Feroz Din and Others

Vs

The State of West Bengal

Criminal Appeal No. 48 of 1958

(S. K. Das, A. K. Sarkar, M. Hidayatullah JJ)

25.11.1959

JUDGEMENT

SARKAR, J. :-

There are five appellants before us. Four of them were employees of a company called the Indian Iron & Steel Co., Ltd. and the fifth an outsider.

The appellants were convicted by a Magistrate of Asansol in West Bengal, of an offence under s. 27 of the Industrial Disputes Act, 1947, hereinafter referred to as the Act, for having instigated and incited others to take part in an illegal strike. Each appellant was sentenced to simple imprisonment for three months. On appeal by the appellants, the learned Additional Sessions Judge of Asansol, confirmed the order of the learned Magistrate. A petition to the High Court at Calcutta against the order of the learned Additional Sessions Judge by way of revision also failed. The appellants have now appealed to this Court with special leave. The respondent to this appeal is the State of West Bengal and the Company has been allowed to intervene.

The Company owns a factory at Burnpur near Asansol in which there is a Sheet Mill. The factory was declared by the Government to be a public utility service. There was slow-down strike in the Hot Mill section of the Sheet Mill. The Company there upon issued charge-sheets to some of its workers, including the four appellants in its employment, for including the four appellants in its employment, for taking part in the slow-down strike and instigating others to join it as also for other misconduct and after an enquiry, dismissed these four appellants from service. On such dismissal the slow-down strike gained in strength. Thereupon, on April 8, 1953, the Company issued a notice to the workers of the Hot Mill the relevant portion of which is set out below :

> "The workers of the Hot Mills (Sheet Mills) are hereby notified that unless they voluntarily record their willingness to operate the plant to its normal capacity they will be considered to be no longer employed by the Company, after which the Company will recruit other labour to man the Plant.
>
> The workers must record their willingness before Friday, 10th April, 2-0 p.m., otherwise action as stated above will be taken."

As a result of this notice forty workers of the Hot Mill recorded their willingness but the rest, who were about three hundred in number, did not make any response at all. In fact, on April 11, 1953, the workers in the entire Sheet Mill numbering about one thousand and three hundred, went on a sit-down strike which lasted till April 20, 1953.

On April 25, 1953, the Company issued another notice to the workers which is set out below :

> "In accordance with General Manager's Notice dated the 8th April, 1953, you have been considered to be no longer employed by the Company after 2 p.m. on Friday, 10th April, 1953, as you did not record your willingness before that date and time to operate the plant to its normal capacity. Your formal discharge from Company's service had been kept pending in order to assure to the fullest that no one who wanted to work normally, was being discharge on circumstantial assumptions.

Now, however, there are no further reasons to believe that every one concerned has not all necessary information about the facts of the case and every opportunity to form a correct and legitimate opinion on the utterly irresponsible attitude adopted by some of the workers.

A copy of the notice dated the 22nd April, 1953, issued by the Directorate of Labour, Government of West Bengal, which has already been widely circulated, is attached herewith, in English with translations in Bengali, Hindi and Urdu.

You are, therefore, hereby given a final Notice that if by 11 a.m. on 28th April, 1953, you do not record your willingness to operate the Plant to hits normal capacity, your name will be removed from the Company's Roll and your discharge will become fully effective with all the implications of a discharge on grounds of serious breach of discipline, and your place will be filled by promotion from amongst the existing men or by engaging new men."

After this notice the workers of the entire factory, except those engaged in essential services, went on a strike on April 27, 1953, which lasted for twenty two hours.

On May 19, 1953, the Company filed a complaint under s. 27 of the Act with the sanction of the Government granted on May 2, 1953. Out of this complaint the present appeal arises. The respondent's case is that the strikes of April 11, to April 20, 1953, and April 27, 1953 were illegal and the appellants had instigated them. The appellants have not in this Court challenged the finding of the Courts below that the strikes took place and that they had instigated them, but they contend that the strikes were of illegal.

Section 27 of the Act provides that a person who instigates or incites others to take part in, or otherwise act in furtherance of strike, which is illegal under the Act, commits an offence. The respondent's case is that the strikes were illegal under s. 24(1) of the Act which provides that a strike or lock-out shall be illegal if it is commenced or declared in contravention of s. 22. There is no dispute that the strikes were in contravention of s. 22. The appellants rely on s. 24(3) of the Act under which a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal and say that the strikes had been in consequence of an illegal lock-out by the Company of the three hundred workers of the Hot Mill by the notice of April 8, and April 25. It is clear that if there was such a lock-out, it was illegal under s. 24(1) for it would be clearly in contravention of s. 22.

The question then is, was there a lock-out by the Company ? The learned Advocate for the appellants first contends that the notice use the same words as are used in the definition of a lock-out in s. 2(1) of the Act and therefore by those notice the Company locked-out the men. We think that this argument is unfounded. The definitions so far as is material reads, "lock-out means ..... the refusal by an employer to continue employ any number of persons employed by him." In the notice the words are "considered to be longer employed" while the definition uses the words "refusal by

the employer to continue to employ". Therefore, the words are not the same Furthermore, the words used in the notice and in the definition have to be read in their respective contexts. For reasons to appear later, the words used in the notice meant a discharge of the employees from service while the words used in the definition do not contemplate such a discharge of the workmen.

The Courts below have come to the finding that by these notice the three hundred workers of the Hot Mill were discharged on April 10, 1953, and had not been locked-out. The learned Advocate for the appellants says that in this the Courts were wrong. He puts his arguments in two ways. First, he says that the notice did not effect a discharge till April 28, 1953, and they had in the meantime resulted in the lockout of the workers from April 10, 1953, in the sense that their services had not been terminated but they had not been allowed to attend their duties. Then he says that even if the notice effected a discharge, then also there was a lock-out, for a discharge is equally a lock-out within the meaning of its definition in the Act as the prevention by an employer of the workers from attending to their duties without discharging them, is.

Did the notice then effect a discharge ? We agree with the Courts below that they did. The learned Advocate for the appellants contends that the two notice taken together make it perfectly clear that there was no discharge of any employee prior to 11 a.m. of April 28, 1953. He says that the notice of April 25, shows that the notice of April 8, did not effect any discharge, for, the first mentioned notice says that the formal discharge had been kept pending and it also required the workers to record their willingness to operate the plant to its normal capacity by 11 a.m. on April 28, and further stated that failing this their names would be removed from the Company's roll and their discharge would become fully effective.

We are unable to read the notice in the way suggested. The notice of April 8, clearly stated that unless the workers notified their willingness to operate the plant to its normal capacity by 2 p.m. on April 10, they would be considered to be no longer in the employment of the Company. It plainly meant that on their failure to record the willingness by the time mentioned, the workers would cease to be in the West Bengal of the Company, that is, in no other words, discharged. Taken by itself, we do not think it is capable of any other meaning. We are also unable to agree that there is anything in the notice of April 25, which would show that a different meaning ought to be put on the words used in the notice of April 8, than they normally bear. The later notice also states that the workers had been considered to be no longer employed from April 10. Hence it maintains that the workers had been discharged on April 10. It no doubt says that the formal discharge had been kept pending but that only means, as is clear from the last paragraph of the notice, that the names of the workers had not been removed from the Company's roll. The word "formal" must have its due meaning; it emphasises that the real discharge had already taken place. We may also state that it has not been contended before us that there can be no discharge till a worker's name is removed from the roll and, without more, we do not think that we would have accepted that contention if made. The removal of the name of a worker from the roll follows his discharge and that is what was meant by the statement in the notice "that the formal discharge had been kept pending."

The circumstances which led to the issuing of the notice of April 25 also shows that the workers had actually been discharged on April 10. What had happened was that he Labour Minister of the Government of West Bengal had intervened in the dispute between the company and its workers. He met the workers and on April 21, 1953, that is, after the termination of the first of the two strikes, suggested certain terms of settlement of the dispute. His suggestion was that "if the workers of the Hot Mills, who stand discharged from 2 p.m. of April 10, 1953, as a consequence of their disregarding the notice issued on 8th April, 1953, report themselves for duty immediately and

record their willingness to operate the plant to its normal capacity, the Government would recommend their reinstatement to the Management." A copy of this suggestion was forwarded to the Company by the Government with a request to implement the recommendations contained in it with a further request to give the suggestion a wide publicity. The company circulated the Labour Minister's suggestion among the workers and to the comply with his request to implement it, it issued the notice of April 25, to which a copy of the suggestion was attached. It is, therefore clear that all the Company intended to do by the notice of April 25, was to comply with the Government's suggestion and so to cancel the discharge of the workers of the Hot Mill which had already taken effect and reinstate them in their former employments if the workers carried out their part of the suggestion. This notice, therefore, does not support the contention that the workers had not been discharged till April 28, 1953.

We may also state that there is no evidence that prior to 2 p.m. of April 10, 1953, any employee had been prevented by the Company from attending to his duty.

The next question is whether a discharge of employees by an employer amounts a lock-out. It is said that the words used in the definition of a lock-out, namely, "the refusal by an employer to continue to employ any number of persons employed by him" cover the discharge of employees by an employer. The contention so raised was rejected by the Labour Appellate Tribunal in Presidency Jute Mills. Co. Ltd. v. Presidency Jute Mills Co. Employees Union ([1952] L.A.C. 62). We are in entire agreement with the view there expressed.

It seems to us that to construe the definition as including a discharge would be against a entire tenor of the Act and also against the meaning of a lock-out as understood in industrial relations.

By virtue of s. 22 of the Act, in a public utility service no worker can go on strike nor can an employer lock-out his workmen without giving notice of strike or lock-out within six weeks before the strike or lock-out as the case may be within fourteen days of such notice or before the date fixed in such notice or during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion thereof. Section 23 prohibits strikes and lock-outs in other industrial establishments during the pendency of conciliation proceedings before a Board and for seven days thereafter. Section 24(1) makes a strike and a lock-out in contravention of ss. 10, 22 and 23, illegal. Section 24(2) provides that a strike declared in consequence of an illegal lock-out and a lock-out declared in consequence of an illegal strike shall not be illegal. Section 25 prohibits the spending of money on illegal strike and lock-outs.

The Act therefore treats strike and lock-outs on the same basis; it treats one as the counterpart of the other. A strike is a weapon of the workers while a lock-out that of a employer. A strike does not, of course, contemplate the severance of the relation of the employer and the employed; it would be strange in these circumstances if a lock-out did so.

Under the provisions of s. 22, a lock-out cannot be declared in a public utility service immediately, it can be declared only after the date fixed in the notice and cannot be declared within fourteen days of the giving of the notice. Now if a discharge is included in a lock-out, an employer in such a service cannot discharge his employee, except after the time specified. Now, that would often make it impossible for the employer to carry on his business. It is conceivable that an employee may be guilty of such misconduct that his immediate discharge is essential. Indeed, there is no reason to think that such cases would be very infrequent. In such a case if an employer is prevented on pain of being made criminally liable under s. 27 from discharging the employee forthwith,irreparable

mischief may be caused to his works or serious personal injury to himself or his other employees. We have no reason to think that the Act intended such a result.

Again, if a lock-out included a discharge, then there would be a conflict between ss. 22 and 23 on the one hand and s. 33 on the other. As has already been stated, ss. 22 and 23 prohibit a lock-out of workers during the pendency of the conciliation proceedings, therein mentioned, and seven days thereafter. According to the interpretation suggested by the learned Advocate for the appellants, during this time no worker could at all be discharged for a lock-out includes a discharge,it being remembered that the prohibition in the section is absolute. Under s. 33 however, an employer is prohibited during the pendency of a conciliation proceeding, from discharging a workman concerned in the dispute for any misconduct connected with such dispute save with the express permission of the authority before whom the proceeding is pending. So, if a lock-out includes a discharge, under ss. 22 and 23 there can be no discharge during the conciliation proceedings while under s. 33 there could be one with the permission of the authority conducting the proceeding. If a discharge amounted to a lock-out, an absurd result would thus be produced.

By an amendment made on October 2, 1953, certain provisions have been introduced into the Act which would show clearly that lock-out as defined in s. 2(1), which section has been left unaltered by the amendment, was never intended to include a discharge of workmen. We refer to s. 2(00) by which a new definition was introduced in the Act which, so far as is necessary for the present purpose, is in these words :

Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action.

If lock-out includes a discharge, then retrenchment as defined in s. 2(00) would also clearly be a lock-out. Obviously, if that were so, then retrenchment would not have been separately defined. Again under s. 25F, also introduced into the Act by the amendment, a workman may be retrenched by paying him wages for a month, the compensation provided, and on notice to the Government. If retrenchment was a form of lock-out, then there would clearly be a conflict between ss. 22 and 23 on the one hand and s. 25F on the other. Section 2(00) and s. 25F were, no doubt, not in the Act at the date of the notices with which we are concerned, but since s. 2(1) was not amended it must be taken that its meaning remained after the amendment what it was before. Since the amendment made it clear that s. 2(1) did not include a retrenchment, it follows that the definition did not include a retrenchment prior to the amendment. If it did not then include a retrenchment, neither could it include a discharge, for, plainly, a retrenchment is but one form of discharge.

It, therefore, seems to us that the words "refusal by an employer to continue to employ an number of persons employed by him" in s. 2(1) do not include the discharge of an employee. We feel no difficulty in taking this view, for it does not seem to us that the words "refusal to continue to employ" in s. 2(1) plainly include a discharge. These words have to be read with the rest of the definition and also the word lock-out. The other parts of the definition contemplate no severence of the relation of employer and employed. The word "lock-out", as stated in the Presidency Jute Co's case ([1952] L.A.C. 62), in its dictionary sense means refusal on the part of an employer to furnish to his operatives except on conditions to be accepted by the latter collectively. Therefore, in our opinion, the rules of interpretation do not prevent us from giving to the words used in the definition the meaning "a refusal by the employer to allow any number of persons employed by him to attend to their duties without effecting a termination of service" as was done in the Presidency Jute Mills Co's case ([1952] L.A.C.62), which would avoid one part of the Act coming in conflict with

another.

The last point raised in about the propriety of the sanction. Section 34(1) of the Act provides,

No court shall take cognisance of any offence punishable under this Act ... save on complaint made by or under the authority of the appropriate Government.

The learned Advocate for the appellants relying on Gokulchand Dwarkadas Morarka v. The King ((1948) L.R. 75 I.A. 30), where a provision somewhat similar to s. 34(1) was considered by the Judicial Committee, contended that the sanction granted in the present case by the Government of the West Bengal to file the complaint against the appellants was bad as it had been granted without reference to the facts constituting the offence. It is true that the sanction does not on the face of it refer to the facts constituting the offence. There is, however, ample evidence in this case, which we did not understand the learned Advocate for the appellants to the challenge and which clearly establishes that the entire facts connected with the offence had been placed before the sanctioning authority and the sanction had been granted on a consideration of them. The Judicial committee in the case above-mentioned itself observed that the sanction would be good if it was proved by evidence that it had been granted after all the necessary facts had been placed before the sanctioning authority though this facts might not have been stated on the face of the sanction itself. It therefore seems to us that the sanction in the present case is unobjectionable.

We feel, therefore, that the appeal must fail. We think it right however in the circumstances of this case and in view of the long lapse of time since the case started, to modify the sentence passed. In our view, a sentence of simple imprisonment for the period already served and a fine of Rs. 100 with simple imprisonment for a period of fifteen days in default of payment of the fine for each appellant will be sufficient in this case and we order accordingly.

Subject to this modification of the sentence, this appeal is dismissed.

Appeal dismissed.

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