Agnani (W. M.)

v.

Badri Das and Others

(Supreme Court Of India)

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

Civil Appeal No. 881 Of 1962 | 25-03-1963

Gajendragadkar, J.

1. The Tribune is a daily English paper published at Ambala Cantonment. In accordance with the will of the late Sardar Dayal Singh Majitha, respondents 1 to 5 are the trustees appointed under the said will and as such, they look after the affairs of the trust including those of the Tribune. In 1948, the appellant Agnani was appointed by the respondents to work as a sub-editor of the Tribune. Accordingly, the appellant was working in the editorial section of which the editor of the paper was the administrative head. On 2 January, 1950, the respondents considered a complaint received by them from some of the residents of the Tribune Colony regarding the conduct of the appellant. This complaint had reference to an incident which took place in the said an colony on 16 November, 1959. The respondents resolved to hold an enquiry into the alleged misconduct of the appellant and accordingly suspended him with immediate effect. By the resolution passed on this occasion, the respondents appointed R. B. Dewan Badri Das, Kanwar Sir Dalip Singh and Mr. Ram Chandra to conduct the enquiry. The resolution authorized two of these trustees to conduct the enquiry, if necessary. It was resolved that the enquiry should be held after giving the appellant a chargesheet and after receiving his explanation in respect of it.

2. Thereafter, a chargesheet was served on the appellant on 11 January 1960. It included nine specific charges; charges 1 to 8 had reference to alleged acts of misconduct on the part of the appellant on seven different occasions, the first of them having occurred at the end of 1955, and the last on 17 September, 1959 : charges 9 specifically referred to the incident which took place on 16 November, 1959. Under this last charge, it was alleged that the appellant

quarreled with the lessee of the provision store in the Tribune Colony, created a rowdy scene and indulged in abusive and vulgar language.Then followed an enquiry at which evidence was led and the enquiry committee submitted its report on 11 February 1960. According to the findings recorded by the committee, all charges except 3 and 5 had been proved. After this report was received, the respondents considered the matter and came to the conclusion that it was necessary to terminate the service of the appellant, and so, after consulting the acting editor, they resolved that the appellant's services should be terminated with effect from the forenoon of 14 March, 1960, by way of disciplinary action as punishment for his continuous misconduct, and that his account be finally settled by 15 April 1960. This order was passed on 12 March 1960.

3. The dismissal of the appellant was then taken up the union and it became the subject-matter of reference for adjudication on 5 May, 1960. Before the tribunal, it was urged on behalf of the appellant that his dismissal amounted to an unfair labour practice and was intended to victimize the appellant for the prominent part he had taken in organizing the union of the Tribune employees. On the merits, it was contended that the enquiry committee acted without jurisdiction in dealing with charges 1 to 8 and that its finding on charges 9 was also illegal, improper and without jurisdiction. These pleas were resisted by the respondents. They urged that the enquiry committee was competent to deal with all the charges, that its findings on the said charges were perfectly legitimate, that there was no victimization involved in the order of dismissal and that the tribunal could not sit in judgment over the findings of the enquiry committee or consider the propriety of the order of dismissal passed by the respondents.

4. The tribunal held that the resolution by which the enquiry committee was appointed did not authorize the committee to consider any charges other than that relating to the incident that took place on 16 November, 1959 and so, it came to the conclusion that the whole of the enquiry in respect of charges 1 to 8 as well as the findings recorded on them were without jurisdiction. In regard to charges 9, the tribunal held that the incident giving rise to the said charge was, in substance, of such a character as not to attract the disciplinary jurisdiction of the respondents. On behalf of the respondents, reliance was placed on Cl. (9) of S. 10 of the standing orders for pressmen which had subsequently been framed; but the tribunal held that the said clause did not justify the action of the respondents. In conclusion, the tribunal directed the management of the Tribune

to reinstate the appellant with continuity of service and full back-wages. Since the tribunal upheld the appellant's two principal contentions, it did not think it necessary to enter into other facts and objections, such as the unfair labour practice, or victimization which had been pleaded by the appellant. This award was pronounced on 25 October 1960.The respondents then challenged the validity of this award by their writ petition in the Punjab High Court on 17 December, 1960. In this writ petition, they alleged that the tribunal had acted without jurisdiction and that its award suffered from errors apparent on the face of the record. That is how they claimed a writ of certiorari and a writ of mandamus or any other writ or direction to quash the order of reinstatement passed by the tribunal in favour of the appellant. The contentions raised by the respondents in their writ petition were all traversed by the appellant and it was urged that no case had been made out for the issue of a writ of certiorari under Art. 226 of the Constitution.

5. The learned single Judge of the Punjab High Court, who heard the writ petition, took the view that the enquiry in respect of charges 1 to 8 was not without jurisdiction, he thought that the resolution passed by the trustees shows that the said items of misconduct were included in the enquiry entrusted to them. In the alternative, he found that the said enquiry could, at any rate, have been made by the employers for the purpose of determining the quantum of punishment to be awarded to the appellant in respect of his misconduct covered by charge 9. Then as to the misconduct alleged to have been committed by the appellant on 16 November, 1959, the learned Judge differed from the conclusion of the tribunal and held that it constituted misconduct on proof of which the respondents were justified in dismissing him. On these findings the writ petition field by the respondents was allowed and an appropriate writ was issued quashing the order of reinstatement passed by the tribunal in favour of the appellant.

6. This order was challenged by the appellant by Letters Patent Appeal under Cl. 10 of the Letters Patent of the High Court, but a Division Bench of the said High Court summarily dismissed his appeal. That is how the appellant has come to this Court by special leave.In dealing with this appeal, it is necessary at the outset to emphasize the limits of the jurisdiction of the High Court in entertaining a plea for a writ of certiorari under Art. 226. This question has been the subject-matter of several decisions of this Court, and the law in relation to it is no longer in doubt. In order to justify the issue of a writ of certiorari, it must

be shown that the impugned order suffers from an error apparent on the face of the record. It is clear that the error must be an error of law, not an error of fact, because an error of fact, though serious, and though it may be apparent on the face of the record, cannot sustain a claim for the writ of certiorari : It is only errors of law that justify the issue of the end writ, provided, of course, they are of such a character as would reasonably be treated as errors apparent on the face of the record. If a finding of fact is made by the impugned order and it is shown that it is based on no evidence, that would no doubt be a point of law open to be urged under Art. 226 - vide Nagendra Nath Bora and another v. Commissioner of Hills Division and Appeals, Assam, and others [1958 S.C.R. 1240]. If this distinction is not borne in mind, it is not unlikely that in entertaining an application for a writ under Art, 226, the High Court may unwittingly assume the jurisdiction of an appellate Court which clearly is distinct from the jurisdiction of the writ Court under Art. 226. This position has not been and cannot be disputed.

7. Let us then briefly refer to the relevant facts which ultimately led to the present proceedings. The appellant who joined the Tribune in 1948 was responsible for bringing into existence a trade union called the "Tribune Employees' Union." In the first election held in the same year, he was elected the propaganda secretary. Then followed the second election at which he was ousted and Mr. Bali became the president and has continued to be the president ever since. It appears that the appellant and some others were not satisfied with the work carried on by the said union and so, they formed another union and got it registered with the Registrar of Trade Union, Punjab, on 8 December, 1959. This union was known as the "Tribune Employees' Union." After this union was registered, the other union was also registered as the Tribune Workers' Union." The appellant's case is that the respondents did not approve of the trade union activities of the appellant and looked with disfavour upon the union started by him. The other union which Mr. Bali was the president is favoured by the respondents. That, according to the appellant, is the background of the enquiry held against him and of the ultimate order of dismissal passed against him.On 16 November 1959, at about 4 p.m., there was an incident in the staff colony. It appears that Chakerpani, an employee of the respondents, had obtained a loan of Rs. 36 from Om Parkash, Provision shop-keeper, who runs his shop in the colony, and for this loan Chakerpani had pawned his coat, attache case and a ring. On that day, Chakerpani and the appellant were to leave for Delhi by the Flying Mail, and so, the appellant went to Om Parkash and asked him to return the pledged articles to Chakerpani. The articles were not, however, at the

provision shop but had been removed to Om Parkash's house. Thereupon the appellant asked Om Parkash to fetch them from his house within five minutes, and warned him that if he failed to do so, he would get shoe-beating by Mr. Chadha, thanedar. That led to an exchange of hot words, and the appellant indignantly abused Om Parkash. Om Parkash then went to his house on a bicycle and brought the articles back. On receiving the amount loaned, Om Parkash returned the articles to Chakerpani. That, in brief, is the nature of the incident which is the subject-matter of charge 9.

8. The first point which we have to consider is whether the High Court was justified in entertaining the plea of the respondents that the tribunal had committed an error of law apparent on the face of the record in holding that charges 1 to 8 were outside the jurisdiction of the enquiry committee. In order to decide this point, it is necessary to read the relevant portion of the resolution by which the committee was appointed.

9. The resolution reads thus :

"The trustees considered the complaint of some residents of the Tribune Colony regarding the conduct of W. M. Agnani, sub-editor, On 16 November, 1959, and after recording statements of four persons, two employees and two ladies, residing in the colony, resolved to suspend W. M. Agnani with immediate effect, and to hold an enquiry into the his conduct. Both on this occasion and on some previous occasions, Agnani's conduct was considered unsatisfactory.The trustees appointed the president R. B. Dewan Badri Das, Kanwar Sir Dalip Singh and Mr. Ram Chandra to conduct this enquiry. If necessary, two of these three trustees will be competent to conduct the enquiry. The enquiry will be held after giving Agnani a chargesheet and receiving his explanation."

10. The tribunal took the view that this resolution clearly showed that the enquiry had to be held about the incident which took place on 16 November, 1959 and it thought that the reference to his previous conduct was in incidental and may have been necessary for determining the question of sentence, but it was not intended to be the subject-matter of the enquiry. The High Court has taken a different view. Apart from the correctness of one view or another, it

seems to us plain that in a matter of this is kind, if the tribunal put one interpretation upon the resolution and the High Court thought it better to put another, that cannot be said to introduce an error apparent on the face of the record in the order of the tribunal. If it can be said that the view taken by the tribunal is not even reasonably possible, perhaps an argument may be urged that the error is apparent on the face of the record; but, in our opinion, it would not be possible to accept Mr. Setalvad's argument that the construction placed by the tribunal is an impossible construction. On the other hand, while conceding that the view taken by the High Court may be reasonably possible, we are inclined to think that the construction put upon the resolution by the tribunal is also reasonably possible; if we had to deal with the matter ourselves, we would have preferred the view of the tribunal to the view of the High Court. The enquiry contemplated by Para. 2 is an enquiry into the conduct specifically mentioned in Para. 1, and so the tribunal was justified in holding that charges 1 to 8 which had nothing to do with the incident of 16 November, 1959, were not entrusted to the enquiry committee. Apart from this aspect of the matter, we are satisfied that the High Court should not have entertained this argument under Art. 226 of the Constitution.Mr. Setalvad then attempted to argue that charges 1 to 8 had been subsequently adopted by the respondents and in that sense, It may be assumed that the respondents wanted to have the said charges tried. We do not think it necessary to examine this argument, because on the record it does not appear that the respondents had formally affirmed these charges before they were sent to the enquiry committee. In any event, is no doubt that the tribunal was entitled to consider this point and if it came to the conclusion that the enquiry contemplated by the resolution of 2 January, 1960 was confined only to the incident of 16 November, 1959, it would not be open to the respondents to contend under Art. 226 that view is erroneous and that the error should be corrected by the issue of a writ of certiorari.

11. Then as to the second point about the misconduct alleged to have been committed by the appellant on 16 November, 1959, Mr. Setalvad has very strenuously contended before us that it was for the domestic enquiry to consider this matter and since an enquiry has been properly held and the conclusion of the enquiry committee has been accepted by the respondents, the tribunal had no authority to consider the propriety or the correctness of the findings, or even the propriety of the ultimate action taken by the respondents against the appellant. It is true that if a domestic enquiry held and the employer terminates the services of his employee, the industrial tribunal dealing with industrial disputes arising out of such dismissals is not authorized to sit in appeal over the

findings of the enquiry committee, or to examine the propriety of the ultimate order of dismissal passed by the employer. This position is, of course, subject to the qualification that if it appears to the tribunal that the ultimate order is so disproportionately severe in relation to the misconduct proved that it may lead to an inference of victimization, the tribunal would be justified in interfering with that order. In that present case, the tribunal did not think it necessary to decide the point of victimization, because it held that the other points of law raised by the appellant before it were well-founded.Now, in dealing with the merits of the conclusion reached by the tribunal and the High Court on this part of the case, it may be relevant to refer to standing order 10, Cl. (9). At the time when the enquiry was held, no standing orders had been framed, but apparently they have been framed subsequently, and as we have already indicated, the respondents relied upon standing order 10(9) before the tribunal. Standing order 10, inter alia, provides for the classification and description of misconduct. Clause (9) of the standing order says that it would be misconduct which would entail dismissal if alone or in combination with orders, anywhere within the trust's estate, an employee causes or threatens to cause mental and/or physical pain or injury to other employees. It is plain that the conduct proved against the appellant does not fall under this clause. The quarrel was between the appellant who espoused the cause of Chakerpani, another employee of the respondents, and the shopkeeper Om Parkash. Om Parkash is not an employee of the respondents, though he had been allowed to run the shop for the benefit of the respondent's employees. The tribunal was, therefore, clearly right in rejecting the respondents' case that the misconduct proved against the appellant was of a character which would fall under standing order 10(9).

12. The standing orders, which have been subsequently adopted by the respondents, however help us in determining what the respondents treat as misconduct. One has merely to glance at the twenty categories of misconduct specified by Para. 10 of the standing orders to realize that a private quarrel between an employee of the respondents and another citizen cannot fall within any of those categories. It is true that in the absence of standing orders, it would be open to the employer to consider reasonably what conduct can be properly treated as misconduct. It would be difficult to lay down any general rule in respect of this problem. Acts which are subversive of discipline amongst the employees would constitute misconduct; rowdy conduct in the course of working hours would constitute misconduct; rowdy conduct in the course of working hours would constitute misconduct; misbehaviour committed even outside working hours but within the precincts of the concern and directed

towards the employees of the said concern may, in some cases, constitute misconduct; if the conduct proved against the employee is of such a character that he would not be regarded as worthy of employment, it may, in certain circumstances, be liable to be called misconduct. What is misconduct will naturally depend upon the circumstances of each case. It may, however, be relevant to observe that it would be imprudent and unreasonable on the part of the employer to attempt to improve the moral or ethical tone of his employees' conduct in relation to strangers not employed in his concern by the use of the coercive process of disciplinary jurisdiction. As we have already observed, it is not possible and we do not propose to lay down any general rule in that behalf. When standing orders were framed, there is no difficulty because they define misconduct. In the absence of standing orders, the question will have to be dealt with reasonably and in accordance with commonsense.In the present case, what is the conduct proved against the appellant ? The appellant does not dispute the fact that he spoke sharp words to Om Parkash; but the quarrel was purely a private quarrel between Chakerpani and Om Parkash, and the appellant intervened and wanted Om Parkash to return the pawned articles to Chakerpani on his paying the amount borrowed by him. This incident has, no doubt, taken place in the colony built by the respondents for their employees, but outside the premises of the paper and it has taken place between one of the employees and a shop-keeper. When we bear in mind the background of the dispute, the nature of the quarrel, the time and place where it took place and its essential features, it is difficult to accept the High Court's conclusion that the tribunal committed an error apparent on the face of the record when it held that the acts proved against the appellant did not constitute misconduct. In this connexion, it is necessary to emphasize that the tribunal was entitled to consider the legality of the action taken by the respondents, because it held that the respondents had misdirected themselves in law in coming to the conclusion that the incident in question amounted to misconduct at all. This aspect of the matter cannot be said to be outside the jurisdiction of the tribunal when it was dealing with the industrial dispute referred to it.

13. It is true that a large number of employees complained to the respondents on 18 November 1959, and that in fact was the justification for the resolution passed by the respondents; but it is remarkable that these persons who complained were not present at the scene when the incident took place and their complaint is obviously based on information received by them later. One has merely to read the language of this complaint to appreciate the comment made by the appellant that this complaint is inspired. It would be idle to contend that

the incident which took place between appellant and the shop-keeper could have hurt the feelings of the ladies living in the colony and could have constituted "a challenge to the self-respect of those who lived in the colony." The extravagant language used in this complaint tends to defeat rather than help the purpose which it was intended to serve. It is also significant that though the incident took place on 16 November, 1959, and a complaint about it was received on 18 November, 1959, no action was taken until 2 January, 1960; and that prima facie lends some support to the appellant's case that what really annoyed the respondents was the fact that the appellant had started another union and got it registered in December 1959. As we have already observed, tribunal has not considered the appellant's case about his victimization because it allowed his prayer for reinstatement on grounds of law raised by him, but since Mr. Setalvad has referred to the complaint, we thought it necessary to point out that the complaint on which the respondents rely and the manner in which they passed the resolution prima facie are indicative of their indignation which cannot be said to be justified merely by the incident which took place on 16 November, 1959. We have carefully considered the points raised by Mr. Setalvad before us, but we do not think it is possible to hold that on the facts held proved by the tribunal in this case it was open to the High Court to exercise its jurisdiction under Art. 226. If the respondents had come to this Court in appeal under Art. 136 against the award made by the tribunal, it might perhaps have been open to them to challenge some of the findings of the tribunal, because, theoretically, the scope of our jurisdiction under Art. 136 in dealing with awards is wider than the scope of the High Courts in dealing with the awards under Art. 226 of the Constitution. It appears to us that in allowing the writ petition filed before it by the respondents, the High Court has, in substance, purported to act as an appellate Court and that is a very serious infirmity in the order.The result is, the appeal is allowed, the order passed by the High Court is set aside and the writ petition filed by the respondents is dismissed with costs throughout.