M/s. Sasa Musa Sugar Works (P) Ltd.

Vs

Shobrati Khan and Others

Civil Appeals Nos. 746 and 747 of 1957

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

29.04.1959

JUDGMENT

WANCHOO, J. -

These are two appeals by the management by special leave in an industrial matter arising out of two applications under s. 33 of the Industrial Disputes Act (hereinafter called the Act). The facts of the case are briefly these : The appellant, Messrs. Sasa Musa Sugar Works (Private) Ltd. is a sugar factory in District Saran (Bihar). The factory was established in 1932. In June 1942, a trade union was formed in this factory. In July 1943, trouble arose between the workmen and the management resulting in the discharge of three office-bearers of the union, including one Shams-ud-din, who was then the joint secretary. That matter was referred to adjudication and the discharged workmen were ordered to be reinstated in the beginning of 1944. In December 1944, there was trouble again and a large number of workmen were dismissed, including Shams-ud-din, who had by now become the president of the union. This dispute was again referred to an Industrial Tribunal, which again ordered reinstatement of the dismissed workmen in August 1947. There was peace for some time after this. But in June 1951, the management again discharged seventeen workmen, including Shams-ud-din, who was at that time secretary of the union. The trouble continued up to December 1951, when an agreement was arrived at between the union and the management, as a result of which twelve of the workmen were reinstated but five, including Shams-ud-din, were not and their cases were to be referred to adjudication. It appears, however, that another reference between the management and its workmen was already pending since September 8, 1951, before an Industrial Tribunal, when this agreement was arrived at. Thereafter the work in the factory proceeded smoothly for some time. But on January 1, 1952, a notice was issued by the union to the management enlisting as many as 40 demands and it was threatened that if the demands were not met within seven days, the union would have to advise the workmen to adopt go-slow and call upon them to offer passive resistance with effect from January 9, 1952, and take all legitimate means to see that the decision of go-slow was carried out till the demands of the union were fulfilled. This notice was received by the management on January 4, which immediately contacted the officers of the Labour Department as well as the Sub-Divisional Magistrate at Gopalganj. On January 8, the Deputy Labour Commissioner wrote to the union that as the conciliation officer was busy in the general elections, the status quo should be maintained till the elections were over, so that the matter might be looked into by the conciliation officer. The union, however, gave no heed to this advice and go-slow began from January 9 and was continued till January 12, 1952. Then the Labour Commissioner himself came to the factory on January 12 and advised Shams-ud-din who was the moving spirit behind all this to call off the go-slow, as it was proposed to start conciliation proceedings at Patna on January 17, 1952. Conciliation proceedings then began on January 17 and an agreement was arrived at as to some of the demands on January 23, and it was decided that

further conciliation proceedings would be held in February. But in spite of this agreement go-slow was again resorted to from January 24 to January 31. In the meantime, the Labour Officer had arrived at the factory on January 28, 1952, and further talks took place. The workmen, however, did not pay heed to the advice of the Labour Officer. He, therefore, reported on January 31 to the Labour Commissioner that go-slow was still continuing. The Labour Commissioner then ordered the Labour Officer to tell the workmen that no further conciliation proceedings would take place until the go-slow was called of. The Labour Officer then informed the management that it could take disciplinary action against the workmen concerned with the permission of the Industrial Tribunal. Consequently, the management suspended thirty-three workmen by a notice given on the night of January 31 as from February 1. It was said in the notice that these thirty-three workmen had been found taking a leading part in the unjustified go-slow which was in contravention of the Act and they were therefore suspended from service until further orders. This notice had some good effect and work improved for four days; but from February 5 go-slow was started again. Consequently, the management suspended seven more workmen from February 6 and eight more from February 7 by giving notice to them in the same terms in which the notice had been given to the thirty-three workmen, on January 31. As adjudication proceedings were pending since September 1951 between the management and its workmen, the former applied on February 6, 1952, under s. 33 of the Act for permission to dismiss the thirty-three workmen and on February 11, 1952, for permission to dismiss the remaining fifteen workmen who had been suspended later. The forty-eight workmen in their turn applied on March 29, 1952, under s. 33-A of the Act to the Industrial Tribunal and their case was that they had been suspended as a measure of punishment and that as this was done without the sanction of the Industrial Tribunal, the management had committed a breach of s. 33.

The three applications were tried together by the Industrial Tribunal and the contentions raised before it were these :

> (1) The management's applications under s. 33 had not been preceded by any enquiry into the misconduct of the workmen and were, therefore, liable to be rejected;
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> (2) The order of suspension in this case amounted to punishment and therefore s. 33 had been contravened; and
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> (3) There was an unjustified go-slow by the workmen in January and February 1952.

On the first point, the Industrial Tribunal found that no enquiry had been held by the management before the two applications under s. 33 were made; but it held that all the evidence which could have been taken in the enquiry by the management had been led before it and it was in full possession of the facts, and no question of any prejudice to the workmen arose, as it would be open to it on a review of the entire evidence before it to decide whether the applications for permission to dismiss should be granted or not. On the second point, it held that the order of suspension was not as a measure of punishment in the circumstances of this case and that it was an order pending enquiry by the management and proceedings under s. 33 before the tribunal and that, as there were no Standing Orders as to suspension in this factory, the management's liability to pay the workmen their wages during the period of suspension remained. On the third point, the Industrial Tribunal, after an elaborate discussion of the evidence, came to the conclusion that there was a deliberate go-slow resorted to by the workmen in January and February 1952 and that it was unjustified as it took place while conciliation proceedings were pending.

Having given these findings, the Industrial Tribunal had then to decide what orders it should pass on

the applications under s. 33 and s. 33-A. It held that there was no evidence to show that of the forty-eight workmen concerned, sixteen workmen named by it had taken part in the go-slow or instigated it. It therefore refused the application under s. 33 with respect to these sixteen workmen. As to the remaining thirty-two workmen it held that as some Standing Orders which were under contemplation at the time provided either dismissal or suspension for seven days in case of misconduct, it was proper to grant leave to the management to suspend the workmen for seven days, in view of some opinion expressed by a Go-Slow Committee appointed some time before by the Bihar Central (Standing) Labour Advisory Board. In effect, therefore, it rejected the prayer of the management for dismissal with respect to these thirty-two workmen also. Finally, it rejected the application under s. 33-A.

This award led to two appeals before the Labour Appellate Tribunal; one was by the management against the entire award so far as it related to its applications under s. 33, and the other by the workmen against the dismissal of their application under s. 33-A and against the award relating to the applications of the management under s. 33. When the matter came up for hearing before the Appellate Tribunal, the workmen withdrew their appeal with respect to their application under s. 33-A and it was consequently dismissed. The result of the dismissal of the appeal of the workmen was that the finding of the Industrial Tribunal that the suspension was not a punishment and was only pending enquiry by the management and the proceedings before the tribunal, stood confirmed.

As to the appeal by the management with respect to the applications under s. 33, it was contended on its behalf before the Appellate Tribunal that the Industrial Tribunal had gone wrong on two substantial questions of law, namely -

> (1) the Industrial Tribunal could either grant or refuse permission to dismiss on an application for such permission under s. 33 and it could not substitute its own judgment about the quantum of punishment; and
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> (2) it was wrong in rejecting the applications against sixteen workmen on the ground that there was no evidence.
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> The Appellate Tribunal was of the opinion that the contention of the management on both these points was correct and that the appeal involved substantial questions of law. It also found that the Industrial Tribunal's finding that the workmen had resorted to go-slow was not perverse and could be the only finding on the evidence. It then went on to say that go-slow was insidious in nature and could not be countenanced, and that it was serious misconduct normal punishment for which was dismissal. It also held that the Industrial Tribunal was not right in relying upon the recommendations of the Go-Slow Committee and the contemplated Standing Orders which were not till then in force. Having said all this, we should have expected that the Appellate Tribunal would set aside the order of the Industrial Tribunal and grant permission to the management to dismiss the workmen for what was serious misconduct of an insidious nature which could not be countenanced. But it went on to say that it was well settled that where an employer could not punish a workman without obtaining permission from the tribunal under s. 33, an application for permission would be mala fide if it was made after any punishment had already been meted out to the workman. It held that in the present case, the suspension of the workmen by the management was substantive punishment, because the notice did not in so many words state that it was pending enquiry and therefore the applications for

> permission having been made after punishment had been meted out were mala fide. In coming to this conclusion, the Appellate Tribunal seems to have forgotten that it had already dismissed the appeal of the workmen from the order of the Industrial Tribunal on their application under s. 33-A, which in effect amounted to confirming the order of the Industrial Tribunal that the suspension was not a punishment but was rightly made pending enquiry by the management and proceedings before the tribunal. The Appellate Tribunal supported its decision on this question of punishment by stating that the mala fides of the management were clear from the fact that though the suspensions had been made between January 31 and February 7, 1952, the application was filed by the management on March 29, 1952, after the application by the workmen under s. 33-A had been filed. This observation was clearly wrong, for the applications under s. 33 were filed on February 6 and 11 by the management, and it was the application of the workmen under s. 33-A which was filed on March 29. Having thus inverted the order in which the applications were made to the Industrial Tribunal, the Appellate Tribunal held that the applications of the management under s. 33 were not bona fide. It then dismissed the appeal of the management, thus upholding the order of the Industrial Tribunal so far as the suspension of thirty-two workmen for seven days was concerned on the ground that the workmen had withdrawn their appeal, though in the earlier part of the judgment all that was said was that the workmen had withdrawn their appeal against the order under s. 33-A.

As the Appellate Tribunal had obviously made a mistake and inverted the order in which the applications under ss. 33 and 33-A had been made, a review application was filed by the management. It, however, held that though the dates had been wrongly mentioned by accident, it saw no reason to review its order. That is how the management filed two special leave petitions in this Court.

We are of opinion that on the findings of the Industrial Tribunal on the three points formulated by it which have not been upset by the Appellate Tribunal, the only order possible on the applications of the management under s. 33 was to permit it to dismiss the forty-eight workmen, provided there was evidence against them all. It was not open to the Industrial Tribunal when it was asked to give permission to dismiss to substitute some other kind of punishment and give permission for that. The Industrial Tribunal was satisfied that there was misconduct and that finding has been upheld by the Appellate Tribunal. As such if there was evidence that these forty-eight workmen were guilty of misconduct, the Industrial Tribunal was bound to accord permission asked for. We cannot agree with the Appellate Tribunal that the suspension in this case was substantive punishment and was not an interim order pending enquiry and proceedings before the Industrial Tribunal under s. 33. We have already pointed out that the Labour Officer told the management on January 31, 1952, that it was free to take disciplinary action with the permission of the Industrial Tribunal. It was thereafter that thirty-three workmen were suspended on January 31 and the notice clearly said that the suspension was pending further orders, thus intimating to the workmen that the order of suspension was an interim measure. This notice of January 31, was followed by an application on February 6 to the Industrial Tribunal for permission to dismiss the thirty-three workmen involved in it, and this also clearly shows that the suspension was pending enquiry (if any) by the management and proceedings before the Industrial Tribunal. Similarly, the suspension notices of February 5 and 6 relating to fifteen workmen said that they were suspended till further orders and were followed on February 11 by an application under s. 33 to the Industrial Tribunal for permission to dismiss them. In the circumstances it is quite clear that suspension in this case was not a punishment but was an interim

measure pending enquiry and proceedings before the tribunal. We have already pointed out that this was the finding of the Industrial Tribunal on the basis of which the application under s. 33-A was dismissed and this finding stood confirmed when the workmen withdrew their appeal with respect to their application under s. 33-A. The Appellate Tribunal therefore was clearly in error in holding that the suspension was punishment.

The only question that remains is about the sixteen workmen about whom the Industrial Tribunal held that there was no evidence to connect them with the go-slow. The Appellate Tribunal's view in this matter was that the contention of the management that the Industrial Tribunal was wrong in holding that there was no evidence against these sixteen workmen was correct. It has been shown to us that evidence against these sixteen workmen is of exactly the same witnesses and of the same kind as the evidence against the remaining thirty-two. The finding, therefore, of the Industrial Tribunal that there was no evidence against the sixteen workmen is patently perverse, for there was the same evidence against them as against the remaining thirty-two. It follows, therefore, that all the forty-eight workmen (two of whom are since said to have died) are exactly in the same position. As held by the Appellate Tribunal, go-slow is serious misconduct which is insidious in its nature and cannot be countenanced. In these circumstances as these forty-eight workmen were taking part in the go-slow and were thus guilty of serious misconduct, the management was entitled to get permission to dismiss them. But as the management held no enquiry after suspending the workmen and proceedings under s. 33 were practically converted into the enquiry which normally the management should have held before applying to the Industrial Tribunal, the management is bound to pay the wages of the workmen till a case for dismissal was made out in the proceedings under s. 33; (see the decision of this Court in the Management of Ranipur Colliery v. Bhuban Singh [[1959] Suppl. 2 S.C.R. 719.]). As already pointed out, this is the view taken by the Industrial Tribunal while dealing with the application under s. 33-A which stood confirmed by the dismissal of the appeal by the workmen in that behalf. The management will therefore have to pay the wages during the period of suspension till the award of the Industrial Tribunal.

We therefore allow the appeals and set aside the orders of the two Tribunals so far as the applications under s. 33 are concerned and grant the appellant the permission sought for by it in these applications subject to the workmen being paid all their wages during the period of suspension up to the date of the award of the Industrial Tribunal, i.e., 22-9-1952. As the workmen did not appear to contest these appeals, we pass no order as to costs.

Appeals allowed.

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