SUPREME COURT OF INDIA

East Indian Coal Co. Ltd.

Vs.

Parbati Sankar Mukherjee

C.A.No.312 of 1957

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

15.04.1959

JUDGEMENT

K. N. WANCHOO J.:

1. This is an appeal by special leave against the order of the Labour Appellate Tribunal of India in the matter of the discharge of an employee of the appellant. The appellant is a coal mining company carrying on business in the district of Manbhum (Bihar) and is governed by "Standing Orders for the Coal Mining Industry" as certified by the Chief Labour Commissioner (Appellate Authority) on 8-4-1950 under S. 6 (2) of the Industrial Employment (Standing Orders) Act, XX of 1948. The respondent was a ration clerk in the employ of the appellant. The appellant's case is that the respondent went into the rice-godown on 7-4-1954 without any authority and created a scene by shourting in the presence of workmen and accusing the clerk in-charge of the rice-godown of deliberately giving short weight and also threatened that clerk. There was a complaint about this incident to the Colliery Superintendent, who sent for the respondent and made inquiries in the presence of the office manager. The respondent explained that he was joking. Thereupon the Colliery Superintendent pointed out to him the serious results which might have ensued from his action. The respondent then admitted his fault and apologized, and no further proceedings were consequently taken. On 24-4-1954, however, the respondent addressed a letter to the union, a copy of which was forwarded by it to the Colliery Superintendent. In that letter, according to the appellant, he made various false allegations against the Colliery Superintendent and the office manager. Thereupon the appellant decided to hold a thorough investigation into the matter and eventually a charge-sheet was delivered to the respondent on 3-5-1954 and he was asked to submit his explanation. The explanation was received on 5-5-1954 and an inquiry was held on May 6. Thereafter the respondent was suspended from May 7, pending completion of the inquiry. The inquiry-officer made his report on May 10. In the meantime, however, the respondent made certain allegations as to the manner in which the inquiry was made on May 6, and his complaint was that he had been forced to make a statement during the inquiry. So a further opportunity was given to him to say what he had to say and a further report was made on May 17. Thereafter the respondent was suspended from May 20, 1954, without pay. As a dispute was pending before the All India Industrial Tribunal at the time, the appellant applied under S. 33 of the Industrial Disputes Act (hereinafter called the Act) to the Tribunal for permission to dismiss the respondent in the interest of maintenance of discipline. The suspension from 20-5-1954, was pending permission of the Industrial Tribunal. The respondent in his turn made an application to the said Tribunal under S. 33-A of the Act that he had been dismissed from service on 20-5-1954, with effect from 7-5-1954, and that this was against S. 33 of the Act inasmuch as express permission in writing from the Industrial

Tribunal had not been taken before such dismissal.

2. These were the two original applications under Ss. 33 and 33-A of the Act by the two parties. Later, both the parties prayed for amendment of their applications. The appellant prayed that in addition to the prayer for permission to dismiss the respondent, it might, in the alternative, be given permission to discharge the respondent. The respondent, on the other hand, prayed that his application u/s. 33-A might be amended by substituting 'suspension' for 'dismissal', and his case by the amendment was that he had been suspended for more than ten days in breach of cl. 27 of the Standing Orders, and this amounted to an alteration in his conditions of service to his prejudice and could not be done without the express permission of the Industrial Tribunal under S. 33 of the Act. The Industrial Tribunal allowed the amendments prayed for by both the parties with their consent. Thus the prayer of the appellant finally was for permission either to dismiss or to discharge the respondent. The prayer of the respondent finally was that action should be taken against the appellant for suspending him for more than ten days without pay against cl. 27 of the Standing Orders without the permission of the Tribunal.

3. The two matters were heard together by the Industrial Tribunal. It came to the conclusion that the appellant was not entitled to dismiss the respondent on the ground of misconduct on the charge framed against him. It then went on to consider whether a case for granting permission to discharge had been made out. It came to the conclusion that the appellant would be perfectly justified in discharging the respondent from employment. It further held that the discharge in the circumstances amounted to retrenchment within the meaning of S. 25-F of the Act. It, therefore, ordered the appellant to pay to the respondent his total emoluments from 7-5-1954 up to the date of publication of its award and also wages for a month in lieu of notice and compensation equivalent to fifteen days' average pay for every completed year of service or any paid thereof in excess of six months, as provided under S. 25-F of the Act. It also in effect dismissed the application of the respondent under S. 33-A, though not in so many words.

4. Thereupon the respondent went up in appeal to the Labour Appellate Tribunal. He challenged therein the orders passed in the two applications under S. 33 and S. 33-A of the Act. In his grounds of appeal; be said that there was neither a 'prima facie' case nor a 'bona fide' one against him which entitled the Industrial Tribunal to grant permission for his discharge under S. 33 and as such the application under S. 33 should have been dismissed. He further said that contravention of S. 33 of the Act had been made out and that his application should have been granted. The appellant filed no appeal and submitted to the order of the Industrial Tribunal, which we have set out above. It appears that it was argued before the Appellate Tribunal that no substantial question of law arose and therefore the appeal of the respondent before it was not maintainable. The Appellate Tribunal considered the order of the Industrial Tribunal and came to the conclusion that the Industrial Tribunal had failed to consider whether the respondent was or was not entitled to the relief of withdrawal of suspension, which he had prayed for in his amended application, and in the circumstances it had failed to exercise jurisdiction in not adjudicating upon this matter; and consequently this part of the appeal involved a substantial question of law. The Labour Appellate Tribunal then dealt with the appeal with respect to the application of the appellant under S. 33 of the Act and took the view that the order passed by the Industrial Tribunal on that application was not one which could be passed under S. 33 of the Act. It pointed out that in deciding an application under S. 33 of the Act, the Tribunal had jurisdiction only to enquire into the question whether the employer had made out a 'prima facie' case for the proposed discharge of the workmen or not and should not decide whether the discharge, when it is made in consequence of the permission, would be justifiable or not, for the reason that the justifiability or otherwise of the discharge could form the

subject-matter of an industrial dispute in future and the Tribunal dealing with an application under S. 33 of the Act should not prejudge or prejudice the future industrial dispute. It also pointed out that in this case the Industrial Tribunal did not limit its inquiry to and did not give a finding on whether a 'prima facie' case had been made out, though the respondent apparently understood the order to amount to living permission to the appellant to discharge him. The Appellate Tribunal, however, thought that there was no permission granted by the Industrial Tribunal to the appellant to discharge the respondent, and therefore there was no question of the respondent being aggrieved by the award or decision. It, therefore, dismissed the appeal of the respondent so far as it relate to the decision of the Industrial Tribunal under S. 33 of the Act. It then went on to consider the appeal with respect to the respondent's application under S. 33-A of the Act and was of the view that the finding of the Industrial Tribunal that the appellant would be justified in discharging the respondent was vitiated by the fact that the respondent had never been charged with what the Industrial Tribunal found, namely, that the respondent made false allegations against the office manager, with the intention of creating some labour trouble and therefore the appellant had lost confidence in one who was capable of such serious mischief. Eventually, the Appellate Tribunal refused the permission sought by the appellant to discharge the respondent. In consequence, it ordered that the suspension of the respondent in anticipation of the permission must be withdrawn and the respondent must be deemed to have been in uninterrupted service all through and his emoluments ever since 1-4-1954 must be paid to him by the appellant. Thereupon the appellant applied to this Court for special leave to appeal, which was granted; and that is how the matter has come before us.

5. We must say with respect that the Labour Appellate Tribunal has put a too literal construction on the order of the Industrial Tribunal. The scope of the powers of the Industrial Tribunal under Ss. 33 and 33-A of the Act and of the Labour Appellate Tribunal under Ss. 22 and 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950, has been laid down by this Court in Automobile Products of India Ltd. v. Rukmaji Bala, 1955-1 SCR 1241: ((S) AIR 1955 SC 258), and there is no doubt that all that an industrial tribunal has to decide when an application is made under S. 33 of the Act is to grant or withhold the permission, i. e., to lift or maintain the ban put on the employer by S. 33 of the Act. It is true that the Industrial Tribunal in this case did not in so many words say that it was granting permission to the appellant to discharge the respondent, just as it did not say in so many words that it was dismissing the application of the respondent under S. 33-A. But a fair reading of the order of the Industrial Tribunal clearly shows that it considered the question whether a case for granting permission to discharge had been made out and came to the conclusion that the discharge in the circumstances would be perfectly justified and in consequence the application under S, 33-A failed. Though it did not say in so many words that it was granting permission to the appellant to discharge the respondent, it is obvious from its order that it was in fact granting such permission. The respondent himself understood the order to mean that the Industrial Tribunal had granted permission to the appellant to discharge him and it was on that footing that he appealed to the Labour Appellate Tribunal and actually said in his grounds of appeal (No. 12) that there was neither a 'prima facie' case nor a 'bona fide' one against the respondent for granting permission to discharge him. We are therefore of opinion that the Appellate Tribunal was not right in holding that the Industrial Tribunal had not granted permission to the appellant to discharge the respondent, even though it did not say so in so many words. It is also difficult to understand how the Appellate Tribunal went on to refuse the permission sought for as if it was dealing with the application under S. 33 as an original tribunal, when it had already held that the respondent was not aggrieved by the award or decision in that matter. The Appellate Tribunal apparently overlooked cl. 21 of the Standing Orders which is in these terms-

"For terminating employment whether by the management or by an employee notice shall be given

in writing by the party concerned:

(a) One month's notice for monthly paid staff.

(b) One week's notice for weekly paid employees."

The appellant was obviously praying in application under S. 33 of the Act that he might be permitted to discharge the respondent under this provision. All that the Industrial Tribunal had to see was whether a 'prima facie' case had been made out for discharge of the respondent under this provision which requires nothing more than one month's notice in that behalf. Undoubtedly, the Industrial Tribunal will not grant permission, if no 'prima facie' case is made out and in that connection may take into account whether the prayer for dismissal or discharge is an unfair prayer for the purpose of victimisation. This was gone into by the Industrial Tribunal in this case and it came to the conclusion that the prayer for discharge was justified in the circumstances. There was thus no substantial question of law which really arose for the decision of the Labour Appellate Tribunal, once it is held, as we do hold, that in effect the order of the Industrial Tribunal amounted to grant of permission to the appellant to discharge the respondent. It is urged on behalf of the respondent that the Labour Appellate Tribunal was right in pointing out that the respondent was never charged with having created some labour trouble against the office manager and thereby having lost the confidence of the appellant. Our attention in this connection was drawn to Martin Burn Ltd. v. R. N. Banerjee, 1958 SCR 514: (AIR 1958 SC 79), where it was held that

"in view of the fact that no formal inquiry into the charges against the respondent was held and the evidence on behalf of the company did not show that the workman was given an opportunity to controvert the allegations made against him, the decision of the Tribunal withholding permission should stand."

That case, in our opinion, has no application to the facts of the present case. In the present case, the appellant framed a charge against the respondent with respect to the incident of 7-4-1954 and the letter he had written to the union. The inquiry was held in that matter in the presence of the respondent and he was given a chance to controvert the charge framed against him. Thereafter a decision was taken that he should be dismissed or discharged and permission should be sought from the Industrial Tribunal for the purpose. It cannot be said, therefore, that there was no inquiry into the charge in this case and no opportunity had been given to the respondent to controvert the charge framed against him. It is true that the charge does not speak of the respondent trying to foment trouble against the office manager or of the appellant having lost confidence in him; but these are merely inferences from the facts which are alleged in the charge. In these circumstances, the criticism of the Labour Appellate Tribunal that the Industrial Tribunal had failed to notice that the respondent was never charged by the appellant with these matters is not justified. We are therefore of opinion that the order of the Labour Appellate Tribunal should be set aside and the order of the Industrial Tribunal restored so far as the application under S. 33 of the Act is concerned . We have already said that that order is in effect an order granting permission under that section.

6. As to the order of the Labour Appellate Tribunal under S. 33-A of the Act reinstating the respondent in effect, we are of opinion that that order must also be set aside and the order of the Industrial Tribunal in that behalf restored, once it is held that the order of the Industrial Tribunal granted permission to the appellant to discharge the respondent. It is true that under cl. 27 of the Standing orders there can be no suspension without pay for more than ten days. But in this case the Industrial Tribunal whose order we are restoring has awarded the respondent his total emoluments

up to the date of publication of the award and that is all that the respondent could have got in any case under S. 33-A. The appellant had submitted to the award and nothing therefore survived which the Appellate Tribunal could consider after it dismissed the appeal with respect to the appellation under S. 33. The order of the Labour Appellate Tribunal therefore setting aside what was in effect an order of dismissal of the application under S. 33-A by the Industrial Tribunal must also be set aside.

7. We, therefore, allow the appeal and set aside the order of the Labour Appellate Tribunal and restore the order of the Industrial Tribunal. In the circumstances of this case, we pass no order as to costs

Appeal allowed.

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