide or unfair. On the findings made by the tribunal no question of law arose, much less did a substantial question of law fall to be considered by the Labour Appellate Tribunal. Therefore the Labour Appellate Tribunal should have held that the respondents' appeal before it was incompetent. What the Labour Appellate Tribunal has purported to do is to appreciate evidence or itself and this clearly is outside its jurisdiction under S. 7 (1) (a).

10. Besides, we may incidentally say that, even on the merits the conclusion of the Labour Appellate Tribunal appears to be patently erroneous. The sequence of events clearly indicates that the refusal of the respondents to accept the office order was deliberate. By their petition presented to the appellant on 7-7-1954 the respondents and their colleagues had clearly told the appellant that unless their demands were met they would not be prepared to work the security arrangements as desired by the appellant. The statement made by the bearer Ajamdar Pandav clearly shows that one of the durwans accepted the order while the others refused; and it also appears in evidence that the durwan who accepted the order got it explained by a clerk and that when the contents of the order were known to the other durwans they refused to take it. The explanation given by the respondents that the bearer had told them that if they refused to take the order they would be sent for by the appellant's manager and the order would be explained to them is clearly an afterthought. It is significant that the charge-sheet which was served on the respondents was in English and they did not refuse to accept it on the ground that they did not know what it contained. It is thus clear that, having regard to the broad facts proved in this case, the conclusion of the tribunal was obviously right and the view taken by the Labour Appellate Tribunal is patently erroneous; but, as we have already observed, the Labour Appellate Tribunal had no jurisdiction to deal with questions of fact and that is the principal legal argument against the validity of the order passed by it.

11. In the result we must hold that in reversing the order passed by the tribunal under S. 33 of the Act, the Labour Appellate Tribunal exceeded its jurisdiction and so its order must be set aside. The result is the appeal is allowed, the order passed by the Labour Appellate Tribunal set aside and that of the original tribunal restored. The learned Attorney-General has very fairly not pressed for his costs and so there will be no order as to costs in this appeal.

Appeal allowed.

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