

Ananda Bazar Patrika (P) Ltd.

Vs

Its Workmen

Civil Appeal No. 633 of 1962

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

07.05.1963

JUDGMENT

GAJENDRAGADKAR J. –

This appeal arises from an industrial dispute between the appellant, the Ananda Bazar Patrika (P) Ltd., and the respondents, its workmen. The appellant is a private limited company and carries on the business of printing and publishing newspapers, namely, 'Ananda Bazar Patrika' which is a Bengali Daily, 'Desh' which is a Bengali Weekly, and "Hindustan Standard" which is an English daily newspaper. Mr. Pulakesh De Sarkar was appointed by the management of the appellant as Journalist in March, 1940, and has been working with the appellant since then until he was discharged from service by the appellant on May 15, 1958. The Union of the appellant's employees took up this discharge and raised an industrial dispute about it. It was urged by the Union that the discharge of Mr. Sarkar's services was illegal and that he was entitled to reinstatement and/or compensation. This dispute was referred by the Government of West Bengal for adjudication to the Second Labour Court on September 25, 1958. By its award pronounced on December 8, 1959, the Labour Court has directed the appellant to reinstate Mr. Sarkar and pay him his emoluments for the period of his forced unemployment. It appears that on January 27, 1959, the appellant had paid some moneys to Mr. Sarkar, and so, the award directs that in paying emoluments to Mr. Sarkar under the provisions of the award, adjustments should be made in respect of the amounts already paid by the appellant to him. It is against this award that the appellant has come to this Court by special leave.

The facts leading to the present industrial dispute between the parties are not many and can be very briefly stated at the outset. It appears that on December 16, 1957, Mr. Shibdas Bhattacharjee who was the Chief Reporter of the Ananda Bazar Patrika, proceeded on leave. Before going on leave, Mr. Bhattacharjee appointed Mr. Madhusudan Chakravorty to work as Chief Reporter temporarily during his absence. Accordingly, he wrote a letter to that effect and sent its copies to the Editor of the Ananda Bazar Patrika, to the News Editor of the said Paper, to the Chief Accountant and to the Reporting Department. The letter was addressed to the Managing Director of the Ananda Bazar Patrika, and a copy of it was hung on the Notice Board of the Reporting Section of the Ananda Bazar Patrika.

Mr. Sarkar who was working as one of the Reporters took exception to this arrangement and interviewed the Managing Director to request him to cancel the said arrangement. The Managing Director told him that the letter had been written by Mr. Bhattacharjee at the instance of the Accounts Department, because the Accounts Department wanted that if any arrangement was made during leave vacancy, it should be evidenced by a document in order to enable the Accounts

Department to deal with the acting person so far as financial transactions were concerned. Mr. Sarkar was not satisfied with the interview and so, he proceeded to write a letter to the Managing Director and hung up a copy of this letter on the Notice Board. In this letter he took strong exception to the arrangement made by Mr. Bhattacharjee and expressed his indignation against the letter which Mr. Bhattacharjee had written to evidence the said arrangement. "I find no reason", said Mr. Sarkar, in that letter, "to honour that spurious letter and so, I would be standing on my own right and merit, decide my assignments myself and act accordingly till the Chief Reporter resumes his office." This letter was written on December 20, 1957. Copy of this letter was sent by Mr. Sarkar to the Editor, to the News Editor and to the Reporting Department.

True to the threat held out by him in his letter, Mr. Sarkar appeared to ignore the assignments allotted to him by the Acting Chief Reporter, Mr. Chakravorty. When this matter was brought to the notice of the Managing Director, he wrote a letter to Mr. Sarkar on December 31, 1957, calling upon him to show cause why action should not be taken against him for his gross misconduct and subversive conduct. Thereupon, Mr. Sarkar told the Managing Director that he was quite willing to remove his letter from the Notice Board and he gave him an account of the work which he had assigned to himself between December 16 to December 31, 1957.

Meanwhile the Acting Chief Reporter complained to the Managing Director that Mr. Sarkar was ignoring the assignments allotted to him. Ultimately, the Managing Director wrote to Mr. Sarkar on January 11, 1958, that in view of the defiant attitude adopted by him, the Managing Director was compelled to call upon Mr. Sarkar to show cause why he should not be dismissed for his insubordination. On January 12, 1958, Mr. Sarkar gave an elaborate answer which was not treated by the Managing Director as satisfactory, he informed Mr. Sarkar by his letter of January 29, 1958, that an enquiry would be held against him and that he should appear before Mr. S. K. Basu, Editor of the Hindustan Standard, in his room on February 1, 1958 at 1 P.M.

Mr. Basu then held an enquiry into the charges already supplied to Mr. Sarkar. At this enquiry, Mr. Sarkar elaborately cross-examined the witnesses who gave evidence against him and gave his own evidence. The principal question which was referred to the enquiry officer was whether Mr. Sarkar had flouted the lawful orders given to him by the Acting Chief Reporter? The enquiry officer considered the evidence, and came to the conclusion that Mr. Sarkar was guilty of deliberate disobedience of the lawful orders of the Acting Chief Reporter who had been properly appointed. This report was made on April 14, 1958.

The management of the appellant then considered the report, examined the evidence led at the enquiry, and came to the conclusion that Mr. Sarkar was guilty of gross misconduct and deserved to be dismissed, but in view of the fact that he had served the Paper for a long period, the management decided to discharge him from service. Accordingly, on May 15, 1958, the management wrote a letter to Mr. Sarkar that his services had been terminated with effect from May 16, 1958. Mr. Sarkar was given one month's pay in lieu of notice, and he was advised to collect his dues, including wages earned by him, gratuity and one month's pay in lieu of notice from the cash office on May 19, 1958, at 11 A.M. The letter also told Mr. Sarkar that the Provident Fund authorities had been advised regarding the termination of his service and that, in due course, the Provident Fund amount due to him would be paid. Broadly stated, these are the facts which give rise to present dispute between the appellant and the Union which took up Mr. Sarkar's case.

The extent of the jurisdiction which a Labour Court or an industrial Tribunal can exercise in dealing with such disputes is well-settled. If the termination of an industrial employee's services has been

proceeded by a proper domestic enquiry which has been held in accordance with the rules of natural justice and the conclusions reached at the said enquiry are not perverse the Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. If, on the other hand, in terminating the services of the employee, the management has acted maliciously or vindictively or has been actuated by a desire to punish the employee for his trade union activities, the Tribunal would be entitled to give adequate protection to the employee by ordering his reinstatement, or directing in his favour the payment of compensation; but if the enquiry has been proper and the conduct of the management in dismissing the employee is not mala fide, then the Tribunal cannot interfere with the conclusions of the enquiry officer, or with the orders passed by the management after accepting the said conclusions.

In the present case, the Labour Court appears to have taken the view that the enquiry was not fair and had not been conducted in accordance with the rules of natural justice. Having reached this conclusion, the Tribunal proceeded to consider the merits of the controversy between the parties and has recorded its findings after appreciating the evidence led before it by the respective parties in support of their contentions. It has held that Mr. Sarkar was not justified in hanging up his letter on the Notice Board, but it took the view that the management should not have taken action against him in view of the fact that Mr. Sarkar had removed the letter as soon as he learnt that the management took exception to his conduct. According to the Labour Court, Mr. Bhattacharjee was not authorised to appoint Mr. Chakravorty as the Acting Chief Reporter during his period of absence on leave, and so, it thought that Mr. Chakravorty was not clothed with lawful authority to allot assignments to Mr. Sarkar during Mr. Bhattacharjee's absence. In regard to the question that Mr. Sarkar had decided his own assignments, the Labour Court was not satisfied with the whole of the story deposed to by the appellant's witnesses and in any event, it held that the explanation given by Mr. Sarkar in that behalf was not unreasonable. It is on these findings that the order of reinstatement has been passed by the Labour Court in favour of Mr. Sarkar.

The first question which falls for our decision is whether the Labour Court was right in holding that the enquiry conducted by Mr. Basu was not a fair enquiry. In support of this conclusion, the Labour Court has observed that Mr. Basu had not allowed Mr. Sarkar "to examine a single witness on his behalf", and had disallowed some very relevant questions put by Mr. Sarkar in cross-examination of the appellant's witnesses. It has also state that the punishment meted out to Mr. Sarkar is far too severe and it thought that it was necessary for the appellant to consult the Editor before deciding upon the punishment which should be imposed on Mr. Sarkar. These facts, according to the Labour Court, betrayed mala fides of the appellant in this case, and so, it was not prepared to accept the findings arrive at the domestic enquiry

Taking the first point about the failure of Mr. Basu to allow Mr. Sarkar to examine even a single witness on his behalf, it is surprising that the Labour Court should have made an observation which gives an impression that Mr. Sarkar wanted to examine a large number of witnesses of whom not even a single witness was allowed to be examined. The observation made by the Labour court is misleading. It is true that at one stage Mr. Sarkar stated that he had filed a list of witnesses, but that list is not on the record before us. What is on the record before us, however, unambiguously shows that Mr. Sarkar wanted to examine only one witness and that is the Editor of the Ananda Bazar Patrika. In any case, there can be no doubt that he pressed his claim for examining only one witness. This is unambiguously proved by the record kept by Mr. Basu during the course of the domestic enquiry and by the statement made by Mr. Sarkar before the Labour Court itself. "The only witness", said Mr. Sarkar before the Labour Court. "I cited in the domestic enquiry was not allowed by the enquiry officer". Therefore, it is unreasonable to make a sweeping statement that Mr. Sarkar was not

allowed to examine a single witness. The true position is that only one witness was intended to be examined by Mr. Sarkar and Mr. Basu did not allow that. It appears from the proceedings of the domestic enquiry that Mr. Basu took the view that on the narrow question which he had been called upon to consider the Editor would have been able to give no material assistance, and so, he thought that the request of Mr. Sarkar to examine him could not be granted. There can be no doubt that at the domestic enquiry it is competent to the enquiry officer to refuse to examine a witness if he bona fide comes to the conclusion that the said witness would be irrelevant or immaterial. If the refusal to examine such a witness, or to allow other evidence to be led appears to be the result of the desire on the part of the enquiry officer to deprive the person charged of an opportunity to establish his innocence, that of course, would be a very serious matter. But in the present case, one has merely to look at the lengthy record of the enquiry to be satisfied that Mr. Basu conducted the enquiry elaborately and allowed Mr. Sarkar fullest latitude to cross-examine the management's witnesses; the enquiry was conducted from day to day and the record shows how elaborately Mr. Sarkar has utilised his right of cross-examination in dealing with the management's witnesses. Therefore, we do not think that in refusing Mr. Sarkar's request to examine the Editor, the enquiry officer can be said to have acted capriciously or mala fide. He seems to have thought honestly that the said witness would not be material or relevant. That being so, we do not think that this circumstance can render the enquiry unfair.

The other criticism made by the Labour Court against the said enquiry is that some very relevant questions had been disallowed by Mr. Basu. In our opinion, this criticism is wholly misconceived. We have looked at the proceedings of the enquiry and we are satisfied that most of the questions which were disallowed were properly disallowed; in fact Mr. Chatterjee has not been able to show how the criticism made by the Labour Court in this part of its award is justified. Some of the questions put by Mr. Sarkar to the witnesses were not only irrelevant, but wholly unfair, and so, it was the duty of Mr. Basu to disallow those questions. Besides, in dealing with this aspect of the matter, the Labour Court should not have overlooked the fact that relevance of questions had to be decided by Mr. Basu who was conducting the enquiry; and even if the Labour Court took the view that some questions which were disallowed were relevant, that would not necessarily make the enquiry unfair or improper unless of course, in disallowing the relevant questions, it can be shown that Mr. Basu was acting mala fide. Therefore, this criticism also is of no avail.

Then, the Labour Court has observed that it was the duty of the Management to have consulted the Editor before deciding upon the punishment to be meted out to Mr. Sarkar. We are surprised that the Labour Court should have treated this as a valid reason for impeaching the fairness of the enquiry. We do not understand how it was necessary or obligatory for the management to consult the Editor before taking any action against Mr. Sarkar. Besides, it is significant that though the management accepted the finding of Mr. Basu that Mr. Sarkar was guilty of gross misconduct, it has purported to act fairly by Mr. Sarkar inasmuch as it took into account his long association with the paper, and so, instead of dismissing him, it merely discharged him from service. Therefore, we have no doubt that the ground given by the Labour Court that the failure to consult the Editor made the conduct of the management mala fide, is wholly unsustainable.

It does appear that an argument was urged before the Labour Court that the enquiry officer being an outsider, the enquiry was void ab initio. This objection had been over-ruled by the Labour Court and, in our opinion, the Labour Court was right. It also appears that it was urged before the Labour Court by the respondents that Mr. Basu bore malice to Mr. Sarkar because of an incident which had taken place in regard to the management of the Provident Fund of the employees of the Ananda Bazar Patrika. It does appear that Mr. Basu as the Managing Director of the Ananda Bazar Patrika

were the Trustees of the said Fund along with 3 other Trustees and the conduct of the Trustees in allowing a fairly large amount of this Trust Fund as a loan to the management was criticised by the members of the Fund, an in consequence of the agitation carried on in that behalf, Mr. Basu who was originally the Trustee of the Fund was not elected at the next elections. This dispute, however, was amicably settled and the parties agreed to terms of settlement on March 7/9, 1957. It was urged by Mr. Sarkar that since he had taken a leading part in the agitation against the conduct of the Trustees in making a loan from the Provident Fund to the management, Mr. Basu and the Managing Director were hostile to him. Even this argument has not been accepted by the Labour Court on the ground that Mr. Sarkar had raised no contention of this kind at the time of the enquiry. Apart from this technical aspect, however, we are satisfied that there is no evidence to show that Mr. Basu or the Managing Director of the Ananda Bazar Patrika bore any ill-will to Mr. Sarkar. In fact, the evidence indicates that Mr. Sarkar is conveniently over-rating the part place by him in the agitation in regard to the said impugned transaction of loan. Therefore, the Labour Court was, in our opinion, right in rejecting this contention.

The position, thus is that the conclusion of the Labour Court that the enquiry was not fair and that the appellant has acted mala fide in discharging Mr. Sarkar cannot be sustained. We have repeatedly pointed out that though industrial adjudication can and must protect industrial employees from victimisation, a finding as to mala fides or victimisation should be drawn only where evidence has been led to justify it; such a finding should not be made either in a causal manner or light-heartedly. In our opinion, no material was produced before the Labour Court in the present proceedings to justify its finding either that the enquiry was unfair, or that the conduct of the appellant in discharging Mr. Sarkar was mala fide.

As soon as we reach this conclusion, it follows that the Labour Court had no jurisdiction to consider the merits of the dispute between the parties, and to enquire whether the findings recorded by the domestic tribunal were right or not. We have, however, heard Mr. Chatterjee at length on the question as to whether Mr. Bhattacharjee had authority to appoint Mr. Chakravorty as an Acting Chief Reporter during his absence on leave, because it appeared to us that if evidence clearly showed that the appointment made by Mr. Bhattacharjee was contrary to the rules prevailing in the institution or was inconsistent with the practice, it may perhaps justify his grievance that Mr. Basu should have allowed the Editor to be examined on the assumption that the Editor could have spoken to the prevailing rules or practice in that behalf. Mr. Sarkar's case is that the Editor is in charge of the whole of the Reporting Department and in case the Chief Reporter goes on leave, it is for the Editor to make an appointment of the Acting Chief Reporter. It is remarkable that though Mr. Sarkar has raised this point from the start, he has not stated on oath anything in support of the practice on which he relies. Mr. Chatterjee has referred us to several statements in his evidence, but he fairly conceded that Mr. Sarkar has now here made a categorical statement on oath that during the long period that he had been working with this Paper, practice ever was that when the Chief Reporter went on leave, the Editor appointed an Acting Chief Reporter in the leave vacancy. The failure of Mr. Sarkar to make such a categorical statement or to refer to any incident in support of his plea is not without significance.

But apart from it, there is abundant evidence adduced before the Labour Court which shows that Mr. Sarkar's contention is not well-founded. We have already noticed that Mr. Sarkar saw the Managing Director and in the letter he had pasted on the notice board on December 20, 1957, Mr. Sarkar had stated clearly that the Managing Director had told him that the only thing of which the Managing Director was aware was "the Accounts Department's insistence on authorising somebody by the Chief Reporter before he went on leave through whom financial transaction, if any, would take

place". This statement clearly shows that the Managing Director told Mr. Sarkar that the Accounts Department wanted something in writing by the Chief Reporter whenever he went on leave to show who would be acting as the Acting Chief Reporter during his absence. This statement is contained in Mr. Sarkar's letter and embodies what he was told by the Managing Director himself. The authorisation had, therefore, to be by the Chief Reporter and not by the Editor according to this statement.

Then we have a letter from Mr. Chakravorty to the Director's Department written on January 3, 1958. This letter shows that on several occasions when the Chief Reporter had gone on leave, Mr. Chakravorty had been assigned the work of the Chief Reporter. In that capacity, he had managed the Department, allotted assignments to the other Reporters and functioned as an Acting Chief Reporter. Mr. A. K. Sarkar who is the Managing Director of the Ananda Bazar Patrika has stated on oath that the usual practice in the Patrika is that when the Chief Reporter or any Head of any Section remains absent, he nominates his successor during his absence. There had been some controversy about the letter written by Mr. Bhattacharjee nominating Mr. Chakravorty as an Acting Chief Reporter, and it was fairly conceded by Mr. A. K. Sarkar that this letter was written because the Accounts Department insisted on some writing to show the appointment of an Acting Chief Reporter. Formerly, the Chief Reporter used to make verbal arrangements for work during his absence. The Acting Chief Reporter has authority to take cash from the Accounts Department to pay to the Reporters whenever necessary. Therefore, the evidence of Mr. A. K. Sarkar establishes the appellant's case that Mr. Bhattacharjee was justified in making the appointment of Mr. Chakravorty as Acting Chief Reporter in his absence. The evidence given by two Reporters of the Ananda Bazar Patrika Mr. G. K. Ghosh and Mr. A. Chowdhary is to the same effect. Thus, apart from the fact that Mr. Sarkar has not taken the oath in support of his plea, the evidence led by the appellant clearly shows that all that Mr. Bhattacharjee did on December 16, 1957 was in accordance with the prevailing practice in the institution.

Indeed, it sounds common-sense that if the Chief Reporter goes on leave, should make some arrangement to enable some other reporter to act in his place during his absence and should intimate accordingly to the other heads of departments and to the Managing Director. It is possible that other institutions may have other rules, or may adopt another kind of practice, but on the evidence, adduced in this case, it is impossible to sustain Mr. Sarkar's plea that Mr. Bhattacharjee acted outside his authority and he was, therefore, justified in adopting the militant attitude which was disclosed by his letter of December 20, 1957 which was pasted by him on the notice board. It is hardly necessary to point out that even if Mr. Sarkar had a grievance in the matter of the appointment of Mr. Chakravorty, he should not have adopted the extremely militant attitude by announcing that he would assign to himself his duties and would take no orders from Mr. Chakravorty. Therefore, we do not think that even on the merits, Mr. Chatterjee is right in contending that the refusal of Mr. Basu to examine the Editor of the Paper was unjustified, much less can it be said to be perverse or malicious so as to sustain the contention that the enquiry held by the said officer without examining the Editor is unfair and has contravened the rules of natural justice.

Mr. Chatterjee no doubt urged before us the fact that Mr. Sarkar has long and meritorious service to his credit in this institution, and he told us that he had taken part in the national movement and had adopted the career of journalism out of patriotic and national feelings. He, therefore, appealed to us to consider whether the appellant should be asked to reinstate him in its employment. When this aspect of the matter was put to Mr. Sastri who appeared for the appellant, Mr. Sastri told us after consulting his client that having regard to the nature of the misconduct which has been held proved against Mr. Sarkar, the appellant was not inclined to take him back.

In the result, the appeal succeeds and the order passed by the Labour Court is set aside. There would be no order as to costs.

Appeal allowed.

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