

Anglo-American Direct Tea Trading Company, Ltd

v.

Workmen Of Nahortoli Tea Estate

(Supreme Court Of India)

HON'BLE MR. JUSTICE P.B. GAJENDRA GADKAR HON'BLE MR. JUSTICE  
K.N. WANCHOO HON'BLE MR. JUSTICE K.C. DAS GUPTA

Civil Appeal No. 244 Of 1960 | 05-12-1960

WANCHOO, J.

(1. ) This is an appeal by special leave in an industrial matter. The appellant is a tea company in Assam. Dhaneswar Bhumiz and his wife Taramani were workmen under the appellant. The case of the appellant was that Dhaneswar was given certain orders on 13 December 1952 by the assistant manager. He did not carry out those orders and was guilty of disobedience and insubordination. Consequently, he was suspended on 15 December. On the same day he was given a charge-sheet and was asked to explain why he should not be dismissed or otherwise punished for gross misconduct inasmuch as he refused to carry out the orders of the assistant manager and became insolent. He was also charged with having worked in the tea garden on 17 December while he was under suspension. He gave an explanation with respect to the first charge as to the incident of 13 December, but said nothing in his explanation as to his having worked on 17 December, after his suspension. An enquiry is said to have been held into both the charges on 18 December. The record of the inquiry, however, shows that all that had happened in that inquiry was that certain questions were put to Dhaneswar to which he gave replies. When he was asked to sign his statement he refused to do so. Thereafter, no further enquiry seems to have been held ; there is however nothing to show that Dhaneswar had refused to take part in the enquiry. On 22 December 1952, Dhaneswar was dismissed. His wife was also dismissed on the same day without any charge being framed against her and without any inquiry.

(2. ) Thereupon a dispute was raised by the union and eventually two references were made by the Government of Assam on 15 September 1953, and 9 December 1953. The first reference was with respect to the dismissal of Dhaneswar and the second with respect to his wife. The industrial tribunal heard the two references together and came to the conclusion that Dhaneswar was guilty of misconduct inasmuch as he had disobeyed lawful orders and consequently upheld the dismissal of Dhaneswar. As for his wife, the industrial tribunal was of opinion that as her husband was dismissed and

it was desirable that Dhaneswar should have no footing in the garden, services of his wife were also rightly terminated, as otherwise Dhaneswar would have an excuse to live in the garden, which would lead to untoward incidents.

(3. ) The matter was then taken in appeal to the Labour Appellate Tribunal. A preliminary objection was raised there as to the maintainability of the appeal on the ground that no substantial question of law was involved in it. The Appellate Tribunal repelled this contention on the ground that the industrial tribunal had relied on the statements of some witnesses, who had not been examined either in the managerial inquiry or before the industrial tribunal. Because of this error in law as to the manner in which the tribunal below relied on evidence which was inadmissible, the Appellate Tribunal held that it was entitled to go into the question whether the remaining evidence which was admissible was sufficient to support the conclusion of the industrial tribunal. After examining this evidence, the Appellate Tribunal came to the conclusion that it had not been proved in the case of Dhaneswar that he was guilty of misconduct, which would justify his dismissal. Further, in the case of his wife, the Appellate Tribunal held that there was no justification whatsoever for her dismissal. Eventually, the Appellate Tribunal considered the question of reinstatement and was of the opinion that in the circumstances of this case the proper course was that Dhaneswar and his wife should not be reinstated but should be compensated for premature termination of their employment. It, therefore, ordered that they should be paid all their Wages up to the date of its decision and one month's wages as notice pay. Besides, they were to be paid fifteen days' average pay per year of completed service as retrenchment compensation and fifteen days' pay per year of completed service as compensation for unjustified and premature termination of their employment. The appellant then came to this Court and prayed for special leave which was granted, and that is how the matter has come up before us.

( 4. ) Three points have been urged before us on behalf of the appellant, namely- (1) the Appellate-Tribunal had no jurisdiction to interfere as there was no substantial question of law involved in the appeal before it; (2) the Appellate Tribunal's decision is vitiated by the fact that it did not keep in mind the principles laid down in *Indian Iron and Steel Company, Ltd. v. their Workmen* (1958 I. L.L.J. 260.= 13 F.J.R. 377), as to the extent of the tribunal's jurisdiction to interfere with an order passed in a managerial inquiry; and (3) in any case, the Appellate Tribunal has awarded double compensation to Dhaneswar and his wife, which it could not have done." Re. (1):- We are of opinion that there is no force in this contention. As the Appellate Tribunal has pointed out, the industrial tribunal has undoubtedly relied on evidence which was neither given in the managerial inquiry nor before it. That was undoubtedly an error of law of a substantial nature which would vitiate the award of the industrial tribunal. In the circumstances, the Appellate Tribunal would be justified in going into the

evidence and deciding for itself whether after excluding the inadmissible evidence on which the industrial tribunal had relied there was sufficient material to justify its finding. In the circumstances, we are of opinion that the Appellate Tribunal was right in holding that there was a substantial question of law involved in this case which entitled it to hear the appeal. Re. (2):- There is no doubt that the principles laid down in Indian Iron and Steel Company case [1958- I L.L.J. 269] (supra) had not been followed by the tribunals in this case. But we are of opinion . that on the facts of this case, those principles have no application. The incident out of which the present proceedings have arisen took place on 13 December. It seems that some kind of preliminary inquiry was made by the management with which Dhaneswar had nothing to do. Thereafter he was suspended on 15 December and a charge-sheet was given to him and his explanation was called for. A second charge-sheet was given to him on 17 December, and the managerial inquiry was fixed for 18 December, in the presence of Dhaneswar. All that happened at that inquiry was that Dhaneswar's statement was taken before even any evidence was led on behalf of the management. It seems that some disputes took place between Dhaneswar and the management at the time his statement was being taken and Dhaneswar refused to sign his statement on the ground that it was not correctly taken down. Be that as it may, it does not appear that any evidence was recorded in the managerial inquiry either before that statement was taken down or afterwards to prove the charge against Dhaneswar. Further, there is nothing to show that Dhaneswar had refused to take part in the managerial inquiry after the dispute as to his refusal to sign the statement. In these circumstances, there was in fact no managerial inquiry worth the name in this case. This is what the Appellate Tribunal has also pointed out, and we think rightly. This is also borne out by the fact that before the industrial tribunal the appellant examined a number of witnesses which would have been unnecessary if there had been a proper managerial inquiry. It seems from this fact that it was practically accepted before the industrial tribunal that there was no proper managerial inquiry and it was left to the industrial tribunal to decide for itself whether the dismissal of Dhaneswar was justified. In these circumstances, there was no scope for the application of the principles laid down in Indian Iron and Steel Company case [ (1957) F. J. R. 377] which applies only where a proper managerial inquiry has been held. This contention must therefore be negatived. Re. (3): - We have already set out the final order of the Appellate Tribunal by which it allowed two kinds of compensation- retrenchment compensation as also compensation for unjustified and premature termination of employment. It is urged on behalf of the appellant that the Appellate Tribunal was wrong in allowing double compensation in this manner. It is not disputed that where a workman is entitled to reinstatement but for some reason the tribunal does not consider it proper to give that relief, compensation is awarded to such workman in lieu of that relief. There is, however, no scope for allowing retrenchment compensation in a case of this kind, for there is no question of any retrenchment as such where the tribunal decides not to pass an order of reinstatement but to give compensation instead. Strictly speaking, therefore, the Appellate Tribunal was wrong in giving retrenchment compensation as well as

compensation for unjustified and premature termination of employment. What it could and should have given was compensation only for unjustified and premature termination of employment. In effect, however, the order of the Appellate Tribunal works out to giving one month's average pay for each year of completed service for unjustified and premature termination of employment in this case. We feel that though the Appellate Tribunal was wrong in splitting up the compensation in two parts as it did, there would have been no reason for interfering with its order if it had given compensation for unjustified and premature termination of employment at the rate of one month's average pay per completed year of service. Now, in a case of proper retrenchment law allows compensation at the rate of fifteen days' average pay for each completed year of service; it stands to reason that where a workman loses his job on account of unjustified and premature termination of employment, he should get something more than what he would have got as compensation if it was a proper case of retrenchment. In such a case we do not think that the award of one month's average pay for each completed year of service would be an excessive compensation for unjustified and premature termination of employment. Therefore, though the order of the Appellate Tribunal may not be quite correct in form and though some of the words used in the last part of the decision seem to suggest that the Appellate Tribunal was punishing the appellant which it should not and could not do, the order as a whole giving one month's average pay for each completed year of service as compensation does not seem to us unreasonable or unjust. In the circumstances we see no reason to interfere.

( 5. ) So far as Dhaneswar's wife is concerned, she was dismissed because her husband was dismissed and for no other reason. In the circumstances, the order of the Appellate Tribunal with respect to her also must be upheld.

( 6. ) There is no force in this appeal and it is hereby dismissed with costs.