State Bank of Bikaner

Vs

Balai Chander Sen

Civil Appeal No. 516 of 1963

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

14.08.1963

JUDGMENT

WANCHOO J. –

The is an appeal by special leave against the order of the Central Government Labour Court at Dhanbad. The respondent was in the service of the appellant-bank's branch at Calcutta and worked as an assistant cashier. On June 17, 1961, one Shankerlal applied for telegraphic transfer of Rs. 4,000/- from Calcutta to Sujangarh and handed over currency notes of Rs. 100/- each to the respondent. As the respondent was counting the notes, Shankerlal remembered that he had given 41 notes instead of 40 to the respondent and requested him to return the bundle of notes for verification. The respondent however refused to return the notes saying that the amount given to him was Rs. 4,000/- and not Rs. 4,100/-. Shankerlal went back to his shop and verified that he had taken 41 notes instead of 40 and had thus handed over one note of Rs. 100/- extra to the respondent, in connection with the telegraphic transfer. He then came back to the bank and complained to the Manager about this. The manager ordered the chief cashier to close the cash in the hands of the respondent and to check the amount in his hand with the books. The chief cashier found on checking that there was one note of Rs. 100/- extra with the respondent. The manager asked the respondent to hand over the extra note but the respondent refused to do so saying that it belonged to him. In explanation he said that it had been given to him by his mother. The manager immediately took steps to verify this statement and deputed the chief cashier along with another person to the respondent's house to make necessary inquiries. But at the house of the respondent both his mother and father said that they had not given a hundred-rupee note to the respondent.

Thereafter the respondent was told what his parents had said and asked what he had to say further. The respondent then came out with another story that the note was given to him by a tenant of the building in which he lived. He gave out the name of the tenant as Mondal. The manager again sent the same persons to make enquiries from Mondal but it was found that there was no person of the name of Mondal in that building. The bank therefore decided to take disciplinary proceedings against the respondent and handed over a charge-sheet to him. The respondent was also suspended from the bank's service. Thereafter an enquiry was conducted against the respondent. The enquiry officer came to the conclusion that the two charges framed against the respondent had been proved and recommended after taking into consideration the past service and conduct of the respondent that he should be discharged from the service of the bank. Thereafter according to the rules prevalent in the bank the respondent was given notice to show cause why he should not be discharged. His explanation was taken into account and thereafter the bank decided to discharge him. So on December 27, 1961, the bank applied under s. 33(2)(b) of the Industrial Disputes Act, No. 14 of 1947, for approval of the action proposed to be taken against the respondent. It may be added that

after this application was made, the bank's case is that is actually discharged the respondent on January 15, 1962.

The application under s. 33(2)(b) finally came up for disposal before the labour court. That court held relying on a decision of this Court in Strawboard Manufacturing Co. v. Gobind ([1962] Supp. 3 S.C.R. 618.) that as the application had been made for approval of the proposed discharge and before the actual discharge of the respondent, it was not maintainable. Consequently it dismissed the bank's prayer for approval of the proposed action. The present appeal by special leave is against this order of the labour court.

The main contention of the appellant is that the labour court was not right in holding that the application was not maintainable on the ground that it had been made for approval of the proposed action and not after the action had been taken. It is urged that the decision of this Court in Strawboard Manufacturing Co.'s case ([1962] Supp. 3 S.C.R. 618.) has been misunderstood by the labour court and this Court did not lay down in that case that an application under s. 33(2)(b) would not be maintainable if it is made by an employer after he had concluded the enquiry and decided to impose a certain punishment but had not actually imposed it. We are of opinion that this contention must prevail.

The contention in the Strawboard Manufacturing Co.'s case ([1962] Supp. 3 S.C.R. 618.) was that the application for approval must be made before the employer takes action and that view was negatived. In that case what the employer had done was to make the enquiry and decide to dismiss the employee. The order of dismissal was passed on February 1, 1960 and on the same day an application was made to the tribunal for approval of the action taken. The tribunal took the view that the application for approval had been made after the dismissed of the employee and the same should have been made before dismissing him. That view was held by this Court to be incorrect. This Court held that s. 33(2)(b) requires the employer to do three things contemplated in the proviso, namely (1) the dismissal or discharge of the employee, (2) payment of wages and (3) the making of the application as parts of the same transaction. That case, however, did not lay down that if an employer takes the precaution of making an application after the necessary enquiry - and before actually taking any action - for approval of the proposed action, such an application would not be maintainable. That case was concerned with the latest time by which the employer must make the application for approval after he had taken the action of which the approval was sought. But there is nothing in s. 33(2)(b) which requires that an application for approval can only be made after the action had been taken. We see nothing in principle against the employer making an application under s. 33(2)(b) for approval of the proposed action before the actual action is taken. Such a course on the part of the employer would, if anything, be more favourable to the employee and would not in our opinion be against the provisions contained in s. 33(2)(b). We are therefore of opinion that the labour court was wrong in holding that an application made by an employer under s. 33(2)(b) for approval of the action he propose to take is not entertainable and that such an application must necessarily be made after the action of which approval is sought is taken. All that the Strawboard Manufacturing Co.'s case ([1962] Supp. 3 S.C.R. 618.) lays down is that the application can be made after the action of which the approval is sought has been taken and that when this happens the three conditions in the proviso to s. 33(2)(b) must be shown to be parts of the same transaction. But if an employer chooses to make an application under s. 33(2)(b) for approval of the action he proposes to take and then takes the action we find nothing in s. 33(2)(b) which would make such an application not maintainable. Such an application in our opinion would not be contrary to the provisions of s. 33(2)(b) read with the proviso thereof and would be maintainable. The view of the labour court therefore that the application by the appellant in the present case was

not maintainable must fail.

This brings us to the question whether approval should be granted to the action proposed to be taken by the appellant-bank. It appears that the respondent could not appear before the labour court on the date on which it decided the matter, on the ground that he was ill. He had submitted a medical certificate in that connection. The labour court however decided to proceed with the matter and dismissed the application on the ground that it was not maintainable. Learned counsel for the respondent prays that in the circumstances the matter should be remanded to the labour court to enable the respondent to appear. We find however that the respondent had filed a written statement in reply to the bank's application in which he controverted the facts on which he was ordered to be discharged. Considering that the matter has been pending since 1961 we do not think that this is a case where a remand is called for. The appellant relied on the enquiry proceedings, copies of which were filed with the application; and all that the tribunal has to see when dealing with an application under s. 33(2)(b) is whether the employer had conducted the enquiry properly and whether the action taken or proposed to be taken was bona fide and not due to victimisation or unfair labour practice. We have been taken through the enquiry papers and we are of opinion that there is nothing in them to show that the enquiry was not properly conducted. Nor is there anything to show that the respondent was victimised or the proposed action is the result of any unfair labour practice. It is true that the respondent said in his written statement that the enquiry was merely a pretence of an enquiry and was held in utter disregard of the rules of natural justice and also that he had been victimised. But besides making these allegations the written statement does not show in what manner the enquiry was not fair and proper and why the respondent was victimised. We are of opinion that the enquiry held in this case was fair and proper and in accordance with the principles of natural justice and the respondent had full opportunity to defend himself. We are also satisfied that there is no question of victimisation or unfair labour practice. Therefore the approval sought for must be granted.

We therefore allow the appeal, set aside the order of labour court and grant the application of the appellant-bank dated December 27, 1961 and approve the proposed action. In the circumstances we pass no order as to costs.

Appeal allowed.

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