Khardah Co. Ltd.

Vs

Their Workmen

Civil Appeal No. 705 of 1962

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

02.05.1963

JUDGMENT

GAJENDRAGADKAR J. –

This appeal arises out of an industrial dispute between the appellant, Khardah Co. Ltd., and the respondents, its workmen. The dispute was in regard to the dismissal of the appellant's employee, Samiran Jadav. The respondents alleged that the said dismissal was unjustified, whereas, according to the appellant, the said employee had been properly and validly dismissed. The dispute which was referred to the 4th Industrial Tribunal, West Bengal, for its adjudication was whether the said dismissal was justified, and to what relief, if any, was the workman entitled ? The Tribunal has held that the dismissal was unjustified and so, it has directed the appellant to reinstate the said employee to his old post within a month from the date of the publication of the award. It has also ordered that the period starting from the date of the dismissal till the date of reinstatement should be treated as leave without pay and as such, should be counted towards the length of service. It is against this award that the appellant has come to this Court by special leave.

The respondent's case was that Jadav had been dismissed by the appellant mala fide with the motive of victimising him for his trade union activities. Jadav was the Organising Secretary of the Union and since he supported the Union's Demands very strongly, the appellant wanted to get rid of him. It appears that Jadav had been working as a weaver for some years past. He was confirmed in service with effect from April 12, 1954. On September 19, 1960, he went on a week's leave. When he returned on September 26, 1960, he was asked to work on machine producing twill, though, normally, he was assigned work on a plain machine. Jadav was not accustomed to work on the complicated machine which produces twill and so, he requested the management that he should be asked to do his usual work on a plain machine. This request was, however, turned down. Being unaccustomed to work on the machine producing twill, Jadav met with an accident on September 27, 1960, and was granted medical leave for a week ending on Saturday, October 1, 1960. On October 3, 1960, when he resumed duty, he again requested the management that he should be permitted to work on the plain machine, but when his request was turned down, he told the management that he would work on the twill machine in the second shift which starts from 1 P.M. On that day, another employee Mahboob, who was ailing and had been on leave, asked for further leave which was refused and he fell unconscious while he was going to operate his machine. As a result, 700 weavers of the appellant stopped work and the weaving section could not resume work at 1 P.M. The management then declared a lock-out on October 5, 1960 which continued until October 29, 1960.

On October 3, 1960, the management served a charge-sheet on Jadav in which it was alleged that

Jadav had wilfully disobeyed the lawful and reasonable order of his superior and had acted in a manner subversive of discipline. The case against him was that he had moved from one place to another in the weaving Department and incited workers of the said department to go on strike. The management alleged that by his conduct, Jadav had committed misconduct under Rule 14(c)(i) and (viii) of the Standing Orders. Jadav was called upon to offer his explanation within 24 hours after receipt of the charge-sheet.

After Jadav gave his explanation, an enquiry was held. At the initial stages of the enquiry, Jadav appeared, but, later, he did not take part in the proceedings. The appellant contends that Jadav deliberately refrained from taking part in the proceedings, whereas according to the respondents, the enquiry was conducted unfairly, and so, it became impossible for Jadav to participate in it. This enquiry was conducted by the Manager himself. After the enquiry was over, the Manager decided that Jadav was guilty of the charge, and so, dismissed him on November 21, 1960. The respondents' case was that the dismissal was purely vindictive and was not justified at all.

On the other hand, the appellant's case was that Jadav had been working in the weaving department both on plain looms and on looms that produce twill. When he returned to duty on October 3, 1960, the departmental Overseer, Mr. Jha asked Jadav to go to his loom, but he refused to obey his orders. The appellant further alleged that Jadav moved inside the weaving department and incited the workers to stop work. The appellant also pleaded that a proper enquiry had been held against Jadav and it was as a result of the said enquiry that he was dismissed for misconduct under Rule 14(c)(i) & (viii) of the Company's Standing Orders. Regarding the incident of Mahboob, the appellant alleged that Mahboob was absent on October 3, 1960 and, therefore, no question of his working on any machine arose on that day. In other words, the appellant's contention was that the Union's version that the strike was spontaneous because Mahboob fainted, was untrue and the strike was in substance, the result of the instigation of Jadav.

Before the Tribunal, some oral evidence was led by the parties and reliance was placed by the appellant on the proceedings of the enquiry itself. The Tribunal held that the management had deliberately suppressed the fact that Mahboob had gone to the mill on October 3, and prayed for extension of leave which was refused, and so, the Tribunal came to the conclusion that the strike could not have been instigated by Jadav. The Tribunal further commented on the fact that after enquiry was held, no finding was recorded by the Manager who held the enquiry, and it appeared to the Tribunal that the conclusions on which the management presumably acted in dismissing Jadav were of such a character that "no person acting fairly and honestly could have reached them". The Tribunal also held that Jadav was not used to work on a twill loom, and so, his request that he should be allowed to work on a plain loom was not unjustified. Its conclusion, therefore, was that a grave charge had been unjustly framed against Jadav and that showed want of good faith and vindictiveness. On these findings, the Tribunal answered the question in favour of the respondents and directed reinstatement of Jadav.

On behalf of the appellant, the learned Solicitor General has strenuously urged before us that the appellant has held a proper domestic enquiry and has dismissed Jadav because the management thought that the enquiry disclosed the fact that the charges framed against Jadav had been established. He contends that it is firmly established by decisions of this Court that an Industrial Tribunal will not interfere with the action of the management in dismissing its employee after holding an enquiry into his alleged misconduct unless it is shown that the management has not acted in good faith, or that the dismissal amounts to victimisation or unfair labour practice, or where the management has been guilty of a basic error, or violation of a principle of natural justice, or when

on the materials, the finding is completely baseless or perverse, vide Indian Iron & Steel Company Ltd. v. Their Workmen ((1958) 1 L.L.J. 260.). There is no doubt that this Court has consistently refrained from interfering with the conclusions reached by the enquiry officer who Conducts domestic enquiries against industrial employees unless one of the four tests laid down in the case of the Indian Iron & Steel Co. Ltd. ((1958) 1 L.L.J. 260.) is satisfied, because we have generally accepted the view that if the enquiry is fairly held and leads to the conclusion that the charge framed against the employee is proved, the Industrial Tribunal should not sit in appeal over the finding recorded at the said enquiry and should not interfere with the management's right to dismiss a workman who is found guilty of misconduct.

It would be noticed that the essential basis on which this view is founded is that the enquiry conducted by the management before a domestic tribunal must be a fair and just enquiry and in bringing home to the workman the charge framed against him, principles of natural justice must be observed. Normally, evidence on which the charges are sought to be proved must be led at such an enquiry in the presence of the workman himself. It is true that in the case of departmental enquires held against public servants, this Court has observed in the State of Mysore v. S. S. Makapur ([1963] 2 S.C.R. 943.), that if the deposition of a witness has been recorded by the enquiry officer in the absence of the public servant and a copy thereof is given to him, and an opportunity is given to him to cross examine the witness after he affirms in a general way the truth of his statement already recorded, that would conform to the requirements of natural justice; but as has been emphasised by this Court in M/s. Kesoram Cotton Mills Ltd. v. Gangadhar ([1964] Vol. 2 S.C.R. 809.), these observations must be applied with caution to enquiries held by domestic Tribunals against the industrial employees. In such enquiries, it is desirable that all witnesses on whose testimony the management relies in support of its charge against the workman should be examined in his presence. Recording evidence in the presence of the workman concerned serves a very important purpose. The witness knows that he is giving evidence against a particular individual who is present before him, and therefore, he is cautious in making his statement. Besides, when evidence is recorded in the presence of the accused person, there is no room for persuading the witness to make convenient statements, and it is always easier for an accused person to cross-examine the witness if his evidence is recorded in his presence. Therefore, we would discourage the idea of recording statements of witnesses ex parte and then producing the witnesses before the employee concerned for cross-examination after serving him with such previously recorded statements even though the witnesses concerned make a general statement on the latter occasion that their statements on the latter occasion that their statements already recorded correctly represent what they stated. In our opinion, unless there are compelling reasons to do so, the normal procedure should be followed and all evidence should be recorded in the presence of the workman who stands charged with the commission of acts constituting misconduct.

In this connection, it is necessary to point out that unlike domestic enquiries against public servants to which art. 311 of the Constitution applies, in industrial enquiries, the question of the bona fides or mala fides of the employer is often at issue. If it is shown that the employer was actuated by a desire to victimise a workman for his trade union activities, that itself may, in some cases, introduce an infirmity in the order of dismissal passed against such a workman. The question of motive is hardly relevant in enquiries held against public servants, vide Union Territory of Tripura v. Gopal Chandra Dutta Choudhuri ([1963] Supp. 1 S.C.R. 266.). That is another reason why domestic enquiries in industrial matters should be held with scrupulous regard for the requirements of natural justice. Care must always be taken to see that these enquiries are not reduced to an empty formality.

Take the present case where, after the enquiry was held, the Manager who held the enquiry has not

recorded any findings, and so, we do not know what reasons weighed in his mind and how he appreciated the evidence led before him. The learned Solicitor-General contends that there was hardly any need to record any findings or to make a formal report in the present case, because the Manager who held the enquiry was himself competent to dismiss the employee. We are not impressed by this argument. The whole object of holding an enquiry is to enable the enquiry officer to decide upon the merits of the dispute before him, and so, it would be idle to contend that once evidence is recorded, all that the employer is expected to do is to pass an order of dismissal which impliedly indicates that the employer accepted the view that the charges framed against the employee had been proved. One of the tests which the Industrial Tribunal is entitled to apply in dealing with industrial disputes of this character is whether the conclusion of the enquiry officer was perverse or whether there was any basic error in the approach adopted by him. Now, such an enquiry would be impossible in the present case because we do not know how the enquiry officer approached the question and what conclusions he reached before he decided to dismiss Jadav. In our opinion, therefore, the failure of the Manager to record any findings after holding the enquiry constitutes a serious infirmity in the enquiry itself. The learned Solicitor-General suggested that we might consider the evidence ourselves and decide whether the dismissal of Jadav is justified or not. We are not prepared to adopt such a course. If industrial adjudication attaches importance to domestic enquiries and the conclusions reached at the end of such enquiries, that necessarily postulates that the enquiry would be followed by a statement containing the conclusions of the enquiry officer. It may be that the enquiry officer need not write a very long or elaborate report; but since his findings are likely to lead to the dismissal of the employee, it is his duty to record clearly and precisely his conclusions and to indicate briefly his reasons for reaching the said conclusions. Unless such a course is adopted, it would be difficult for the Industrial Tribunal to decide whether the approach adopted by the enquiry officer was basically erroneous or whether his conclusions were perverse. Indeed, if the argument urged before us by the learned Solicitor-General is accepted, it is likely to impair substantially the value of such domestic enquiries. As we have already observed, we must insist on a proper enquiry being held, and that means that nothing should happen in the enquiry either when it is held or after it is concluded and before the order of dismissal is passed, which would expose the enquiry to the criticism that it was undertaken as an empty formality. Therefore, we are satisfied that the Industrial Tribunal was right in not attaching any importance to the enquiry held by the Manager in dealing with the merits of the dispute itself on the evidence adduced before it.

It is well settled that if the enquiry is held to be unfair, the employer can lead evidence before the Tribunal and justify his action, but in such a case, the question as to whether the dismissal of the employee is justified or not, would be open before the Tribunal and the Tribunal will consider the merits of the dispute and come to its own conclusion without having any regard for the view taken by the management in dismissing the employee. If the enquiry is good and the conduct of the management is not mala fide or vindictive, then, of course, the Tribunal would not try to examine the merits of the findings as though it was sitting in appeal over the conclusions of the enquiry officer. In the present case, the Tribunal has come to the conclusion that the dismissal of Jadav was not effected in good faith and has been actuated by a desire to victimise him for his trade union activities. That is a conclusion of fact which cannot be said to be perverse, and so, it is not open to the appellant to challenge its correctness of the merits before us.

There is one point to which we ought to refer before we part with this appeal. It appears that the main dispute between the parties was whether the strike on October 3, 1960, was spontaneous, or had been instigated by Jadav. The respondents contended that the treatment given by the management to Mahboob caused this strike and 700 weavers struck work spontaneously, whereas

the appellant urged that Mahboob was not present on the said date, and so, the story that his request for leave was not acceded to and he had to work is altogether false and the strike had really been instigated by Jadav. On this point, the Tribunal has made a categorical finding against the appellant and in doing so, it has relied upon the minutes of the Emergency Works Committee meeting held on October 3, 1960, at 3 P.M. with the Manager himself in the chair. These minutes show that when an enquiry was made as to why the strike had commenced, it was definitely reported to the Committee that Mahboob, who had gone on leave, had extended his leave and after the expiry of the extended leave, he reported on October 3, and pleaded that he was still unwell and should be given still further leave, but "nobody paid any heed to his prayer", and so, presumably he had to resume duty. The minutes further show that the Labour Officer informed the members of the Committee that Mahboob had produced a certificate of fitness on September 22, 1960 and after discussion, it was unanimously decided to refer his case to the Mill's Medical Officer on whose recommendation the leave should be considered. These minutes, therefore, clearly prove that Mahboob had gone to the Mill on October 3, had asked for further leave, and his request for further leave was not granted. We ought to add that these minutes have been signed by the Joint Secretary on the employer's side and the Joint Secretary on the employees' side, and their correctness cannot be impeached. It is in the light of these statements that the plea made by the appellant before the Tribunal had to be considered by it.

The plea specifically made was that Mahboob was absent on October 3, and, therefore, there was no question of his working on any machine. The plea would seem to suggest that Mahboob was absent from the Mill and that undoubtedly is not true. The learned Solicitor-General invited us to consider this plea in the light of the statement made by one of the witnesses in the domestic enquiry. This statement was that Mahboob and the witness had gone to the Labour Officer for extension of leave to Mahboob and the Labour Officer had granted leave. This statement would show that leave had been granted to Mahboob in the morning of October 3, but as we have already seen, the Labour Officer himself told the members of the Works Committee at 3 P.M. on the same day that leave had not been granted to Mahboob because he had produced a certificate of fitness dated September 22, and the Works Committee had resolved that Mahboob's case should be referred to the Mills's Medical Officer on whose recommendation action should be taken. Thus, there can be not doubt that even if the plea made by the appellant is liberally construed and is read in the light of the statement made by one of the witnesses at the domestic enquiry, the Industrial Tribunal was right in holding that the stand taken by the appellant was wholly untrue and that Mahboob had not been given leave on October 3. That being so, if the Industrial Tribunal took the view that the refusal of the Management to give leave to Mahboob exasperated the workmen, we cannot hold that its conclusion is erroneous or that its propriety can be successfully challenged before us. The incident in regard to Mahboob forms the main background of the strike and the anxiety of the appellant was to show that Mahboob was not present on that date. Therefore, once the Industrial Tribunal came to the conclusion that the version given by the appellant was untrue, it naturally changed the complexion of the whole of the charge-sheet framed by the appellant against Jadav. That is why the Industrial Tribunal came to the conclusion that the conduct of the appellant in dismissing Jadav showed lack of good faith and appeared to have been inspired by the desire to victimise Jadav for his trade union activities.

The learned Solicitor-General commented on the fact that the Tribunal had allowed the respondents to call for the register of trade unions after the arguments had been heard before it. It appears that both the parties appeared before the Tribunal on January 19, 1961, when arguments were heard and the award was reserved. The Union then filed an application praying that the trade union record may be called for, and the Tribunal ordered that the record be called for. The grievance made by the

learned Solicitor-General is that it is improper to have allowed additional evidence to be called for after the arguments had been heard. We do not think there is any force in this argument, because the only purpose for which the record was called for by the Union was to show that Jadav was the Organising Secretary of the Union. Since that fact was presumably disputed by the appellant in arguing the case before the Tribunal, the Union urged that the record kept by the Registrar of Trade Unions would show that the appellant's plea was not well founded. If, in such circumstances, the Tribunal sent for the record to satisfy itself that the record showed that Jadav was the Organising Secretary of the Union, we do not think any serious grievance can be made by the appellant about the conduct of the Tribunal. It is perfectly true that in dealing with industrial matters, the Tribunal cannot allow evidence to be led by one party in the absence of the other, and should not accept the request of either party to admit evidence after the case has been fully argued unless both the parties agree. In the present case, however, what the Tribunal has done, is merely to send for authenticated record to see whether Jadav was the Organising Secretary of the Union or not.

The result is, the appeal fails and is dismissed with costs.

Appeal dismissed.

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