SUPREME COURT OF INDIA

G. E. C. (P) Ltd., Naini, Allahabad

Vs.

Labour Court Allahabad

C.A.No.958 of 1966

(J. M. Shelat, V. Bhargava and C. A. Vaidialingam, JJ.)

05.08.1968

JUDGEMENT

VAIDIALINGAM, J.:-

1. In this appeal, by special leave, the question, that arises for consideration, is as to whether the award of the Labour Court, Allahabad, dated September 16, 1965, directing the reinstatement of six workmen, referred to in the order of reference is justified.

2. The facts leading up to the award may be referred to. There was a strike, in the establishment of the appellant company, from March 18, 1964. There was a meeting of the District Industrial Relations Advisory Committee, on March 29, 1964, presided over by the District Magistrate of the area. Representatives of the management and the workmen, attended the said meeting. The proceedings of the meeting show that the Advisory Committee decided to appeal to the appellant not to take any action against the workers, on the ground that they had gone on strike, from March 18, 1964. There was an appeal to the District Magistrate, Allahabad, to release, as a gesture of goodwill, the arrested employees of the company, who were not involved in violence. The Union,

representing the workers of the appellant, in turn decided to call off the strike and directed the workmen to resume work with effect from the morning of March 30, 1964. There is no controversy that the strike was called off, and certain workers, who had been arrested in connection with the strike were also released from jail, on March 29, 1964 itself. This strike will be referred to, as the first strike in the course of this judgment.

3. On March 20, 1964, the respondent Union had given to the appellant another notice, stating that the workmen of the appellant company would be going on a token strike, for one day, after fourteen days of the receipt of the notice, in sympathy with the workers of the Swadeshi cotton Mills, Naini. The exact date, on which the strike was to take place, was not given in the notice, as required under sub-section (4) of Sec. 68 of the U. P. Industrial Disputes Act 1947 (hereinafter referred to as the Act) On April 9, 1964, the respondent Union again intimated to the management about the workmen's intention to go or strike on April 10, 1964, and offered to work on a Sunday, so that there would be no loss of production; but the management intimated the Union that the factory would work on April 10, 1964. A token strike actually took place, on April 10, 1964. This strike will be termed as the second strike, in these proceedings.

4. In respect of the first strike the Management had, on March 28,1964 charge-sheeted, for going on an illegal strike, some of the workmen including the workmen, whose dismissal had been set aside by the present award. A joint reply was sent, by the concerned workmen, On April 9, 1964, to the management, drawing their attention to the decision of the District Industrial Relations Advisory committee, dated March 29, 1964, and the settlement, arrived at, therein, between the management and the Union. The workmen also requested the management, not to disobey the decision of the committee. The appellant sent a communication, on April 10,, 1964, to the workmen, stating that they had not made any commitment, at the meeting On March 29, 1964, that the management would not proceed with the taking of disciplinary action, against an employee, who committed a misconduct according to the Standing Orders of the Company. The workmen were again directed to furnish, within 24 hours, their reply, if any, to the charge-sheet, dated March 28, 1964.

5. On May 8, 1964, the Acting Works Manager, of the appellant company, passed orders, warning the concerned workmen, for having misconducted themselves, as stated in the charge-sheet dated March 28,1964. It is further stated, in this order, that after hearing the explanation, furnished by the workmen, the management holds the workmen guilty of misconduct, for which they could have been dismissed; but the management has taken a lenient view and, hoping that the misconduct will not be repeated, administers an earnest warning.

6. In respect of the second strike, which took place on April 10, 1964, the management charge-sheeted, on April 16 1964, thirteen workmen, for going on illegal strike, which is a misconduct, under sub-clause (2) of Clause 21, of the Certified Standing Orders of the company, and as the strike was in violation of sub-section (4) of Section 6-S of the Act. There was a further charge that the workmen, concerned, had intimidated and prevented other willing workers from going to work. The

workmen were directed to offer their explanation, as to why disciplinary action need not be taken for their conduct.

7. On April 17, 1964, the thirteen workmen, jointly sent a reply saying that the strike, on April 10, 1964, was legal, and due notice had been given, under the provisions of the Act. They also denied having intimidated, or restrained any willing worker from going to work. They further stated that they had not committed any misconduct. The management proceeded to conduct an inquiry, against the thirteen workmen, and Sri K.D.Gupta, an officer of the company, was entrusted with the conduct of the said inquiry. Shri Gupta accordingly conducted an enquiry on April 20, 1964, and sent his report to the Acting Works Manager, on April 24, 1964. After referring to the conduct of the inquiry proceedings, Shri Gupta has stated that the thirteen workmen are guilty of participation in an illegal strike, on April 10, 1964, and, as participation in an illegal strike, is a misconduct, under Cl. 21 (2) of the Certified Standing Orders of the Company, the workmen concerned are guilty of misconduct; but, regarding the charge of intimidation and incitement, the inquiry officer found that the said charge was not established.

8. On May 22, 1964, the Acting Works Manager of the appellant accepted the report of Shri Gupta and passed orders, administering a warning, to seven out of the thirteen, workmen; but, regarding the remaining six workmen, the Works Manager, after taking into account the warning that had been administered to them, on May 8, 1964, for going on an illegal strike (referring to the first strike), passed orders dismissing them from service.

9. The Union raised a dispute, regarding the dismissal of the six workmen and accordingly the said dispute was referred to the Labour Court, Allahabad, for adjudication.

10. The case of the workmen was that the strike, on April 10, 1964, was legal, and that the domestic inquiry, conducted by Shri Gupta, was neither bona fide, nor fair. They also contended that in view of the settlement, arrived at on March 29, 1964, in respect of the first strike, the management had no right to take any action, by way of warning the workmen, as it purported to do, on May 8, 1964. Taking the said warning into account, for the purpose of imposing the punishment of dismissal, amounted to a vindictive conduct, on the part of the management, and, therefore, the order of dismissal was illegal.

11. The management, on the other hand, contended that the strike, that took place on April 10, 1964, was illegal, as a was not in accordance with the provisions of the Act and participation, in such illegal strike, was a misconduct, under Cl. 21 (2) of the Standing orders of the Company and, such misconduct could be punished by dismissal, under Cl. 22. According to the management, the inquiry proceedings, conducted by Shri Gupta, were quite fair, and bona fide, and the workmen were given full opportunity to participate in the inquiry proceedings. They also pleaded that the management was entitled, to impose punishment for misconduct, by taking into account the

previous conduct of the workmen concerned; and, in this case, the warning, recorded against them on May 18, 1964, was legitimately and properly taken into account, inasmuch as the management had not agreed to withdraw the proceedings, against the workmen.

12. The Labour Court has upheld the plea of the management, that the Second Strike, on April 10, 1964, being contrary to Sub-S. (4) of S. 6-S was illegal under S. 6-T of the Act; but it has further held that, notwithstanding the infirmity in the notice, issued by the workmen regarding the second strike, all the managements in the area, including the appellant, were fully aware of the fact of the intended token strike on April 10, 1964. The Labour Court has further held that the inquiry proceedings, conducted by Shri Gupta, were bona fide and fair, and they suffered from no infirmity, whatsoever. The Labour Court further holds that though normally imposing of a punishment, for misconduct, under the standing Orders, is a managerial function, in this case, the appellant was not justified in taking into account the warning, recorded on May 8, 1964, in respect of the first strike. It is the further view, of the Labour Court, that the continuance of disciplinary proceedings, and recording of warning, on May 8, 1964, by the appellant, against the six concerned workmen, in respect of the first strike, was with a view to create a ground for punishment and dismissal, in the subsequent proceedings, relating to the second strike, and, as such, the action of the management was not bona fide. The Labour Court, in this connection, refers to the proceedings of the District Industrial Relations Advisory Committee, that took place on March 29, 1964, in the presence of the representatives of the appellant, and the Union, and the Labour Court is of the view that a settlement had been arrived at, by which the management has agreed, not to lake any disciplinary action, against the workers, in connection with the first strike. Ultimately, the Labour Court holds that the punishment of dismissal, inflicted on the six workmen, by the appellant, on May 22, 1964, is unconscionable and unjustified, and not recorded in a bona fide manner. In consequences, the order of dismissal, passed against the six concerned workmen, named in the annexure to the order of reference, was set aside and the workmen were directed to be reinstated with 50 per cent back wages.

13. We have fairly elaborately referred to the various circumstances, leading to the passing of the order of dismissal, by the management, in order to appreciate the contentions, urged on behalf of the management, that the Labour Court had committed a serious illegality, in interfering with an order, passed by the management, for misconduct, as provided under the standing orders of the company.

14. Mr. H. R. Gokhale, learned counsel, for the appellant, raised two contentions before us: (i) that the finding of the Labour Court, that at the meeting of the District Industrial Relations Committee, held on March 29, 1964, the appellant agreed not to take disciplinary action, against its workmen, in respect of the first strike, is erroneous; and (ii) that having held that the second strike was illegal as being contrary to sub-s. (4) of S. 6-S of the Act, the labour Court has committed an error in interfering with the act of the management when it imposed a punishment, for misconduct, under the standing orders of the company.

15. Mr. R. Vasudeva Pillai, learned counsel for the Union, has supported, in full, the award of the Labour Court.

16. We are not impressed with either of the contentions, of the learned counsel for the appellant. We have already referred to the proceedings, of the District Industrial Relations Committee, of March 29, 1964. No doubt, a day prior to that, the appellant had issued notices to the workmen, asking them to show cause as to why disciplinary action should not be taken against them, for going on strike from March 18, 1964. There was a joint reply, given by the workmen, on April 9, 1964, to the effect that, at the meeting held on March 29, 1964, the management had agreed, not to take any disciplinary action, against the workmen, and that, it was on that basis that the strike itself was called off, and the workmen, arrested, were also released by the Government. There was no doubt an attempt, by the management, in their reply of April 10, 1964, to make it appear that they had not committed themselves, at the meeting of March 29, 1964, as mentioned by the workmen. But it is rather surprising that, when the President of the Union, WW1, gave evidence to the effect that there was a settlement, on March 29, 1964, whereby the management had agreed not to take any disciplinary action, against the workmen, there was absolutely no cross-examination, by the appellant of that witness. There is no dispute that Mr. Wright represented the management, at the said meeting, and no suggestion even has been made to WW1 that the evidence, given by him, is not correct. No doubt, the appellant, in their letter of April 10, 1964, had taken the stand that the company had not committed itself, not to take any action against the workmen, in respect of the first strike. The inquiry report of Shri Gupta, in respect of the second strike, was already in the hands of the management on April 24, 1964. It is really after the receipt of this report, that the Acting Works Manager of the appellant-company recorded warnings, as against the concerned workmen, on May 8, 1964, in respect of the first strike. This warning has been taken into account, by the Works Manager, when he passed the order of dismissal, in respect of the second strike, on May 23, 1964. Having due regard to these circumstances, the finding of the Labour Court, that the continuance of the disciplinary proceedings, and recording of punishments of warnings, as against the six concerned workmen, on May 8, 1964, in respect of the first strike, by the management, was to create a ground for punishment and dismissal, in respect of the second strike, is perfectly justified. The further finding of the Labour Court, that the action of the management, in recording warnings in respect of the first strike, is not only not bona fide, but also against the settlement, arrived at, on March 29, 1964, is also correct. The first contention, on behalf of the management, therefore, fails.

17. There is the finding of the Labour Court, that the second strike, on April 10, 1964, is illegal. Going on illegal strike, is certainly 'misconduct', under sub-cl. (2) of Cl. 21, of the Standing Orders of the company. Under Cl. 22 of the Standing Orders, the punishment for misconduct is dismissal, or, in the alternative suspension, for a period not exceeding four days. If the management had, without any regard to what happened, in respect of the first strike, imposed punishment under Cl. 22, in respect of an illegal strike, which is 'misconduct under Cl. 21 (2) of the Standing Orders, after a fair inquiry the punishment, meted out being a managerial function, would not be normally interfered with. But, in this case, even the order of dismissal clearly shows that the management has taken into account the previous conduct of the workmen in having gone on the first strike, and the punishment of warning, administered on May 8, 1964. It is because of this past conduct, it is further stated in the order, that the six workmen were being dismissed from service. The finding of the Labour Court is that the management was not entitled to take into account the warning, given on

May 8, 1964, in respect of the first strike, in view of the settlement, on March 29, 1964. In view of the fact that the warning has been taken into account, by the management, which it is not entitled to, the punishment of dismissal has been rightly considered, by the Labour Court, to be not bona fide, and vindictive. In fact, the Labour Court is also of the view that the punishment is unconscionable, and unjustified. It is on these grounds, that the Labour Court has interfered with the order of dismissal, passed by the management. The second contention, of learned counsel for the appellant, also fails, as we are in agreement with the reasons, given by the Labour Court, on this aspect of the matter.

18. The result is that this appeal fails, and is dismissed. There will be no order as to costs.

Appeal dismissed.