SUPREME COURT OF INDIA

Management of Swatantra Bharat Mills, New Delhi

Vs.

Ratna Lal

C.A.No.392 of 1959

(P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.)

28.03.1960

JUDGEMENT

GAJENDRAGADKAR, J.:

1. An application made by the appellant, the Management of Swatantra Bharat Mills, Najafgarh Road, New Delhi, under S. 33(2) (b) of the Industrial Disputes Act, 1947, for approval of its decision to dismiss from its employment its employee Mr. Ratanlal, the respondent, has been dismissed by the Industrial Tribunal, Delhi. It is against this order that the appellant has come to this Court by Special Leave.

2. The appellants carries on business as a textile mill at Najafgarh Road, New Delhi, which is owned and managed by the Delhi Cloth and General Mills Co. Ltd. The respondent had been employed as a number marker in the bundling and baling department of the appellant. There are three bundling presses in the mills where bundles of yarn of 10 lbs. each are made out and marked by label signifying the weight, quality, etc. Thereafter the said bundles had to be carried in a trolley by the respondent (who is a time-rated workman) to the baling press. This press is at some distance from the bundling press. The packing of smaller bundles into a large bale was the work of baling-press men who are piece-rated workers. After the baling is done the respondent had to mark the bales with proper marking showing the quality, number of yarn, weight, etc., of the yearn packed. The respondent had been working for a long time past and discharging his duties in the manner indicated.

3. It appears that the respondent became slack and negligent in his duties in June 1957 with the inevitable result that production went down. A charge-sheet was then served on him on June 24, 1957, again on July 16, 1957 and August 5, 1957, for acts of misconduct under the Standing Orders; but before any action could be taken against him the respondent tendered an apology on December 4, 1957, in which he admitted his fault and promised that he would do his best in future to deliver normal number of 10 lbs. bundles as he used to do and to do other normal duties so that the production may not be affected. Thereupon the appellant warned him and took no further action against him.

4. About December 28, 1957, the respondent again became slack and negligent. He was then served with a warning notice. At this stage the baling-press men had complained against the negligence of the respondent because his negligence affected their earnings. On January 2, 1958, a report was received from the baling-press men that their output was considerably going down on account of the

negligence of the respondent whereupon another warning was served on the respondent on January 2, 1958. This warning however, had no effect and the respondent's negligence continued. The baling-press men again represented to the appellant against the conduct of the respondent. This time a charge-sheet was served on the respondent and an enquiry was held. The respondent was given an opportunity to cross-examine the witnesses who gave evidence against him and his explanation was also taken. At the end of the enquiry the enquiry officer found that the changes framed against the respondent had been proved. On receiving the said report, the appellant terminated the respondent's services by an order dated February 28, 1958, and then the present application was made to the industrial tribunal under S. 33(2)(b).

5. The industrial tribunal rejected the application on the ground that in the various circumstances set out by it in its award it was of opinion that the charges against the workman "cannot be held to have been satisfactorily established". It is true that the tribunal began its award with the observation that it had to decide whether a prima facie case had been made out by the appellant against the workman. This approach is no doubt proper because under S. 33 (2)(b) the jurisdiction of the tribunal is limited to the enquiry as to whether a prima facie case has been made out by the employer against the employee or not. Having stated the limits of its jurisdiction correctly in this manner the tribunal, however, proceeded to consider the merits of the rival contentions as though it was trying the case itself. It was not satisfied that the respondent's job included the Mazdoor's work of carrying bales. It was also inclined to hold that the work-load of the respondent had increased because there was a certain amount of increase in distance which had to be traversed by the respondent before he could deliver the bundles to the baling-press. It also observed that there was no satisfactory evidence defining the duties of the respondent, and so, it came to the conclusion that the appellant's case against the respondent had not been satisfactorily established. One has merely to look at the findings recorded by the tribunal to realise that it has exceeded its jurisdiction under S. 33(2)(b). It may be pointed out in fairness to the appellant that the enquiry officer's report is a well considered document wherein he has examined the evidence adduced before him and has given elaborate reasons in support of his final conclusion. The conduct of the appellant to which we have already referred unmistakably supports the final conclusion of the enquiry officer. The apology given by the respondent on December 4, 1957, has naturally been considered by the enquiry officer and the rest of the evidence taken into account before he rejected the respondent's plea. In such a case we do not see how it was open to the industrial tribunal to sit in appeal over the findings of the enquiry officer and to reappreciate the evidence for itself. That is not the scope of the enquiry under S. 33(2)(b).

6. It appears that before the tribunal it was urged on behalf of the respondent that he was not allowed the help of Mr. Braham Dutt or any other worker attached to the mill. The grievance made by the respondent in his application before the tribunal was that the enquiry officer did not allow Mr. Braham Dutt to be with him and thereby deprived him of the opportunity of having a witness of his own to bear out the irregularities committed by the management in its proceedings. In other words he wanted Mr. Braham Dutt to be present in the enquiry not with a view to assist him but with a view to watch what according to the respondent were the irregular features of the enquiry. Apart from the fact that the record does not show any irregularity connected with the enquiry we do not see how the respondent can make a grievance of the fact that Mr. Braham Dutt was not allowed to be present at the enquiry and urge that the enquiry itself is thereby vitiated. The tribunal also was not inclined to go that far; it has merely observed that to some extent the respondent has a grievance in the matter of enquiry. The main question which the tribunal had to consider was whether this grievance made the enquiry improper or illegal. In our opinion, the answer to this point must definitely be against the respondent. Thus there is no doubt that in rejecting the application of the

appellant the tribunal has exceeded its jurisdiction and that makes the award wholly unsustainable.

7. The result is the award is set aside and the application made by the appellant for approval of the dismissal of the respondent is allowed. There will be no order as to costs.

Appeal allowed.

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