SUPREME COURT OF INDIA

Cawnpore Tannery Ltd., Kanpur

Vs.

S. Guha

C.A.No.55 of 1959

(P. B. Gajendragadkar, A. K. Sarkar and K. N. Wanchoo, JJ.)

11.11.1960

JUDGEMENT

GAJENDRAGADKAR, J.:

1. This is an appeal by special leave and it arises from an industrial dispute between the appellant, the Cawnpore Tannery Ltd. and its employees. This dispute was in regard to the discharge of one of the employees of the appellant, Mr. S. Guha. It appears that Mr. Guha was appointed as Assistant Store Keeper in the Boot Factory Stores owned by the appellant on a salary of Rs. 140 p.m. Subsequently his services were terminated on May 1, 1951. This gave rise to a dispute between the appellant and its employees and the dispute was adjudicated upon by the Tribunal. The employees alleged that the termination of Mr. Guha's services was wrongful whereas the appellant urged that the discharge of Mr. Guha became necessary partly because measures of economy had to be adopted after the appellant's Boot Factory Stores and General Stores were amalgamated. The plea raised by the appellant was upheld by the Tribunal and it was held that Mr. Guha's discharge was not wrongful. The workmen made an appeal against the said decision but the appeal failed and the award made by the Tribunal was upheld.

2. Meanwhile the appellant had employed two clerks, Mr. Zaidi on August 16, l95l and Mr. Joseph in July 1952. Subsequently, another clerk was also employed in April 1953. On January 10, 1953, a complaint was filed in which it was alleged that the retrenchment of Mr. Guha was not bona fide and that persons junior to Mr. Guha had been retained while he was discharged. This complaint has given rise to the present industrial proceedings. When it was referred for adjudication, the issue framed was 'whether the management of the appellant have wrongfully and/or unjustifiably kept Mr. Guha out of employment from the time when there was scope for his re-employment ? If so, to what relief is he entitled ?' This complaint was tried as an industrial dispute by the Tribunal. After considering, the evidence adduced before it the Tribunal has held that the appellant had kept Mr. Guha wrongfully and unjustifiably unemployed at least since August 16, 1951, when it employed Zaidi as a clerk and so it has directed the appellant to re-employ Mr. Guha with effect from the date on which the award would become enforceable, according to law. The appellant has also been directed to pay Mr. Guha the highest consolidated pay which was then being paid to the three clerks subsequently employed. The appellant challenged the correctness and propriety of this award by preferring an appeal before the Labour Appellate Tribunal. This appeal, however, failed, because the Appellate Tribunal agreed with the findings recorded by the original Tribunal. It is this decision of the Labour Appellant Tribunal which has given rise to the present appeal by special leave.

3. Mr. Sen for the appellant has urged before us three points. He contends that there was and could be no industrial dispute between the appellant and the respondents in regard to the retrenchment of Mr. Guha, because Mr. Guha had been retrenched as long ago as May 1951, and had ceased to be the workman of the appellant. In our opinion, there is no substance in this contention. Even after Mr. Guha was retrenched, it would have been open to the Union of which Mr. Guha was a member to raise a dispute about his non-employment. The definition of the term "workman" even prior to its amendment in 1956 would have included a person like Mr. Guha whose services were terminated. This position is now made perfectly clear by the present definition of "workmen" which includes a person who had been dismissed, discharged or retrenched. Besides, the definition of the term "industrial dispute" is wide enough to justify the Union of which Mr. Guha as well as the propriety of the appellant's conduct in not giving him an opportunity to be re-employed when an occasion for the employment when an occasion for the employment of an additional clerk arose. That is the view taken by the Labour Appellate Tribunal and we are not satisfied that the said conclusion is erroneous in law so as to justify our interference.

4. Then Mr. Sen argues that though under S. 25-H of the Industrial Disputes Act the principle has now been statutorily recognised that a retrenched workman must be given an opportunity of re-employment when the employer has to employ an additional hand, at the relevant time this provision was not in the statute book and it was erroneous in law to have virtually given effect to the said statutory provision retrospectively. In our opinion, this argument is misconceived. Even before 25-H was added to the Act industrial adjudication generally recognised the principle that if an employer retrenched the services of an employee on the ground that the employee in question had become surplus, it was necessary that whenever the employer had occasion to employ another hand the retrenched workman should be given an opportunity to join service. This principle was regarded as of general application in industrial adjudication on the ground that it was based on considerations of fairplay and justice, vide Shri Vishuddananda Saraswathi Hospital v. Their Employees, 1949-1 Lab LJ 111: (IT-West Bengal); Kilburn and Co. and MacNeill and Co. v. Their Employees, 1950-2 Lab LJ 125 (IT-West Bengal) and Sri Annapurna Mil1s v. Certain Workmen, (1953) 1 Lab LJ 43 (L..A.T.I. All). It is true that in the case of Annapurna Mills the discharge of the workmen was the result of the fact that the employer had closed his business and it was held that with improvement in circumstances if the employer re-opened his business it was necessary that he should take back in his employment his old employees. It would be noticed that the principle which was applied to the case of an employer who re-opened his business which had been closed by him is substantially the same principle which requires the employer to give an opportunity to his retrenched workman when he has occasion to engage another servant. That is why the Labour appellate Tribunal has observed that the principle now statutorily recognised by Section 25-H was, before the Act was amended, recognised by industrial adjudicators in dealing with such question. Therefore, we do not think that Mr. Sen is justified in contending that the order passed in the present proceedings against the appellant is contrary to industrial law.

5. It is then urged that the principle of industrial adjudication on which the respondents rely cannot require the appellant to offer to Mr. Guha a job unless the said job belongs to the same category to which Mr. Guha belonged. On principle, Mr. Sen may be right in assuming that the offer would be conditioned by the consideration of the category to which the retrenched employee belonged. But in the present case on the finding of the Tribunal below, there is no room for contending that Mr. Guha has been asked to be taken in a category other than the one to which he originally belonged. It is true that under his earlier assignment Mr. Guha was described as an Assistant Store Keeper, but it has been found by the Tribunals below that he was doing a substantial amount of clerical work and subsequent appointments made by the employer were made in the clerical cadre. Therefore, all that

the Tribunals have required the appellant to do is to re-employ Mr. Guha in the clerical cadre. We do not think that his order can be challenged on the ground that it is not justified by the principle of industrial adjudication in regard to retrenched workmen.

6. Mr. Sen then attempted to contend that the Tribunals might have held that the appointment of the three clerks subsequently introduced by the appellant in his establishment may be wrong, but he contends that it was not right that the Tribunals should have made an order directing the appellant to re-employ Mr. Guha. He points out that the record shows that there are some other persons whom the appellant had discharged and considerations may arise as to which of the discharged persons should be given the first opportunity of re-employment. We do not think it is open to Mr. Sen to raise this contention for the first time before this Court. This contention is based on certain facts none of which was pointedly brought to the notice of the Tribunal below, and Mr. Sen has fairly conceded that this aspect of the matter was not argued before them either.

7. In the result we see no reason to interfere with the order passed by the Labour Appellate Tribunal. The appeal fails and is dismissed with costs.

Appeal dismissed.

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