Doom Dooma Tea Company, Limited

v.

Assam Chah Karmachari Sangha and Another

(Supreme Court Of India)

HON'BLE JUSTICE P. B. GAJENDRAGADKAR HON'BLE MR. JUSTICE K.C.DAS GUPTA

Civil Appeal No. 324 Of 1958 | 19-02-1960

Gajendragadkar, J.

1. This appeal by special leave arises out of an industrial dispute between Doom Dooma Tea Company, Ltd., (hereinafter called the appellant), the workmen of Daimukhia Tea Estate (hereinafter called respondent 1) and Bapiram Das (hereinafter called respondent 2). The dispute was in regard to the dismissal of the appellant's employee Bapiram Das (respondent 2). It was urged by respondent 2 that the said dismissal was illegal and unjustified whereas the appellant contended that the impugned dismissal was fully justified. This dispute was referred by the Government of Assam for adjudication to Mr. Radhanath Hazarika under Cl. (c) of Sub-sec. (1) of S.10 of the Industrial Disputes Act, 1947. Evidence was led before the industrial tribunal by both the parties. Having considered the said evidence the tribunal took the view that the dismissal of respondent 2 was not justified. Even so it was not inclined to direct reinstatement of respondents. It, however, directed the appellant to grant respondent 2 a certificate of discharge with all retrenchment benefits which were specifically enumerated in the award. It is this award which is challenged before us by Mr. Viswanatha Sastri on behalf of the appellant.

2. The material facts leading to the dispute ought to be briefly stated act the outset. It appears that respondent 2 had been working as a factory hazira mohorer in the Daimukhia Tea Estate of the appellant since December 1946. With a view to improve the standard of the pruning work in section 6 of the said estate the garden manager had instructed Mr. Addission, the assistant manager, to take special care in the work of the said section. Accordingly, on 22 December, 1955, Mr. Addission asked respondent 2 to take particular care in checking the labourers' work while taking their hazira (attendance) in the morning. Respondent 2 was further asked to direct the worker responsible for the poor quality of work to have his work executed once again in proper manner with a view to bring it up to the normal standard, and not to allow him leave until that was done to the satisfaction of Mr. Addission. At 2-10 p.m. on the

same day when Mr. Addission went to section 6 he noticed that the standard of work done by the workers was very poor and that respondent 2 had not carried out his instruction in that behalf. When respondent 2 was asked about it he explained that the standard of work of each and every worker was very poor and so he did not and could not have the whole of the work reexecuted. Thereupon respondent 2 was told that Mr. Addission would make a report to the manager about this matter and he was directed to submit his explanation in writing to the manager in that behalf. After this conversation took place respondent 2 left the room of Mr. Singh, the garden engineer, where he had met Mr. Addission. Shortly thereafter respondent 2 returned to the office of Mr. Singh and desired to talk to him. Mr. Singh advised him to give his explanation in writing whatever it was. Then Mr. Addission asked respondent 2 whether he had recorded the attendance of the labourers who had returned poor quality of work; and when respondent 2 answered him in the affirmative Mr. Addission said "Bigger fool you too have done so; why did you not . . ."

Before, however, Mr. Addission could complete his sentence respondent 2 hit him under his left eye with a fist blow shouting "shut up." This blow caused a bleeding injury. Mr. Singh thereupon jumped from his seat and prevented respondent 2 from assaulting Mr. Addission any further. Respondent 2 then left Mr. Singh's room saying that Mr. Addission did not know him.

This incident was reported to the manager Mr. Black immediately. Respondent 2 was then suspended pending enquiry. A charge sheet was served on him on 24 December, 1955, and he was required to furnish his explanation by 26 December, 1955, which he did. On 28 December, 1955, the manager held an enquiry, recorded evidence of both sides and came to the conclusion that respondent 2 was guilty of gross misconduct under standing order 10(a) 7 inasmuch as he has assaulted Mr. Addission, the assistant manager. Consequently he ordered the dismissal of respondent 2 with immediate effect. It is this order of dismissal which has given rise to the present dispute.

3. In the proceedings before Mr. Black, Mr. Addission gave evidence and so did Mr. Singh. On the other band respondent 2 supported his own version and examined some witnesses on his behalf. The case of respondent 2 was that Mr. Addission was holding a stick in his hand and was waving it in front of him. Whilst he was so waving his stick in front of his face he apprehended that the stick would be need against him and so he warded it off. In that process injury may accidentally have been caused to Mr. Addission. Respondent 2 also alleged that Mr. Addission had called him a bloody fool. The manager hold that the witnesses examined by respondent 2 had not heard the actual conversation between him and Mr. Addission and so he was not satisfied that the words 'bloody fool' had been used by Mr. Addission. He also found that even if

Mr. Addission had used objectionable language against respondent 2 that did not warrant the assault made by respondent 2 on his superior officer. It is on this view that the manager found respondent 2 guilty and decided to dismiss him.It appears that before the tribunal evidence was led by both the parties. The employer did not content himself with producing the papers in regard to the enquiry held by the manager; it led evidence before the tribunal itself in support of its conclusion that respondent 2 was guilty of misconduct which justified his dismissal. On appreciating the evidence the tribunal has found that Mr. Black who hold the enquiry had a bias against respondent 2, and that according to the tribunal has vitiated the entire enquiry proceedings. If it can be shown that the enquiry was not fair or that the enquiring officer had made up his mind against respondent 2 that, no doubt, would be a serious infirmity on which respondent 2 would be entitled to rely. The scope of the enquiry in such an industrial dispute has been considered by this Court in the case of Indian Iron and Steel Company, Ltd. & Anr. v. Their Workmen [1958 - I L.L.J. 260], and it has been held that the tribunal can interfere only in four classes of cases, viz.,

(1) when there has been a want good faith;

(2) when there is victimization or unfair labour practice;

(3) when the management has been guilty of a basic error or violation of a principle of natural justice; and

(4) when on the materials, the finding to completely baseless or perverse.

4. Therefore, the question which arises for our decision is whether the finding of the tribunal that Mr. Black was entirely biased against respondent 2 is justified. If this finding had been based on appreciation of evidence considered in the light of probabilities, we would have been reluctant to interfere with it in exercise of our jurisdiction under Art. 136 of the Constitution. We are, however, satisfied that the tribunal's finding as to the manager's bias is not even reasonably possible. That is why we think we must reverse the said finding. The main reason given by the tribunal in support of its conclusion is that Mr. Black suspended respondent 2 immediately after he received the complaint from Mr. Addission."It is evident from the fact that he did not wait to call for any report from Sri Das, " says the tribunal, "but suspended him immediately on receipt of the oral report from Mr. Addission, " and it adds,"being a manager of an industrial establishment Mr. Black ought to have taken a dispassionate

view of the matter and should have gone deeper into it before deciding to dismiss Sri Das."

We are unable to understand the validity of this reasoning. It is usual in cases of this kind that the person against whom a complaint of misconduct is received should be suspended pending the enquiry. How long such suspension can last and on what terms are matters which would normally be governed by the relevant standing orders. It is not suggested that the suspension of respondent 2 was contrary to the standing orders in the present case. Therefore it is idle to suggest that because Mr. Black suspended respondent 2 pending the enquiry it could be inferred that Mr. Black was prejudiced against respondent 2 and had decided to find him guilty.

Mr. Aggarwal realised the weakness of this finding and so he sought to give two additional reasons in support of it which are not to be found in the award itself. He contended that the notice issued by Mr. Black against respondent 2 on 24 December, 1955, shows that he had already decided to dismiss him. It may be conceded that the words used in the notice are capable of such construction if they are literally construed; but, reading the notice as a whole, it would be unreasonable to assume that the only opportunity which Mr. Black wanted to give to respondent 2 was to make a plea in respect of sentence. We cannot ignore the fact that the draft has been prepared by a person not familiar with legal terminology and as such it must be considered as a whole and should be construed in a reasonable manner.

Besides, the explanation given by respondent 2 clearly shows that he understood the scope of the notice to be wide enough to enable him to give his defence even in respect of the allegation about his assault on Mr. Addission, and the enquiry which followed in disputably proves that the whole of the incident was investigated and that the enquiry was not confined only to the question of sentence. Therefore, in our opinion, the notice on which Mr. Aggarwal relies cannot justify the assumption that Mr. Black had made up his mind before he held the enquiry.Then Mr. Aggarwal has argued that the conclusion of Mr. Black is so manifestly unreasonable that an inference of bias can be legitimately drawn against him. We are not impressed by this argument at all. The order passed by Mr. Black appears to us to be a fair order in which he attempted to sum up the evidence and to record his conclusion. Whether or not one agrees with the said conclusion is a different matter; but there is nothing in the order which can be rationally construed to justify the argument that Mr. Black was prejudiced against respondent 2. Indeed the record shows that there was no occasion for Mr. Black or even Mr. Addission to be prejudiced against respondent 2. Therefore the principal finding on which the tribunal proceeded is, in our opinion, entirely

opposed to the weight of evidence on the record, and so it can be legitimately characterized as perverse in the legal sense.

5. It is true, as the tribunal has pointed out, that Mr. Addission was not at all justified in calling respondent 2 a big fool. Employers must realise that their employees, however humble their status and however poor their earnings may be, are entitled to be treated as human beings and must be treated with due respect to human dignity. Abuse of any kind not only shows bad manners but hurts the dignity of the parson to whom it is addressed and inevitably creates strong reactions in his mind. Therefore we must strongly disapprove of the attitude adopted by Mr. Addission in dealing with respondent 2. That, however, does not mean that the tribunal has jurisdiction to interfere with the order of the punishment passed by the management. This question must be considered in the light of the limits which are imposed by law on the jurisdiction of tribunals in dealing with such a dispute.What then is the position on the merits ? The tribunal cannot sit in appeal over the findings of Mr. Black; and indeed though the tribunal has attempted to sit in appeal over the findings of Mr. Black its own conclusions of facts are at best more than halting.

"Although the person accused, " says the tribunal, "is not entitled to any benefit of doubt as he is in a criminal trial, in a departmental enquiry, when satisfactory and legal evidence is wanting, the manager should not have awarded such extreme punishment as dismissal."

It is thus obvisious that because the tribunal felt that the evidence was not bad enough to be discarded altogether it was not very good either, and so it thought that this quality of the evidence should have influenced Mr. Black in imposing a lesser sentence an respondent 2. It is hardly necessary to add that this approach is both illogical and irrational. Either the evidence is good enough or not, if it is disbelieved respondent 2 is not guilty of any misconduct, on the other hand, if it is believed misconduct is proved. In any case sentence must depend upon the nature of the misconduct proved. It is true that the tribunal found the evidence led by Mr. Addission to be not very satisfactory. Even so it has based its final decision on the ground which we have just considered. Besides, it is obvious that the tribunal overlooked the fact that it was not within its competence to reappreciate the evidence in the present enquiry, and that introduces a serious infirmity in the award.

6. Then, as to the order of dismissal itself, we will assume that the tribunal has jurisdiction to interfere with sentence in an industrial dispute of this kind if it is satisfied that the sentence is unduly severe and wholly unjustified (Vide : Buckingham

and Carnatic Company, Ltd. v. Workers of the Company and another [1951 - II L.L.J. 314]. In the present case, however, we are unable to hold that the sentence can be held to be unduly severe or unjust. In fact the tribunal itself has not ordered reinstatement but has granted respondent 2 retrenchment benefits and directed the company to give him a certificate of discharge. On the facts held proved by Mr. Black it seems to us that the conduct of respondent 2 in attacking Mr. Addission is of such a character that the order of dismissal passed against him cannot be treated as unduly harsh or unjust. Whether or not the industrial tribunal itself would have passed this order if the matter had come for its decision is not material. Normally the awarding of proper punishment for misconduct under the standing orders is the function of the management, and unless there is valid justification the tribunal should be slow to interfere with the exercise of that function.There is only one point which may be incidentally mentioned before we part with this case. Mr. Aggarwal attempted to argue that the conduct attributed to respondent 2 did not amount to misconduct under S. 10(a) 7 of the standing orders. Clause 10(a) 7 refers to riotous conduct and Mr. Aggarwal contends that attacking Mr. Addission does not constitute misconduct under the said clause. This contention has never been taken before, nor before Mr. Black, nor before the industrial tribunal, nor in the statement of the case before us. Besides, having regard to the other cognate items in standing order 10, it is impossible to hold that riotous conduct does not include the assault in question. Clause 10(a) 8 refers to inciting others to disturbance or violence which means that if an employee incites another employee to cause disturbance or to adopt violence that would fall under Cl. 10(a) 8. If that is so, if an employee who himself adopts violent attitude and assaults his superior officer, can in the context of the standing orders be treated as guilty of riotous conduct. Therefore there is no substance in the argument that Cl. 10(a) 7 does not apply.

7. In the result the appeal must be allowed; the order passed by the industrial tribunal set aside, and it must be held that the order of dismissal passed against respondent 2 by the appellant's manager is justified and that respondent 2 is not entitled to any relief in that behalf. There would be no order as to costs.

8. Appeal allowed.