

The Hindusthan General Electrical Corporation Ltd.

Vs

Bishwanath Prasad and Another

Civil Appeal No. 2167 of 1966

(G.K. Mitter, C.A. Vaidialingam, P. Jagmohan Reddy JJ)

17.08.1971

JUDGMENT

MITTER, J. -

1. This appeal by special leave arises out of an order of the Patna High Court setting aside the award, dated February 23, 1962, made by the presiding Officer of the Labour Court, Ranchi and remitting the matter back to him for making a fresh award in accordance with the observations of the High Court.

2. The facts are as follows. The first respondent, Bishwanath Prasad a workman of the appellant, made a complaint in writing to the officer in charge of Nirsa Police Station on September 19, 1960, stating inter alia that the members of his Union were being harassed repeatedly by the Management of the company and that the labourers had reported on that day that an Assistant Manager, a Labour Welfare Officer and others had broken open the lock of the room of a worker by the name of Kashi Nath Singh and thrown away his belongings when he was actually on duty. The police were requested to take proper action against the said Assistant Manager. After enquiry the officer-in-charge Nirsa police station submitted a final report on November 19, 1960 to the effect that the complainant Bishwanath Prasad had deliberately brought a false complaint. The Sub-divisional Officer of the District acting on the final report dismissed the complaint on January 12, 1961. The Management served the respondent Bishwanath Prasad with a charge-sheet on January 23, 1961 to show cause why disciplinary action should not be taken against him for his misconduct subversive of discipline in making serious defamatory allegations against the officers in general and to two of the officers in particular who had been put to great harassment and humiliation at the investigation by the police. The explanation given by Bishwanath Prasad to the charge-sheet was that he had made the report to the police after receiving a complaint from Kashi Nath Singh, a member of his Union with no intention to undermine the prestige of the officers concerned and the discipline in the factory, but simply to pacify the workers who were very much excited owing to the Action of the officer. It appears that an enquiry into the matter was fixed by the Management and the respondent was asked to appear at the enquiry on January 30, 1961 but he failed to attend the same and sent a letter "asking for an open enquiry in which representatives of the Labour Department, Dhanbad should be present". The enquiry officer sent in his report and the management acting thereupon dismissed the respondent from service with effect from the date of suspension, namely, January 23, 1961.

3. Quite unconnected with the above matter, there was trouble in the factory on January 10, 1961, when one group of workers is alleged to have assaulted another group due to inter-union rivalry. The Company dismissed 10 workmen on the ground of their assaulting two others on January 28,

1961.

4. On March 28, 1961, the Government of Bihar referred an Industrial Dispute to the Labour Court, Ranchi, regarding the dismissal of the 11 workmen including the respondent Bishwanath Prasad. The labour Court examined the merits of the matter and held that the orders of dismissal meted out by the management to all the workmen would have to be maintained and the workmen were not entitled to any relief. Examining the facts and circumstances in the light of the principles formulated by this Court in the case of *Indian Iron and Steel Co. Ltd. v. Their Workmen*, (1958 SCR 667 : AIR 1958 SC 130 : 1958 SCJ 285) at page 685 that :

"In case of dismissal on misconduct, the Tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere, (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and (iv) when on the materials the finding is completely baseless or perverse."

The Tribunal held that the finding of the management with regard to the guilt of the 10 workmen other than Bishwanath Prasad was not in any way unwarranted or perverse and the management was not actuated by bad faith. With regard to Bishwanath Prasad the Tribunal examined the facts and circumstances relied on by the parties and held that the order of dismissal was not vitiated on any of the well-known grounds of interference as laid down in *Indian Iron and Steel Co.'s case* (supra).

5. The Tribunal also examined the plea put forward on behalf of the workers that the orders of dismissal should be held to be illegal inasmuch as they were all passed during the pendency of a conciliation proceeding. The Tribunal noted that no evidence had been led to sustain the plea and the Union had only placed on record carbon copies of two letters which were alleged to have been addressed to the Labour Officer, Dhanbad. The Tribunal was not satisfied that the letters had actually been delivered to the Labour Officer and found that there was no evidence to show that the Labour Officer had applied his mind to the matter mentioned in those letters and accordingly took the view that the pendency of a conciliation proceeding at the relevant time had not been established.

6. The respondent, Bishwanath Prasad, filed a petition under Article 226 and 227 of the Constitution before the Patna High Court challenging the award inter alia on the ground that the Labour Court had failed to appreciate that the enquiry officer had acted mala fide and in violation of the principles of natural justice in holding the enquiry. A complaint was also made that the letters from the conciliation officer Dhanbad were ignored by the Labour Court. The management filed a Counter Affidavit justifying its action against the workmen and submitting that the award had been correctly made.

7. Before the High Court one of the main pleas taken on behalf of the respondent was that the order of dismissal against him having been passed in contravention of Section 33 of the Act was invalid and ineffective and on that ground alone he should have been reinstated. It was also contended that in cases where an order of dismissal passed in contravention of Section 33 of the Act was the subject-matter of adjudication either by virtue of a reference under Section 10(1) or by reason of a complaint under Section 33-A of the Act, the enquiry held by the employer before passing the order of dismissal was of no avail. According to the High Court all the contentions raised on behalf of the petitioner are found on the basic fact that there was contravention of Section 33. Referring to the

judgment of this Court in *The Punjab National Bank Ltd. v. Its Workmen*, ((1960) 1 SCR 806 : AIR 1960 SC 160 : 1960 SCJ 999) the High Court took the view that it was necessary for the Labour Court to first go into the question whether or not there was a conciliation proceeding pending at the date when the dismissal order was made with a view to find out whether the date when the dismissal order was made with a view to find out whether the plea of the workman concerned that the impugned order of dismissal was passed in contravention of Section 33(2)(b) was correct or not and if it accepted the petitioner's contention that the order of dismissal contravened Section 33(2)(b), the departmental enquiry would not avail the employer and the whole question would be open. The High Court directed that the petitioner should be afforded an opportunity to place the letters earlier referred to viz., Annexures I and I-1, and such other relevant evidence in this connection as he might choose before the Labour Court and the Labour Court should come to its own conclusion on the issue before it upon all the evidence adduced before it. Being of the view that in the absence of any determination of the basic question whether or not there was a contravention of Section 33, the High Court did not think it advisable to pronounce upon the merits of the several contentions raised on behalf of the petitioner, set aside the award and remitted the matter back to the Labour Court for making a fresh award in accordance with the court's observations.

8. In our view the High Court did not properly appreciate the true scope of Section 33(2)(b) of the Industrial Disputes Act and the result of the violation thereof. It is undisputed that the order of dismissal of the respondent was made after an enquiry on the basis of a charge-sheet submitted to him. In his explanation to the show cause notice the respondent admitted having lodged the complaint before the Nirsra police on September 19, 1960 and the harassment and humiliation of two officers at the investigation by the police. He did not deny that the report made by him was false and contented himself by submitting :

"It is for the police and the Government authority to take any action against me if my report was at all false."

He was examined before the Labour Court and the only statement relating to conciliation proceedings made by him was that conciliation proceedings were held before the Labour Officer and the Labour Commissioner. In our view, the High Court failed to observe that under the Act, pendency of conciliation proceedings at the time when the respondent was discharged could not effect the merits of the question at all.

9. The scope of Sections 33 and 33-A was examined by this Court in several cases to some of which we shall presently refer. Section 33(1) has obviously no application to the facts of this case. Section 33(2) relates to the dismissal, discharge, etc., of a workman for any misconduct not connected with an industrial dispute during the pendency of any conciliation proceeding before a conciliation officer or a Board etc., unless he had 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. Section 33-A enables a workman who has been punished by dismissal discharge etc., to make a complaint in writing to a Labour Court, Tribunal or National Tribunal when an employer contravenes the provisions of Section 33 during the pendency of proceeding before Labour Court, Tribunal or national Tribunal etc. If such a complaint is made, the Labour Court, Tribunal etc., is to adjudicate upon the complaint as if it were a dispute referred to or pending before it and in accordance with the provisions of the Act submit its award to the appropriate Government. In other words, when the conditions laid down in Section 33-A apply a workman who is punished as mentioned therein does not have to wait for a reference of an industrial dispute by an appropriate authority under Section 10 of the Act for adjudication of the dispute but

can himself prefer his complaint which is to be treated in the same way as a dispute under Section 10. These sections do not lend themselves to the construction that as soon as the Labour Court, Tribunal etc. finds that there has been a violation of Section 33 it should award reinstatement. It must go through the proceedings which would have to be taken under Section 10 and it would be the duty of the Labour Court etc. to examine the merits of the case in the light of the principles formulated in the Indian Iron and Steel Co.'s case (supra).

10. It has not been alleged in this case that any conciliation proceedings were pending before a Labour Court, Tribunal or National Tribunal as envisaged in Section 33-A. Assuming for a moment that there was a conciliation proceeding before a labour officer, Section 33-A would not be attracted. In any event it would be open to the complaining workman to take exception to the conduct of the management in ignoring the provisions of Section 33(2)(b).

11. In the Punjab National Bank Ltd.'s case (supra) referred to by the High Court for the purpose of remitting the matter back to the Labour Court this Court examined the scope of Sections 10, 33 and 33-A of the Industrial Disputes Act and pointed out (at p. 826) :

"..... even if the requisite permission is granted to the employer under Section 33 that would not be the end of the matter. It is not as if the permission granted under Section 33 validates the order of dismissal. It merely removes the ban; and so the validity of the order of dismissal can be made, and often is, challenged by the union by raising an industrial dispute in that behalf."

The contention on behalf of the workmen that disregard of a ban imposed by Section 33 of the Act would render the employer's Action of dismissal void and inoperative was rejected by this Court. The reason for enactment of Section 33-A was explained at p. 830 of the said report. In that case the impugned orders of dismissal had given rise to an industrial dispute which was referred to a tribunal by the appropriate Government under Section 10 and this Court observed that :

"There can be no doubt that if under a complaint filed under Section 33-A a tribunal has to deal not only with the question of contravention but also with the merits of the order of dismissal, the position cannot be any different when a reference is made to the tribunal like the present under Section 10. What is true about the scope of enquiry under Section 33-A is a fortiori true to the case of an enquiry under Section 10. What is referred to the tribunal under Section 10 is the industrial dispute between the Bank and its employees. The alleged contravention by the Bank of Section 33 is no doubt one of the points which the tribunal has to decide; but the decision on this question does not conclude the enquiry. The tribunal would have also to consider whether the impugned orders of dismissal are otherwise justified; and whether, in the light of the relevant circumstances of the case, an order of reinstatement should or should not be passed. It is only after all these aspects have been considered by the tribunal that it can adequately deal with the industrial dispute referred to it and make an appropriate award."

12. The Tribunal in our view rightly refused to go into the question of the pendency of any conciliation proceeding; but, even if there was any such proceeding, it would make no difference to the result in this case. The Tribunal would still have to consider whether the employer's action was justified in the light of the decision in the Indian Iron and Steel Co.'s case (supra). In other words, the Tribunal would have to be satisfied that the allegations, if any, about want of good faith or

victimisation or unfair labour practice were baseless. The Tribunal would also have to be satisfied whether any complaint was made on that score that the enquiry was vitiated by basic error or violation of any principle of natural justice and its finding on which the order of dismissal was passed was therefore perverse or without any foundation.

13. The tribunal came to the conclusion that there was no justification for the respondent's complaint to the police that the company's officials were in the habit of acting high-handedly and oppressively as alleged by him and further took the view that the respondent's action in defaming two of the officers of the company could not but be pronounced as an act subversive of discipline and undermining the authority of the officers and thereby affecting the maintenance of peace and good order in that factory.

14. Reliance was placed on a judgment of the Court in *Rodrick v. Karam Chand Thapar and Bros.*, ((1963) 1 LLJ 248 at 249) and the observation therein that :

"It is well settled that if an application is made by an employee under Section 33-A and it is shown that the impugned dismissal to the employee has contravened Section 33, it is open to the employer to justify the dismissal on the merits by adducing satisfactory evidence before the Tribunal."

15. It was contended that this course was not adopted in this case. The facts in that case as found from the report are that the appellant who was a store keeper of the respondent company had been served with a charge-sheet as a result of the checking of the stock in his care; this was followed by an enquiry and an order of dismissal of the appellant. The employee made an application under Section 33-A of the Act alleging that Section 33 had been contravened and he was entitled to reinstatement. The Tribunal rejected the preliminary objection of the company that an application under Section 33-A was not competent and thereafter proceeded to examine the merits of the case. As a result thereof the tribunal believed the evidence led by the respondent to hold that the appellant was guilty of misappropriation.

16. To our mind, this case does not help the respondent. The Labour Court had to adjudicate upon the dispute which was referred to it; with regard to the respondent it had to go into the question as to whether he had been properly dismissed. On the material before it, it came to the conclusion that the respondent's action in lodging a false complaint to the police against the conduct of the appellant's officers was subversive of discipline which merited dismissal. The Labour Court had the evidence before it; the lodging of the complaint was not disputed, that the allegations therein were false were not denied and the humiliation of the officers was not contradicted. Not one of the grounds formulated in the *Indian Iron and steel Co.'s case* (supra), which could lead the Tribunal to hold that the dismissal was improper is substantiated.

17. In the result, we hold that the order of the High Court remitting the matter back to the Labour Court was not justified. The appeal is therefore allowed and the award of the Labour Court upheld. The order for costs made at the time when special leave was granted in this case will stand.

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