SUPREME COURT OF INDIA

M. L. Bose and Co., Private Ltd., Calcutta

Vs.

Employees

C.A.No.238 of 1959

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

28.03.1960

JUDGEMENT

GAJENDRAGADKAR, J.:

1. This appeal by special leave arises from an industrial dispute between the appellant M/s. M. L. Bose and Co., Calcutta, and the respondents, its workmen. Five items of dispute were referred by the West Bengal Government to the Third Industrial Tribunal for its adjudication; the principal amongst them was in regard to the dismissal of 47 persons. The respondents urged that this dismissal was wrongful and illegal and the dismissed workmen were entitled to reinstatement. The other items of dispute were in regard to the scale of pay, dearness allowance, holidays and leave. The industrial tribunal has held that the dismissal of the 47 workmen was illegal and has directed their reinstatement. It has also ordered that the appellant should pay them 1/3 of their total emoluments for the period from the date of dismissal till reinstatement. In regard to the other items of dispute the tribunal has made appropriate orders. In the present appeal we are principally concerned with the order of reinstatement.

2. The appellant is a private limited company which manufactures Laxmibilas Hair Oil, Barley and other products. It is a small concern and carries on its business on the cottage industries scale. Sometime in January 1957 a charter of demands was submitted by the appellant's workmen, and according to the appellant soon thereafter the workmen started coercive measures by way of slow down of production. On April 15, 1957, the appellant issued a notice calling upon its employees to stop subversive activities and to co-operate with the appellant; but according to the appellant this notice had no effect on the workmen.

3. The respondents' case, on the other hand, is that the appellant disliked the fact that its workmen had formed a union which was registered on November 2, 1956, and it is this dislike which is really responsible for the subsequent events. The charter of demands submitted by the respondents to the appellant was forwarded by the respondents to the Labour Commissioner as well on February 19, 1957. The Labour Commissioner called for the comments of the appellant on the said charter. The appellant then swiftly reacted against this development by putting a notice which is alleged to have been hung up on the notice board on April 15, 1957, calling upon the workers to stop agitational activities. That according to the respondents is the genesis of the said notice.

4. Next day a charge-sheet was issued and hung up on the notice board against 10 employees. On April 17, 1957, the Labour Officer wrote to the appellant suggesting a joint conference. On April

18, 1957, the appellant dismissed the 10 workmen. Two days thereafter another charge - sheet was similarly hung up on the notice board and it was followed by dismissal of 5 workmen on April 22, 1957. It appears that at this stage the appellant applied to the Magistrate, Sealdah, under S. 144 of the Code of Criminal Procedure against 17 of its employees. On April 25, 1957, a charge- sheet was affixed on the notice board against 32 workmen and they were dismissed on May 31, 1957. The respondents protested against this conduct of the appellant in thus dismissing a large number of its workmen illegally and that led to the present reference.

5. The tribunal has found that the orders of dismissal contravened S. 33 of the Industrial Disputes Act, 1947, that they also contravened the principles of natural justice inasmuch as no enquiry was held in respect of any of the dismissals. The tribunal was not even satisfied that the notices alleged to have been posted by the appellant were posted on the notice board in fact, and it saw no reason why the appellant could not have served each one of the workmen individually with the said notice. It is significant that 16 of the workmen in any case were dismissed even before the date fixed for the enquiry had arrived. On the evidence the tribunal also thought that the attendance register disproved the appellant's contention that the workmen concerned had absented themselves from duty; and it had no doubt that the recitals made by the appellant in the respective notices were mere paper recitals without any basis. The tribunal also commented on the fact that the production slip which would have shown whether the workmen were going slow or not had not been produced for the relevant period, and the charge of staging or inciting a strike was disproved by the attendance register itself. In conclusion the tribunal held that the termination of the services of the workmen concerned was due to their union activities and to the charter of demands which had been submitted to the appellant for its consideration. It may be mentioned that out of 47 employees concerned in the dispute 2 died and so the dispute was ultimately confined to 45 workmen only. It is on these findings that the tribunal has made the order of reinstatement and payment of back wages against which the present appeal has been preferred.

6. In our opinion, the order passed by the tribunal is obviously just and not open to any legitimate criticism. The conduct of the appellant clearly shows that he is unable to accept the inevitable position that industrial employees are entitled to form a trade union and to agitate collectively for the betterment of their wages and other conditions of service. There is no doubt that the root cause of the trouble is the appellant's aversion to the formation of the union by its employees. The notices alleged to have been issued are no more than a cloak for carrying out the appellant's objective of dismissing all employees who were concerned with the union activities. Mr. Sanyal, for the appellant, has invited our attention to the fact that a complaint has been made against the directors of the appellant company for assault by one of the employees, Mr. Ramkhelwan Shaw, and he contends that where the atmosphere had been so much embittered it would be difficult for the appellant to keep in its employment such employees. We do not propose to say anything about the merits of the complaint in question. It seems to us that the plea made by the appellant that the atmosphere had been embittered cannot possibly succeed in the circumstances of this case because if any bitterness has arisen it is solely due to the appellant's inability to tolerate the trade union activities of its workmen.

7. Mr. Sanyal then contended that in the present case the ends of justice would be met if the employees are awarded reasonable compensation, and he argued that in the meanwhile the appellant has employed other workmen and their discharge would create complications. This Court has repeatedly held that when the dismissal of a workman is found to be illegal it is no answer to the workman's claim for reinstatement that in the meanwhile the employer has engaged another workman. However much the Court may sympathise with the difficulties arising from such a

position the workman is entitled to claim reinstatement which is a normal rule in the case of wrongful and illegal dismissal. Therefore we are not prepared to accede to the argument that a fair order of compensation would be justified in this case.

8. The award has directed that 1/3 of the total emoluments should be paid to the workmen for the period from the date of dismissal till reinstatement; that was because it appeared to the tribunal that the workmen had earned from time to time by different work. Mr. Sanyal has suggested that we should direct a similar payment at a similar reduced rate from the date of the award until the date of reinstatement. We do not propose to make such an order. After the award became operative the workmen were entitled to reinstatement by the appellant, but the appellant obtained an order for stay from this court unconditionally. In such a case we do not see any reason for depriving the workmen of their full wages from the date the award became operative to the date of their reinstatement.

9. In regard to the other items in dispute Mr. Sanyal faintly attempted to contend that the minimum fixed by the award in the shape of basic wage and dearness allowance should have been fixed below Rs. 61. We are not impressed by this argument. The award has fixed basic wage at Rs. 30 and dearness allowance at Rs. 31 per month of 26 working days. We do not see how it can be legitimately argued by the appellant that Rs. 61 does not represent the minimum basic total to which the employee is entitled.

10. In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

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