Strawboard Manufacturing Co

Vs

Gobind

Civil Appeal No. 387 of 1961

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

06.03.1962

JUDGMENT

WANCHOO, J. -

This appeal by special leave raises the question of interpretation of s. 6-E(2)(b) of the United Provinces Industrial Disputes Act, U.P. Act No. XXVIII of 1947, (hereinafter called the U.P. Act), which is in exactly the same terms as s. 33(2)(b) of the Industrial Disputes Act, No. XIV of 1947, (hereinafter referred to as the Act), as amended by Act 36 of 1956. The question arises in this way. The appellant is a Strawboard Mill. The respondent was in the employ of the appellant. On August 12, 1959, the respondent was given certain orders by the Technical Director of the appellant, but he refused to comply with them. The same day the respondent refused to comply with certain similar orders given by the machineman. Again on August 13, 1959, he refused to obey similar orders of the shift in-charge. Finally, on August 14, he refused to obey similar orders of another shift in-charge. Consequently a notice was served on the respondent to show cause why he should not be dealt with under cl. 22(a) of the Standing Orders which provided that wilful insubordination or disobedience of any lawful orders of superior was misconduct. The respondent submitted his explanation. He was then suspended and a charge-sheet was served on him on August 16, 1959. Thereafter an inquiry was held into the alleged misconduct. After the inquiry was over the appellant referred the matter for the decision of the Labour Commissioner without giving any prior decision of its own as provided in cl. 30 of the Standing Orders. The Labour Commission, however, refused to give a decision and informed the appellant that it could take such action as it was entitled to under the Standing Orders. The appellant again approached the Labour Commissioner for giving an order as envisaged by cl. 30 of the Standing Orders, but the Labour Commissioner finally refused to pass any order and directed the appellant to take such action as it thought fit and as was within its power. Thereupon the appellant dismissed the respondent on February 1, 1960. As however, two disputes were pending between the appellant and its workmen one before the Industrial Tribunal No. 3 at Allahabad and the other before the Labour Court at Meerut, the appellant sent applications by post on the same day to the two authorities for approval of the action taken, namely, the dismissal of the respondent. It appears that the tribunal at Allahabad approved of the action on March 22, 1960. When however the same matter came before the labour court at Meerut on April 29, 1960, it refused to approve the action taken, even though the order passed by the tribunal at Allahabad already was brought to its notice. The labour court at Meerut held that the appellant was not motivated by victimisation. It further held that in the inquiry held by the appellant, prima facie case had been made out for the dismissal of the respondent; but the labour court said that though ordinarily the application of the appellant should have been granted in these circumstances it refused to approve the dismissal on the ground that the application for approval had been made after the respondent had already been dismissed; therefore it held that the application was not bona fide and in the

circumstances the prayer that the order of dismissal should be approved was not granted. It was of the view that the proviso to s. 6E(2)(b) required that the application for approval should be made before the dismissal of the workmen concerned, and failure to do so amounted to contravention of the terms of the section. Therefore as the application in this case was made after the dismissal, approval could not be granted and on this narrow ground the labour court refused to approve of the dismissal of the respondent. Thereupon the appellant obtained special leave from this Court and that is how the matter has come up before us.

The question thus raised depends upon the interpretation of the terms of s. 6E(2) which as we have said already correspond word for word with the provisions of s. 33(2) of the Act. We shall therefore set out the provisions of s. 33(2) which reads as below :-

> "(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute -
>
> #(a) ... ...##
>
> "(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman;

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

We are concerned in the present appeal with the interpretation of the proviso to cl. (b) which says that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. It is unnecessary to consider in the present case whether applications have to be made, where more than one dispute is pending before more than one tribunal, to all the tribunals where the disputes are pending or whether an application to only one of them would be enough. In the present case disputes were pending before two authorities and applications were made to both of them, though curiously the result has been rather unfortunate for the appellant, for one tribunal has approved of the action while the other has not.

Before however we turn to the interpretation of the proviso we may refer to the circumstances in which s. 33(2) came to be enacted. Originally there was no such provision like s. 33(2) in the Act and the only provision to be found therein corresponded to the present section 33(1). The object behind enacting s. 33 as it was before the amendment of 1956 was to allow continuance of industrial proceedings pending before any authority prescribed by the Act in a calm and peaceful atmosphere undisturbed by any other industrial dispute. The plain object of the section was to maintain the status quo as far as possible during the pendency of any industrial dispute before a tribunal. But it seems to have been felt that s. 33, as it stood before the amendment of 1956, was too stringent for it completely took away the right of the employer to make any alteration in the conditions of service or to make any order of discharge or dismissal without making any distinction as to whether such alteration or such an order of discharge on dismissal was in any manner connected with the dispute pending before an industrial authority. It seems to have been felt therefore that the stringency of the provision should be softened and the employer should be permitted to make changes in conditions

of service etc. which were not connected with the dispute pending before an industrial tribunal. For the same reason it was felt that the authority of the employer to dismiss or discharge a workman should not be completely taken away where the dismissal or discharge was dependent on matters unconnected with the dispute pending before any tribunal. At the same time it seems to have been felt that some safeguards should be provided for a workman who may be discharged or dismissed during the pendency of a dispute on account of some matter unconnected with the dispute. Consequently s. 33 was redrafted in 1956 and considerably expanded. It is now in five sub-sections while before 1956 it consisted practically of what is now sub-s. (1).

The present scheme therefore of s. 33 is as follows :- Sub-section (1) refers to matters connected with a dispute which might be pending and forbids any alteration to the prejudice of the workmen concerned in such dispute, in the conditions of service applicable to them immediately before the commencement of the industrial proceedings resulting from such dispute and also forbids the employer from discharging or punishing any workman whether by dismissal or otherwise in connection with any matter connected with the dispute; and the employer, if he wants to make any alteration in the conditions of service or to punish any workman or discharge him, must get the express permission of the authority before which the proceeding relating to the dispute might be pending. Thus sub-s. (1) lays down that if an employer proposes to alter any conditions of service or proposes to punish or discharge a workman in relation to a matter connected with the dispute which might be pending before a tribunal the employer must put such proposal before the tribunal and obtain its express permission in writing before carrying out the proposal whether it be for alteration of any conditions of service or for punishment or discharge of a workman by dismissal or otherwise.

Sub-section (2)(a) on the other hand gives power to the employer to alter any conditions of service not connected with the dispute and this the employer can do without approaching at all the tribunal where the dispute may be pending. It further permits the employer to discharge or punish, whether by dismissal or otherwise, any workman where this may be on account of any matters unconnected with the dispute pending before the tribunal; but such discharge or dismissal is subject to the proviso, which imposes certain conditions on it. The intention behind enacting sub-s. (2) obviously was to free the employer from the fetter which was put on him under s. 33 as it was before the amendment in 1956 with respect to action for matters not connected with a dispute pending before a tribunal. So far as conditions of service were concerned, if they were unconnected with matters in dispute the employer was given complete freedom to change them, but so far as discharge or dismissal of workmen was concerned, though the employer was given freedom, it was not complete and he could only exercise the power of discharge or dismissal subject to the conditions laid down in the proviso. Even so, these conditions in the proviso cannot be so interpreted, unless of course the words are absolutely clear, as to require that the employer must first obtain approval of the tribunal where a dispute may be pending before passing the order of discharge or dismissal of a workman, for on this interpretation there will be no difference between s. 33(1)(b) and s. 33(2)(b) and the purpose of the amendment of 1956 may be lost.

Then we come to sub-s. (3) which provides that notwithstanding anything contained in sub-s. (2) certain workmen who are called protected workmen shall not be dealt with except with the express permission in writing of the authority before which the proceeding is pending. Thus the freedom which was given to the employer under sub-s. (2) with respect to conditions of service unconnected with the dispute or with respect to discharge or punishment of workmen on the ground of matters unconnected with the dispute was cut down by sub-s. (3) with respect to a small class of workmen, even though the action of the employer may be unconnected with any matter in dispute before the tribunal. The explanation to sub-s. (3) defines who is a protected workmen and sub-s. (4) makes

consequential provisions with respect to him.

Lastly we come to sub-s. (5) which lays down that where an employer makes an application under the proviso to sub-s. (2) for approval of the action taken by him, the authority concerned shall without delay hear such application and pass as expeditiously as possible such order in relation thereto as it deems fit.

Let us now turn to the words of the proviso in the background of what we have said above. The proviso lays down that no workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. It will be clear that two kinds of punishment are subject to the conditions of the proviso, namely, discharge or dismissal. Any other kind of punishment is not within the proviso. Further the proviso lays down two conditions, namely (i) payment of wages for one month and (ii) making of an application by the employer to the authority before which the proceeding is pending for approval of the action taken. It is not disputed before us that when the proviso lays down the condition as to payment of one month's wages, all that the employer is required to do in order to carry out that condition is to tender the wages to the employee. But if the employee chooses not to accept the wages, he cannot come forward and say that there has been no payment of wages to him by the employer. Therefore, though s. 33 speaks of payment of one month's wages it can only mean that the employer has tendered the wages and that would amount, for payment, for otherwise a workman could always make the section unworkable by refusing to take the wages. So far as the second condition about the making of the application is concerned, the proviso requires that the application should be made for approval of the action taken by the employer. It has been urged on behalf of the respondent that the words "action taken" in this part of the proviso mean the action proposed to be taken and therefore all that the employer can do is to make an application to the tribunal asking it to approve the action proposed to be taken by it and it is only after the approval that the employer can proceed to dismiss or discharge the workman. We are however of opinion that on this interpretation there would really be no difference between sub-s. (2) and sub-s. (1) of s. 33 and the intention of the legislature in making the amendment in 1956 would be rendered nugatory. Moreover, it is against the rules of interpretation to add words to a provision, when the provision, as it stands, is capable of a reasonable meaning which will give effect to the intention of the legislature even on the words as they stand. On the plain meaning of the proviso, it is clear that it gives the employer the power to discharge or dismiss the employee before obtaining the approval of the tribunal concerned; but at the same time the protection afforded to the employee by the proviso has to remain effective. It seems to us therefore that when the proviso speaks of an application for approval of the action taken, the action taken there is the order of actual discharge or dismissal made by the employer and it is for the approval of this order that the application is to be made. This is borne out by form 'K' under r. 60 of the Rules framed under the Act which corresponds to form XV under r. 31 of the U.P. Rules. Further the use of the word "approval" in the proviso also suggests that something has been done by the employer who seeks approval of that from the tribunal. If the intention was that in view of the proviso the employer could not pass the order of dismissal or discharge without first obtaining the approval of the tribunal, we see no reason why the words in the proviso should not have been similar to those sub-ss. (1) and (3), namely, that no workmen shall be discharged or dismissed without the express permission writing of the authority concerned. The change therefore in the language used in the proviso to sub-s. 2(b) clearly shows in our opinion that the legislature intended that the employer would have the right to pass an order of discharge or dismissal subject to two conditions, namely, (i) payment of wages for one month and (ii) making of an application to the authority concerned for approval of the action taken. The use of the word "approval" also suggests

that what has to be approved has already taken place, though sometimes approval may also be sought of a proposed action. But it seems to us in the context that the approval here is of something done, as otherwise it would have been quite easy for the legislature to use the words "for approval of the action proposed to be taken" in the proviso. Further sub-s. (5) also suggests when it uses the words "approval of the action taken" that some action has been taken and it is that action which the employer wants to be approved by his application. The difference between sub-s. (1) and sub-s. (2) is therefore that under sub-s. (1) the employer proposes what he intends to do and asks for the express permission of the authority concerned to do it; in sub-s. (2) the employer takes the action and merely asks for the approval of the action taken from the authority concerned by his application. There can therefore be no doubt that sub-s. (2)(b) read together with the proviso contemplates that the employer may pass an order of dismissal or discharge before obtaining the approval of the authority concerned and at the same time make an application for approval of the action taken by him. It is however urged on behalf of the respondent that if the employer dismisses or discharges a workman and then applies for approval of the action taken and the tribunal refuses to approve of the action the workman would be left with no remedy as there is no provisions for reinstatement in s. 33(2). We however see no difficulty on this score. If the tribunal does not approve of the action taken by the employer, the result would be that the action taken by him would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer. In such a case no specific provision as to reinstatement is necessary and by the very fact of the tribunal not approving the action of the employer, the dismissal or discharge of the workman would be of no effect and the workman concerned would continue to be in service as if there never was any dismissal or discharge by the employer. In that sense the order of discharge or dismissal passed by the employer does not become final and conclusive until it is approved by the tribunal under s. 33(2).

The next question is as to when should an application be made. In this connection our attention was drawn to s. 33-A of the Act which gives a right to the employer to apply for redress in case an employer contravenes the provision of s. 33 and there is no doubt that the proviso to s. 33(2)(b) should be so interpreted as not to whittle down the protection provided by s. 33-A. As we read the proviso, we are of opinion that it contemplates the three things mentioned therein, namely, (i) dismissal or discharge, (ii) payments of wages and (iii) making of an application for approval, to be simultaneous and to be part of the same transaction, so that the employer when he takes action under s. 33(2) by dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time. When however we say that the employer must take action simultaneously or immediately we do not mean that literally, for when three things are to be done they cannot be done simultaneously but can only be done one after the other. What we mean is that the employer's conduct should show that the three things contemplated under the proviso, namely, (i) dismissal or discharge, (ii) payment of the wages, and (iii) making of the application, are parts of the same transaction. If that is done, there will be no occasion to fear that the employee's right under s. 33-A would be affected. The question whether the application was made as part of the same transaction or at the same time when the action was taken would be a question of fact and will depend upon the circumstances of each case.

We may now refer to certain cases which have been relied upon by either side. The main case on which learned counsel for the respondents relies is The Premier Automobiles Limited v. Ramchandra Bhimayya (I.L.R. (1960) Bom. 289.). In that case the Bombay High Court held that the application should be made before the action has been taken by the employer and that it was not correct to infer from the use of the word "approval" in the proviso that the legislature intended that such an application should be made after the action had been taken. The High Court has pointed out

that there is apparent conflict between the first and last part of the proviso and the view it took was with the object of harmonising the two parts. This view has been followed by the Gujarat High Court in Indian Extractions Private Limited v. A. V. Vyan, Conciliation Officer (A.I.R. 1961 Guj. 22.) though with some hesitation. With respect we feel that it is not necessary to read the words "action taken" in the proviso as equal to "action proposed to be taken", as the Bombay High Court has done and that the apparent conflict between the two parts of the proviso can be harmonised, as we have indicated above, leaving it open to the employer to dismiss or discharge the employee and at the same time pay him the necessary wages and make an application to the authority concerned for approval of the action taken. The contrary view has been taken by the Calcutta High Court in Metal Press Works Limited v. Deb (H.R.) ((1962) 1. L.L.J. 75.) where it has been held that payment of wages and the making of the application should be simultaneous with the order of discharge or dismissal. It has further been pointed out that the word "simultaneously" must of course be taken reasonably and a notion of split-second timing should not be imported. It should be done at once and without delay", and it will depend upon the facts of each case whether the application has been made at once or without delay. This, we think, is the correct view to take.

Let us therefore see what has happened in this case. The appellant-concern is situate at Saharanpur while one tribunal was at Meerut and the other at Allahabad. What the appellant did was to pass an order of dismissal on February 1, 1960. On the same day he sent two applications by post addressed to the two tribunals. The application at Meerut was received on February 3 and the application at Allahabad on February 4, 1960. In these circumstances we are of opinion that the appellant had made the application to the tribunal simultaneously and without delay on its passing the order of dismissal and its action was therefore in accordance with the proviso. The view taken by the labour court that the application must be made before dismissing the respondent is not correct. The appellant in this case had complied with the proviso to s. 33(2)(b) when it dismissed the workman, paid him or offered to pay the necessary wages and at the same time sent the application by post to the tribunal concerned for approval of the action taken by it.

This being the only point on which the labour court had refused to give approval, the appeal must succeed. We therefore allow the appeal, set aside the order of the labour court and approve the action taken by the appellant. In the circumstance we pass no order as to costs.

Appeal allowed.

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