

Titaghur Paper Mills Company, Limited

v.

Ram Naresh Kumar and Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE P.B. GAJENDRAGADKAR HON'BLE JUSTICE  
K.N.WANCHOO

Civil Appeal No. 15 Of 1959 | 03-03-1960

Wanchoo, J.

1. This is an appeal by special leave against the order of the Fifth Industrial Tribunal, Bengal. The appellant is a paper mill. Ram Naresh Kumar, respondent, was in the employ of the appellant. He also happened to be the vice-president of the union at the relevant time. He was working in the time office and his duty was to note the attendance and send the necessary attendance reports daily to the labour office of the appellant. But he failed to send the report to the labour office from 6 September to 28 September, 1953 with respect to the soda recovery department, relay II, and from 1 September to 28 September, 1953 with respect to the digester department, relay II. Consequently, a charge was framed against him on 30 September, 1953 and he was asked to explain within three days why disciplinary action should not be taken against him for disobedience of orders under the relevant standing orders. He submitted an explanation, which was followed by an enquiry on 3 October, 1953 at which he did not cross-examine the witnesses. Thereafter, he was suspended with effect from 5 October, 1953; but as some industrial dispute was under adjudication before a tribunal the appellant applied for permission to dismiss him under S.33 of the Industrial Disputes Act. Before, however, the application could be disposed of, the industrial dispute was decided by the tribunal and, in consequence, there was no necessity for any order on the application under S. 33. Thereafter, the appellant dismissed Ram Naresh Kumar on 17 December, 1953. On this a dispute was raised by the union and reference was made by the Government of West Bengal on 31 March, 1954 with respect to Ram Naresh Kumar and some other employees. In the present appeal we are only concerned with Ram Naresh Kumar, and the matter referred to the industrial tribunal was whether the termination of the service of Ram Naresh Kumar was justified and whether he was entitled to any relief. The tribunal has held that there was dereliction of duty by Ram Naresh Kumar. It has also held that there was a proper enquiry which was followed by suspension and dismissal of Ram Naresh Kumar. It is also not in dispute that the punishment of dismissal could be meted out under the relevant standing order for such dereliction of duty. The tribunal, however, set aside

the order of dismissal on two grounds. It said that it was usual for the labour office, where there was delay in submitting the attendance report, to send a reminder to the workman at fault, but this was not done in the present case, and it thought that this was done designedly in order to take advantage of Ram Naresh Kumar's lapses. Secondly, the tribunal was of the view that as Ram Naresh Kumar was the vice-president of the union and certain disputes were going on between the union and the appellant which resulted in the withdrawal of the recognition of the union on 5 October, 1953, Ram Naresh Kumar was more or less of the nature of an eyesore to the management and there was, therefore, ample room for suspicion that the management wanted somehow or other to get rid of this man. Though the tribunal did not say so in so many words, it seems to have thought that this was a case of victimization and in consequence ordered the reinstatement of Ram Naresh Kumar. It may be mentioned that the explanation given by Ram Naresh Kumar for his failure to perform his duties was so unsatisfactory and absurd that even the learned counsel appearing on behalf of the union before the tribunal had to admit that it was a childish explanation.

2. We are of opinion that on the findings of the tribunal itself there was no case for interference with the order of dismissal. The scope of the power of an industrial tribunal to interfere in the matter of dismissal of workmen by the management was considered by this Court in *Indian Iron and Steel Company, Ltd., and another v. Their workmen* [1958 - I L.L.J. 260], and it was laid down that the powers of an industrial tribunal in this matter were not unlimited and the tribunal did not act as a court of appeal and substitute its own judgment for that of the management. It was also held that the tribunal would interfere when:

(i) there is want of good faith;

(ii) there is victimization or unfair labour practice;

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

(iv) on the materials the finding is completely baseless or perverse.

We are of opinion that the present case is not covered by any of the four grounds on which a tribunal can interfere with the order of dismissal by the management. Dereliction of duty was clearly established in this case; the management had the right

of dismissal under the relevant standing orders; proper enquiry was held and the explanation of the workman was found to be childish. In these circumstances, there was no ground for the tribunal to substitute its own judgment for the judgment of the management in the matter of punishment to be meted out. The two reasons given by the tribunal for interfering with the order of management do not, in our opinion, come within any of the four principles mentioned above. It was not the duty of the management to remind the workman who was failing to perform his duties properly, even if the management sometimes did so. Nor can this be said to be a case of victimization, for the dereliction of duty was clearly established. All that the tribunal has said is that there was room for suspicion that the management wanted somehow or other to get rid of this man. But considering the nature of the dereliction of duty in this case it cannot possibly be said that the management had any hand in the failure of the workman to perform his duty properly. The fact that the recognition of the union was withdrawn about that very time is also not a material consideration, for the withdrawal of the recognition was undoubtedly due to short illegal strikes fomented by the union in the months of July, August and September 1953. The tribunal itself had to concede that the reason for the dismissal was sound but it said that it was designed. This is something which we cannot understand, for the management could not design that the workman should fail to perform his duties. In the circumstances, the appeal must be allowed. We may, however, note that the learned Solicitor-General appearing on behalf of the appellant has stated that the management will pay *ex gratia* a sum of Rs. 500 to Ram Naresh Kumar taking into account his past services and we trust that this will be done.

3. We, therefore, allow the appeal, set aside the order of the tribunal and uphold the order of dismissal passed by the appellant. In the circumstances, we make no order as to costs.