Management of Messrs. Pradip Lamp Works

Vs

Pradip Lamp Works Karamcharya Sangh and Another

Civil Appeal No. 482 of 1967

(V. Ramaswami-I, I.D. Dua JJ)

16.10.1969

JUDGMENT

DUA, J. –

1. This appeal by special leave is directed against the award of the Industrial Tribunal, Bihar, dated October 13, 1966, by means of which the workmen of the appellant were held entitled to wages for the period of the lock-out beginning with February 28, 1964 and ending with March 22, 1964.

2. On March 20, 1964 the governor of Bihar referred to following disputes to the Industrial Tribunal :

> 1. Whether the strike launched by the workers on the morning of the 27th February, 1964, was justified ?
>
> 2. Whether the lock-out declared by the Management is justified ?
>
> 3. Whether the workmen are entitled to wages for the period of strike and/or lock-out ?

On the first point the Tribunal came to the conclusion that the strike by the workmen on February 27, 1964, was not justified. As a result of this conclusion the lock-out declared by the Management on February 27, 1964 was held to be justified but on a consideration of the material placed before the Tribunal no justification for continuing the lock-out on the following days was shown. On this conclusion the Tribunal decided under point No. 3, that the workmen were entitled to wages for the remaining period of the lock-out.

3. In this Court the learned Advocate for the appellant raised only two points. The first submission attacked the decision of the Tribunal under point No. 2, where it is held that the lock-out by the Management was unjustified after February 27, 1964, and the second submission assailed the decision under point No. 3 awarding to the workmen wages for the period of lock-out between February 28, 1964 and March 22, 1964.

4. On the first point Shri Gokhale very frankly conceded that the finding of fact arrived at by the Tribunal was not open to challenge in the present appeal under Article 136 of the Constitution. He, however, contended that the order of the Tribunal in this respect is open to question on the ground that the appellant had been deprived of a reasonable opportunity of adducing evidence in support of its case. He referred us to the proceedings of the Tribunal held on September 29, 1966. On that date

the Tribunal recorded the following order :

> "Parties present. Management is represented by Shri Pandey S. Prasad, Personal Officer and the workmen are represented by Shri Kalika Nandan Singh, Advocate, on behalf of Pradeep Lamp Works Karamchari Sangh and Shri B. B. Karan on behalf of Pradeep Lamp Workers' Union. Shri Karan files written statement on behalf of his union today. This written statement cannot be accepted as it has been filed so late. The Workers' Union may adduce its evidence if it so likes.
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> Hearing of the case is taken up. As the Karamchari Sangh pleaded its inability to start its evidence, the management is called upon to produce its witnesses. The management examines M. W. 1. Trilokinath Rastogi and M. W. 2, Shri R. M. Kahattriya who are discharged after cross-examination. M. W. 1, proves Exts. A, A-1, B, B-1, B-2 and B-3 for the management. Thereafter the management prays that the case may be adjourned as it wants to examine more witnesses. The parties should have come ready with all their evidence today. The prayer for adjournment by the management closed. Union examined L. W. 1, Krishna Thakur who is discharged, after cross-examination. As it is late, the case is adjourned for tomorrow for further hearing. Call for the letter of the Labour Commissioner, dated March 13, 1964 on party's risk."

5. The argument strongly pressed on behalf of the appellant was that the Tribunal was wrong in rejecting the appellant's prayer for adjournment when it had already given time to the Karamchari Sangh to produce its evidence later because of its inability to start its evidence in the first instance. According to the appellant's argument the discretion exercised by the Tribunal was arbitrary and contrary to the accepted judicial procedure. In this connection our attention was also drawn to a written application made by the appellant to the Tribunal on September 29, 1969, seeking an opportunity for producing the witnesses named therein, but the prayer was disallowed by the Tribunal. The order of the Tribunal discriminatory and violative of the recognised standards of judicial impartiality. Had the Sangh been compelled to start its evidence, then, so proceeded the argument, the appellant's oral evidence could not be closed because the case was adjourned to the following day without concluding the recording of the evidence of the Union party and on that day the remaining evidence of the management could be produced in the normal course.

6. On behalf of the respondent Shri Manchanda tried to meet this argument by submitting that the parties must be presumed to have been directed by the Tribunal on the previous hearing to come ready with their oral evidence on September 29, 1966. To rebut this presumption, argued Shri Manchanda, the appellant should have got printed the previous order adjourning the case to September 29, 1966, for recording the evidence of the parties. The learned Advocate also submitted that the question whether or not a party is entitled to an adjournment for producing its evidence is a matter of discretion and the exercise of discretion cannot be assailed on appeal under Article 136 of the Constitution.

7. The second point strongly urged by Shri Gokhale relates to the grant of full wages to the workmen for the remaining period of the lock-out. If the blame for the lock-out was apportionable to both the parties, according to the submission, full wages could not be awarded. In such cases the normal practice, argued the learned Advocate, was to award half of their wages. In support of this submission reference was, to begin with, made to a decision of this Court as Indian General Navigation and Railway Co. Ltd. v. their Workmen. At page 31 of the report this Court said :

> "As regards the remaining workmen, the question is whether the Tribunal was entirely correct in ordering their reinstatement with full back wages and allowances on and from August 20, 1955, reinstatement. This would amount to wholly condoning the illegal act of the strikers. On the findings arrived at before us, the workmen were guilty of having participated in an illegal strike, for which they were liable to be dealt with by their employers. If is also clear that the inquiry held by the appellants, was not wholly regular as individual charge-sheets had not been delivered to the workmen proceeded against. When the blame attaches to both the parties, we think that they should divide the loss half and half between them. We, therefore, direct that those workmen whose reinstatement by the Tribunal is upheld by us, should be entitled only to half of their wages during the period between the date of the cessation of the illegal strike (i. e. from August 20, 1955) and the date the Award became enforceable. After that date they will be entitled to their full wages, on reinstatement."

8. The other decision cited on this point is reported as India Marine Service Private Ltd. v. their Workmen. At page 583 of the report it was observed thus :

> "It is true that the strike was intended to be a token one. But the object that strike being to circumvent settlement in an amicable manner, even though the company was ready for such settlement, we have no doubt that strike was unjustified. It is in the light of this finding that the lock-out has to be judged. In our opinion, wile the strike was unjustified the lock-out when it was ordered on November 13, 1958, was justified. It seems to us, however, that though the lock-out was justified at its commencement its continuance for 53 days was wholly unreasonable and, therefore, unjustified. In a case where a strike is unjustified and is followed by a lock-out which has because of its long duration, become unjustified it would not be a proper course for an industrial tribunal to direct the payment of the whole of the wages for the period of the lock-out. We would like to make it clear that in a case where the strike is unjustified and the lock-out is justified the workmen would not be entitled to any wages at all. Similarly where the strike is justified and the lock-out is unjustified the workmen would be entitled to the entire wages for the period of strike and lock-out. Where, however, a strike is unjustified and is followed by a lock-out which becomes unjustified a case for apportionment of blame arises."

9. In that case also the blame for the situation was apportioned roughly half and half between the Company and the workmen with the result that the workmen were given half of their wages for the period in question.

10. The respondent's learned Advocate submitted in reply that the management had been adopting dilatory tactics and there was a very trivial instance of slapping a workman which had led to a demand by the workmen for an apology from the offending part and this had led to the strike and the lock-out. In the background of this situations, the learned Advocate contended, the order giving full wages to the workmen was fully justified. It was emphasised that for one day went the strike was held to be illegal, the workmen have been deprived of their wages completely. Thereafter they were always willing to work but the management declared a lock-out and continued the same without any justification. The learned Advocate referred us to a decision of a Labour Appellate Tribunal in Jeypore Sugar Co. Ltd. v. Their Employees, in support of his submission that the assault on a workman was not a matter of such a serious nature as would justify the management to declare

the lock-out, more particularly to continue it for such a long duration.

11. In our opinion, it was incumbent on the Tribunal to apply its mind to the question of apportionment of blame on the two parties and to its effect on the amount of wages to be awarded to the workmen for the period of the lock-out after February 28, 1964. The order of the Tribunal ignoring this important aspect is infirm and is difficult to sustain. In so far as the first question is concerned, prima facie, the order of the Tribunal does appear to be somewhat arbitrary and injudicious and it would have been more appropriate exercise of judicial discretion to adjourn the case to the following day for the production of the appellant's evidence, if necessary, on payment of costs. Had we decided to remit the case back to the Tribunal for considering the question of the effect of both parties being blame worthy for the lock-out on the amount of wages to be awarded, we would have perhaps though it proper also to direct the Tribunal to permit the appellant to adduce evidence. This evidence, we were informed, was only sought to be adduced on the question of apportionment of blame. On a consideration of all the facts and circumstances of the case we, however, feel that it would be more just and proper not to prolong this litigation and to put to an end to the controversy by directing that half wages should be paid to the workmen for the period of lock-out from February 28, 1964.

12. We accordingly allow the appeal to the extent stated but in the circumstances of the case there would be no order as to costs.

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