Management of Ritz Theatre (P) Ltd.

Vs

Its Workmen

Civil Appeal No. 111 of 1962

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

27.07.1962

JUDGMENT

GAJENDRAGADKAR, J. -

An industrial dispute between the appellant, the Management of Ritz Theatre (Private) Ltd., and the respondents, its Workmen, from which this appeal arises was referred for adjudication to the Industrial Tribunal at Delhi by the Delhi Administration on November 13, 1959. The dispute was in regard to the termination of services of two of the appellant's employees, Jai Jai Ram and Mohd. Mia and the question referred for adjudication was whether the said two workmen should be reinstated with full back wages and to what relief they were entitled.

The appellant is a company which carries on the business of exhibiting cinema films in its theatre, the Ritz Cinema, and the two workmen had been its employees for several years past. It appears that in August, 1958, charge sheets were served on the two workmen. Against Jai Jai Ram, four charges were framed. The first charge was that on 1st August, 1958, he along with Mohd. Mia had given a beating with slaps and fist blows while on duty to Mool Krishan Nigam another employee at about 6 P.M. during the Matinee show of "Nausherwane-Adil"; the second charge was that he had misappropriated carbons belonging to the management; the third was that he had run Reel No. 9 on the picture "Bhabi" upside down on 19th August, 1958, during the 6-30 P.M. show; and the last charge was that he had run over the Film Print of picture "Mother India" and thereby damaged the film print.

Against Mohd. Mia, three charges were framed. The first was in regard to the incident which took place on 1st August, 1958 in which he and Jai Jai Ram had acted together in beating with slaps and fist blows Mool Krishan Nigam; the second was that on 25th August, 1958, at about 3 P.M. during the show, he had threatened Ramesh Chandra another employee and had abused him and pushed him out of the cabin; and the third was that on 23rd August, 1958, while on duty he had left his cabin for half an hour without leave or permission or even without giving any information and was found taking tea in the restaurant during duty hours.

These charges were enquired into by the Enquiry Officer appointed by the appellant. At the enquiry, the appellant led evidence, both oral and documentary. Eleven witnesses were examined on behalf of the appellant whereas eleven witnesses were examined on behalf of the workmen. The Enquiry Officer examined the evidence adduced before him by the respective parties, considered their rival contentions and came to the conclusion that the charges firmed against both the workmen had been fully established. Accordingly, the Officer recommended that the services of both the workmen should be dispensed with for misconduct. He added that in case his recommendation for dismissing

the employees was accepted, certain payments should be made to them as indicated in the report. The appellant's case is that the report made by the Enquiry Officer was accepted by it and in accordance with the recommendation made by the said report, Jai Jai Ram and Mohd. Mia were dismissed on 15th January, 1959, and Ist May, 1959 respectively.

In the present dispute, the respondents' case was that the departmental enquiry instituted by the appellant against the two workmen was unfair, unjust and inequitable and so it was urged that the termination of services of both the workmen was not justified. In regard to Mohd. Mia, the respondents took an additional specific plea that the said workman had not been dismissed but had continued to be under suspension from 11th September, 1958 and on this additional plea, reinstatement of Mohd. Mia was claimed. Both these allegations were denied by the appellant; it urged that the departmental enquiry held by its Officer was fair and just and that fullest opportunity had been given to the employees to explain their position and meet the charges framed against them. In regard to Mohd. Mia, it was averred that after the management decided to terminate his services, the order of dismissal was in fact served on him on 1st May, 1959.

It is in the light of these pleadings that the Tribunal proceeded to deal with the dispute referred to it for its adjudication. It appears that when the trial began before the Tribunal, an application was made by the appellant asking for permission to lead additional evidence. In this application the appellant stated that some additional evidence had come to its knowledge since the holding of the enquiry and so production of the said additional evidence may be allowed. Thereupon, the respondents urged that they should also be allowed an opportunity to adduce additional evidence, and on the 27th January 1960, the Tribunal ordered that as both parties desired to lead further evidence, permission was granted; and in accordance with this order, evidence had been led before the Tribunal both by the appellant and the respondents. In addition to the evidence thus led, the appellant produced before the Tribunal all the papers of the departmental enquiry containing evidence recorded therein and the report made by the Officer.

The Tribunal has held that since the appellant sought for permission to led additional evidence, it was open to it to consider the merits of the dismissal of the two employees for itself in the light of the whole of the evidence before it. It took the view that since the appellant wanted to cite further evidence before it, the jurisdiction of the Tribunal to deal with the merits of the dispute became wider; and considering the evidence from this point of view, it came to the conclusion that the dismissal of Jai Jai Ram was not justified and that the findings recorded against him at the departmental enquiry were baseless. In regard to the termination of Mohd. Mia's services, the Tribunal held that no order of dismissal had been served on him and so it could not be said that his services had been duly terminated by an order of dismissal at all. On these grounds, the Tribunal ordered reinstatement of both the employees and gave them additional consequential reliefs. It is against this order that the appellant has come to this Court by special leave.

The first point which Mr. Andley has raised before us is that in dealing with the dispute on the merits, the Tribunal has exceeded its jurisdiction. Industrial disputes arising from orders passed by employers terminating the services of their employees have frequently come to this court in appeal and the principles which govern the limits, and the due scope, of the exercise of the Industrial Tribunals jurisdiction in respect of such dispute have been examined by this Court on several occasions. It is well-settled that if an employer serves the relevant charge or charges on his employee and holds a proper and fair enquiry, it would be open to him to act upon the report submitted to him by the Enquiry Officer and to dismiss the employee concerned. If the enquiry has been properly held, the order of dismissal passed against the employee as a result of such an enquiry

can be challenged if it is shown that the conclusions reached at the departmental enquiry were perverse or the impugned dismissal is vindictive or mala fide, and amounts to an unfair labour practice. In such an enquiry before the Tribunal, it is not open to the Tribunal to sit in appeal over the findings recorded at the domestic enquiry. This Court has held that when an proper enquiry has been held, it would be open to the Enquiry Officer holding the domestic enquiry to deal with the matter on the merits bona fide and come to his own conclusion.

It has also been held that if it appears that the departmental enquiry held by the employer is not fair in the sense that proper charge had not been served on the employee or proper or full opportunity had not been given to the employee to meet the charge, or the enquiry has been affected by other grave irregularities vitiating it, then the position would be that the Tribunal would be entitled to deal with the merits of the dispute as to the dismissal of the employee for itself. The same result follows if no enquiry has been held at all. In other words, where the Tribunal is dealing with a dispute relating to the dismissal of an industrial employee, if it is satisfied teat no enquiry has been held or the enquiry which has been held is not proper or fair or that the findings recorded by the Enquiry Officer are perverse, the whole issue is at large before the Tribunal. This position also is well settled.

In regard to cases falling under this last category of cases, it is however open to the employer to adduce additional evidence and satisfy the Tribunal that the dismissal of the employee concerned is justified. And in such a case, the Tribunal would give opportunity to the employer to lead such evidence, would give an opportunity to the employee to meet that evidence, and deal with the dispute between the parties in the light of the whole of the evidence thus adduced before it. There can be little doubt even about this position.

Mr. Sastri however contends that there can be an intermediate class of cases where the employer no doubt rests his case on the fact that an enquiry has been held, but apprehensive about the validity of the enquiry, he seeks for permission to lead evidence to justify his action before the Tribunal and he contends that whenever the employer seeks to adduce additional evidence before the Tribunal after having produced the papers in regard to the enquiry proceedings, it should he held that the Tribunal is entitled to deal with the merits of the dispute for itself, because the course adopted by the employer in seeking to adduce additional evidence should by itself justify an inference that he concedes that the enquiry has not been proper. That is the view which apparently the Tribunal has taken in the present proceedings and Mr. Sastri naturally seeks to support it.

We do no think that this view can be accepted as correct. In enquiries of this kind, the first question which the Tribunal has to consider is whether a proper enquiry has been held or not. Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the finding recorded at such an enquiry are perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute. It is quite conceivable, and in fact it happens in many cases, that the employer may rely on the enquiry in the first instance and alternatively and without prejudice to his plea that the enquiry is proper and binding, may seek to lead additional evidence. It would, we think, be unfair to hold that merely by adopting such a course, the employer gives up his plea that the enquiry was proper and that the Tribunal should not go into the merits of the dispute for itself. If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it

may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer; if the finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence, instead of following such an elaborate and somewhat cumbersome procedure, if the employer seeks to lead evidence in addition to the evidence adduced at the departmental enquiry and the employees are also given an opportunity to lead additional evidence, it would be open to the Tribunal first to consider the preliminary issue and then to proceed to deal with the merits in case the preliminary issue is decided against the employer. That, in our opinion, is the true and correct legal position in this matter.

Mr. Sastri however contends that there are two decisions which support the view which has been accepted by the Tribunal in the present case. In that connection, he has invited our attention to the decision of this court in Bharat Sugar Mills Ltd. v. Jai Singh [[1961] 2 L.L.J. 644.]. We do not think that this decision supports Mr. Sastri's contention at all, The argument which was urged before this court in that case, and which this court rejected, was that in an enquiry before a Tribunal in respect of the dismissal of an industrial employee, it would not be open to the employer to adduce additional evidence and justify the dismissal on the merits apart from the enquiry. And this court held that it would be open to the employer to adduce additional evidence, It was observed in the course of the judgment that "where there has been a proper enquiry by the management itself, the Tribunal, it has been settled by a number of decisions of this Court, has to accept the finding arrived at in that enquiry unless it is perverse and should give he permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair labour practice or is acting mala fide." Then this court proceeded to add that "the mere fact no enquiry has been held or that the enquiry has not been properly conducted cannot absolve the Tribunal of its duty to decide whether the case that the workman has been guilty of the alleged misconduct has been made out. The proper way for performing this duty where there has not been a proper enquiry by the management is for the Tribunal to take evidence of both sides in respect of the alleged misconduct." It would thus be seen that this decision lays down the principle that even if no enquiry has been held and an industrial employee has been dismissed, where a dispute is referred to the Industrial Tribunal for its adjudication, the failure to hold the enquiry would not necessarily be fatal to the employer's case and it would be open to him to justify the dismissal by citing evidence before the Tribunal in support of his case that the employee was guilty of misconduct which justified his dismissal. This conclusion cannot by any stretch of imagination support Mr. Sastri's contention that as soon as evidence is led by the employer, the plea raised by him on the ground of the enquiry held by him prior to the dismissal of the employee is not available to him and that the Tribunal is at liberty to examine the question and decide it on the merits for itself.

The other decision on which Mr. Sastri has relied is a judgment delivered by this court in the Anglo American Direct Tea Trading Company Ltd. v. Workmen of Nahortali Tea Estate [(1961) (2) L.L.J. 625.]. In that case, it appears that all that had happened in the course of the departmental enquiry held by the employer was that certain questions were put to the employee Dhaneswar to which he gave answers. When he was asked to sign the statement, he refused to do so. Thereafter, no further enquiry was held and it did not appear that Dhaneswar refused to take part in the enquiry. Before the Tribunal, the employer sought to justify the dismissal by adducing evidence. It is in the light of these facts that this court observed that from the fact that evidence was led, "it was practically accepted before the Industrial Tribunal that there was no proper managerial enquiry and it was left to the Industrial Tribunal to decide for itself whether the dismissal of Dhaneswar was justified." Mr. Sastri reads this sentence literally and contends that it lays down the principles that whenever the

employer seeks to lead evidence before the Tribunal, it should be held that he accepts the position that there was no proper managerial enquiry. We are satisfied that this literal and somewhat mechanical way of reading this solitary sentence in the judgment from its context is not justified. Therefore we do not think that there is any authority for the proposition that wherever the employer seeks to lead additional evidence before the Tribunal in support of the dismissal of his employee, it must necessarily follow that he has given up his stand based on the previous departmental enquiry and the Tribunal is entitled to examine the dispute on the merits for itself; and on principle of fair play and justice the said proposition is unsound. That is why we held that the Tribunal was in error in proceeding to examine the evidence for itself in coming to the conclusion that the dismissal of Jai Jai Ram was not justified on the merits. It is true that the Tribunal has observed that the findings recorded at the departmental enquiry were baseless, but that clearly is the result of its appreciation of the whole of the evidence adduced before it and this course should not have been adopted by the Tribunal.

It appears from the award that no attempt was made before the Tribunal by the respondents to justify their plea that the enquiry was improper or unfair. In fact, as we have already indicated, the Tribunal took the view that because evidence was led by the employer the scope of the enquiry automatically became wider, However, we have heard Mr. Sastri in support of his argument that in fact the enquiry was unfair. In dealing with this point, it may be necessary to recall that the enquiry in the present case has been very elaborate. As we have already pointed out, eleven witnesses each were examined by both the parties, and documentary evidence was also adduced; and the enquiry Officer has made an elaborate and well-considered report. He has examined the oral evidence cited before him, considered the documents to which his attention was drawn and has also examined the probabilities in the case. Therefore prima facie, it would be difficult to entertain the plea that the enquiry was unfair or that the conclusions reached by the Enquiry Officer were baseless. The record of the enquiry shows that all the witnesses examined by the employer were crossexamined by the respondents and the record does not show that any opportunity was refused to the respondents either to test the employer's evidence or to lead their own evidence.

Mr. Sastri however contends that soon after the enquiry commenced, an application was made by the Secretary of the Union to which the two workmen belonged setting forth in detail their objections to the course adopted by the Enquiry Officer (Ex. M/20 dated September 30, 1958). It is true that in this application ten separate grounds had been set out alleging irregularities committed at the said enquiry. But it is significant that no attempt has been made before the Tribunal to justify these allegations. The Secretary who signed that document has given evidence in this case, but he has no personal knowledge about the said allegations and he has said nothing about them. Mohd. Mia has also given evidence but he has also not said anything about those allegations. Jai Jai Ram has not given evidence before the Tribunal. Therefore it is quite clear that on the record before the Tribunal, there is no evidence whatever to justify the several allegations made in the document on which Mr. Sastri relies. That is why we think this ground of attack against the propriety or the fairness of the enquiry must be rejected.

Mr. Sastri has then contended that a fair opportunity was not given to the respondents when the Enquiry Officer obtained a statement about the actual verification of the carbon consumption. It appears that the Enquiry Officer wanted an actual verification of carbon consumption, and so he directed that a sort of mathematical stipulation should be submitted by the management in that behalf. That brings out clearly the thorough manner in which the Enquiry Officer conducted the enquiry. The report shows that whilst this material was being prepared, the workmen did not cooperate and Mr. Sastri's grievance is that they were not given an opportunity to cooperate in this

matter. This contention is not justified by the record at all. It appears that Jai Jai Ram wanted that he should work the machines when the said material was being collected, and that request was naturally not accepted by the Enquiry Officer; but the fact that this request was turned down did not justify Jai Jai Ram's non-cooperation when the calculations were made and documents were prepared in that behalf. Therefore it seems to us that the Enquiry Officer was justified in criticising the employees for not co-operating with the employer when the said statement was prepared. The argument that a proper opportunity was not given to the employee in that behalf must therefore be rejected. The result is that the grievance made by Mr. Sastri before us that the enquiry was unfair or otherwise improper cannot be sustained. If that be the true position, it follows that the order of dismissal passed against Jai Jai Ram must be sustained.

That takes us to the case of Mohd. Mia. The Tribunal has found that no order of dismissal had been served on him. We have already noticed that this was the specific plea made by the respondents in their statement before the Tribunal and that had been specifically traversed by the appellant. In support of its plea that the order of dismissal had been served on the employee, the appellant had examined certain witnesses; and before deciding the question as to whether the finding of the Tribunal is based on any evidence or not, it may be necessary to consider that evidence broadly. It does appear that a document had been produced by the appellant (Ex. M/8) which purports to be the order of dismissal and which purports to bear the signature of Mohd. Mia. Mohd. Mia took oath before the Tribunal that signature was not his and that in fact no order had been served on him. He has not been cross-examined on this point. But apart from this aspect of the matter, the evidence given by the appellant in support of its case that the order of dismissal has been served on Mohd. Mia is so completely discrepant that it must be discarded as worthless. Om Bahl who is the Manager of the Ritz Theatre Stated that when he received the order of dismissal of Mohd. Mia from the Managing Director's Head Office at Delhi, he gave it to the Assistant Manager to be served on the employee. He no doubt purported to say that it contained the signature of Mohd. Mia; but he knew nothing about the actual service and so his evidence is not of much assistance. Om Parkash, the Assistante Manager stated that he in his turn gave the order of dismissal to his staff to get it served on Mohd. Mia. He frankly stated that Mohd. Mia did not put his signature on the order in his presence, and so his evidence also does not help. It would be noticed that the evidence of Om Bahl and Om Parkash makes it clear that neither of them was present when the order was alleged to have been served on Mohd. Mia. Now, when we come to the evidence of Kundan Lal, he stated that the order was given by Mr. Om Parkash to Mohd. Mia in his presence. In other words, the evidence of this witness purports to show that the order of dismissal was served on Mohd. Mia by the Assistant Manager in the presence of this witness, and that clearly is inconsistent with the testimony of Om Prakash himself. Similarly, Bhagwati Prasad stated that Om Prakash, Om Bahl and Kundan Lal were all present when the order was served, so that this witness went one step further when he stated that not only the Assistant Manager but the Manager was also present when the order was served. Having regard to the nature of this evidence there is no difficulty in appreciating how the tribunal came to the conclusion that the appellant had failed to prove its allegation that the order of dismissal had been served on Mohd. Mia. It is to be regretted that the appellant should have taken this plea and should have sought to support it by such discrepant and worthless evidence.

That takes up to the question as to the proper order which should be passed in respect of Mohd. Mia. The grievance made by the respondents before the Tribunal was that Mohd. Mia had been suspended from September 11, 1958, and had continued under suspension ever since. That is why they claimed that he was entitled to reinstatement. Mr. Andley contends that though it may not be possible for him to rely on the evidence led by the appellant in support of its plea that the order of dismissal had in fact been served on Mohd. Mia, it would be open to him to contend that atleast on

the date of reference Mohd. Mia had notice that he had been dismissed and so the relationship of master and servant should be deemed to have been terminated from that date in any event. We are not prepared to accept this argument, particularly when we are satisfied that the appellant has taken a different plea and sought to support it by evidence which it should not have done. The relationship of the employer and the employee can be effectively terminated in such a case not merely by the decision of the employer to terminate the employee's services but by the communication of the said decision to the employee; and as it happened, such a communication had not been made even till the date when the award was pronounced. We are told by Mr. Andley to-day, and Mr. Sastri concedes, that effective steps have now been taken by the employer to terminate the services of Mohd. Mia and that from to-day in any case he is not an employee of the appellant. That being so, the further question which we have to consider is the amount which we should direct the appellant to pay to Mohd. Mia. Mr. Andley has fairly conceded that in the model standing orders usually a provision is made that if an industrial employee is suspended pending an enquiry into his misconduct the period of suspension should not extend beyond a fortnight. There are not standing orders in the appellant's concern and Mr. Andley has therefore requested us to hold that the suspension of Mohd. Mia was reasonable for the period of the enquiry before he is held entitled to claim his wages from the appellant. We are inclined to accept this argument partially; because in the circumstances of this case, we think, it would be fair to hold that the order of suspension passed on Mohd. Mia on September 11, 1958 was justified until December 1, 1958; and so we direct that from December 1, 1958 until to-day the appellant should pay Mohd. Mia the wages to which he would have been entitled if he had been in the actual employment of the appellant and had been working in its concern from day to day.

The result is the appeal partially succeeds. The order of reinstatement passed by the Tribunal in favour of Jai Jai Ram is set aside and his dismissal is affirmed; and an order is made against the appellant to pay Mohd. Mia wages as indicated. Mohd. Mia would not be entitled to reinstatement. There would be no order as to costs.

Appeal allowed in part.

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