SUPREME COURT OF INDIA

Tika Ram and Sons Ltd.

Vs.

Its Workman

C.A.No.627 of 1957

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

01.05.1959

JUDGEMENT

GAJENDRAGADKAR, J.:

1. This appeal by special leave arises out of an industrial dispute between M/s. Tika ram and Sons Ltd. Oil Mills, Aligarh (hereafter called the appellant) and its workman Bishamber Dayal (hereafter called the respondent). The appellant had purported to terminate the services of the respondent, and at the instance of the respondent the dispute in regard to the said termination of his services was referred for adjudication. The tribunal as well as the appellate tribunal have held that the appellant was not justified in dismissing the respondent and so an order has been passed directing the appellant to reinstate respondent in his old job with continuity of service and to pay him the subsistence allowance and pay as specified in the award. It is this order which is challenged before us in the present appeal.

2. It appears that the respondent was employed as a Munim (accounts clerk) by the appellant from October 25, 1948 to August 31, 1951. On September 1, 1951, the respondent took one day's leave but did not return to his job in spite of repeated calls. He was marked 'on leave' on 1-9-1951 and treated as absent for one month thereafter. Meanwhile the appellant came to know that the respondent had made certain false entries in its books of account with a view to misappropriate a Bank Draft of Rs. 1,422 which was issued in favour of the appellant. Thereupon the appellant filed a criminal complaint against the respondent and two others under Ss. 408, 477A and 465 of the Indian Penal Code. This complaint was dismissed by the learned magistrate on April 21, 1953. The appellant moved the learned Sessions Judge at Aligarh in revision but the said revisional application was also dismissed on February 17, 1954.

3. On April 22, 1954 the respondent moved the Regional Conciliation Officer for settlement of his dispute with the appellant. He alleged that the appellant had wrongfully terminated his services whereas according to the appellant the services had been terminated for misconduct as shown by the falsification of accounts made by him. Since the Conciliation Officer was unable to settle the dispute, he made a report and thereafter the present dispute was referred for industrial adjudication.

4. According to the appellant it had dealings with Shankar Das Durga Prasad of Meerut and an amount of Rs. 1,422 was due from the said firm. A draft for the said amount was received from the said firm in favour of the appellant. It was in respect of this draft that false entries were made by the respondent in the appellant's books of account kept by the respondent. The relevant entries had been

overwritten with the object of conveniently misappropriating the said amount.

5. The tribunal held that the appellant had not held any enquiry against the respondent. No charge-sheet was given to him nor was any opportunity afforded to him to explain the charge. It is true that the appellant had filed a criminal complaint against the respondent but the record shows that the appellant failed to appear in the witness-box to support the said complaint. It had obtained several adjournments for the purpose of leading evidence but no evidence was in fact led and the complaint was dismissed for default. The Sessions Judge who was moved in revision by the appellant commented on this point and held that there was no force in its revisional application. In the opinion of the tribunal this conduct of the appellant clearly proved that the appellant was not willing to substantiate its charge in the criminal court.

6. It was urged before the tribunal that the respondent had made its complaint before the Conciliation Officer after a long lapse of time; but this contention was rejected by the tribunal. It found that the criminal revision filed by the appellant was dismissed on February 17, 1954, and the respondent had approached the Conciliation Officer within a couple of months thereafter. Thus there was no delay on the part of the respondent. The tribunal also criticised the appellant for its failure to lead any evidence before it. Indeed nobody stepped into the box on behalf of the appellant nor was any other documentary evidence produced before it. That is why the tribunal held in favour of the respondent and directed the appellant to reinstate him.

7. When the matter was taken by the appellant before the Labour Appellate Tribunal an attempt was made to raise a point of law to justify the appeal and this point was that the award under appeal was without jurisdiction as it related to a matter which had arisen more than three years before the reference. The appellate tribunal has rejected this argument. It has referred to the pendency of the criminal proceedings instituted by the appellant against the respondent and it has observed that these proceedings were deliberately protracted by the appellant itself; and that the appellant had failed to substantiate its charges in the said proceedings. Having held that the point of limitation thus raised was without any substance the appellate tribunal took the view that the appeal was incompetent and so dismissed it. It is this decision that is challenged before us by the appellant.

8. In this appeal an application has been made by the appellant for the admission of additional evidence. This evidence consists of a judgment delivered on February 26, 1959 in a suit (Suit No. 323 of 1955) filed by the respondent to recover Rs. 1,200 as damages for his malicious prosecution by the appellant. We do not think that this additional evidence can be admitted. It is significant that neither in the criminal proceedings launched by the appellant nor in the industrial adjudication has any attempt been made by the appellant to produce any evidence and as we have just pointed out the tribunal has severely commented against this conduct of the appellant. In such a case we do not see how the appellant can be permitted to rely upon the dismissal of the respondent's claim for damages. It was its duty to adduce evidence at the proper stage and if it has not done so the judgment in the respondent's suit cannot be allowed to be produced at this late stage.

9. Besides this judgment would hardly be of any assistance to the appellant on the merits of the appeal. The respondent has no doubt admitted that he overwrote the relevant entries but his case always has been that he did so under the directions of the son of the managing director of the appellant itself. In view of this specific allegation made by the respondent it was the duty of the appellant to lead evidence either in the criminal court or before the industrial tribunal. Its failure to do so leads inevitably to the inference that the appellant was afraid to face cross-examination by the respondent. Therefore the attempt to produce this evidence in the present appeal cannot succeed.

Besides usually this court does not admit additional evidence in appeals under Art. 136.

10. It is then urged that the industrial tribunal had no jurisdiction to entertain the dispute because the dispute is not an industrial dispute at all. It appears that the employees of the appellant had formed no union and the dispute had been raised at the instance of the respondent who is an individual workman. Mr. Veda Vyas contends that it is now well settled that a dispute raised by an individual workman cannot be treated as an industrial dispute. We cannot allow this objection to be raised for the first time before us. It is clear that this objection was not raised before the tribunal as it should have been; but it is suggested that it was raised before the Labour Appellate Tribunal. This suggestion is denied by the respondent. The judgment of the Labour Appellate Tribunal shows that only one point was raised by the appellant to justify its contention that the appeal raised a substantial question of law, and was therefore competent; and this question related to the point of limitation and no other. Prima facie it would be legitimate to infer that the question of jurisdiction had not been urged before the appellate tribunal; if it had been so raised the appellant tribunal would have dealt with it. Besides the allegation that this point was argued before the Labour Appellate Tribunal is not also properly made in the present petition. The petition no doubt has been sworn by the chemist-in-charge of the appellant who claims to be conversant with the facts of the case. It is not suggested that the chemist was present in the court when the matter was argued before the Labour Appellate Tribunal. Neither the person who argued the matter nor anybody else who was present at the time of the argument on behalf of the appellant has made a specific statement on oath that this point was in fact urged before the Labour Appellate Tribunal. The fact that along with other points this one was mentioned in a memo was wholly inconclusive. If the appellant wanted to urge that this point had been specifically argued before the Labour Appellate Tribunal it should have made a more specific and clearer affidavit in that behalf. In the absence of any such affidavit we do not think we would be justified in entertaining this objection for the first time in the present appeal. It would be relevant to recall that this point obviously was not mentioned before the industrial tribunal.

11. On the merits it is difficult to see how the tribunals could have come to any other conclusion. No doubt the appellant has made a serious allegation against the respondent; and the respondent has also admitted that he overwrote the relevant entries but the respondent's case consistently had been that this was done under the directions of the son of the managing director of the appellant. If the appellant wanted to prove its case against the respondent it was clearly its duty to lead evidence on the point; and it consistently and studiously refrained from leading any evidence in all the proceedings between the parties. Therefore we must hold that the tribunals were justified in directing the reinstatement of the respondent. The propriety of the directions issued by the tribunal in regard to the payment of subsistence allowance and back wages cannot be challenged in the present appeal because that clearly is a matter of discretion.

12. In the result the appeal fails and is dismissed. In the circumstances of this case, however, there will be no order as to costs.

Appeal dismissed.

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