

Jabalpur Electric Supply Co.

Vs

Sambhu Prasad Srivastava & Others

Civil Appeal No. 432 of 1961

(P. B. Gajendragadkar, J. R. Mudholkar, K. C. Das Gupta JJ)

27.07.1962

JUDGMENT

DAS GUPTA, J. -

When under the Standing Orders of a Company the Company is empowered to take disciplinary action against an employee by proceeding in the prescribed manner can that power be legally delegated by the Company to any of its officers ? That is the principal question raised in this appeal.

The appellant is a Company incorporated under the Indian Companies Act having its registered office at 12, Mission Row, Calcutta. It is engaged in the generation and distribution of electricity at Jabalpur. The Company's office at Jabalpur is in charge of a Resident Engineer. By a power of attorney given by the appellant company on June 26, 1957, Mr. Leonard Shell Macleod, the Company's Resident Engineer at Jabalpur, was appointed "the company's true and lawful attorney for and in the name of the Company to do exercise and perform all or any of the acts, matters, discretions and things" set out in 11 clauses. The 10th clause provided that "subject to the Standing Orders from time to time given by the Company to appoint, dismiss, suspend or terminate the services of any of the employees of the Company at Jabalpur." On November 12, 1957, the respondent Sambhu Prasad Srivastava was served with a charge sheet under the signature of Mr. Macleod in which it was alleged that he had substituted 13 coils of V.I.R. cable in the stores of the Company for the same quantity of cable of various makes from the local market, Sambhu Srivastava's reply to this charge was that when the shortage of 13 coils came to his notice on the eve of the audit he remonstrated with his subordinates who actually handled these articles and that what he did was done in the best interests of the Company and that he never acted with any dishonest intention. An enquiry was then held by the Resident Engineer and ultimately on January 16, 1958, the Resident Engineer issued a letter to him in these terms :-

"With reference to charge sheet dated 12th November, 1957, and the subsequent investigations in the case against you, please note that the matter has been very carefully considered, and in accordance with the interview which you had with our Chief Engineer, Mr. J. W. Fawcett, on the morning of the 15th January, 1958, we hereby notify you that the Company does not find it possible to retain your services.

Therefore, you are hereby discharged from the service of the Company, with immediate effect.

Please call at the Company's office on the 17th instant, to receive final settlement of your dues from the Company."

Srivastava then applied to the Assistant Labour Commissioner, Jabalpur, alleging that this order was in contravention of the provision of the C.P. & Berar Industrial Tribunal Settlement Act and of the Standing Orders as the powers of the Company under the Standing Orders to hold the enquiry can be exercised only by the Managing Director. It was also alleged that the order though in form an order for discharge was really an order of dismissal and that cls. 14, 18, 19 and 20 of the Standing Orders had been violated. The Company pleaded in its reply that under the power of attorney the Resident Engineer had the power to hold an enquiry and take disciplinary action against an employee and the action by him should be considered in law to amount to an action by the Company. It was pleaded that the provisions of the Standing Orders had not been violated. The Assistant Labour Commissioner made an order on September 10, 1958, ordering reinstatement of the respondent without break in his service but without payment of back wages.

The State Industrial Court which was moved both by the Company and by the employee held that the order of discharge was in substance an order of dismissal, and that misconduct alleged was not proved, and that in any case the Resident Engineer was not empowered to hold an enquiry and to issue an order of discharge. It refused to interfere with the order passed by the Assistant Labour Commissioner and rejected both the revisional applications.

Both parties then moved the Madhya Pradesh High Court for relief under Art. 226 of the Constitution. The High Court held that the powers - under cl. 19 of the Standing Orders could not be delegated to the Resident Engineer and also that the general right reserved to the Company under cl. 20 of the Standing Orders was meant to be exercised by it and was not covered by the delegation under cl. 10 of the power of attorney. The High Court seems to have thought also that the order made by the Resident Engineer was not under cl. 20 of the Standing Orders. Accordingly, the High Court refused to interfere with the order of reinstatement and dismissed the Company's application under Art. 226. It allowed the employee's application under Art. 226, being of opinion that the Assistant Labour Commissioner had no discretion in the matter of back wages and was bound to order payment of back wages as soon as an order of reinstatement was made.

Before considering the question whether the Company could delegate its power to take disciplinary action against its employees it will be proper to clear the ground on the question whether the order was made under cl. 19 or cl. 20 of the Standing Orders. Clause 18 of the Standing Orders mentions inter alia that theft, fraud, or dishonesty in connection with the Company's business or property will be treated as misconduct. Clause 19 provides various penalties for misconduct. The substance of these provisions is : that an employee who is adjudged by the Company on examination of the employee and of facts to be guilty of misconduct is liable to be summarily dismissed without notice or compensation in lieu of notice or alternatively to be suspended for a period not exceeding fourteen days; that the order of dismissal or suspension shall be in writing over the signature of an officer duly authorised for this purpose, and shall also briefly mention the reason on which it is based, and that no order for dismissal or suspension under this Standing Order shall be made unless the employee is informed in writing of the misconduct alleged against him and that he shall be given an opportunity to produce evidence in his defence. Clause 20 does not deal with dismissal or suspension but provides that "the Company has at all times a general right to discharge an employee from service not only for proved misconduct but also when the employer has lost confidence in the employee." Clause 21 provides for notice of censure to be given for certain acts or omissions.

An examination of these provisions shows that for an order of dismissal under cl. 19 to be made a special procedure is to be followed and when it is made the employee is not entitled to any compensation. Examining now the order made on January 16, 1958, we find that while cl. 20 has

not been mentioned it does not say that the employee has been found guilty of misconduct but merely states that "the Company does not find it possible to retain (this employee's) services" and reference is made to the investigations in the case against him and to an interview he had with the chief Engineer, Mr. J. W. Fawcett, on the morning of the 15th January, 1958. The only reasonable view to take of this order, in our opinion, is that this order was being made under cl. 20 on the ground that the employer had lost confidence in the employee and was in fact and in law an order of discharge as distinct from an order of dismissal or suspension. It appears to us that while the Resident Engineer who held the enquiry may have been satisfied that an act of misconduct for which the employee was liable to dismissal had been proved he took a merciful view of his conduct in view of his previous clean record and proceeded accordingly to act under cl. 20 of the Standing Orders instead of proceeding under cl. 19. This is a case in which the employer has acted, fairly and even generously in terminating the services of the employee under cl. 20.

The question remains whether the Resident Engineer could take action under cl. 20. The employee's argument, which found favour with the High Court was that it was the Company alone which could take action under clause 20 and the Resident Engineer in his capacity as the Resident Engineer apart from anything else, was not competent to take action under cl. 20 - For, cl. 20 empowers the Company and not the Resident Engineer as such to discharge an employee on the ground that the employer had lost confidence in him. In the present case, however, it was not the Resident Engineer in his capacity as the Resident Engineer that made the order of discharge. Clearly in making the order of discharge he was acting on the basis of the power of attorney executed in his favour on June 26, 1957. Under cl. 10 of the power of attorney he had power "subject to the Standing Orders from time to time given by the Company to appoint, dismiss, suspend or terminate the services of any of the employees of the Company at, Jabalpur." The power of the Company under cl. 19 of the Standing Orders to dismiss or suspend and its power under cl. 20 to discharge an employee are both covered by cl. 10 of the power of attorney. If there be nothing in law to prevent these powers being delegated to the Resident Engineer there could be no escape from the conclusion that the exercise of the power cl. 20 in the present case by the Resident Engineer amounted in law to an exercise of the power by the Company itself. Is there anything in law which bars such delegation ? We are unable to find any. It is obvious and admitted that when a Company has to exercise its powers in connection with the management of its business it is not all the share-holders of the Company that have to meet to exercise the power. How the Company will regulate its business is prescribed in its Articles of Association. It is nobody's case that in the Articles of Association of the Jabalpur Electric Supply Co., there is anything barring the delegation of the disciplinary powers of the Company to any of its officers. In law therefore delegation of the functions of the Company may properly be made having regard to the exigencies of the business and the Articles of Association. It cannot be reasonably disputed that where the Head Office of the Company is at Calcutta and the main business is to be carried on at Jabalpur the exigencies of the business do require delegation of the Company's power to take disciplinary action against its employees to a responsible official like the Resident Engineer. But whether or not the Company might have done without such delegation is a matter which it is unnecessary for us to enquire into. The delegation was made and neither on principle nor on authority is it possible to say that the delegation was against the provisions of law.

Nor can we see that the words "subject to the Standing Orders from time to time given by the Company" with which cl. 10 of the power of attorney opens affects the delegation. On a proper interpretation of these words their only effect is that in exercising the power to appoint, dismiss, suspend or terminate the services of the employees at Jabalpur the delegate cannot do anything beyond what the company itself can do under the Standing Orders. On no reasonable construction of the words can they mean that the delegate cannot exercise these powers at all, because under the

Standing Orders the Company itself is given these powers. Whether it is the power to take action under cl. 19 or under cl. 20 of the Standing Orders the delegate can exercise these powers under cl. 10 of the power of attorney in the same way as if the delegate was the Company itself.

We therefore hold, disagreeing with the High Court, and the Courts below, that the order of discharge made by the Resident Engineer was in exercise of the power validly delegated to him and that there has been no breach of the Standing Orders by such action.

We therefore allow the appeal, set aside the order passed by the High Court and direct that the appellant's application under Art. 226 of the Constitution be allowed and the order made by the Assistant Labour Commissioner dated September 10, 1958, ordering reinstatement of the respondent, Sambhu Prasad Srivastava be set aside. There will be no order as to costs.

Appeal allowed.

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