SUPREME COURT OF INDIA

Shiva Glass Works Co. Ltd.

Vs.

Their Workmen

C.A.No.6 of 1958

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

21.04.1959

JUDGEMENT

B. P. SINHA J.:

1. This appeal by special leave, impugns the validity and correctness of the reversing judgment and order, dated 20-11-1956, of the Labour Appellate Tribunal of India, Calcutta, whereby it directed the reinstatement, with full wages, of 83 workmen of the appellant company.

2. The facts leading up to this appeal may shortly be stated as follows: The appellant is a limited liability company which was incorporated in 1949, with its head office at Calcutta. It has two Factories known as Factory No. 1 and Factory No. 2. We are here concerned with the workmen of Factory No. 1. The Factory employs about 425 workmen, for manufacturing goods. It is stated that at the instigation of outsiders, the workmen took a concerted action of "go-slow", with the result that the production of the Factory began to decline, and by the month of June, 1955, the production went down by 42 per cent. On various dates in June, 1955, the appellant gave notices and warnings to its workmen, but without any result. The workmen also resorted to several "sit-down" strikes, and on 24-6-1955, there was a complete stoppage of work for two hours. As a consequence of the workmen's "go-slow" policy and "sit-down" strikes, the Company suffered a heavy loss. As the appellant's warnings and notices to the workmen proved unavailing, it had no option but to declare a lock-out on 4-7-l955. The matter was forthwith reported to the Labour Commissioner and to the police authorities, with a view to taking security measures. During the pendency of the conciliation proceedings, the Shiva Glass Mazdoor Union, adopted a hostile attitude and threatened strike in Factory No. 2 also, if the lock-out in Factory No. 1, was not withdrawn. The leaders of the said Union resorted to several illegal and violent activities, resulting in a number of criminal cases. But in spite of all this, the majority of the workmen of Factory No. 1, were willing to come back to work peacefully, and as they were not inclined to support the obstructive policy and illegal activities of the Mazdoor Union aforesaid, they formed themselves into another Union named "Shiva Glass Employees' Union", with Janab A. M. A. Zaman, M. L. A., as the President. As the bulk of the workmen were eager to start working in Factory No. 1, they started negotiations through the Labour Commissioner, through whose intervention, a settlement was arrived at on 4-8-1955. It is not necessary for the purposes of this case to set out the terms of the agreement, beyond stating that the workmen were prepared to give a written undertaking that they would work peacefully, observe the discipline of the Company, and by hard word, make good the losses the Company had sustained, and "will give full production according to the Production Order of the Company in force at present". As a result of the agreement, the lock-out was lifted on 6-8-1955, and the Company gave

repeated notices to the workmen on several dates between August 6 and 26, 1955 inviting all the workmen to re-join the Factory. The last notice extended time till August 29, for the workmen to join the Works. Most of the workmen joined their posts, and on 1-9-1955, the Company began to engage new hands in place of those workmen who had not chosen to join their posts.

3. In the meantime, the Mazdoor Union had been creating trouble in Factory No. 2 also, necessitating the making of a Reference by the Government of West Bengal to the Industrial Tribunal - Reference No. 278/ Dis, dated 20-1-1955. The said Reference culminated in a compromise Award, as a result of which, the workmen in Factory No.2 also, entered into terms similar to those which had been effected by the agreement between the new Union and the Management, as aforesaid. The workmen of factory No. 2 also similarly gave an undertaking to make up the losses in production, and to be of good behaviour.

4. In spite of the agreement reached between the majority of the workmen of Factory No. 1, represented by their new Union, the leaders of the Mazdoor Union continued to create trouble and to indulge in violent activities of assault and intimidation to workmen who had joined the Factory. Apparently, they were indulging in those unlawful activities in the interest of those workmen who had not chosen to join their posts, or perhaps, because the old Mazdoor Union was not inclined to respect the agreement reached by the new Union. Whatever may have been the cause of the trouble, in order to settle the dispute, the Government of West Bengal made another Reference to the Second Industrial Tribunal, West Bengal, Calcutta, for the adjudication of the following dispute:

"Is the termination of service of the workmen, as per list attached justified? What relief are they entitled to?"

The 'attached list' contained 195 names of the persons whose services had been alleged to have been terminated by the Management. of those, it was the case of the Management, fifty were fictitious names. Though the last date fixed by the Company for the workmen to join their posts had elapsed, between September, 1955, and April 1956, about fiftyfive more workmen, out of the list of 195, were permitted by the Management to join their posts.

5. Before the Industrial Tribunal, the workmen, in their written statement, submitted that all those 195 named workmen had been kept out of their work, but at the time of the hearing of the Reference, their case was that 84 persons, who had not received any discharge letter, were still the victims of the lock-out. The Union made an unsuccessful attempt to have the terms of the Reference unended by substituting the words "lock-out" in place of "termination of service", as contained in the terms of the Reference. After hearing evidence of both the parties, the Tribunal made its Award on 13-7-1956. The Tribunal set out to decide the question:

"Whether the Management refused to allow these workers to join their duties or whether these workers did not turn up of their own accord in spite of several notices issued by the management."

The Tribunal observed, in the course of its Award, that all the workmen, except 84, had been taken in by the Company even after the last date fixed by them had expired, and even after the Reference had been made, as aforesaid. It also observed that the Management had been exceedingly considerate to the workmen, and that none of the workmen had been examined in support of the allegation of the Union that they had been victimized. In these circumstances, the Tribunal refused to place any reliance on the uncorroborated testimony of the Secretary of the Union. The Tribunal held, on an examination of the evidence before it, that the workmen must be deemed to have

voluntarily left the service of the Company by not turning up in spite of notices issued by the Management, and that it was not true to say that the Management had terminated the services of those workmen. In the result, the Tribunal held that the workmen, except one, with whom we are not concerned in this case, were not entitled to any relief. It also held that the Management was perfectly justified in recruiting new hands for running its Factory, in place of those workmen who did not turn up to join their posts after the lock-out had been lifted.

6. The Company filed an appeal from that part of the Award of the Tribunal which related to the single workman who had been reinstated with full arrears of wages. With that appeal, we are not concerned here. The workmen, represented by the Mazdoor Union, filed their appeal from the Award of the Tribunal, in so far as it had refused to grant any relief to 83 workmen. In the Memorandum of appeal, raising 11 grounds, not one ground raised any substantial question of law. All the grounds of attack against the Award, were based on the findings of fact recorded by the Tribunal. But curiously enough, the Labour Appellate Tribunal allowed the appeal on a ground which had not been raised in the statement of the case on behalf of the workmen, or in the evidence, or in the Memo. of appeal to the Appellate Tribunal. The Appellate Tribunal appears to have taken the view that that agreement of August 4, was not binding on the workmen, and that the workmen were not bound to appear before the Management in pursuance of the terms of that agreement. The Appellate Tribunal, apart from raising a new point which was not even contained in the grounds of appeal, appears to have ignored the glaring facts that most of the workmen had joined their work - many had joined their posts even after the last date for doing so had expired, and many others had joined even during the pendency of the Reference before the Tribunal. The eighty-three workmen before the Appellate Tribunal, had contested the matter under Reference on a pure question of fact, namely, that they were ready and willing to join their posts, but that they were kept out by the Management. It was not their case at any stage of the proceedings before the Appellate Tribunal that they were not bound by the agreement and, therefore, were not bound to join their posts on giving any undertaking or a written apology for their misconduct. In fact, their case throughout was that they presented themselves to join work, but the Company refused to take them in; this case is wholly inconsistent with the point made out in their favour by the Appellate Tribunal for the first time in its decision. In our opinion, the appeal before the Appellate Tribunal was wholly incompetent, as, on the pleadings, no question of law arose, since the original Tribunal had decided the whole controversy on a pure question of fact. The Appellate Tribunal has, therefore, exceeded its jurisdiction in directing the reinstatement of the eighty-three workmen with arrears of their wages and allowances, when the appeal before it could not be sustained as it was wholly lacking in any substantial question of law.

7. The appeal must, therefore, be allowed, and the decision of the Appellate Tribunal set aside, but as the learned counsel for the appellant did not insist upon costs being allowed against the Union, there will be no order as to costs.

Appeal allowed.

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