Binny Ltd.

Vs

Their Workmen

Civil Appeal No. 1851 of 1967

(G. K. Mitter, C. A. Vaidialingam JJ)

17.02.1972

JUDGMENT

MITTER, J.

1. This is an appeal by special leave from an award of the Labour Court, Bangalore, dated October 9, 1967, where the dispute referred for adjudication was, "whether the Management of the Bangalore Woollen, Cotton and Silk Mills Ltd. (hereinafter referred to as the 'Company') was justified in terminating the services of five workmen including one Kuppuswamy" ?

2. During the course of the proceedings the Binny Mills Labour Association, Bengal, a registered trade union, sponsoring the cause of the dismissed workmen entered into a settlement with the management whereby the management agreed to reinstate one Ramanadha and gave up its demand for reinstatement of three others excluding Kuppuswamy. The Union however withdrew its support to Kuppuswamy from the date of the settlement and the latter stated before the Labour Court that he would conduct his own case.

3. The facts relating to the dismissal of Kuppuswamy are as follows : He is alleged to have behaved in an insolent manner towards the Warehouse Master, his superior officer, on November 3, 1963, in respect whereof he was given a charge-sheet on November 6, 1963, the complaint against him being that he was guilty of misconduct falling under Standing Order No. 13(11) i.e., act subversive to discipline. He submitted a written explanation on November 8. An enquiry was held by the Mill Manager on November 10, and on the same day the Mill Manager came to the conclusion that the charge against Kuppuswamy had been proved and taking into account the gravity of the misconduct and his past conduct the Mill Manager found him not a fit person to remain in the employment of the company and terminated his services. Before the Labour Court, Kuppuswamy filed his statement of claim, the management its statement of objections followed by a rejoinder of Kuppuswamy. Kuppuswamy examined himself and one Shadgopalan was examined on behalf of the management. The records of the domestic enquiry were marked in evidence by common consent. The Labour Court while accepting the finding of the domestic tribunal that Kuppuswamy was guilty of the misconduct alleged against him was not inclined to retain the order of termination of his service mainly on the ground that he was not given an opportunity to challenge the statement of one Veeraraghavan regarding his past record of service nor was he given any opportunity to say whether Veeraraghavan's statement was true or false or reasonably explainable. According to the Tribunal the enquiry officer :

> "might have thought fit to pass this very order of termination, even without going into the past record of Kuppuswamy. But the possibility of his awarding a lesser

punishment also cannot be ruled out, altogether."

4. We have, therefore, to examine what happened at the enquiry stage to ascertain whether the labour court was right in acting in the manner it did. The charge against Kuppuswamy formulated by the manager was that :

> "on the 3rd of this month at about 9.15 a.m. Kuppuswamy had behaved in an insolent manner towards the Warehouse Master, Mr. Veeraraghavan by shouting at him and creating a disorderly scene in the Warehouse office."

The Manager reminded Kuppuswamy of his written explanation and asked him whether he had anything to add. Kuppuswamy stated that he had stocked a number of pieces which had mounted so high that he apprehended that the same might fall over and he therefore started stocking the pieces in between the pieces already mounted before the examiners. The Manager reminded him that the charge against him was not about stacking pieces but of behaving in an insolent manner towards the Warehouse Manager. Kuppuswamy was asked whether he wanted to call anyone as witness and Kuppuswamy answered in the negative. Veeraraghavan was then examined by the Manager. According to Veeraraghavan's statement, Kuppuswamy had disregarded the instructions given to him by one Allam, Assistant Manager by stacking the pieces between the examiners in a manner which would obstruct the free passage for the examiners and that he did so deliberately. Kuppuswamy when produced before the. Warehouse Master by Allam is alleged to have flared up and shouted at him saying :

> "You do not find out our difficulty. You do not listen to our grievances."

He is further alleged to have shouted at the top of his voice :

> "You think we are all slaves ? You do not know how to treat us. Are we not human beings ?"

It was also said that not only was Kuppuswamy was shouting but he was also gesticulating with his hands towards the Warehouse master who found it impossible to control Kuppuswamy and immediately reported the matter to the Mill Manager. Asked whether he had any questions to put to Veeraraghavan, Kuppuswamy answered in the negative and explained that it was his habit to speak in a loud voice. According to him Veeraraghavan did not bear him nay enmity. To the next witness for Management, Allam, Kuppuswamy put only one question, namely, whether he (Kuppuswamy) was not presenting his view of the case to the Warehouse master. He had not further questions to put to Allam and stated that Allam did not bear him any enmity. The third witness was one Murty who supported the version given by Veeraraghavan. To Murty also Kuppuswamy put only one question and denied that Murty bore him any enmity. After these three witness were examined, the Manager called upon Veeraraghavan to give his remarks about Kuppuswamy's conduct and ability and any other relevant information in respect of the respondent whereupon Veeraraghavan stated that Kuppuswamy had been absent without leave or permission on a number of occasions and that about a month back he had behaved in a manner similar to the one with which he was charged but no disciplinary action had been taken against him on the intercession of one Rajagopal. When Veeraraghavan was making this statement, Kuppuswamy intervened and said :

> "That was because of a misunderstanding as it is my habit to speak in a loud voice."

The record of the proceedings shows that Veeraraghavan thereafter went out. The Manager did not ask Kuppuswamy on this occasion as to whether he wanted to put any question to Veeraraghavan on

the further testimony given by him or whether he had any explanation to offer. On the spot the Manager passed his order wherein after reciting the facts of the case he recorded that he found Kuppuswamy guilty of misconduct with which he was charged on the testimony of three witnesses. A note was also made that the misconduct was aggravated in view of the fact that the insolent behavior was unprovoked and there were no extenuating circumstances in the case. The last two paragraphs of the order read :

> "The only question which remains for me is to decide what punishment should be given to you. While looking into your service records, I find that you educated up to S.S.L.C. Being an educated person, a better behaviour is expected of you. Further you heard the Departmental Officer inform me during the case of this enquiry that you had been warned by him for absence for three days without leave or permission and that you had availed within a span of about six months, 25 days sick leave No. 9. Much more than all of these, he had let you off only a month earlier for behaving insolently towards him purely because of request of the departmental workers' representative.
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> Under the circumstances, I do not consider that you are a fit person to remain in this employ of the Company and I therefore terminate your services with immediate effect on payment of one month's wages and dearness allowance in lieu of notice."

5. The question before us is whether on the facts and circumstances of the case, the Labour Court was justified in exercising its discretion in ordering reinstatement specially when he himself had recorded in the course of his award that he accepted the finding that Kuppuswamy was guilty of the misconduct alleged against him in the charge-sheet.

6. The points urged before us were as follows : (1) The Labour Court had gone wrong in setting aside the order of dismissal on the ground which was not put forward by the workman himself, specially because he never asked for an opportunity to cross-examine Veeraraghavan on his last statement and had never taken the point that he had been denied an opportunity to explain what was put forward against him by Veeraraghavan in his last statement before the enquiry officer. (2) The order of reference was invalid inasmuch as Government had no previous occasions refused to refer the dispute for adjudication and there were no material on record to show what persuaded the Government ultimately to do so. (3) The Labour Court should not have proceeded with the reference after the Union had ceased to sponsor the case of Kuppuswamy and left him to his fate. (4) Re-instatement should not have been ordered in view of the long lapse between the date of dismissal and the order of reference; and (5) The order of reinstatement was also not justified in this case inasmuch as the breach of discipline of which Kuppuswamy was found guilty was of a serious character and the justice of the case required at the most that compensation should be awarded to him in place of reinstatement.

7. In our view, none of the contentions have any merit. As regards the first point, the record made by enquiry officer amply demonstrates that Kuppuswamy was not given a chance to cross-examine Veeraraghavan on his further statement nor was he asked to state anything by way of explanation. To our mind the record of the enquiry officer seems to suggest that he was under the impression that he could look into the past record of the delinquent without affording him an opportunity to explanation or testing by cross-examination testing by what was alleged against him. On each occasion when a person was examined on behalf of the management, the Manager was at pains to ask the delinquent whether he wanted to put any questions. But when the evidence was given about

his absenting himself without leave or permission and specially when he was accused of a similar insolent conduct in the past, the least he could have done was to have asked Kuppuswamy whether he had any question to put on the further evidence given and whether he had anything to say for himself in respect of what was alleged. We were asked to record Kuppuswamy's intervention "that it was his habit to speak in the loud voice" as and by his way of his explanation and also amounting to an admission of the truth of the statement of Veeraraghavan. We find ourselves unable to except his view. It appears clear to us that the enquiry officer was alive to the fact that the delinquent had to be given an opportunity of cross-examining a witness on his statement and that it was necessary also for him to find out whether the delinquent was accusing the witness of any bias or pre-conceived notion.

8. Several decisions were cited to us in support of the proposition put forward by counsel that it was for the delinquent to raise an objection when he found a point being made against him without an opportunity to him to give evidence by way of explanation. In our view each case must depend on its own facts and the circumstances of a particular case may slow that no prejudice had been caused to the delinquent by any irregularity sought to be availed by him. In The Management of Delhi Cloth and General Mills Co. Ltd. v. Kalu Ram (C.A. No. 195 of 1964, decided on April 9, 1965), this Court took the view that the Tribunal whose order was appealed against had gone wrong in taking the view that the enquiry officer had conducted the inquiry unfairly in that the respondent was not given an opportunity to cross-examine the export of the appellant with the help of an expert of his own. In that case the respondent had been charged with using abusive, defamatory and threatening language in a letter to the officer in charge of his department without putting his name or signature thereto. In the domestic enquiry the expert produced by the respondent was allowed to be cross-examined by the expert previously examined on behalf of the management but the expert produced on behalf of the appellant was only cross-examined by the respondent himself. This Court noted that the Tribunal had not found that the respondent ever demanded that he should be permitted to cross-examine the expert produced on behalf of the appellant with the help of an expert of his own and there had been no refusal of any such request. According to this Court :

> "If the respondent did not ask for an opportunity to cross-examine the appellant's expert with the help of an expert because he had no legal advice, that default on his part cannot mean that enquiry the enquiry officer violated the principles of natural justice. Not the fact that cross-examination by the respondent could not be of the same quality as the cross-examination with the aid of an expert mean that the enquiry officer was guilty of breach of any of the principles of natural justice."

We fail to see how this case helps the appellant before us at all.

9. It was argued on behalf of the appellant that once the Labour Court accepts the finding of the domestic tribunal that the delinquent is guilty of the misconduct alleged against him the fact that the order of termination of service mentions a similar conduct in the past on which no charge had been raised should not make any difference to the result. Our attention was drawn to the decision of the Court in Railway Board v. Niranjan Singh ((1969) 3 SCR 548 : (1969) 1 SCC 502), where the enquiry committee after investigating the charges had come to the conclusion that although the first charge was not proved beyond all reasonable doubt the respondent was guilty of the second charge. The disciplinary authority, the General Manager, accepted not only the findings of the second charge, but differing from the conclusion on the first charge tentatively took the view that the respondent was guilty of that charge as well and after the issue of a show cause notice and the rejection of his explanation directed that the respondent be removed from service. The High Court

set aside the order of dismissal on a writ petition under Article 226 taking the view that :

> "Where an order such as an order of detention or removal from service is based on a number of grounds, and one more of these grounds disappear it becomes difficult to uphold the order when it is not clear to what extent it was based on the ground found to be bad."

It was urged that the Court should not have assumed that the General Manager would have inflicted the punishment of dismissal solely on the basis of the second charge and consequently the punishment should not be sustained if it was held that one of the two charges on the basis of which it was imposed was unsustainable. This was rejected following the decision in State of Orissa v. Bidyabhan Mohapatra (1962 Supp 1 SCR 648), where it was said that if an order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which punishment imposed can lawfully be given, it is not for the Court to consider whether that ground alone would have weighed with authority in imposing the punishment in question. In our view that principle can have no application to the facts of this case. Although the enquiry officer found in fact that the respondent had behaved insolently towards the Warehouse Master, he did not come to the conclusion that this act of indiscipline on a solitary occasion was sufficient to warrant an order of dismissal. He expressly recorded that the delinquent had been guilty of absenting himself without leave, that he had taken 25 days sick leave in a span of six months and that "Much more than all this, he (the warehouse master) had let Kuppuswamy off only a month earlier for behaviour insolently towards him purely because of request of the departmental workers' representative" and it is in these circumstances that the manager did not consider the delinquent to be a person fit to be retained in service. The language of the order leaves no doubt in our mind that it was the cumulative effect of the lapses on the part of the respondent that had resulted in the order of termination of service. It was not a case where two separate charges had been framed against the delinquent and they were of such a serious nature that the finding of guilt on any one would warrant the dismissal of the delinquent from service.

10. In our view the decision in India Marine Service v. Their Workman ((1963) 1 LLJ 122), does not help the appellant. There the order of enquiry officer extracted at page 124 right hand column clearly shows that the order of dismissal was based on one of the charges and it was only after recording this decision that the enquiry officer went on to note "in taking the action against you we have also taken into consideration your past record which is very much against you".

11. The case of Tata Oil Mills Co. v. Its Workmen ((1963) 2 LLJ 78), is equally unhelpful to the appellant. There this Court found itself unable to sustain the finding of the Industrial Tribunal that the domestic enquiry was unfair because the concerned workman had not been given sufficient time to submit his explanation. Examining the facts of the case this Court concluded that "the position appears to be that on the two points on which Gupta could have cross-examined Mr. Banerjee if the report had been given to him have been tested in cross-examination, and so we feel no hesitation in holding that the failure to supply Mr. Banerjee's report to Gupta has not caused any prejudice to Gupta in the present case".

12. The submission that the order of reference is invalid as the Government had no grounds or material to from the opinion about the existence of a dispute in order to enable it to make an order under Section 10(1) is one which does not merit any consideration. In the absence of the Government from the array of the parties it is not possible to come to any finding as to whether there were any such material or not. But the mere fact that on two provisions occasions Government

had taken the view that no reference was called for does not entitle us to conclude that there could be no cause for reference in 1966. The enquiry was held on November 10, 1963 and the order of termination of service was made the very same day. The letter of the Under Secretary to Government, Labour Department, dated August 17, 1964 shows that out of the five workmen in question Government considered the cases of dismissal of three as quite old as having taken place at different times in 1961, 1962 and 1963 and as such did not deserve consideration. With regard to the other two namely, Ramanatha and Kuppuswamy Government was of the view that they had been employed in the year 1963 itself and had put in very short periods of service and as they had been dismissed after proper enquiry no reference was called for. The second letter is dated August 21, 1965, where the Under Secretary merely stated that the view of the decision already taken, the dispute in question did not merit reference in for adjudication. From the above it does not follow that Government could not thereafter either change its mind or make an order of reference on fresh material before it. Under Section 10(1) of the Industrial Disputes Act a reference may be made at any time whenever the appropriate Government is of opinion that any industrial dispute exists or is apprehended. At any rate the point could only be canvassed either in a proceeding to which the Government was party or in one where the Court was in possession of all the available material relating to the dispute. In the absence of such material the point must be decided against the appellant. In our view the further sub-mission that the order of reference must on the face of it show what impelled the Government to depart from its earlier decision and that in the absence thereof the Court must hold that there were no reasons for such a change of opinion is without any force.

13. The next submission was that the dispute with regard to the dismissal of Kuppuswamy ceased to be an industrial dispute after the union ceased to sponsor this case. As already mentioned, during the pendency of the proceeding before the Labour Court, there was a settlement of the disputes between the Union and the Management with regard to all the employees other than Kuppuswamy. The memorandum of settlement under Section 12(3) of the Industrial Disputes Act which was put in on the 24th June, 1967 shows that the Union had proposed that in consideration of their withdrawal of the cases of Madaiah, Ekambaram and Devaiah, Ramanatha and Kuppuswamy may be taken back into service but the Management did not accept the proposal but offered to take back Ramanatha only, which was accepted by the Union. The Union further undertook not to represent Kuppuswamy's case of prosecute it before the Labour Court in view of this overall settlement with the Management. It is not necessary for us to consider whether Section 2-A of the Act which was introduced in the statute in 1965 has any application to the fact before us. We do not however see any reason to hold that the dispute which had already been referred by the Government should cease to be one in respect of a portion of it merely because the Union did not choose to represent the case of a particular dismissed employee. If there was an industrial dispute at the time of reference it would not cease to be one merely because the claim of some of the dismissed employees was settled by mutual agreement.

14. The last point urged before us was that on the facts of the case the Labour Court should not have been directed reinstatement but should have allowed compensation to Kuppuswamy in view of the following factors : (1) Kuppuswamy had been dismissed because of gross indiscipline and it was not proper to order reinstatement of a person who might indulge in similar acts in the future. (2) Reinstatement should not have been ordered four years after the dismissal as Management had already made other arrangements for the work which was formerly being done by Kuppuswamy executed through some other workman. On the first of the above points our attention was drawn to the decision in Shalimar Works Limited v. Their Workmen ((1960) 1 SCR 150 at 159 : AIR 1959 SC 1217 : (1959) 2 LLJ 26). There the facts were that the company had discharged a large number of workmen in April, 1948 and the first order of reference was made in October, 1952. The case of

no less than 250 workmen was involved in the dispute and this Court observed that :

> ".....if any reason there had been wholesale discharge of workmen and closure of the industry followed by its reopening and fresh recruitment of Labour, it is necessary that a dispute regarding reinstatement of a large number workmen should be referred for adjudication within a reasonable time.....
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> In these circumstances, we are of opinion that the tribunal would be justified in refusing the relief of reinstatement to avoid dislocation of the industry...."

On this view the Court felt that appellate Tribunal should not have ordered reinstatement of even the 15 workmen as their case was exactly the same as that of a large number of others. In our view what was said in the Shalimar Works' case (supra), cannot be repeated in the case before us. The appellant persues an industry with a large number of workmen and we cannot imagine any serious dislocation of work by the order of reinstatement of one workman. Normally it will be months before an order of reference is made by Government and one or two years elapse in almost all cases before the adjudication by an Industrial Tribunal is complete. If mere lapse of time be enough to lead the Industrial Tribunal to hold that there should be no reinstatement of service the power of reinstatement will become obsolete. In any case the Management must try to show that reinstatement will cause dislocation of work and the Tribunal must take that into consideration. In this case we find no much compelling circumstances.

15. On the question as to whether compensation should have been awarded in lieu of reinstatement, we were referred to the case of Hindustan Steels v. A. K. Roy ((1970) 1 LLJ 228 : (1969) 3 SCC 513) where it was said that it was in the discretion of the tribunal not to make an order of reinstatement or to award compensation in lieu thereof and it is only when the tribunal exercises its jurisdiction disregard of the circumstances or the relevant principles laid down in regard thereto that this Court would interfere with their discretion. It has become almost a settled principle that reinstatement should not be awarded where the management justifiably alleges that they have ceased to have confidence in the dismissed employee. In other cases the Tribunal must consider carefully the circumstances of the case to come to a finding that justice and fairplay require that reinstatement should be awarded. In this case, there is no allegation that the Management had lost confidence in Kuppuswamy. It is extremely doubtful whether the Manager would have ordered dismissal if Veeraraghavan had not drawn his attention to the past lapses of the respondent about which he has not allowed to have a say. We do not therefore feel that we must interfere with the award of reinstatement of the respondent.

16. In the result the appeal fails and is dismissed with costs.

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