

Saran Motors Private, Limited, New Delhi

v.

Vishwanath and Another

(Supreme Court Of India)

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

Civil Appeal No. 755 And 756 Of 1963 | 31-03-1964

Gajendragadkar, C.J.

1. The short question which arises for our decision in these two appeals to whether the domestic enquiry held by the appellant, Saran Motors (Private) Ltd., against two of its employees, Vishwanath and Saran Singh, was vitiated by the fact that the enquiry officer began and conducted the enquiry With a bias against the employees and in favour of the appellant and whether his conclusions suffer from the vice that they are not supported by any evidence and can be characterized as perverse.

2. The present proceedings began with two applications made by the two employees under S.33A of the Industrial Disputes Act, 1947 (14 of 1947). By their applications, the two employees alleged that they had been dismissed from service by the appellant in contravention of the provisions of S.33 of the Act. It appears that on 7 March 1960 orders of discharge simpliciter were served by the appellant on the two employees who will be called the two respondents hereafter. The two respondents pleaded that these orders of discharge really amounted to their dismissal and, since, according to them, S. 33 had been contravened, the said orders ought to be set aside. The industrial tribunal which heard these complaints has upheld the respondents case and has directed the appellant to reinstate the respondents and give them consequential reliefs. It is against this order that the present appeals have been brought before us by the appellant by special leave.

3. The incident which ultimately led to the dismissal of the respondents took place on 8 June 1959. The appellant is a private limited company and has a

branch in Delhi and it carries on the business of automobile engineers. Respondent 1, Vishwanath, was working with the appellant in the capacity of a technical assistant to the director of the appellant's company while respondent 2, Har Saran Singh, was working as an assistant fitter in the company. On 8 June 1959 both of them had taken leave. Respondent 1 had alleged that he was ill while respondent 2 had stated that his grandfather was ill. The manager, however, suspected that the excuses given by the two respondent were false and that they had been really absenting them-selves from work in order to earn money by taking private work. That is why a kind of raiding party was arranged by the management consisting of the manager, Sri Bhardwaj, and Sri Madan Gopal. These persons engaged a taxi and went to the compound of Sir Ganga Ram Hospital. There they found Vishwanath was working on a car No. DLS 2512 (Hillman) belonging to Sardar Atma Singh and Har Saran Singh was working on a car No. DLG 4917 belonging to Dr. Thakur Dass. Both these owners were customers of the appellant. Having seen that the respondents had absented themselves on false pretexts and had really taken private work, charge-sheets were served on them and the same were followed by a domestic enquiry. At the enquiry, evidence was led both by the appellant and the respondents. Sri Chadha who held the enquiry found against the respondents and accepted the appellant's case, on receiving his report, the appellant passed the impugned orders of discharge against the two respondents. Before industrial tribunal it was urged by the respondents that the enquiry held by Sri Chadha was unfair and his conclusions were perverse. The appellant denied these allegations and contended that the enquiry was fair and the tribunal had no jurisdiction to consider the correctness or propriety of the findings recorded by the enquiry officer. The tribunal has accepted the respondents' contention and has made the awards which have given rise to these two appeals.

4. The first question which we have to decide is whether the tribunal was justified in holding that Sri Chadha has a bias in favour of the appellant, and so, was incompetent to hold the enquiry. It appears that Sri Chadha is sometimes engaged by the appellant as a lawyer in industrial matters and the respondents' case was that he had been entrusted with the work of holding such enquiries on four or five occasions. It is on these grounds that the tribunal has held that Sri Chadha was not competent to hold the present enquiry.

5. In our opinion, this view is completely erroneous and cannot be sustained. We have repeatedly pointed out that domestic enquiries in industrial relations

must be fairly conducted and whenever we are satisfied that any enquiry was not fairly conducted or its conclusions were not supported by evidence, we have unhesitatingly ignored the findings recorded at such an enquiry and held that the tribunals must deal with the merits of the dispute for themselves; but it is impossible to accept the argument that because a person is sometimes employed by the employer as a lawyer, he becomes incompetent to hold a domestic enquiry. It is well-known that enquiries of this type are generally conducted by the officers of the employer and in the absence of any special individual bias attributable to a particular officer, it has never been held that the enquiry is bad just because it is conducted by an officer of the employer. If that be so, it is obviously un-sound to take the view that a lawyer, who is not a paid officer of the employer, is incompetent to hold the enquiry, because he is the employer's lawyer and is paid remuneration for holding the enquiry. Therefore, the first reason given by the tribunal for ignoring the findings of the domestic enquiry must be reversed. The second conclusion set out in the award of the tribunal is that Sri Chadha adopted a double standard in appreciating the evidence. It appears that before Sri Chadha, the appellant examined four witnesses and the respondents also led evidence. Amongst the witnesses examined by the respondents, were Dr. Thakur Das and Sardar Atma Singh. Sri Chadha has believed the evidence of the management witnesses and has discarded the testimony given by the respondents' witnesses. The tribunal thought that because Sri Chadha has dealt in great detail with the evidence given on behalf of the respondents and has considered the management's evidence somewhat briefly that shows that his approach was perverse. This ground again is completely misconceived and has to be rejected. It may be that the tribunal itself may have been inclined to prefer the evidence led on behalf of the respondents; but that is no reason for holding that Sri Chadha was actuated by bias or that he adopted a double standard in dealing with oral evidence led before him. The criticism made by the tribunal against Sri Chadha on this count appears to us to be completely misconceived, and so, we must hold that the tribunal was in error in rejecting the findings of Sri Chadha on the ground that he had adopted a double standard in dealing with evidence adduced before him (?).

6. The last point on which the tribunal has rested its conclusion that the enquiry was unfair and its conclusions can be ignored is based on the fact that Sri Chadha did not make notes of inspection. It appears that Sri Chadha inspected the compound where the respondents were found working on 8 June 1959. No doubt, The respondents were not agreeable to this inspection but that cannot mean that Sri Chadha was not competent to inspect the spot if he thought it

necessary and expedient to do so. It is true that Sri Chadha did not make any inspection notes but referred to the impression formed by him at the said inspection when he wrote his report. It may be that it would have been better if Sri Chadha had made the inspection notes soon after the inspection; but we do not see how Sri Chadha's failure to make inspection notes can invalidate the whole of the domestic enquiry. After all, the question which Sri Chadha had to decide was a simple question of fact : Did the appellant prove that the two respondents were found working within the compound of the Sir Ganga Ram Hospital on a private job when they had taken leave from the appellant's workshop ? On this issue the two rival contentions were supported by two sets of witnesses examined by the parties. Sri Chadha has believed the management's evidence and has rejected the testimony of the respondent witnesses. In such a case, we do not think it was open to the tribunal to consider the evidence for itself when it is plain that the domestic enquiry was fairly conducted, a reasonable opportunity was given to the respondents to prove their case and the conclusions recorded at the enquiry are supported by evidence which was believed by the enquiry officer.

7. Under these circumstances, we are satisfied that the appeals must be allowed, the awards passed by the tribunal in favour of the two respondents, Viswanath and Har Saran Singh, set aside and their respective applications made under S. 33A dismissed. There would be no orders as to costs.

8. Appeals allowed.