Caltex India Limited

Vs

Presiding Officer, Labour Court, and Ors.

Civil Appeal No. 1006 of 1964

(CJI P. B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, J. C. Shah, S. M. Sikri JJ)

23.02.1966

JUDGMENT

WANCHOO, J.-

The main question raised in this appeal by special leave against the judgment of the Patna High Court is the constitutionality of s. 26 of the Bihar Shops and Establishments Act, No. 8 of 1954, (hereinafter referred to as the Act). The question arises in this way. The appellant is carrying on business in petroleum products in the Patna district. Habibur Rahman was serving as a watchman and Abdul Rahim as a driver in the permanent employ of the appellant at the Dinapore depot. They were charged with gross misconduct and an enquiry was held by the appellant in that connection. Habibur Rahman was discharged on May 5, 1960 and one month's pay in lieu of notice was offered to him. Abdul Rahim was dismissed on April on April 22, 1960. These two employees made applications under s. 26 of the Act in December 1960 before the labour court. These applications were obviously barred by time. The labour court condoned the delay without giving any notice to the appellant on the question and issued notice to show cause why the dismissal/discharge be not set aside. On receipt of this notice, the appellant learnt that delay the applications had been condoned without hearing it. Consequently the appellant moved the High Court at Patna under Art. 226 of the Constitution for quashing the order of the labour court condoning the delay on the ground that it had been passed without hearing the appellant. Thereafter in March 1961 the appellant moved the labour court for recalling the ex parte order of condonation. The labour court heard the appellant on March 27, 1961 and decided on April 4, 1961 to condone the delay and confirm the ex parte order already passed. Thereupon the appellant filed another writ petition in the High Court out of which the present appeal has arisen. In this petition the order dated April 4, 1961 was attacked on various grounds. Besides the appellant also attacked the validity of s. 26 of the Act. It may be mentioned that a number of other petitions had also been filed before the High Court attacking the validity of s. 26 of the Act. All these petitions were heard together and the High Court held that s. 26 was constitutionally valid. It also held that the order of April 4, 1961 showed that delay had been condoned after hearing the appellant and therefore there was no cause for interference with that order. The appellant moved the High Court for a certificate to appeal to this Court, which was refused. It then applied for special leave, which was granted and that is how the matter has come before us.

The attack of the appellant is on the proviso to s. 26(1) of the Act, and the only ground that has been urged before us on its behalf is that that proviso suffers from the vice of excessive delegation and should therefore be struck down. The relevant part of s. 26 is in these terms :

"26. Notice of dismissal or discharge - (1) No employer shall dismiss or discharge

from his employment any employee who has been in such employment continuously for a period of not less than six months except for a reasonable cause and without giving such employee at least one month's notice or one month's wages in lieu of such notice :

Provided that such notice shall not be necessary where the services of such employee are dispensed with on a charge of such misconduct as may be prescribed by the State Government, supported by satisfactory evidence recorded at an inquiry held for the purposes."

It is not necessary to set out the rest of s. 26 for that is not under attack.

The contention on behalf of the appellant is that when the proviso lays down that no such notice would be necessary as is mentioned in the main part of s. 26(1) where services are dispensed with on the charge of misconduct and the State Government is given full power to specify the nature of the mis-conduct which would eliminate the necessity of a notice, there is excessive delegation of its authority by a legislature in the matter of specifying the nature of such misconduct. It is urged that as the proviso stands it gives arbitrary and naked power to the State Government to specify and misconduct on proof of which notice could be dispensed with.

We are of opinion that there is no substance in this contention. Under s. 40 of the Act, the State Government has been given the power to make rules to carry out the purpose of the Act. Clause (c) of s. 40(2) specifically empowers the State Government to frame rules to provide for the nature of misconduct of an employee for which his services may be dispensed with without notice. By virtue of that power, the State Government framed r. 20(1) which specifies as many as 11 acts which are to be treated as misconduct on proof of which no notice as required by s. 26(1) would be necessary.

We are of opinion that there is guidance in the words of the section itself in the matter of specifying misconduct on proof of which no notice would be necessary. It is well known that in industrial law there are two kinds of misconduct, namely, (i) major misconducts which justify punishment of dismissal/discharge, and (ii) minor misconducts which do not justify punishment of dismissal/discharge but may call for lesser punishments. Therefore when the legislature indicated that the State Government will prescribe the kinds of misconduct on proof of which no notice will be required and services of an employee can be dispensed with it was clearly indicating to the State Government to include in its list of misconducts such of them as are generally understood as major misconducts which justify the dismissal/discharge of an employee. This in our opinion is sufficient guidance to the State Government to specify in the rule it was expected to make such misconduct as is generally understood in industrial law to call for the punishment of discharge/dismissal. It is difficult to see what other guidance the legislature could have given to the rule making authority in its behalf. The only other way in which the legislature could have acted would be to indicate the list of several items of misconduct in the section itself; but apparently the legislature thought that by delegating authority to the State Government the matter of what misconduct should be sufficient to dispense with notice would remain flexible and the State Government would from time to time look into the matter and see what misconduct should be prescribed for this purpose. The authority was being delegated to the State Government an that is also a consideration which the legislature might have kept in its mind when it gave this flexible power to the State Government. The legislature must have known that in industrial law misconduct is generally of two kinds (namely, (i) major misconduct justifying punishment of discharge/dismissal, and (ii) minor misconduct justifying lesser punishment), and that appears to have been thought by the legislature to be sufficient guidance to

the State Government to prescribe by rule such misconduct as is major in nature and deserves punishment of discharge or dismissal. Looking at the list of several items of misconduct which have been prescribed by the State Government under r. 20(1), we are of the opinion that the State Government also properly understood the guidance which was contained in the words of s. 26(1) and its proviso and has prescribed a list of what are clearly major misconducts for the purpose and has also included therein by the last clause "breach of the provisions of the Standing Orders applicable to the establishment and certified under the Industrial Employment (Standing Orders) Act, 1946". The last clause would thus include all other major misconducts which would justify an order of dismissal/discharge. Therefore as we read the words of s. 26(1) and its proviso, we have no doubt that there is sufficient guidance there for the State Government to define misconduct on proof of which no notice would be necessary. Further, if we look at what the State Government has done by r. 20(1), it is clear that the State Government also rightly understood the guidance contained in the words of the section and has acted accordingly. In the circumstances we are of opinion that the proviso to s. 26(1) is not ultra vires because of the vice of excessive delegation.

Learned counsel for the appellant also wanted to urge that the order of the labour court condoning delay was bad. We have not allowed him to pursue this point. It is true that the first order condoning delay made in December 1950 was ex parte; but after the writ petition was filed against that order by the appellant in the High Court, the labour court gave an opportunity to the appellant and heard it on March 27, 1961. After hearing both parties, the labour court confirmed the order condoning delay which it had already made. It cannot therefore be said now that the order was made without hearing both the parties. The High Court has not thought fit to interfere with the order condoning delay after hearing both parties made on April 4, 1961. We cannot see how the appellant can ask us to interfere in the matter in an appeal by special leave.

The appeal therefore fails and is hereby dismissed with costs to respondent No. 4, namely, the State of Bihar.

Appeal dismissed.

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