Labour Commissioner, Madhya Pradesh

Vs

Burhanpur Tapti Mills and Others

Civil Appeal No. 529 of 1963

(CJI P. B. Gajendragodkar, K.N. Wonchoo, K.C. Das Gupta JJ)

25.03.1964

JUDGMENT

DAS GUPTA, J. –

Two main question arise in this appeal. The first is whether s. 42(1)(g) of the Central Provinces and Berar Industrial Disputes and Settlement Act, 1947 prohibits an employer from taking action against a workman for participation in an illegal strike before it is so declared under s. 41 of the Act. The second question is whether in an application made under s. 16(3) of the Act the Labour Commissioner has jurisdiction to decide the legality or illegality of the strike.

On September 21, 1956 the first respondent in this appeal, the Burhanpur Tapti Mills Ltd., served a charge-sheet on one of the employees Sulemankhan Mullaji, who is the second respondent in the appeal alleging that he had instigated workers of the Waving Department to go on an illegal strike earlier that day. After holding an enquiry into the matter the Manager came to the conclusion that the charge had been established being of opinion that this constituted misconduct under cl. 25(b) of the Standing Orders. Thereafter, the Manager ordered Sulemankhan to the summarily dismissed without notice and without compensation in lieu of notice. Sulemankhan made an application against this order to the Labour Commissioner, Madhya Pradesh under s. 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947. The Labour Commissioner was of opinion that the authority to decide the legality of a strike had been entrusted by s. 41 of the Act by the legislature to the State Industrial Court or the District Industrial Court. He also held that before a strike had been held by either of these authorities to be illegal the employer had no right to take any action against his workmen on his own view that a strike was illegal. The Labour Commission further held that there was no legal evidence to prove the allegation against Sulemankhan and that in inflicting the punishment of dismissal the Manager had not paid due regard to sub-cl. 4 of cl. 26 of the Standing Orders. Accordingly, he ordered the reinstatement of Sulemankhan with full wages from the date of dismissal to the date of reinstatement.

The revision application by the first respondent proved unsuccessful. The State Industrial Court, which is the revisional authority, disagreed with the Labour Court's view that the employer could not take action before a decision from the State Industrial Court or the District Industrial Court declaring the strike to be illegal had been obtained. Being however of opinion that the enquiry had not been held in accordance with the Standing Order in cl. 26(2) and also that in awarding the punishment the Manager had not taken into consideration the matters mentioned in the Standing Orders in cl. 26(4), the Industrial Court concluded that the Labour Commissioner was justified in examining the evidence for itself. It further held that the finding of fact given by the Labour Commissioner could not be challenged in revision. The final conclusion of the State Industrial

Court, as already indicated, was that the order of reinstatement made by the Labour Commissioner was fully justified.

Against this order the employer (the first respondent) moved the High Court of Madhya Pradesh under Art. 226 of the Constitution. The High Court indicated its view that though the Labour Commissioner may not have the jurisdiction to decide the question of illegality of a strike, it may decide the question incidentally for the purposes mentioned in s. 16 of the Act if in an enquiry under s. 16 a question is raised that the dismissal was wrongful as there was no incitement of an illegal strike under cl. 25(b) of the Standing Orders. After expressing this view the High Court, however, added the words : "That aspect of the matter need not be considered because the strike instigated here was not held to be a legal strike." The High Court was of opinion that the Industrial Court had fallen into an error in thinking that the charge sheet served on the workmen was defective. It also held that neither the Labour Commissioner nor the State Industrial Court had any jurisdiction to examine the findings of the domestic tribunal as an appellate authority and to come to a contrary conclusion on the same evidence. Accordingly, the High Court quashed the orders of the Labour Commissioner and the State Industrial Court.

The present appeal has been preferred by the Labour Commissioner, Madhya Pradesh. No appeal has been preferred by the workman himself. It is therefore unnecessary for us to consider in this appeal the correctness or otherwise of the High Court's decision on the merits of the case. What we have to decide, as already indicated is whether sec. 42 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 stood in the way of the employer taking action against a workman for participation in an illegal strike before it had been declared to be so under s. 41; and secondly, whether when there has been no such decision the Labour Commissioner has jurisdiction to decide the question of legality or illegality of the strike in an application made to him under s. 16 of the Act.

The relevant provisions of s. 42 which require consideration for a decision of the first question are that : "No employer shall dismiss, discharge, suspend or reduce any employee or punish him in any other manner solely by reason of the circumstance that the employee has participated in a strike which is not 'rendered illegal" under any provision of this Act." The provisions of the Act rendering a strike illegal are set out in s. 40. Prima facie it appears that it is only where the strike in which an employee has participated does not come within any of the provisions of s. 40 that the employer is prohibited from taking action against him. The prohibition operates only when a strike is not "rendered illegal" under any provisions of the Act. That, it is urged by the respondent-employer, is the same thing as saying that the prohibition operates only where the strike is not illegal within the meaning of the provisions of s. 40 of the Act.

The argument on behalf of the appellant is that the words "rendered illegal" in s. 42(1)(g) should properly be construed as "held illegal". It has to be noticed in this connection that s. 41 of the Act provides a machinery under which not only the State Government but any employer or employee can approach the State Industrial Court or a District Industrial Court for a decision whether a strike or a lockout of which notice has been given or which has taken place is illegal. According to the appellant, it is only after on such an application the State Industrial Court or a District Industrial Court has decided that a strike is illegal, that the employer can take action. We are unable to see any justification for such a construction. It is clear to us that the phrase "rendered illegal" in s. 42(1)(g) has been deliberately used in contradistinction to the words "held illegal" used in ss. 43, 44 and 45. Section 43 provides penalty on an employer who "declares a lockout which is held by the State Industrial Court or the District Industrial Court to be illegal". Section 44 provides penalty against an

employee "who goes on a strike or who joins a strike which is held by the State Industrial Court or the District Industrial Court to be illegal". Section 45 provides penalty for instigation or incitement to or participation or acting in furtherance of a strike or lockout "which is held to be illegal by the State Industrial Court or the District Industrial Court". When the legislature used the words "held illegal" by the State Industrial Court or the District Industrial Court in ss. 43, 44 and 45 but used different phraseology, viz., "rendered illegal" in s. 42(1)(g) the conclusion is irresistible that this was done deliberately. The reason for this is not far to seek. However, quickly the State Industrial Court or the District Industrial Court may act on an application under s. 41 the decision on the legality or otherwise of a strike is bound to take a considerable time. It would be an impossible position for industrial management if after notice has been given of a strike or a strike has started which the employer considers to be illegal within the meaning of s. 40 he should be compelled to stay his hand and wait till a State Industrial Court or a District Industrial Court has given a declaration on the question. It also appears clear that these authorities are not bound to give a decision on an application by the employer.

The Section runs thus :-

> "The State Industrial Court or a District Industrial Court shall, on a reference made by the State Government, and may, on an application by any employer or employee concerned or by a representative of the employees concerned or by the Labour Officer, decide whether any strike or lockout or any change of which notice has been given or which has taken place is illegal."

It has to be noticed that while on a reference by the State Government the State Industrial Court or a District Industrial Court "shall" decide the question of legality of the strike or lockout, it "may" decide the question on an application by the employer or employee or any other person mentioned in the section. The use of the word "shall" in connection with the action to be taken on a reference by the State Government and "may" in connection with the action on an application by others in the same section compels the conclusion that on an application by anybody other than the State Government, the State Industrial Court or a District Industrial Court may also refuse to take action. The suggested construction of the words "rendered illegal" as "held illegal" might therefore have the curious result that even though the strike is in fact illegal within the meaning of s. 40 of the Act no action can at any time be taken against an employee for participation in it. We have accordingly come to the conclusion that the words "rendered illegal" does not mean "held illegal" and the employer is free to take action against the employee as soon as he thinks that the strike in which he has participated comes within the provisions of s. 40 of the Act.

When the employer takes such action against the employee by dismissing, discharging, removing or suspending him, it will be open to the employee to apply to the Labour Commissioner for reinstatement and payment of compensation for loss of wages. This is provided in s. 16(2) of the Act. Section 16(3) provides that if on receipt of such application the Labour Commissioner after such enquiry as may be prescribed finds that the dismissal, discharge, removal or suspension was in contravention of any other provisions of this Act or in contravention of a Standing Order made or sanctioned under this Act or was for a fault or misconduct committed by the employee more than six months prior to the date of such dismissal, discharge, removal or suspension, he may direct reinstatement of the employee or other relief. The question has been raised whether when the order of dismissal, discharge, removal or suspension purports to have been made for participation in or instigation to an illegal strike it is open to the Labour Commissioner to decide the question of illegality of a strike. On behalf of the appellant it has been suggested that exclusive jurisdiction to

decide the question of legality or illegality of a strike has been given by the Act to the two authorities, viz., the State Industrial Court or a District Industrial Court, as maintained in s. 41. There is no doubt that s. 41 which has been set out above empowers the State Industrial Court or a district Industrial Court to decide the question of legality of a strike on a reference by the Government, or application by employer or employee or others mentioned in the section. Mr. Shroff argues that it could not have been the intention of the legislature to have two parallel bodies - the Labour Commissioner as well as the State Industrial Court or a District Industrial Court - having jurisdiction to decide such a matter. For, as he points out, it may well be that while on an application under s. 16(3) the Labour Commissioner holds that the strike was not illegal the contrary view may be taken by the State Industrial Court or the District Industrial Court on an application under s. 41 or vice versa. This argument is plausible at first sight. There is, however, one great difficulty in accepting it. That consists in the fact, already pointed out, that the State Industrial Court or a District Industrial Court is not bound to give any decision at all on application by any party other than the State Government. There being thus cases where the authorities mentioned in s. 41 may refuse to decide the question of legality or illegality of a strike, it is not possible to say that exclusive jurisdiction is given by s. 41 to these authorities to decide the question of legality or illegality of a strike. It is reasonable to held therefore that for performing its functions under s. 16(3) of the Act the Labour Commissioner has jurisdiction to decide the question of legality or illegality of a strike when that question is raised before it.

The appeal is accordingly dismissed. No order as to costs.

Appeal dismissed.

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