Oriental Textile Finishing Mills, Amritsar

Vs

Labour Court, Jullundur and Others

Civil Appeal No. 1071 of 1966

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

31.08.1971

JUDGMENT

JAGANMOHAN REDDY, J. -

1. While reference No. 150 of 1958 was pending in respect of an Industrial dispute between the appellant and its workmen relating to Bonus, Casual leave and sick leave etc., and after the management had suspended six of its workmen on certain charges of misconduct for having refused to operate some machines, another worker Darshan Singh, a Helper of a Blowing Machine also refused on January 25, 1959, when called upon by the management to work the machine in the absence of Shri Daulat Ram, Machineman and was accordingly suspended the same day. On hearing this news the workmen went to see one of the partners of the Appellant and demanded that the order of suspension passed against Shri Darshan Singh should be cancelled and he be reinstated as a Helper. As the management was not agreeable to reinstate the Helper workman, the workers went on a lightning strike. Since the workmen came on strike conciliation efforts were made but inspite of the persuation persuasion of the Labour Officer, M.W. 2, the Labour Inspector M-4 and by the management, Respondents 2 to 24 along with others did not report or duty although it is stated the Appellant was willing to employ them. Certain charge-sheets were served on the workmen towards the end of January to which replies were given. Thereafter notices were sent to the Respondents 2 to 15 and 17 to 24 asking them to resume work by certain specified dates and when they did not resume work other notices were sent requiring the said respondents to show why their names should not be struck off and asked them to submit their reply by a certain date. In so far as Respondent 16 is concerned a notice was served on him on 4-3-1959, in which it was mentioned that he was absent since 13-2-1959, without any leave and that he should resume duty by 6-3-1959. He was further asked to explain by 8-3-1959, why his name should not be struck off. None of the respondents Nos. 2 to 24, either acknowledged these notices nor sent a reply. The management thereafter by letters, dated 23-2-1959, 4-3-1959 and 17-3-1959, informed the aforesaid respondents that since they were no longer interested in the employment their names were struck off from the muster rolls. It is alleged that from 25-1-1959, till their names were struck off from the muster rolls, the respondents sat outside the Mill gate and inspite of persuasion by the Labour Officers as well as by the management who were genuinely desirous of their resuming work, they did not join duty and as a consequence the management was compelled to employ others in order to keep the Mill going. It is also stated that during this period those workmen who wanted to join duty were permitted to do so and their services were entertained. It is also the case of the management that the strike fizzled out after the striking workmen failed to get rations and thereafter they had abandoned the service. On 19-3-1959, a demand notice on behalf of the workmen was served on the management as a result of which the conciliation proceedings commenced. But even then according to the report of the Conciliation Officer while the management was willing to employ the workmen, the respondents

were not willing to resume work till the suspended workmen were also allowed to resume duty.

2. Ultimately on 26-8-1959, the matter was referred to the Labour Court at Jullundur under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), to determine whether the termination of services of 31 workmen whose names were mentioned therein was justified. It may be mentioned here that out of these 31 workmen, 8 workmen had resumed their duties and were no longer interested in the proceedings. The Labour Court after receiving the statement of claim and recording the evidence on behalf of both the management and the workmen passed an award on 31-10-1961, which was published in the Gazette on 8-12-1961. By this Award the claim of the workmen was rejected on the ground inter alia -

(a) that they had resorted to illegal strike;

(b) that the management did not in fact terminate the services of the workmen concerned in the case and never meant to take action against them for having gone on strike. On the other hand management was always prepared to take them back and was requesting them through the Labour Inspector and the Labour Officer to end the strike and to resume duty but the workers went on insisting that the suspension orders passed on their co-workmen should first be cancelled;

(c) that the workmen were adamant and as such there was no alternative for the management except to terminate their services and take fresh hands who are still continuing in its service; and

(d) that no evidence was produced by the workmen to prove that any of them ever requested the management to resume duty or that the management had turned down any such request.

3. Against this Award of the Labour Court a Writ Petition was filed by the respondents in the High Court of Punjab. A Single Bench of that Court by its Judgment, dated 6-12-1964, held that in law the plea that the workers had abandoned the service of the Appellant could not be sustained, but on the other hand it was the management which had terminated their services. In this view the case was remanded to the Labour Court for a fresh decision. A Letters Patent Appeal was filed by the management against this decision but later it was dismissed as withdrawn. On remand the Labour Court by an Award, dated 10-9-1965, which was published in the Gazette on 1-10-1965 held that the plea of the workmen that there was a lock out by the management was not substituted, on the other hand it was they who had gone on strike; that the strike was illegal because of the proceedings pending before the Labour Court in Reference No. 150 of 1958; that the question as to whether the management had terminated the services of the concerned workmen or not was not a matter which was res-integra in view of the judgment of the Punjab High Court in the Writ Petition referred to above; and in the alternative as the termination took place by virtue of letters, dated 23-2-1959, 4-3-1959, and 17-3-1959, without holding an enquiry, it was not valid. In the result the Labour Court directed reinstatement of Respondents 2 to 24. In so far as Surat Singh Respondent 16 was concerned, it was found that there were no standing orders in force applicable to the appellant, as such it was not justified in dismissing him for absence without leave. It was also held that the Respondents were not entitled to wages from 25-1-1959 to 17-3-1959. They would however only be entitled to half the back wages from 18-3-1959 to the date on which the Award would become enforceable and from that date till the date of their reinstatement, respondents Nos. 2 to 24 would be given full back wages. Against the said Award Appeal has been filed by Special Leave.

4. The short question for our consideration is whether the termination of employment of the respondents in the circumstances of the case without an enquiry was justified. There is no doubt and

it has been conceded at the very outset that there being no standing orders applicable to the appellant, the termination of the services of Shri Surat Singh, respondent No. 16 is not valid and the Award pertaining to his reinstatement cannot be assailed. In so far as the validity of the action of the management in terminating the employment of the other respondents is concerned a great deal would depend on whether the management was able to justify its action before the Tribunal. It would be useful to set out at the outset certain undisputed facts namely -

(1) that the respondents went on a strike on 25-1-1959;

(2) that as there was a reference pending before the Labour Court the strike would be illegal under Chapter V of the Industrial Disputes Act, 1947;

(3) that both the Labour Officers as well as the management tried to persuade the workers to join duty and after the demand notice, dated 19-3-1959, conciliation efforts were made but they did not resume work and made it a condition of their joining duty that the suspended workmen also should be taken back;

(4) that the management gave workers on strike notices on different dates asking them to join duty by a date specified therein and subsequently by another letter called upon them to justify their absence failing which they were informed that their names would be struck off from the muster roll;

(5) that notwithstanding those notices and the willingness of the management to take them back the respondents gave no reply and continued the strike till they were informed by letters, dated 25-2-1959, 4-3-1959 and 17-3-1959, that their names were removed from the muster roll; and

(6) that no domestic enquiry was held into the misconduct of the respondents.

5. On these admitted facts it is sought to be contended on behalf of the appellant that the management took every possible step to get the workmen back into their factory but they were adamant in continuing the strike. In these circumstances they could do nothing else but to terminate their services and take in fresh hands in order to keep the factory going. It may be mentioned that the management immediately after the strike served charge-sheets calling upon them to show-cause why proper legal action should not be taken against them. In those charge-sheets they had alleged that the respondents had indulged in intimidation, unjustified slogan mongering and inciting the workers to remain on strike. The workmen by their letters denied the allegations against them. Thereafter the management seem to have dropped these charges and tried to persuade them to join work. It would be useful to examine the correspondence of a typical case. On 5-2-1959, by Ex. A-3 the management served a notice and wrote to Amar son of Brijlal, as follows :

> "Please take notice that from the afternoon of 25-1-59, you are on strike, which is illegal due to the pendency of proceedings before the Punjab Labour Court, Amritsar in reference No. 150 of 1958. This strike of yours is wholly unjustified. Inspite of the various persuasive attempts by the management and the Labour Department, Amritsar, you have failed to resume work. If you will not come to duty on February 8, 1959, the management would employ fresh hand in your stead as the management can ill-afford to keep the work at a standstill. You will have in that event no claim to any reinstatement or compensation. Management is however prepared to consider you as one of the new entrants, should you be selected for appointment. This application should reach in writing by February 9, 1959."

A copy of this letter was given to the Labour Commissioner, Ambala Cantt., as well as Labour Inspector and Labour Officer, Amritsar. When this workman did not join his duty the management by Ex. A-4 wrote another letter to him on 21-2-59. It said :

> "You were served with a registered notice on 5-2-59 that you since the afternoon of January 25, 1959, are on illegal and unjustified strike along with other workers. You were given an opportunity to report for duty up to 8-2-59. But up till today you did not report yourself for duty by which it is clearly patent that you do not want to work in the factory. Therefore, show cause as to why your name be not struck off from the muster roll of the factory. The factory management also gave you a chance that you can join on new service, but you did not do even that, which clearly shows that your stand is totally illegal and baseless. Factory cannot be closed in any event, thus your coming on duty was necessary. If you will not give any satisfactory reply then your name will be struck off from the muster roll of the factory. Your reply should reach up to 25-2-59."

Copies of this letter were also given to the Labour Officers referred to above. When no reply was received to this letter the management terminated the services by Ex. A-7, dated 4-3-59 which is follows :

> "For your continued absence since the afternoon of 25-1-59 and inspite of repeated requests to come and join duty you have failed to resume work. You have also failed to show cause in pursuance to our letter dated 21-2-59 as already intimated for your abandonment of service and/or illegal strike. In view of your these illegal activities the management has struck off your name from the muster roll of the Mills w.e.f. 4-3-59."

6. The Respondent's Advocate while not denying these letters as above contends that the earlier letters had charged them with incitement and stay in strike and intimidation etc., but the management gave the go bye to it and have terminated the service for merely going on a peaceful strike and by subsequent letters it was made clear that the object of the management was to employ the workmen afresh and deprive them of the past benefits which had accrued to them. He further submits that merely because workmen have gone on a strike which is a weapon for obtaining their redress, the relationship of employer and employee does not come to an end if the workmen have behaved in a violent manner or incited or intimidated other workmen, even then the management cannot terminate their services without holding an enquiry into the alleged misconduct but as no such enquiry was held the termination is illegal.

7. The question however would be whether before the services of the workmen, who are on strike, are terminated, is an enquiry into their misconduct obligatory and would an omission to comply with this requirement, make the order or termination illegal? It appears to us that merely because workmen go on strike it does not justify the management in terminating their services. In any case if allegations of misconduct have been made against them those allegations have to be enquired into by charging them with specific acts of misconduct and giving them an opportunity to defend themselves at the enquiry. Even where a strike is illegal it does not justify the management from terminating their services merely on that ground, though if it can be shown on an enquiry that the conduct of the workmen amounted to misconduct it can do so. While it is an accepted principle of Industrial adjudication that workmen can resort to strike in order to press for their demands without snapping the relationship of employer and employee, it is equally a well accepted principle that the

work of the factory cannot be paralysed and brought to a stand-still by an illegal strike, inspite of legal steps being taken by the management to resolve the conflict. The management have the right in those circumstances to carry on the work of the factory in furtherance of which it could employ other workmen and justify its action on merits in any adjudication of the dispute arising therefrom.

8. In Express Newspaper (P) Ltd. v. Michael Mark and Another, ((1963) 3 SCR 405 : AIR 1963 SC 1141.) where certain employees who had indulged in illegal strike and did not join their duty inspite of notices given by the management and their places were filled up by others, applied for relief under the Payment of Wages Act but the application was dismissed. The workers moved the High Court under Article 226 and their writ petition were allowed. This Court in appeal held that the Standing Orders contemplated termination of employment by the employer and in those cases there could be no doubt that the Appellant had terminated the employment of the Respondents by removing their names from the muster roll without giving them any notice of such removal. It was also held that if employees absent themselves from work because of strike in enforcement of their demands, there can be no question of abandonment of employment by them and that if the strike was in fact illegal, the appellant could take disciplinary action against the employees under the standing Order and dismiss them.

9. This case merely illustrates why has been stated by us that even where the strike is illegal a domestic enquiry must be held. In the case before us admittedly there were no standing orders applicable to the appellant. Nonetheless a domestic enquiry should have been held in order to entitle the management to dispense with the services of its workmen on the ground of misconduct. This view of ours is also supported by another case of this Court in India General Navigation & Railway Co. Ltd. v. Their Workmen, ((1960) 2 SCR 1 : AIR 1960 SC 219 : 1960 SCJ 1031 : 1960 SCA 318.) where it was held that mere taking part in an illegal strike without anything further would not necessarily justify the dismissal of all the workers taking part in the strike and that if the employer, before dismissing a workman, gives him sufficient opportunity of explaining his conduct and no question of mala fides or victimisation arises, it is not for the Tribunal in adjudicating the propriety of such dismissal, to look into the sufficiency or otherwise of the evidence led before the enquiring officer or insist on the same degree or proof as is required in a Court of Law, as if it was sitting in appeal over the decision of the employer. It may be mentioned that in the case of a domestic enquiry where misconduct is held to be proved the Tribunal can only interfere with that order if there is mala-fides or want of good faith, there was victimisation or unfair labour practice or the management has been guilty of basic error or violation of the principles of natural justice or on the materials the finding is completely baseless or perverse. If however the management does not hold such an enquiry of the enquiry is due to some omission or deficiency not valid it can nonetheless support its order of discharge, termination or dismissal when the matter is referred for industrial adjudication by producing a satisfactory evidence and proving misconduct. Even in such cases the evidence which is produced to substantiate and justify the action taken against the workmen is not as stringent as that which is required in a Court of law. At any rate the evidence should be such as would satisfy the Tribunal that the order of termination is proper.

10. The appellant before us on the evidence produced before the Tribunal seeks to justify its order removing the names of the respondents from the muster roll. In the Punjab National Bank Ltd. v. Workmen, ((1960) 1 SCR 806 : AIR 1960 SC 160 : 1960 SCJ 999 : (1960) 1 SCA) though there was no enquiry held by the management it sought to justify the action of termination of the services of its employees before the Industrial Tribunal. The employees of the Appellant Bank had commenced pen down strikes which were followed by general strike pending arbitration of an industrial dispute between them. On the intervention of the Government the Bank reinstated all the

employees except 150 against whom it had positive objection and it is in respect of those workmen that a dispute was referred under Section 10 of the Act for adjudication. One of the two issues that was referred to the Tribunal was whether 150 employees had been wrongly dismissed. The Tribunal did not hear any evidence and by its final award held that the strike was illegal, and the Bank was, on that ground alone, justified in dismissing the employees. On Appeal the Labour Appellate Tribunal held that even though the strikes were illegal under Section 23(b) read with Section 24(1) of the Act, the Bank had by entering into the agreement with the Government of India, waived its right to take penal action against its employees for joining the illegal strikes and that therefore, an enquiry should be held on additional evidence to decide the disputes on merits. Against this inter locutory order the Bank appealed to this Court which held that while strikes were no doubt illegal under Section 23(b) of the Act, the orders of dismissal passed by the Bank were no less so under Section 33 of the Act and it dismissed the appeal. The Appellate Tribunal thereafter, heard the cases on merits, directed the reinstatement of 136 of the said employees, but refused to reinstate the rest whom it found guilty of issuing poster and circulars subversive of the credit of the Bank. Both the Bank and the workers appealed to this Court. It was held that under Section 33-A of the Act as construed by this Court the jurisdiction of the Tribunal was not limited to an enquiry as to the contravention of Section 33 of the Act. Even if such contravention was proved, the employer could still justify the impugned dismissal on merits and there was no difference in this regard between a reference under Section 10 of the Act and a dispute raised under Section 33-A of the Act.

11. In Workmen of Motipur Sugar Factory (P) Ltd. v. Motipur Sugar Factory, ((1965) 3 SCR 588.) the workers of the respondent started a go slow in its sugar factory. Therefore the respondent issued a general notice to those workmen and individually to each workmen notifying that unless he recorded his willingness to discharge his duties faithfully and diligently so as to give a certain minimum output, he will no longer employed and the willingness he was required to record was to be within a certain time failing which he was notified that he would be discharged without further notice. Respondents held no enquiry as required by the standing orders before dispensing with the services of the appellant. A general strike followed resulting in a joint application by both the parties to the Government and the Government referred the question to the Tribunal. In the notice given by the Respondents it was stated that the go slow tactics was likely to injure the factory resulting in a major breakdown of the machinery. The Tribunal came to the conclusion that there was go slow during the period and consequently held that the discharge of the workmen was fully justified. It was contended before this court that what the Tribunal had to concern itself was whether the discharge of the workmen for not giving and undertaking was justified or not and that it was no part of its duty to decide that there was go slow which would justify the order of discharge and that since the Respondents held no enquiry as required by the standing orders it could not justify the discharge before the Tribunal. It was pointed out in that case that this Court had consistently held that if the domestic enquiry is irregular, invalid or improper the Tribunal may give an opportunity to the employer to prove his case and in doing so the Tribunal tries the merits itself and that no distinction can be made between cases where the domestic enquiry is invalid and those where no enquiry has in fact been held. It was observed at page 603 :

> "Looking at the matter in this board way - and that is all that we are prepared to do, for we are examining a finding of fact of the Tribunal - we cannot say that its conclusion that there was go slow between November 27 and December 15, is not justified..... But as we have already indicated the charge in the notice of December 15, was that the workmen had been going slow from November 27 and they were asked to give an undertaking to improve and the respondent was apparently willing to overlook the earlier lapse. Even assuming that the demand of an undertaking was

> unjustified, it does appear that the attitude of the workmen was that they would do no better; and in those circumstances they were discharged on December 17, 1960, on the basis of misconduct consisting of go-slow between November 27 and December 16, 1960. That misconduct has been held proved by the Tribunal and in our opinion that decision of the Tribunal cannot be said to be wrong. In the circumstances the Tribunal was justified in coming to the conclusion that the discharge was fully justified."

In a recent case - The Hindustan General Electrical Corporation Ltd. v. Bishwanath Prasad & Another, (1971 (2) SCC 605.) while considering this aspect of the matter we had held that even though no enquiry was held or there was contravention of the provisions of Section 33 of the Act, in a dispute referred under Section 10 the Labour Court had to adjudicate upon the dispute which was referred to it with regard to the respondent and had to go into the question as to whether he had been properly dismissed. In other words the management can justify and substantiate its action on evidence duly placed before the Tribunal.

12. The learned Advocate for the respondents however urged that even where the strike is illegal in order to justify the dismissal or the order terminating the services of workmen on the ground of misconduct the management must prove that they were guilty of some overt acts such as intimidation, incitement or violence. We do not think that in every case the proof of such overt acts are a necessary pre-requisite. In this case there is a persistent and obdurate refusal by the workmen to join duty notwithstanding the fact that the management has done everything possible to persuade them and give them opportunities to come back to work but they have without any sufficient cause refused, which in our view would constitute misconduct and justify the termination of their services. The workmen as spoken to by the Labour Officers and also as is evidenced by the documentary evidence to which we have referred, were unwilling to join duty till the workmen who were suspended were also taken back. There is nothing to justify the allegation that the management wanted to terminate their services under some pretext with a view to recruit them afresh and deprive them of accrued benefits. The notices clearly mention that the workmen would be free to join duty by a certain date and only after that date the management was prepared to entertain them as new entrants if they were to apply by the date specified in the notices. It appears to us therefore that management has proved misconduct and the stand taken by it was reasonable. There was nothing that it could do further in view of the unjustified attitude taken by the workers by staying away from work particularly after they were given over a month's time within which to commence work. In the view we take order terminating their services was not improper. The Tribunal was not justified in directing their reinstatement and payment of wages merely on the ground that no domestic enquiry was held. The Appeal is accordingly allowed except for the Award in respect of Surat Singh, which is maintained. Having regard to the circumstances of the case there will be no order as to costs.

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