Tata Iron and Steel Co. Ltd.

Vs

S. N. Modak

Civil Appeal No. 422 of 1964

(CJI P. B. Gajendragadkar, V. Ramaswami – I, Raghuvar Dayal JJ)

19.03.1965

JUDGMENT

GAJENDRAGADKAR, C.J.

The short question of law which arises in this appeal relates to the scope and effect of the provisions contained in s. 33(2) of the Industrial Disputes Act, 1947 (No. 14 of 1947) (hereinafter called 'the Act'). The appellant, the Tata Iron and Steel Co. Ltd., Jamadoba, applied before the Chairman, Central Government Industrial Tribunal, Dhanbad (hereafter called "the Tribunal") under s. 33(2)(b) of the Act for approval of the order passed by it discharging the respondent, its employee S. N. Modak, from its services. In its application, the appellant alleged that the respondent had been appointed as a Grade II Clerk in the Chief Mining Engineer's Office at Jamadoba. One of the duties assigned to the respondent was to check arithmetical calculations according to sanctioned rate of the bills coming from the Heads of Department. He was required to bring to the notice of the Deputy Chief Mining Engineer cases of discrepancies or irregularities, and also cases where additions or alterations in the bills had been made, but not initialed. On re-checking of the bills which had been passed by the respondent, it was discovered that several additions and alterations made in the bills were not noticed by him and were not reported. This failure constituted misconduct under the Standing Orders of the appellant. For this misconduct, the respondent was charge-sheeted (No. 51 dated 1/5-10-1960); that led to a departmental enquiry, and as a result of the report made by the Enquiry Officer, the appellant passed an order on December 17, 1960, terminating the services of the respondent as from December 24, 1960. The present application was drafted on 17th December and it reached the Tribunal on the 23 December 1960. It appears that this applications was made by the appellant under s. 33(2)(b), because four industrial disputes were pending between the appellant and its employees at that time in Reference Nos. 27, 34, 40 & 49 of 1960.

After this application was filed, the respondent challenged the propriety of the order passed by the appellant for which approval was sought by it, and several contentions were raised by him in support of his case that the enquiry held against him was invalid and improper and the order of dismissal passed against him was the result of mala fides. Evidence was led by the parties in support of their respective pleas.

When the matter came to be argued before the Tribunal, it was urged by the appellant that the application made by it no longer survived, because all the industrial disputes which were pending between the appellant and its employees and as a result of the pendency of which it had made the application under s. 33(2)(b) of the Act, had been decided by the Tribunal; Awards had been made in all the said References and they had been published in the Gazette. It does appear that the four References which we have already mentioned, ended in Awards made on 31-10-1960, 8-11-1960,

14-4-1961, and 22-9-1961 respectively. The award on the present application was made on 29-9-1962, and it is common ground that at the time when the appellant urged its contention that the application made by it did not survive any longer, all the four References had, in fact, been disposed of. The plea thus raised by the appellant naturally raised the question as to what would be the effect of the awards pronounced by the Tribunal on industrial disputes pending before it at the time when the appellant moved the Tribunal under s. 33(2)(b) ? If, as a result of the pendency of an industrial dispute between an employer and his employees, the employer is required to apply for approval of the dismissal of his employee under s. 33(2)(b), does such an application survive if the main industrial dispute is meanwhile finally decided and an award pronounced on it ? That is the question which this appeal raises for our decision, and the answer to this question would depend upon a fair determination of the true scope and effect of the provisions of s. 33(2)(b) of the Act.

This question has been answered by the Tribunal against the appellant. Having held that the application made by the appellant survived the decision of the main industrial disputes, the Tribunal has considered the merits of the controversy between the parties. After examining the evidence, the Tribunal has found that the enquiry made by the appellant before passing the impugned order of discharge against the respondent was invalid. It has pointed out that the Enquiry Officer, Mr. Watcha, did not in fact record the statement of any witnesses who gave evidence before him, and the only record of the enquiry is the report made by Mr. Watcha. It has also noticed that the enquiry in question suffered from the serious infirmity that Mr. Watcha who acted as the Enquiry Officer himself gave evidence against the respondent, and the evidence which was actually recorded in the case was taken not by Mr. Watcha, but by Mr. Paravatiyar. In the result, the conclusion of the Tribunal on the merits was that the enquiry "was a farce, a mere eye-wash, biased with pre-determined result, and entirely mala fide and not at all fair". As a result of this conclusion, the Tribunal refused to accord approval to the order of discharge passed by the appellant against the respondent. It is against this order that the appellant has come to this Court by special leave.

Reverting then to the question of construing s. 33 of the Act, we may refer to some general considerations at the outset. Broadly stated, s. 33 provides that the conditions of service, etc. should remain unchanged under certain circumstances during the pendency of industrial adjudication proceedings. It is unnecessary to refer to the previous history of this section. It has undergone many changes; but for purpose of the present appeal, we need not refer to the said changes. We are concerned with s. 33 as it stands after its final amendment in 1956. Section 33 consists of five sub-sections. For the purpose of this appeal, it is necessary to read sub-sections (1) & (2) of s. 33 :-

> "(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall -
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> (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute the conditions of service applicable to them immediately before the commencement of such proceedings; or
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> (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.
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> (2) During the pendency of any such proceeding in respect of an industrial dispute,

the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, -

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman :

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

A reading of the above two sub-sections of s. 33 makes it clear that its provisions are intended to be applied during the pendency of any proceeding either in the nature of conciliation proceeding or in the nature of proceeding by way of reference made under s. 10. The pendency of the relevant proceeding is thus one of the conditions prescribed for the application of s. 33. Section 33(1) also shows that the provisions of the said sub-section protect workmen concerned in the main dispute which is pending conciliation or adjudication. The effect of sub-sec. (1) is that where the conditions precedent prescribed by it are satisfied, the employer is prohibited from taking any action in regard to matters specified by cl. (a) & (b) against employees concerned in such dispute without the previous express permission in writing of the authority before which the proceeding is pending. In other words, in cases falling under sub-sec. (1), before any action can be taken by the employer to which reference is made by cl. (a) & (b), he must obtain the express permission of the specified authority. Section 33(2) proceeds to lay down a similar provision and the conditions precedent prescribed by it are the same as those contained in s. 33(1). The proviso to s. 33(2) is important for our purpose. This proviso shows that were action is intended to be taken by an employer against any of his employees which falls within the scope of cl. (b), he can do so, subject to the requirements of the proviso. If the employee is intended to be discharged or dismissed, an order can be passed by the employer against him, provided he has paid such employee the wages for one month, and he has made an application to the authority before which the proceeding is pending for approval of the action taken by him. The requirements of the proviso have been frequently considered by Industrial Tribunals and have been the subject-matter of decisions of this Court as well. It is now well-settled that the requirements of the proviso have to be satisfied by the employer on the basis that they form part of the same transaction; and stated generally, the employer must either pay or offer the salary for one month to the employee before passing an order of his discharge or dismissal, and must apply to the specified authority for approval of his action at the same time, or within such reasonably short time thereafter as to form part of the same transaction. It is also settled that if approval is granted, it takes effect from the date of the order passed by the employer for which approval was sought. If approval is not granted, the order of dismissal or discharge passed by the employer is wholly invalid or inoperative, and the employee can legitimately claim to continue to be in the employment of the employer notwithstanding the order passed by him dismissing or discharging him. In other words, approval by the prescribed authority makes the order of discharge or dismissal effective; in the absence of approval, such an order is invalid and inoperative in law.

Sub-sections (3) & (4) of s. 33 deal with cases of protected workmen, but with the provisions contained in these two sub-sections we are not concerned in the present appeal. That leaves s. 33(3)

to be considered. This sub-section requires that where an application is made under the proviso to sub-s. (2), the specified authority has to dispose of the application without delay; and indeed, it expressly prescribes that the said proceedings must be dealt with as expeditiously as possible. This sub-section is naturally limited to cases falling under sub-s. (2). In regard to cases falling under sub-s. (1) the employer can act only with the previous express sanction of the prescribed authority, and, therefore, there is no need to make any provision in regard to an application which the employer may make under sub-s. (1) requiring that the said application should be dealt with expeditiously. That is the general scheme of s. 33.

It is quite clear that s. 33 imposes a ban on the employer exercising his common-law, statutory, or contractual right to terminate the services of his employees according to the contract of the provisions of law governing such service. In all cases where industrial disputes are pending between the employers and their employees, it was thought necessary that such dispute should be adjudicated upon by the tribunal in a peaceful atmosphere, undisturbed by any subsequent cause for bitterness or unpleasantness. It was, however, realized that if the adjudication of such disputes takes long the employers cannot be prevented absolutely from taking action which is the subject matter of s. 33(1) and (2). The Legislature, therefore, devised a formula for reconciling the need of the employer to have liberty to take action against his employees, and the necessity for keeping the atmosphere calm and peaceful pending adjudication of industrial disputes. In regard to actions covered by s. 33(1), previous permission has to be obtained by the employer, while in regard to actions falling under s. 33(2), he has to obtain subsequent approval, subject to the conditions which we have already considered. In that sense, it would be correct to say that the pendency of an industrial dispute is in the nature of a condition precedent for the applicability of s. 33(1) & (2). It would, prima facie, seem to follow that as soon as the said condition precedent ceases to exist, s. 33(1) and (2) should also cease to apply; and the learned Solicitor-General for the appellant has naturally laid considerable emphasis on this basic aspect of the matter.

It is also true that having regard to the conditions precedent prescribed by s. 33(1) and (2), it may be possible to describe the application made by the employer either under s. 33(1) or under s. 33(2) as incidental to the main industrial dispute pending between the parties. We have noticed that such applications have to be made before the specified authority which is dealing with the main industrial dispute; and so, the argument is that an incidental or an interlocutory application which arises from the pendency of the main industrial dispute, cannot survive the decision of the main dispute itself. That is another aspect of the matter on which the learned Solicitor-General relies. He urges that it is during the pendency of the main industrial dispute that s. 33 applies; that it applies in relation to workmen concerned with such main dispute; and that the power conferred by it has to be exercised by the authority before which the main dispute is pending. These broad features of s. 33 impress upon the applications made under s. 33(1) and (2) the character of interlocutory proceedings, and thus considered, interlocutory proceedings must be deemed to come to an end as soon as the main dispute has been finally determined.

On the other hand, there are several considerations which do not support the argument of the appellant that as soon as the main industrial dispute is decided, the application made by it for approval under S. 33(2) should automatically come to an end. As we have already indicated, the application of the appellant can, in a sense, be treated as an incidental proceeding; but it is a separate proceeding all the same, and in that sense, it will be governed by the provisions of s. 33(2)(b) as an independent proceeding. It is not an interlocutory proceeding properly so called in its full sense and significance; it is a proceeding between the employer and his employee who was no doubt concerned with the main industrial dispute along with other employees; but it is nevertheless a

proceeding between two parties in respect of a matter not covered by the said main dispute. It is, therefore, difficult to accept the argument that a proceeding which validly commences by way of an application made by the employer under s. 33(2)(b) should automatically come to an end because the main dispute has in the meanwhile been decided. What is the order that should be passed in such a proceeding, is a question which cannot be satisfactorily answered, unless it is held that the proceeding in question must proceed according to law and dealt with as such.

In this connection it is significant that though the Legislature has specifically issued by s. 33(5) a directive to the specified authorities to dispose of the applications without delay and act as expeditiously as possible, it has not made any provision indicating that if the decision on the applications made under s. 33(2) is not reached before the main dispute is decided, no order should be passed on such applications. There is little doubt that the legislature intends that applications made under s. 33(2) should be disposed of well before the main dispute is determined; but failure to provide for the automatic termination of such applications in case the main dispute is decided before such applications are disposed of, indicates that the Legislature intends that the proceedings which begin with an application properly made under s. 33(2) must run their own course and must be dealt with in accordance with law. The direction that the said proceeding should be disposed of as expeditiously as possible emphasises the fact that the legislature intended that proper orders should be passed on such applications without delay, but according to law and on the merits of the applications themselves.

It is, however, urged by the learned Solicitor-General that it would be futile to allow the present application to proceed any further, because the appellant can proceed to dismiss the respondent notwithstanding the fact that the Tribunal does not accord its approval to its order in question. This argument, in our opinion, is misconceived. It cannot be denied that with the final determination of the main dispute between the parties, the employer's right to terminate the services of the respondent according to the terms of service revives and the ban imposed on the exercise of the said power is lifted. But it cannot be overlooked that for the period between the date on which the appellant passed its order in question against the respondent, and the date when the ban was lifted by the final determination of the main dispute, the order cannot be said to be valid unless it receives the approval of the Tribunal. In other words, the order being incomplete and inchoate until the approval is obtained, cannot effectively terminate the relationship of the employer and the employee between the appellant and the respondent; and so, even if the main industrial dispute is finally decided, the question about the validity of the order would still have to be tried and if the approval is not accorded by the Tribunal, the employer would be bound to treat the respondent as its employee and pay him full wages for the period even though the appellant may subsequently proceed to terminate the respondent's services. Therefore, the argument that the proceedings, if continued beyond the date of the final decision of the main industrial dispute, would become futile and meaningless, cannot be accepted.

There is another aspect of this matter to which reference must be made. Section 33A makes a special provision for adjudication as to whether any employer has contravened the provisions of s. 33. This section has conferred on industrial employees a very valuable right of seeking protection of the Industrial Tribunal in case their rights have been violated contrary to the provisions of s. 33. Section 33-A provides that wherever an employee has a grievance that he has been dismissed by his employer in contravention of s. 33(2), he may make a complaint to the specified authorities and such a complaint would be tried as if it was an industrial dispute referred to the Tribunal under s. 10 of the Act. In other words, the complaint is treated as an independent industrial proceeding and an award has to be pronounced on it by the Tribunal concerned.

Now, take the present case and see how the acceptance of the appellant's argument would work. As we have already pointed out, in the present case the Tribunal has considered the merits of the appellant's prayer that it should accord approval to the proposed dismissal of the respondent and it has come to the conclusion that having regard to the relevant circumstances, the approval should not be accorded. If the appellant's argument is accepted and it is held that as soon as the main industrial disputes were finally determined, the application made by the appellant under s. 33(2) automatically came to an end, the respondent would not be able to get any relief against the appellant for the wrongful termination of his services between the date of the impugned order and the final disposal of the main industrial disputes; and this would mean that in a case like the present, s. 33A would be rendered nugatory, because the employer having duly applied under s. 33(2)(b), the employee cannot complain that there has been a contravention of s. 33 by the employer, even though on the merits the dismissal of the employee may not be justified. That, in our opinion, could not have been the intention of the Legislature. This aspect of the matter supports the conclusion that a proceeding validly commenced under s. 33(2)(b) would not automatically come to an end merely because the main industrial dispute has in the meanwhile been finally determined.

It is of course true that under S. 33 the authority to grant permission or to accord approval in cases falling under s. 33(1) and (2) respectively, is vested in the Tribunal, before which the main industrial dispute is pending, but that is not an unqualified or inflexible requirement, because s. 33B(2) seems to permit transfers of applications before one Tribunal to another, and in that sense, the argument urged by the appellant that the condition that a specified Tribunal alone can deal with applications made to it is an inflexible condition, cannot be accepted. We are, therefore, satisfied that the Tribunal was right in over-ruling the contention raised by the appellant that the application made by it for approval under s. 33(2)(b) ceased to constitute a valid proceeding by reason of the fact that the main industrial disputes, the pendency of which had made the application necessary, had been finally decided.

This question has been considered by several High Courts in this country. The High Courts of Calcutta, Madras and Mysore have taken the view for which the learned Solicitor-General has contended before us, vide Alkali and Chemical Corporation of India Ltd. v. Seventh Industrial Tribunal, West Bengal, and Ors. [[1964] II L.L.J. 568]; Mettur Industries Ltd. v. Sundara Naidu and Anr.; [[1963] II L.L.J. 303] and Shah (A.T.) v. State of Mysore and Ors. [[1964] I L.L.J. 237] respectively. On the other hand, the Kerala, the Punjab, and the Allahabad High Courts have taken the view which we are inclined to adopt, vide Kannan Devan Hill Produce Company, Ltd., Munnar v. Miss Aleyamma Varughese and Anr.; [[1962] II L.L.J. 158] Om Prakash Sharma v. Industrial Tribunal, Punjab and Anr.; [[1962] II L.L.J. 272] and Amrit Bazar Patrika (Private) Ltd. v. Uttar Pradesh State Industrial Tribunal and Ors. [[1964] II L.L.J. 53] respectively. In our opinion, the former view does not, while the latter does, correctly represent the true legal position under s. 33(2)(b).

That takes us to the merits of the findings recorded by the Tribunal in support of its final decision not to accord approval to the action proposed to be taken by the appellant against the respondent. We have already indicated very briefly the nature and effect of the said findings. The learned Solicitor-General no doubt wanted to contend that the said findings were not justified on the evidence adduced before the Tribunal. We did not, however, allow the learned Solicitor-General to develop this point, because, in our opinion, the findings in question are based on the appreciation of oral evidence, and it cannot be suggested that there is no legal evidence on the record to support them. Usually, this Court does not under Art. 136 of the Constitution entertain a plea that the findings of fact recorded by the Industrial Tribunal are erroneous on the ground that they are based

on a misappreciation of evidence. The propriety or the correctness of the findings of fact is not ordinarily allowed to be challenged in such appeals.

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

Appeal dismissed.

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