

M/S. Francis Klein & Co. (P) Ltd.

Vs

Their Workmen and Another

Civil Appeal No. 481 of 1967

(C.A. Vaidialingam, P. Jagmohan Reddy JJ)

17.09.1971

JUDGMENT

JAGANMOHAN REDDY, J. -

1. This appeal by special leave concerns the termination of the services of Nayan Singh a Durwan in the Appellant Company. This raised an Industrial Dispute which was referred by the Government to the Tribunal. The Tribunal found that the Company was not justified in dismissing him and directed that it should reinstate him and pay his back-wages from the date of his dismissal. Apart from Nayan Singh, who used to sleep in the show room, there was another Durwan Basunandan Singh who used to be on day duty in the said show room and sleep in the night in the godown of the Company. On the early morning of September 11, 1965, Basunandan Singh was on his way to the Ganges to take a bath and before he went there he wanted to go to the show room for easing himself. When he came to the show room he found the gate of the backside of the premises which had the show room closed. While he was standing in front of the gate he noticed a man coming out of the show room with a tin container in his hand after which he placed it on the bicycle at the gate where another man was sitting. Basunandan Singh questioned the man about the contents of the tin case, but without giving any satisfactory reply, the man went inside the premises keeping the tin case on the bicycle. Basunandan Singh then, caught hold of the man who had been sitting near the bicycle and took over the tin container in which there were brass savings. On enquiry he replied that Nayan Singh's son Kajiman who was then working as a Durwan under Tinker & Co., which was having its factory and godown in those premises had given him those brass savings. Basunandan Singh then called Kajiman and the latter requested him to release the man. Nayan Singh and the other members of his family also arrived at that place and asked him to release the man. Neither Nayan Singh nor his family members helped him in getting hold of the man and as such he had to send a vegetable vendor to his brother Basudeb Singh and when Basudeb Singh arrived, he and Basudeb took the man into the show room of the company where the officers of the Company who later arrived there, question him.

2. In respect of this incident Nayan Singh was suspended from duty and served with a charge-sheet on September 16/17, 1965, in which he was asked to submit his explanation within 48 hours as to why disciplinary action which may include dismissal should not be taken against him. The gravamen of the charge was that when Basunandan Singh appealed to him by the officers of the Company, Nayan Singh had refused to assist Basunandan Singh and had tried to persuade him to release the outsider. The charge-sheet further mentioned as follows :

"During the interrogation by our Chief Accountant, Shri N. C. Banerjee, the outsider stated that the savings and components were sold to him by your son, Shri Kajiman

Singh and that he has been buying these savings and components from him for over one year. When your son Shri Kajiman Singh was asked for an explanation, he confessed before our Chief Accountant, Shri N. C. Banerjee and others that he has been removing the savings and components in small bits every day and storing them in your room. Since this pilferage of the savings and components from our show room was going on for a long period, we have every reason to believe that you were aware of this happening."

A domestic enquiry was held by one of the Officers of the Company at which Basunandan Singh, Bhushweshwar Pandey, (the Darwan of M/s. Raptakos & Co.), N. C. Banerjee, Kajiman Singh, accused No. 1 and Nayan Singh accused No. 2 were examined. The Enquiry Officer Shri K. A. Menon held that the circumstances clearly point out to the possibility that the accused Kajiman was aware of the incident and the other workmen were trying to shirk responsibility and did not give the facts of the theft. The report states as follows :

"From the above proceedings it appears that none of the accused persons want to accept responsibility for or admit any knowledge of the theft. This is rather unusual for Durwans in whom the Company has placed its trust. It is a fact that they were all staying inside the show room premises and as per the statement made by Jiban Mukherjee the shift in charge, Shri Kajiman woke up at about 4.45 a.m. and went out as someone had come to see him at that hour. Jiban Mukherjee also stated that Kajiman came back after a few minutes and then again went out to the room of Nayan Singh. It is reasonable therefore to assume that the circumstances clearly point out to the possibility that the accused Kajiman was aware of the incident and the other accused were trying to shirk responsibility and not helping to unearth the real facts of the theft."

On the strength of this Report the Company terminated Nayan Singh's services by their letter dated October 14, 1965 which is in the following terms :

"As a result of the departmental inquiry held in your presence with reference to the charge-sheet No. 6102/ M.C.F. dated September 17, 1965 you are found negligent in you duties as a Durwan of our Demonstration shop and the Company has lost confidence in you, which warrants you dismissal from service.

You are therefore dismissed from service with immediate effect.

You are direct to collect your dues, if any, at any time during working hours of the office of the office of the Company. You are also requested to give immediately vacant possession of the room which was given to you for use as a Durwan of our showroom."

It may be mentioned here that Kajiman and Tikaram, the other two accused were Durwans of Tinker & Co., which is a sister Company under the same management and were jointly tried with Nayan Singh by Menon P.W. 2 before the Tribunal the Company sought to justify the termination and examined Durablal Paul, Nayan Singh, Basunandan Singh and K. A. Menon and they were also cross-examined. The Tribunal had in its award observed that during the Inquiry Shri Menon admitted that he had put most of the questions, that he recorded answers given by the witness in Hindi language as far as he could in English and it may be that he might have omitted some

statements of the witnesses as they were talking very fast and were bringing many extraneous matters. The Tribunal observed that there is nothing to show that the accused Durwan was given the right to cross-examine the witnesses in the domestic inquiry proceedings held by the Company nor was there any note in those proceedings that an opportunity was given and it was refused. It, therefore, held that the findings of the enquiry officer do not show that the allegations made against Nayan Singh were proved and in the circumstances it could not say that the domestic inquiry was fair and proper and was based on sufficient evidence.

3. On the evidence before it, the Tribunal pointed out that Nayan Singh had stated that he has put in 27 years of good service in this Company without any charge-sheet or warning previous to this incident; that he was a Durwan and used to sleep in the show room of the Company; that he had been given a room by the he Company but admits that his son Kajiman was occasionally sitting there and that since his son was married he was living separately and he had no control over him. In so far as the evidence of Basunandan Singh was concerned it remarked that his son was appointed in the place of Kajiman and Tikaram who were dismissed so it cannot be said that he is a disinterested witness. It also noticed the statement of Nayan Singh that on the night of the incident he was sleeping in the show room and that at about 7 a.m. in the morning he found a few persons collected near the show room and a box near it. Thereafter the Tribunal concluded that the evidence adduced before it "does not establish that Nayan Singh was allegedly connected with the theft of the materials of the Company"; that "the Company was not justified in dismissing the Durwan Nayan Singh who had unable mished record of 27 years". This conclusion of the Tribunal is totally opposed to the charge against Nayan Singh. Though in the chargesheet towards the end certain facts were mentioned but that was not what the Durwan was asked to answer. The Company did not charge him with any theft, it only charged him with not having gone to the assistance of Basunandan Singh when he called upon him to help him take the person who was caught by him inside the show room till the officers of the Company came to enquire into the matter. Even the Union in the statement of claim admitted that the management did not in the complaint lodged before the Police, mention the name of Nayan Singh as a culprit or as a suspect or even as an accomplice nor was Nayan Singh made an accused in the criminal case against the arrested person. That apart there is nothing on record to show that the workmen requested permission to cross-examine the witnesses nor did Nayan Singh ever make a complaint that the Inquiry Officer did not record all the statements. In any case as has been held by this Court on several occasions that even where a domestic enquiry is not valid it is open to the employer to justify the order of dismissal or termination as the case may be, before the Tribunal. We have noticed that is what the Appellant sought to do before the Tribunal by producing witnesses who were subjected to cross-examination. There can be no doubt that Nayan Singh was present at the time of the incident and this was admitted during the cross-examination when he stated :

"At 7 a.m. on the September 11, 1965 I was going out from the show room. Then I found a few persons gathered on the main road at the back of the show room, and a box was lying there. The box was in a locked up state. Basunandan was present there. I did not ask Basunandan anything."

He however denied that Basunandan called him after finding the tin box being carried on a bicycle by a man. He also admitted having found Basudeb Singh brother of basunandan another Durwan of Francis Klein who was working at the Chowringhee godown being present on the spot of occurrence but he denied having asked Basunandan to release the man carrying away the tin box. It would appear from this evidence that almost all the salient facts have been established by the evidence led before the Tribunal. In fact as we have seen Nayan Singh himself has not denied that

he was present or that there was an incident like the one disrobed by Basunandan or that there was a man who was caught with a tin box and that Basudeb Singh, brother of basunandan who was a Durwan at Chowringhee was present there. This statement more than corroborates the statement of Basudeb Singh. If so there is no reason for not relying on Basunandan Singh that he had called Nayan Singh but he had refused. Be that as it may this evidence in our view is sufficient to justify the contention that the Appellant had lost confidence in Nayan Singh and was entitled to terminate the services. The order in our view was an order of termination though it is strenuously contended on behalf of the Respondent that it was an order of dismissal. The order to which we have referred above no doubt uses the word dismissal but the entire purport of it could lead only to the conclusion that since the company had lost confidence in Nayan Singh his services were being dispensed with, with immediate effect and he was being asked to collect his dues. Even after his dismissal in a letter addressed by the Executive Director to Nayan Singh on November 2, 1965 in reply to his letter, stated that his services were terminated as they had lost confidence in him. This is what was stated :

"The inquiry which was held in connection with the charge-sheet was proper and valid. We understand from the Inquiry Officer that although you did not make an official request for the copy of the proceedings, a copy was sent to you for your perusal and signature. However, you refused to sign the copy of the proceedings and such remark has been made by the Inquiry Officer in the report. We have also informed you that your services have been terminated since we have lost confidence in you and therefore, you are requested once again to call on our Accounts Department to collect your dues, if any."

In our view when an employer loses confidence in his employee particularly in respect of a person he is discharging an office of trust and confidence there can be no justification for directing his reinstatement. The post of a Durwan in an industrial concern where valuable property both manufactured goods and assets require to be guarded, is such a post and when one of his colleagues calls on him to assist him in apprehending a thief, the refusal to do so is certainly an act which justified the employer in losing confidence in him. Even the Tribunal in its order recognised that the employer has lost confidence in Nayan Singh because while directing the Company to reinstate him, it says :

"If the management considers that Nayan Singh should not be given guard duty because of the Company's loss of confidence in him, as claimed by them, he may be allotted some other job of similar nature as found suitable."

Even this direction is not a valid direction because if once the Company has lost confidence in its employee it is idle to ask them to employ such a person in another job. What job can there be in a Company which a person can be entrusted with and which does not entail reposing of confidence in that person. We are informed that Nayan Singh has been receiving half his salary until now which works out to about Rs. 9,000. While setting aside the Award of the Tribunal by allowing this appeal we maintain the order terminating Nayan Singh and direct the appellant to pay 5,000 within two months as compensation for termination on account of loss of confidence which in the circumstances will meet the ends of justice. Each party will bear its own cost in this Appeal.

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