

SUPREME COURT OF INDIA

Management of Balipara Tea Estate

Vs.

Its Workmen

C.A.No.195 of 1958

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

30.04.1959

JUDGEMENT

SINHA, J.:

1. This appeal by special leave raises the question of the validity and correctness of the Award dated 31-1-1957, of the Industrial Tribunal, Assam, directing the reinstatement, with all back wages, of one Nandeswar Bora, an employee of the appellant company which had dismissed him for misconduct, after holding a regular inquiry against him.

2. The appellant is a company incorporated under the English Companies Act, 1927, with its registered office in London. The appellant is the owner of Balipara Tea Estate in Assam, hereinafter referred to as "the Estate". Prior to 1953, McLoed and Company Limited was the Managing Agent of the appellant in respect of the Estate. Jardine Henderson Limited became the Managing Agent in 1953. Nandeswar Bora aforesaid had been in the employment of the appellant as a Women Mohurir in the Estate, and his duties included the preparation and maintenance of Leaf Weighment Book and the Daily Wages Book, also called Hazri book, in respect of female labour employed in the Estate, Female labour was employed in the Estate for plucking tea leaves and for doing other work on days when the female labourers were not doing the plucking work. The Leaf Weighment Book was meant to contain a record of the amount of the remuneration earned by each female labourer when employed for plucking leaves. The said Daily Wages Book was a record of the total remuneration earned by a female labourer by leaf-picking, as also remuneration for other work done by the labourer concerned, when not employed in plucking leaves. Thus, the Daily Wages Book would show the total amount of remuneration not only for plucking leaves, but also for every other work done during the week. The said Nandeswar Bora was responsible for the preparation and maintenance of the said Leaf Weighment Book and the Daily Wages Book, which used to be initialled by the Manager or the Assistant Manager of the Estate, in token of his having looked into the books. Payment of wages used to be made to female labourers in the Estate at the end of every week, on the basis of the entries in the said Daily Wages Book. After the transfer of the Managing Agency, as aforesaid in 1953, the accounts kept by the appellant company, including the books kept by the said Nandeswar Bora, were audited by the internal Auditor. The said Auditor found some discrepancies in the said Leaf Weighment Book, as compared with the Wages book for the year 1950. In 1954, the appellant's Auditor aforesaid, thoroughly examined the Leaf Weighment Books and the Daily Wages Book for years 1950, 1951, 1952 and 1953. As a result of his examination, the Auditor found a number of irregularities and discrepancies in the said books, showing that the said Nandeswar Bora had recorded in the said Daily Wages Book, sums as having been earned by some female labourers,

although they had not earned the full amount as shown in the Daily Wages Book as compared with the relevant entries in the Leaf Weighment Books. The several excess payments had resulted in a loss of Rupees 467 odd to the Company.

3. As a result of the examination of the books by the internal Auditor of the Company, it was discovered that Nandeswar Bora was responsible for the said irregularities and the said loss. He was, therefore, placed under suspension with effect from 16-12-1954, pending further inquiry into the matter. By a letter dated 18-1-1955, the Manager of the Estate duly issued to said Nandeswar Bora a charge-sheet to the effect that between June, 1950, and August, 1953, he had willfully made false entries in the Daily Wages Book, which should have been maintained in accordance with the entries of factual leaf weighments. Some of the alleged false entries were specified with reference to the names of the women workers, wages earned as shown in the Leaf Weighment Book, and wages as per entries in the Wages Book, in respect of particular weeks. He was further told in the charge-sheet that the sum of Rs. 467 odd had been paid in excess to the women workers. He was called upon to explain the circumstances appearing against him, as set out in the charge-sheet. He was also called upon to show cause why he should not be dismissed for misconduct within the meaning of Cl. 10(a) of the Certified Standing Orders.

4. The said Nandeswar Bora answered the charge by his letter dated 21-1-1955. In that letter, he expressed his inability to reconcile the discrepancies after a lapse of about four years, and stated that there might have been wrong calculations and there might have been entries in the accounts for some items of work other than plucking leaves, which other items of work were then beyond his memory. It is noteworthy that he did not allege that the other work might have been paid for with reference to some other books kept in the Estate if such was the fact. He protested his innocence, and stated that he had been working honestly in the interest of the Company during the whole period of his service, but he added that if, however, some mistakes had occurred here and there in the entries in the Wages Book, he was liable to correction and he sincerely apologised for those mistakes. He, therefore, begged that the discrepancies might be overlooked and he might be granted pardon as a first offender, and prayed that the suspension order against him might be lifted.

5. By a letter dated 22-1-1955, the Manager of the Estate informed the said Nandeswar Bora that a regular inquiry into the charges against him would be held in his presence on 24-1-1955, at 3. p. m., when he would be given every opportunity of explaining the circumstances appearing against him regarding the entries referred to in the charge-sheet. On that appointed date, an inquiry was held by the Manager in the presence of Nandeswar Bora. In answer to the questions put by the Manager, drawing his attention to the details mentioned in the charge-sheet, Nandeswar Bora stated that he had read and understood the charge-sheet, and that he had nothing further to say. To further questions, he replied that he had no explanation to give, though he admitted that he had made those entries and it was his duty to maintain those books. To the specific question whether he admitted that those entries had caused excess amounts to be drawn and paid to certain labourers, he answered:

"Yes. I admit that these entries have caused excess amounts to be drawn and paid to the Labour."

It should be noted again that even at this stage, Nandeswar Bora did not raise the question that the alleged excess payments by way of wages, could be explained with reference to books other than the Leaf Weighment Books, or that those excess payments were, as a matter of fact, in respect of other work done by those labourers.

6. By a letter dated 10-2-1955, the Manager dismissed Nandeswar Bora, with effect from 18-1-1955.

Thereupon, the respondents, the workmen of the Tea Estates, represented by their trade union, raised an industrial dispute between the appellant company and its workmen. In April, 1955, conciliation proceedings were held in the presence of the Manager of the Estate and the representatives of the trade union concerned, but no settlement could be arrived at. Ultimately, by a Notification dated 20-5-1956, and a subsequent Notification dated 7-7-1956, the Government of Assam referred the dispute to Shri R. Hazarika, Addl. Distt. and Sessions Judge, the questions for adjudication being:

"(1) Whether the dismissal of Sri N. Bora, Women Mohurer of Balipara Tea Estate by the Management of the said Tea Estate is justified?

"(2) If not, is he entitled to reinstatement or any other relief in lieu thereof?"

Before the Industrial Tribunal, the appellant filed a written statement, containing a recital of the circumstances which have been summarized above, which led to the dismissal of the workman concerned. The Company claimed that the dismissal orders were passed by the Manager after holding a bona fide inquiry and finding that the workman concerned was guilty of gross misconduct in respect of Company's funds; and that it was wrong to suggest that the workman had been dismissed merely on suspicion, or that there was any ulterior motive for passing the impugned order of dismissal. Nandeswar Bora filed a written statement of his case, stating that he could not be expected to reconcile the discrepancies after a lapse of four years, and that there might have been wrong calculations and entries for some items of work other than leaf weighment, for which the wages were paid. He repeated his statement made before the Manager, when showing cause at the inquiry held by the Manager, that payments might have been made for other items of work, which he could not recollect. Here again, he did not specifically allege that the payments might have been made in respect of work done which would not find an entry in the Leaf Weighment Book but in some other book. He repeated his request to be excused for any mistakes which he might have made and for which he sincerely apologized. He also repeated what he had said before the Manager, in these words:

"Finally I beg most respectfully to overlook the discrepancies if any and grant me pardon as the first offence with the lifting of the suspension order..."

7. Before the Tribunal, the appellant company produced both oral and documentary evidence in support of the charge framed against the workman aforesaid, and also produced a chart showing how over-payments had been made to some women workers. The workman concerned (Nandeswar Bora) examined himself only, in support of his case. He stated in his examination-in-chief that women labourers collected leaves in two shifts - one in the morning and the other in the afternoon - and the weighments were recorded by him in the presence of the Manager or the Assistant Manager. He also made entries in the Wages Book, and the following morning those entries in the Wages Book used to be checked by the Jamadar or the Assistant Manager, and payment of wages used to be made in accordance with the amount shown in the Wages Book. He also admitted the fact of the regular inquiry held by the Manager, and the explanation offered by him in answer to the charge-sheet drawn up against him. In cross-examination, he admitted that he did not ask for books before the submission of his explanation. Nor did he ask for the production of the Field Book on the day he was examined before the Tribunal. He also admitted that the Daily Wages Book was copied from the Field Book, and the daily wages were shown in the Wages Book if the workers did some work other than plucking leaves. The Manager, one N. H. Archer, was also examined on behalf of the Company. He testified to the inquiry held by him. He admitted in cross-examination that the Field

Book was not called for as it was not necessary. He also admitted that he did not show the Field Book to the workmen concerned at the time of the inquiry or at any time before or after the inquiry.

8. The Industrial Tribunal made an Award on 31-1-1957, directing that Nandeswar Bora should be reinstated with all back wages from the date of dismissal. In the course of its Award, the Tribunal observed that Daily Wages Book was prepared on the basis of the Field Book, and as the Field Book had not been produced, it had not been conclusively shown that there was any discrepancy between the work actually done and the wages paid. It also observed that the women labourers concerned, who were alleged to have been paid excess wages, should also have been called as witnesses by the Management; and that on the books filed, it could not be said that falsification of the accounts had been definitely proved. It agreed with the Management that the falsification of accounts was a gross misconduct, but it held that the charge had not been conclusively brought home to the workman concerned. It made the following very significant observation:

"The degree of proof is always the same in a department enquiry as in the common law court."

As a result of its findings, the Tribunal directed the reinstatement of the workman concerned, as indicated above. It is against this Award that the appellant prayed for, and obtained, special leave to appeal to this Court.

9. It has been contended on behalf of the appellant, and in our opinion, rightly, that the Tribunal has misdirected itself in so far as it has judged the case against the workman concerned afresh on its merits as if it were a trial for a criminal offence for the falsification of accounts and misappropriation of funds, and that in so doing, the Tribunal was not only sitting as a Court of Appeal on the order of dismissal passed by the Management, even though it did not find any mala fides or want of good faith or any irregularity in the proceedings taken by the Management against the workman concerned, but it had also laid down a wrong line of approach to the case. The Tribunal misdirected itself in so far as it insisted upon conclusive proof of guilt to be adduced by the Management in the inquiry before it. It is well-settled that a Tribunal has to find only whether there was justification for the Management to dismiss an employee and whether a case of misconduct had been made out at the inquiry held by it. On the merits also, the Tribunal misdirected itself in so far as it based its Award on the absence of the Field Book. It should be noted in this connection that before the inquiry before the Tribunal began, the respondents had asked for certain documents to be called for from the Management, but the Field Book was not one of those documents. Even on the date the evidenced was being recorded on behalf of the respondents, it was admitted by the workman concerned in his cross-examination, that the Field Book had not been called for. On the other hand, it was the appellant's case that the Field Books were wholly irrelevant, because it was never the case on behalf of the respondents that there were entries in the Field Book which could explain the discrepancy between the work done as shown in the Leaf Weighment Book and the Wages Book. At no stage of the inquiry, either by the Management itself, or before the Tribunal, the Field Book was called for. On the other hand, the Manager, when examined on behalf of the Management, clearly stated in his cross-examination, that the Field Book was not called for and it was not produced, as it was not thought necessary, apparently because there were no relevant entries in the Field Book. The Tribunal, therefore, was not justified in drawing any inference against the Management from the non-production of the Field Book, which, according to it, had no bearing on the case against the workman concerned. The relevant entries in the Leaf Weighment Book and the Daily Wages Book, would show that the particular dates in respect of which the charge had been levelled against the workman concerned, showed that the women labourers were engaged both in the mornings and evenings in the collection of leaves, and therefore, there was no question of their

having done any other work on those dates. The workman concerned was fully aware of the circumstances of the case and the actual procedure adopted in maintaining the several account books. If any explanation could be forthcoming from the Field Book, he would have been the first person to say, at the earliest opportunity, that the alleged discrepancies could be explained with reference to the entries in the Field Book. As already indicated, at no stage of the inquiry, either by the Manager, or before the Tribunal, was it the case of the workman that there really were no discrepancies, and that the alleged discrepancies could be explained with reference to any entries in the Field Book. If the Tribunal had any genuine doubts of its own as regards the bona fides of the Management, of which there is no mention in the Award, the easiest thing would have been to call upon the Management to produce the Field Book, containing the relevant entries, if any. But that does not appear to have been done. Thus, it is clear that the Tribunal completely misdirected itself in basing its conclusion upon the absence of a document which neither the parties before it nor the Tribunal itself, during the inquiry, thought to be relevant. In our opinion, therefore, the record does not furnish any justification for the reason given in the Award for holding that the charge brought against the workman concerned was not well founded. In this case, the Award suffers from the inherent weakness of the approach made by the Tribunal in determining the controversy before it. It had not got to decide for itself whether the charge framed against the workman concerned had been established to its satisfaction; it had only to be satisfied that the Management was justified in coming to the conclusion that the charge against the workman was well founded. If there had been a finding by the Tribunal that the Management had been actuated by any sinister motives, or had indulged in unfair labour practice, or that the workman had been victimized for any activities of his in connection with the trade union, it might have had reasons to be critical of the inquiry held by the Management. But that is not so on the findings in the Award itself.

10. In view of these considerations, it must be held that the Award is invalid and suffers from an inherent infirmity. The appeal is, accordingly, allowed, and the Award, set aside. As the appellant did not insist upon costs being awarded against the respondents, each party will be directed to pay its own costs here and below.

Appeal allowed.

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