Phulbari Tea Estate

Vs

Its Workmen

Civil Appeal No. 205 of 1958

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

06.05.1959

JUDGMENT

WANCHOO J. -

This is an appeal by special leave in an industrial matter. The appellant is the Phulbari Tea Estate (hereinafter called the company). The case relates to the dismissal of one workman namely, B. N. Das (hereinafter called Das), which had been taken up by the Assam Chah Karmchari Sangh, which is a registered trade union. A reference was made by the Government of Assam on March 8, 1956, to the Industrial Tribunal on the question whether the dismissal of Das was justified; and if not, whether he was entitled to reinstatement with or without compensation or any other relief in lieu thereof. Das was dismissed by the company on March 12, 1955. The charge against him was that on the night of February 6/7, 1955, he along with one Samson, also an employee of the company, committed theft of two wheels complete with tyres and tubes from the company's lorry, which amounted to gross misconduct under the Standing Orders. The case was reported to the police and Das as well as Samson were arrested. Das remained in jail up to February 25, 1955, when he was released on bail. He reported for duty on February 28; but the manager suspended him for ten days from March 1. Thereafter, he was served with a charge-sheet on March 10, 1955, asking him to show cause why he should not be dismissed for gross misconduct as mentioned above. He gave a reply on March 11, that as the case was sub judice in the criminal court, the question of dismissal did not arise at that stage and the allegations against him would have to be proved in the court. On March 12, the manager held an enquiry, which was followed by dismissal, on that very day. We shall mention later in detail what happened at the enquiry, as that is the main point which requires consideration in this appeal. To continue the narrative, however, the police submitted a final report and the magistrate discharged Das on March 23, 1955. Thereafter, his case was taken up by the union and eventually reference was made to the Tribunal on March 8, 1956. The Tribunal came to the conclusion that the dismissal of Das was not justified on the ground of proper procedure not having been followed and also for want of legal evidence. It went on to say that normally Das would have been entitled to reinstatement but in the peculiar circumstances of this case it was of opinion that he should be granted the alternative relief for compensation. Consequently, it ordered that Das would be entitled to his pay and allowances from February 28, to March 11, 1955 and full pay and allowances from March 12, till the date of payment. It also ordered that he would be entitled to fifteen day's pay for every completed year of service along with all benefits that accrued to him till the date of final payment. This award was given on October 23, 1956, and was in due course published and came into force. Thereupon, there was an application to this Court for special leave to appeal, which was granted; and that is how the matter has come up before us.

Two points have been urged before us on behalf of the company, namely -

(1) the Tribunal was not a competent tribunal under s. 7 of the Industrial Disputes Act, No. XIV of 1947 (hereinafter called the Act) as it then stood; and

(2) the award of the Tribunal is not sustainable in law as it shows as if the Tribunal was sitting in appeal on the enquiry held by the company, and this it was not entitled to do.

Re. (1).

Reference in this case was made on March 8, 1956, before the amending Act No XXXVI of 1956 came into force. At the relevant time, therefore, s. 7 of the Act, which provided the qualifications of a tribunal, required that where it was one member tribunal, he (a) should be or should have been a Judge of a High Court, or (b) should be or should have been a district judge, or (c) should be qualified for appointment as a Judge of a High Court. The contention is that Shri Hazarika who was the tribunal in this case, was not qualified under this provision. This contention was not raised before the Tribunal and therefore the facts necessary to establish whether Shri Hazarika was qualified to be appointed as a tribunal or not were not gone into. Shri Hazarika was an Additional District & Sessions Judge, Lower Assam Division, at the time the reference was made. Assuming that he was not qualified under clause (a) above, he might well have been qualified under clause (b), if he had been a District Judge elsewhere before he became an Additional District Judge in this particular division. Further even if he had never been a District Judge, he might be qualified for appointment as Judge of a High Court. These matters needed investigation and were not investigated because this question was not raised before the Tribunal. In the circumstance, we are not prepared to allow the company to raise this question before us for the first time and so we reject the contention under this head.

Re. (2).

The Tribunal gave two reasons for holding that the dismissal was unjustified; namely - (1) that proper procedure had not been followed, and (2) that legal evidence was wanting. So far as the second reason is concerned, there is force in the criticism on behalf of the company that the Tribunal had proceeded as if it was sitting in appeal on the enquiry held by the company. But considering that the Tribunal was also of opinion that proper procedure had not been followed we have still to see whether that finding of the Tribunal justifies the conclusion at which it arrived. We may in this connection set out in detail what happened at the enquiry on March 12, as appears from the testimony of the manager and the documents produced by him before the Tribunal. They show that when the enquiry was held on March 12, certain persons, whose statements had been recorded by the manager in the absence of Das during the course of what may be called investigation by the company were present. The first question that Das was asked on that day was whether he had anything to say in connection with the disappearance of two lorry wheels and tyres from the garage. He replied that he had nothing to say, adding that he knew nothing about the theft. He was then told that the people who had given evidence against him were present and he should ask them what they had to say. He replied that he would put no questions to them. Then the witnesses present were asked whether the evidence they had given before the manager was correct or not; and if that was not correct, they were at liberty to amend it. They all replied that the evidence they had given before the manager was correct. This was all that had happened at the enquiry on March 12, and thereafter the order of dismissal was passed by the manager. The manager's testimony shows that the witnesses who were present at the enquiry were not examined in the presence of Das. It also does not show that copies of the statements made by the witnesses were supplied to Das before he was asked to

question them. Further his evidence does not show that the statements which had been recorded were read over to Das at the enquiry before he was asked to question the witnesses. It is true that the statements which were recorded were produced on behalf of the company before the Tribunal; but the witnesses were not produced so that they might be cross-examined even at that stage on behalf of Das. The question is whether in these circumstances it can be said that an enquiry as required by principles of natural justice was made in this case.

We may in this connection refer to Union of India v. T. R. Varma [[1958] S.C.R. 499]. That was a case relating to the dismissal of a public servant and the question was whether the enquiry held under Art. 311 of the Constitution of India was in accordance with the principles of natural justice. This Court, speaking through Venkatarama Ayyar J. observed as follows in that connection at p. 507 :-

> "Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them".

It will be immediately clear that these principles were not followed in the enquiry which took place on March 12, inasmuch as the witnesses on which the company relied were not examined in the presence of Das. It is true that the principles laid down in that case are not meant to be exhaustive. In another case New Prakash Transport Co. Ltd. v. New Suwarna Transport Co. Ltd. [[1957] S.C. R. 98], this Court held that "rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the legislature under which they have to act, and the question whether in a particular case they have been contravened must be judged not by any preconceived notion of what they may be but in the light of the provisions of the relevant Act". In that case, it was held that "the reading out of the contents of the police report by the Chairman at the hearing of the appeal was enough compliance with the rules of natural justice as there was nothing in the rules requiring a copy of it to be furnished to any of the parties." That was, however, a case in which the police officer making the report was not required to be cross-examined; on the other hand, the party concerned was informed about the material sought to be used against him and was given an opportunity to explain it. The narration of facts as to what happened on March 12, which we have given above, shows that even this was not done in this case, for there is no evidence that copies of the statements of witnesses who had given evidence against Das were supplied to him or even that the statements made by the witnesses to the manager were read out in extenso to Das before he was asked to question them. In these circumstances one of the basic principles of natural justice in an enquiry of this nature was not observed, and, therefore, the finding of the Tribunal that proper procedure had not been followed is justified and is not open to challenge.

The defect in the conduct of the enquiry could have been cured if the company had produced the witnesses before the Tribunal and given an opportunity to Das to cross-examine them there. In Messrs. Sasa Musa Sugar Works (Private) Ltd. v. Shobrati Khan [C.As. Nos. 746 & 747 of 1957 decided on 29-4-1959], we had occasion to point out that even where the employer did not hold an enquiry before applying under s. 33 of the Act for permission to dismiss an employee, he could make good the defect by producing all relevant evidence which would have been examined at the enquiry, before the tribunal, in which case the tribunal would consider the evidence and decide whether permission should be granted or not. The same principle would apply in case of

adjudication under s. 15 of the Act, and if there was defect in the enquiry by the employer he could make good that defect by producing necessary evidence before the tribunal. But even that was not done in this case, for all that the company did before the Tribunal was to produce the statements recorded by the manager during what we have called investigation. This left the matters where they were and Das had never an opportunity of questioning the witnesses after knowing in full what they had stated against him. In these circumstances we are of opinion that the finding of the Tribunal that the enquiry in this case was not proper is correct and must stand.

We therefore dismiss the appeal. We should, however, like to make it clear that the order of the Tribunal fixing grant of compensation till the date of payment must be taken to be limited to the sum of Rs. 11,125, which has been deposited in this Court in pursuance of this Court's order of April 22, 1957 and Das will not be entitled to anything more, as further stay of payment was pursuant to the order of this Court. In the circumstances we are of opinion that the parties should bear their own costs of this Court.

Appeal dismissed.

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