SUPREME COURT OF INDIA

Central India Coalfields Ltd., Calcutta

Vs.

Ram Bilas Shobnath

C.A.No.162 of 1959

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

31.03.1960

JUDGEMENT

GAJENDRAGADKAR, J.:

1. An application made by the appellant, the Central India Coalfields Ltd., under section 33(2)(b) of the Industrial Disputes Act, 1947, to the Labour Court, Nagpur at Bombay, sitting at Calcutta, for approval of its decision to dismiss its employee, the respondent Ram Bilas Shobnath, has been dismissed by the said tribunal. That is why the appellant has come to this Court by special leave to challenge the validity and the property of the said order.

2. The appellant is a limited company owning and managing a colliery at Chirimiri in Madhya Pradesh. There are staff quarters built by the appellant on its land for the residence of its employees and their families. The respondent had been employed by the appellant as a workman who performed his duties as an underground Munshi in the said colliery. A complaint was received against the respondent from several other workmen in the appellant's colliery that the respondent was guilty of rowdy and indecent behaviour at night on June 5, 1957. He went to the quarters of his co-workmen drunk and in a state of heavy intoxication. First he knocked violently at the door of Sarkar Babu, then at the door of Srivastava Babu and used dirty and filthy language of abuse. Then he moved to the door of Madhu Babu and began to tear down the screens and abused Madhu Babu. He then knocked at the door of Tulsi Babu who thought that there might be some accident and so he left his dinner and opened the door. The respondent then entered the room using filthy language and threw the articles in the room hither and thither. The neighbour then collected on the scene and with great difficulty took out the respondent from Tulsi Babu's room. At this time Ram Anjari Munshi was moving with the respondent. The complaint further alleged that the respondent was a drunkard and was in the habit of causing nuisance to his neighbours. Complaints had been made against him on several occasions in the past but no serious action had been taken against him. The complaint ended with the statement that if no serious action was taken against the respondent then the residents of the quarters would find it difficult to tolerate his indecent behaviour.

3. The charge contained in this complaint was explained to the respondent and enquiry was held on June 8, 1957. The statement made by the persons in the complaint against the respondent was read out in the presence of the respondent and he was asked what he had to say. The respondent's companion Ram Anjari Munshi also gave evidence in which he admitted the truth of the complaint made against the respondent. He confessed that he had also drunk liquor but he remembered the incident that took place. The respondent, however, pleaded that he was so drunk that he did not

remember any thing about the incident. The respondent was then told that his companion had admitted that all the allegations made against him in the application were true and he was asked whether he had anything to say in defence. He replied that he had nothing to say in defence. As a result of this enquiry the officer made a report that the allegations made against the respondent were proved and in fact were admitted by the companion of the respondent and were in substance not denied by himself. So the officer thought that the respondent was guilty of misconduct as per Standing Order No. 29(5); and he reported accordingly. The appellant's Manager considered the report and took into account the fact that several charge-sheets had been filed against the respondent and repeated warnings had been given to him, and so he held that there was no alternative but to dismiss him. Accordingly an order of dismissal was passed against him under Standing Order No. 29(5). He was asked to take one month's wages from the accounts department in lieu of final settlement, after obtaining a clearance certificate from the department concerned as well as the stores department. It was under these circumstances that an application was made by the appellant for approval of the industrial tribunal to the appellant's decision to dismiss the respondent. At the hearing before the tribunal the respondent filed no written statement but his representative argued against the validity of the order.

4. The industrial tribunal took the view that Standing Order No. 29(5) strictly did not apply because, though the respondent was guilty of the misbehaviour mentioned in the said Standing Order, his misconduct had taken place outside the working hours as well as outside the pit where the respondent had to discharge his duties. The tribunal was inclined to hold that the respondent could have been punished under Standing Order No. 37 provided his case fell under Standing Order No. 32. It was on this technical objection that the tribunal refused to approve the dismissal of the respondent. The appellant contends that the tribunal has erred in law in refusing to accord its approval to the respondents dismissal.

5. It is common ground that quarters are provided by the appellant to its employees and they are situated on the coal bearing area at a distance of about 200 feet from the pit-mouth according to the appellant and at a distance of 2000 feet according to the respondent. Standing Order No. 29(5) provides that drunkenness, fighting, riotous or disorderly or indecent behaviour constitutes misconduct which entails dismissal. Normally this Standing Order would apply to the behaviour on the premises where the workmen discharge their duties and during the hours of their work. It may also be conceded that if a quarrel takes place between workmen outside working hours and away from the coal premises that would be a private matter which may not fall within Standing Order No. 29(5); but in the special circumstances of this case it is clear that the incident took place in the quarters at a short distance from the coal bearing area and the conduct of the respondent which is proved clearly amounts both to drunkenness as well as riotous, disorderly and indecent behaviour. In fact, as the enquiry officer in substance has found, unless the appellant took some action against the respondent, breach of peace was threatened and that is not a matter which complacence. Besides, if the tribunal thought as it appears to have done that since the incident happened in the company's quarters the management could take action provided the respondent's case fell under Standing Order No. 32 read with Standing Order No. 37, it need not have allowed considerations of this character to influence its final decision particularly when the extent of its jurisdiction under S. 33(2)(b) was very limited. This is not a case where any mala fides can be attributed to the appellant or it can be said that the dismissal amounts to unfair labour practice. In the circumstances of this case the order of dismissal passed by the appellant against the respondent appears to be a straightforward matter and the tribunal may well have resisted the temptation of examining the validity of the said order in such a technical way. Besides, as we have already indicated, having regard to the special circumstances of this case we are not satisfied that the tribunal was right in holding that Standing Order No. 29(5)

was inapplicable.

6. It has been urged before us by Mr. Dipak Choudhri, on behalf of the respondent, that the enquiry held against the respondent was improper in that a formal charge-sheet was not served to him; and he also attempted to argue that the dismissal of the respondent is intended to victimise him because he is an active trade union worker. We are not impressed by either of the two arguments. The enquiry proceedings show that the officer told the respondent clearly what the complaint against him was. The complaint was in fact read out to him and, as we have already indicated, the respondent's companion admitted the truth of the complaint made in the statement. It does not appear that the respondent wanted to cross-examine any of the parties who had complained against him and that an opportunity was refused to him so to do. It is abundantly clear from the record that in substance the respondent himself admitted all the facts though the pretended that he was too drunk and therefore did not remember what had really happened at the time. Therefore, this is not a case where there is any dispute as to the incident itself, and so the objection that the enquiry was improper cannot be sustained. Besides, it is significant that no such point was raised before the tribunal itself by the respondent's representative. It is not possible for us to allow Mr. Choudhri to raise a point of mala fides for the first time in this appeal. That is a question of fact on which no material has been adduced by the respondent either before the enquiry officer or before the tribunal.

7. Then Mr. Choudhri contended that the tribunal was justified in not approving the dismissal because the dismissal is an unduly sever punishment in this case. There are two obvious answers to this argument. In an enquiry under S. 33(2)(b) normally it is not open to the tribunal to consider whether the sentence proposed is unduly severe or not. Such a consideration may be relevant in dealing with an industrial dispute; and what is more important in this case,-the previous conduct of the respondent which the appellant's Manager legitimately took into account more than justifies the respondent's dismissal. The several occasions on which the respondent had been warned for his misconduct of one kind or another make a formidable reading. On most of the occasions he pleaded guilty, apologised and promised to behave better. Sometimes he put up a plea in defence and asked the appellant what difference did it make to the appellant if he was drunk provided his work was not affected. Even so the proceedings ended with a warning every time; and the last incident which gave rise to the present enquiry showed that the respondent had made a nuisance of himself to his co-workmen who bluntly told the appellant that in case serious action was not taken against the respondent it would be difficult for them to tolerate his misbehaviour which in effect conveyed their determination to teach him a lesson. That would obviously have meant disturbance of the peace. It is difficult to appreciate why the tribunal should have found it difficult to approve the dismissal of the respondent in such a case.

8. We must accordingly hold that the order passed by the tribunal is patently erroneous and must be set aside. The application made by the appellant for the approval of the tribunal for dismissing the respondent is accordingly allowed. There will be no order as to costs.

Appeal allowed.

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