Tata Oil Mills Company, Limited

v.

Its Workmen & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE P. B. GAJENDRAGADKAR HON'BLE JUSTICE K. C. DAS GUPTA HON'BLE JUSTICE RAGHUBAR DAYAL

Civil Appeal No. 127 Of 1962 | 21-08-1962

Gajendragadkar, J.

1. This appeal by special leave arises out of an industrial dispute between the appellant, Tata Oil Mills, Ltd., and the respondents, its workmen. The dispute was in regard to the termination of services of K. P. Gupta. It appears that the appellant passed an order terminating his services on 16 February, 1959. In this order, the appellant stated that some enquiries had been held into his misconduct and as a result thereof, the enquiry officer had reached the conclusion that the charges framed against him had been proved. The order then goes on to add that in view of the said findings, the appellant would have been justified in dismissing Gupta; however, instead of doing so, it had decided to put an end to the contract of service of Gupta under Service Rule 40(1). The order adds that Gupta would be paid a month's salary in lieu of notice. The dispute which was referred to the industrial tribunal for its adjudication was whether the termination of Gupta's services brought about by the order passed by the appellant on 16 February, 1959 was justified or not. The respondent urged that it was not justified whereas according to the appellant it was fully justified.

2. At the trial, the appellant took two preliminary points. It urged that the dispute referred to the industrial tribunal had not been properly referred and this point was raised on the basis that the union which had sponsored the case of Gupta, the Kanpur Tel Mazdoor Sabha, had no locus standi to raise the present dispute. That is how the validity of the reference was challenged by the appellant. The second preliminary point raised by the appellant was that the matter in dispute was not an industrial dispute, substantially because the appellant urged that Gupta had not been dismissed, but his services had been

terminated under Service Rule 40(1) in pursuance of the terms of employment and that could not be said to raise an industrial dispute. The tribunal has overruled both these contentions. It has found that the Kanpur Tel Mazdoor Sabha had locus standi to raise the present dispute and it has held that the order by which Gupta's services were terminated in law and in substance amounted to an order of dismissal. Having thus overruled the first two preliminary objections, the tribunal proceeded to examine the merits of the dispute referred to it for its adjudication.It appears that two charges were framed against Gupta and the tribunal has held that the enquiry held in respect of both the charges was unfair, and so it has ultimately come to the conclusion that the dismissal of Gupta was wrongful and illegal and has directed the appellant to reinstate him. It is against this order that the appellant has come to this Court by special leave.

3. For the purpose of this appeal, we are assuming that the tribunal was right in overruling the two preliminary objections raised by the appellant, and we will therefore deal with the merits of the dispute between the parties and the award in relation thereto. The first charge framed against Gupta was served on him on 16 December, 1958. Under this charge, the appellant's case was that according to the journey plan given to Gupta, he was scheduled to visit Faizabad market on 16 September, 1958; he failed to work that market on that date and instead of explaining to his office as to why he did not go there on that day, he made a false report to show that he did work that market on 16. The charge further alleged that he had worked that market only on 17 September. Having served this charge on Gupta, the appellant gave time till 22 December, 1958 to file his explanation and an enquiry followed. Mr. Kamta Prasad held enquiry from 9 to 14 January, 1959. At this enquiry, nearly 16 witnesses have been examined. Out of these, five witnesses have given evidence for Gupta including himself. Kamta Prasad rejected Gupta's evidence and his version and held that the charge framed against him had been proved.

4. The second charge was served on Gupta on 8 January 1959. This charge was based on the allegation that whereas Gupta had been asked to work the Mau market on 17 December, 1958, he did not comply with the order and remained at Allahabad and sent a letter to the appellant asking it to grant him leave for one day without giving any reason for the same. Thereafter he proceeded to Faizabad and applied for leave by telegram. It was alleged that this was contrary to Service Rule 13(xxv) and that constituted misconduct. On this charge, an enquiry was commenced against Gupta. But when Kamta Prasad asked him

certain questions, Gupta refused to answer them on the ground that at such an enquiry evidence must first be led against him before he is asked to give an explanation. That is how the enquiry ended Mr. Kamta Prasad has found that this charge had been proved against Gupta. After the report made by Mr. Kamta Prasad was received by the appellant, the appellant made an order against Gupta to which we have already referred. We have noticed that thought in form the order purports to be one of discharge, in substance it is an order of dismissal and the dismissal is the result of the report made by Mr. Kamta Prasad against Gupta holding that the charges have been proved against him. That in brief is the position on facts on which the tribunal was called upon to consider whether Gupta's dismissal was wrongful or not.The true legal position about the jurisdiction of the tribunal in dealing with an industrial dispute of this type is now well-settled. If it is shown that the employer has held a proper enquiry, the tribunal would not be entitled to consider the propriety or the correctness of the conclusions reached by the enquire office at such enquiry. The tribunal will be entitled to consider the said conclusions if they appear to be perverse or if the tribunal is satisfied that the enquiry was unfair, or, either the proceedings or the final order passed against the workmen amounted to victimization or adoption of an unfair labour practice. If none of these facts is established, then the findings made by the enquiry officer in the domestic enquiry should be taken to be binding against the employee.

5. In the present case, the tribunal does not appear to have borne in mind the limitations of its jurisdiction in dealing with the present dispute. It is true that in one place the tribunal has held that the enquiry in regard to the first charge was unfair and we will presently deal with this finding. But, then, the tribunal has dealt with the merits of the findings recorded by Mr. Kamta Prasad and having come to the conclusion that these findings did not inspire confidence in the mind of the tribunal, it has mixed up this conclusion with the first conclusion that the trial was unfair. In other words, it appears that the tribunal was influenced by the fact that the conclusions of Mr. Kamta Prasad did not appear to the tribunal to be correct, though partly, in coming to the conclusion that the enquiry was unfair. This approach was obviously untenable.

6. Reverting to the finding of the tribunal that the enquiry was unfair, it is significant that the only reason given by the tribunal in respect of its finding in regard to the first enquiry is that Gupta was not given proper opportunity to make his explanation in reply to the charge. We have already seen that the first

charge was served on Gupta on 16 September, 1958 and it appears that Gupta was told to work the Mau market next day. The tribunal seems to have thought that because Gupta was asked to work the Mau market on 17 September he was really not given an opportunity to consider the matter at leisure before making his reply to the charge. Now, in coming to this conclusion the tribunal has lost sight of the fact that Gupta did not go to operate the Mau market and made his explanation within the time prescribed after consulting his lawyer. In fact, Gupta was given time until 22 December and in fact Gupta had consultations with his friends and lawyers before he made his defence. That being so, it is not easy to follow how the tribunal came to the conclusion that the trial was unfair. First it will be noticed that Gupta was given enough time to make his answer and the explanation which he gave was followed by an enquiry much later. Besides, as we have just noticed, Gupta did have time and opportunity for consultations. Mr. Misra who has argued the case of Gupta before us saw the difficulty in supporting this finding and so he pressed before us an ingenious aspect of the matter. He contended that though it is true that Gupta had time enough to consult the lawyer and to make his explanation, he got this time, by disobeying the order of the employer to go to the Mau market on 17 September and that, Mr. Misra says, showed that the employer did not give him a proper opportunity to make his defence. We are not impressed by this argument. There is no doubt that time was given to Gupta to make his explanation and he made a proper explanation according to the advice that he received.In this connexion, we ought to emphasize the fact that the actual enquiry which began on 9 January appears to have been conducted somewhat elaborately. Witnesses were heard from 9 to 14 January, 1959. Gupta has cross-examined the witnesses and had led his own evidence. Therefore, in considering the question as to whether the enquiry had been fair or not, the argument that he was not given time to make his explanation would be very insignificant. Unfortunately, that appears to be the only reason given by the tribunal in support of its finding that the enquiry into the first charge was unfair. In our opinion, this reason is wholly untenable and the conclusion based on it is open to serious challenge.

7. Mr. Misra however has sought to support this finding on additional grounds. He contends that in the course of the enquiry, Mr. Kamta Prasad seems to have completely ignored the statement made by Mr. Laxminarain who had visited Faizabad market at the relevant time, that Gupta had worked the Faizabad market during the last journey plan in a very hasty way. The argument is that this statement of Mr. Laxminarain shows that Gupta had worked in a hasty manner and that does not exclude the possibility that he may have gone to

Faizabad on 16, and remained there on 16 and 17 September. A part from the fact that this statement does not very easily yield that meaning, we do not see how the fairness of the enquiry can be challenged on the contention that this statement of Mr. Laxminarain has not been weighed by Mr. Kamta Prasad. The appreciation of evidence adduced in a domestic enquiry is a matter within the jurisdiction of the enquiry officer and the fact that some evidence which could have appeared to the domestic tribunal to be relevant was treated by it as unreliable would not make the enquiry unfair. This position is too plain for words. Therefore, the argument that Mr. Laxminarain's report was not duly considered and therefore the enquiry was unfair does not carry Gupta's case any further.Then Mr. Misra has argued that the enquiry was unfair because Mr. Kamta Prasad, the manager of the appellant, who held the enquiry, was himself in the in the position of a prosecutor and in support of this argument Mr. Misra wanted to rely on the fact that at the relevant time Mr. Kamta Prasad was busy collecting letters from the market at Faizabad. Unfortunately for Mr. Misra this allegation has not been raised at any stage in the present proceedings. In the statement of the case filed by the respondent-union on behalf of Gupta before the industrial tribunal the only allegation made is that the termination of services was improper and the only reference to the enquiry is contained in Para. 14 which says that the so-called enquiry was started on 1 September, 1959. There is no averment in the statement alleging that the enquiry was unfair or setting forth any grounds as to why it was unfair. Gupta has given evidence in this case before the tribunal. In his evidence, he has not made any allegation on oath about the impropriety or the unfairness of the enquiry. It is significant that Gupta gave evidence after Mr. Kamta Prasad proved the enquiry. Mr. Kamta Prasad's evidence showed that he produced all the papers in respect of the two enquiries and he supported the appellant's case that the enquiry were proper. Even though Gupta went into the witness-box after Mr. Kamta Prasad gave his evidence, he did not suggest anything against the fairness of the enquiry. That being so, we do not think that we can allow Mr. Misra to take a new point of fact for the first time in this Court.

8. Lastly, Mr. Misra has argued that the enquiry was unfair because a copy of Mr. Banerjee's report had not been given to Gupta when the domestic enquiry was held. It does appear that Gupta asked for a copy of Mr. Banerjee's report and that request was not granted. The said report had been produced before the tribunal and forms part of the record placed before us. Mr. Misra contends and with some force that it was necessary that the employer should have supplied Gupta with a copy of this report to enable him to cross-examine Mr. Banerjee. It

appears that at the instance of the manager, Mr. Banerjee made an enquiry on the spot and as a result of the enquiry, he made his report on 13 October, 1958. Mr. Banerjee gave evidence on behalf of the appellant and he has been a cross-examined by Gupta. If Gupta wanted a copy of the report made by Banerjee to enable him to cross-examine him on that report, it was clearly necessary that the report should have been supplied to him and the grievance made by Mr. Misra on this count must be held to be well-founded. We have however examined the question from the point of view determining whether any prejudice has been caused to Gupta as a result of the enquiry officer's failure to give him a copy of the report. The report consists of two principal statements; the first is that the stockists of the appellant at Faizabad - Vanaspati Trading Company - reported to Mr. Banerjee that Gupta had not done the market at Faizabad on 16 September; the second statement is that when Gupta was confronted with this complaint by Mr. Banerjee, he admitted that he had not worked the market on 16 September, but only on 17, and he urged that his wife was seriously ill and so he could not go to Faizabad on 16. Having regard to this statement made by Gupta, Mr. Banerjee recommended that Gupta may be given a warning. It would thus be seen that the two statements on which Gupta; would have desired to cross-examine Mr. Banerjee if a copy of the report had been given to him have in fact been tested by him by cross-examining Mr. Banerjee and this became possible because Mr. Banerjee stated in his evidence what he had come to know at Faizabad in his enquiry. He made both the statements. He stated that he told the enquiry officer what the stockists had told him and he also told that Gupta had admitted his guilt before him. Therefore, on facts, the position appears to be that the two points on which Gupta could have cross-examined Mr. Banerjee if the report had been given to him have been tested in cross-examination, and so we feel no hesitation in holding that the failure to supply Mr. Banerjee's report to Gupta has not caused any prejudice to Gupta in the present case. These are the only grounds on which Mr. Misra made a strenuous effort to sustain the finding of the tribunal that the enquiry on the first charge was unfair. We have come to the conclusion that the said finding cannot be supported in law.As soon as we reach the conclusion that the enquiry held in respect of first charge is not shown to be unfair, it follows that the finding has gone against Gupta and on that finding, the appellant is entitled to terminate his services by way of dismissal. Mr. Misra attempted to argue that the order of dismissal is so unduly severe that that itself may make the termination illegal. We are not prepared to accept this argument. It is true that Courts do come across cases where the dismissal of an employee may appear to the Court to be so unreasonably severe as to give rise to an inference that it is a case of victimization, but this inference cannot arise in every case where the Court feels

that the order is a little too severe. In the circumstances of this case, we see no justification for the contention that there has been a case of victimization.

9. That leaves the question of the second charge to be considered. It appears that on the second charge when the enquiry commenced Gupta refused to answer any question on the ground that unless evidence was led in support of the charge, he was not bound to make any answer. Technically that is true, and technically the enquiry can be said to be defective; but the substance of the matter was that Gupta did not comply with the order which called him to work the Mau market on 17 September, 1958, and under the service rules, it was a case of not doing duty without leave or without justification. However, we do not think it necessary to pursue this matter any further, because in our opinion, the appellant was justified in dismissing Gupta even on the proof of the first charge which has been duly and properly investigated.

10. The result is, the appeal is allowed, the order of reinstatement passed by the tribunal is set aside and the dismissal of Gupta is upheld. There will be no order as to costs.