SUPREME COURT OF INDIA

I. M. H. Press, Delhi

Vs.

Additional Industrial Tribunal, Delhi

C.A.Nos.357 and 358 of 1959

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

06.04.1960

JUDGEMENT

WANCHOO, J.:

1. These appeals arise out of seventeen applications under S. 33-A of the Industrial Disputes Act, No. 14 of 1947, (hereinafter called the Act). The brief facts necessary for their disposal are these. The appellant is a press working in Delhi. It appears that there was a dispute between the appellant and its workmen with respect to certain demands made by the workmen. That matter was pending before the conciliation officer. While those proceedings were pending, the workmen served upon the management a notice on October 3, 1955, intimating that they would strike after fourteen days. This period was to expire on October 18, 1955, but the workmen went on strike from October 17 and the strike continued till October 29. In the meantime, the Chief Commissioner made a reference on October 19, 1955, and also declared the strike illegal. But the order declaring the strike illegal was received by the union on October 29 and thereafter the strike was called off from October 30. When the time for payment of wages came the appellant deducted wages for the period from October 19 to October 29, 1955. Thereupon certain workmen applied under S. 33-A of the Act with respect to this deduction. These applications were disposed of in August 1956 and the tribunal held that it was improper on the part of the workmen to have precipitated matters by going on strike and that there was no justification for the strike. It was also observed by the tribunal that the strike had become illegal on October 19 and not on October 29 when the order declaring the strike illegal was received by he union. The application were therefore dismissed.

2. Immediately after this order of the tribunal, the appellant decided to dismiss some of the workmen on the ground of their having joined an illegal strike and picked out the seventeen workmen who later made applications under S. 33-A of the Act which have resulted in the present appeals. Charge-sheets were served on these workmen on September 19, 1956, and they replied on September 20. On September 24 1956, the appellant informed these workmen that an inquiry would be held on September 27, 1956, with respect to the charge-sheets given to them on September 19. In the meantime it appears that a general demonstration was to be held at the instance of the Delhi Press Workers Union on the afternoon of September 21, 1956, and a procession was to be taken out which was to terminate before the office of the Director of Industries. The Delhi Press Workers Press wrote to all the presses, including the appellant-press, about this demonstration. Thereupon some of the workmen of the appellant-press made applications to the appellant for leave to join the demonstration. This leave was refused and a notice was given by the appellant that if any workman absented himself it would amount to a strike and that he would be joining the demonstration at his

own risk and would be marked absent for the rest of the day. Therefore when the appellant informed the seventeen workmen that an enquiry would be held on September 27 into the charge-sheets given on September 19, 1956, it was also stated that these workmen, had absented themselves after 1 p. m. on September 21 and had staged a demonstration before the main gate of the press and shouted slogans and had thus contravened sections 26(1) and 27 of the Act and that they were to show cause why heir behaviour should not be reported to the Delhi Administration, apparently for taking penal action under the abovementioned sections.

3. An enquiry was eventually held on September 27, 1956, at which all the seventeen workmen were present. The complaint of the workmen was that one Mr. Bhattacharya who was present on their behalf was not allowed to cross-examine the witnesses. On the other hand, the appellant contended that the enquiry was fair and regular.

4. The tribunal did not go into the question whether the contention of the workmen that Mr. Bhattacharya on their behalf was not allowed to cross-examine the witnesses was correct. It seems to have assumed that the enquiry was regular; but it came to the conclusion that the appellant was not justified in dismissing the workmen who had struck work in October 1955 merely because the strike was later declared illegal. As to the absence of the workmen on September 21, it held that that was not and could not be a part of the charge given to the workmen on September 19 on which the dismissal order was based. It pointed out that the workmen were not called upon to show cause even in the notice of September 24, why they should not be dismissed for their absence of September 21 and that all that was said in that notice about the absence was that the appellant intended to report their conduct to the Delhi Administration for prosecution and they should show cause why such a report should not be made. The earlier notice also showed that the only action the appellant proposed to take was to mark them absent for that part of September 21. The tribunal therefore directed the reinstatement of seventeen workmen and ordered that they should be paid 50 per cent. of their wages from the date of their dismissal till the date of their reinstatement.

5. The appellant challenged this award before the Punjab High Court under Art. 226 of the Constitution. That petition was, however, dismissed in limine. That is how there are two appeals before us : one against the order of the tribunal and the other against the order of the Punjab High Court dismissing the writ petition.

6. The charge that was given to the seventeen workmen was that they had taken part in an illegal, unjustified, mala fide and improper strike and also that they had fomented the strike causing other workers to join it by threats. This was followed by the dismissal of the seventeen workmen on September 28, 1956, and the main ground for the dismissal given in the order was that these workmen had gone on an illegal, unjustified and mala fide strike during the month of October 1955, which had caused loss to the press. Reference was also made to the demeanour and stubborn and insolent attitude of these workmen during the enquiry as well as to their going on strike on September 21 and raising provocative slogans and staging an unhealthy demonstration in front of the press. There was, however, no finding that these seventeen workmen had fomented the strike in October 1955 and caused other workmen to join it by treats. Thus the sole ground for the dismissal of these workmen was that they had taken part in the illegal strike of October 1955. As to their absence on September 21, 1956, the tribunal was right in holding that that was not a part of the charge and that the said absence was not a strike but mere absence without permission, for which the appellant might have deducted the pay of those who absented themselves for half the day.

7. It has been held by this Court in Indian General Navigation and Railway v. Their Workmen, AIR

1960 SC 219 that mere taking part in an illegal strike without anything further would not necessarily justify the dismissal of all the workmen taking part in the strike. In this case the appellant had made a charge that these workmen had fomented the strike and had induced other workmen to take part in the strike by threats; but that was not proved. It further appears, that the illegal strike which was the basis of dismissal took place in October 1955, almost one year before the appellant proceeded to take action. It seems that things were going on more or less smoothly in press after the workmen rejoined on October 30, 1956, and the trouble arose simply because the appellant took it into its head to take belated disciplinary action after the tribunal dismissed the application for payment of wages for the strike period in August 1956 and held that the strike of October 1955 was not justified and was even illegal after October 19, 1955. It seems therefore that the appellant took advantage of the decision of August 1956 and picked out these seventeen workmen after about a year for victimisation. Our attention was also drawn to Model Mills Ltd. v. Dharamdas, 1958-1 Lab LJ 539 : (AIR 1958 SC 311) where dismissal of workmen was upheld merely for taking part in an illegal strike. That was however a case where there was such a provision in the Standing Orders. The present however is not such a case for there are undoubtedly no Standing Orders in the appellant-press and therefore the general rule laid down in India General Navigation case, AIR 1960 SC 219 will apply. In the circumstances, though the tribunal has not considered this aspect of the matter, we are of opinion that there is no case for interference with the order of reinstatement and the award of 50 per cent. wages between the date of dismissal and the date of reinstatement.

8. A further circumstance has however intervened in this case since, viz., that the appellant's business has been closed as from April 25, 1959. In view of that closure it would not be possible for the order of reinstatement to be carried out and therefore an order of compensation will have to be substituted in its place.

9. We therefore, modify the order of the tribunal thus. The appellant will pay to the seventeen workmen who have been ordered to be reinstated but who cannot be reinstated now 50 per cent. of their wages from the date of their dismissal (namely, September 28, 1956) till the date on which the tribunal's order under appeal became enforceable. Thereafter the appellant will pay full wages as compensation to these seventeen workmen upto April 24, 1959. Further from April 25, 1959, when the business was closed these seventeen workmen along with others will be entitled to compensation under S. 25FFF of the Act, as may be determined by the proper authority. In the circumstances however we pass no order as to costs. With this modification the appeals are dismissed.

Order modified.

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