

The Works Manager, Bihar State Superphosphate Factory, Sindri,

Vs

Sri C. P. Singh and Others, Etc.

Civil Appeals Nos. 965-967 of 1968

(C. A. Vaidialingam, I. D. Dua JJ)

22.03.1972

JUDGMENT

VAIDIALINGAM, J. -

1. All these three appeals, by special leave, arise out of the Interim Awards, dated December 19, 1967, passed by the industrial Tribunal, Bihar in Miscellaneous Cases Nos. 120, 123 and 124 of 1967.
2. There appears to have been a dispute between the appellant and its employees in respect of bonus for the year 1962-63. That was the subject of a Reference by the State Government and was pending adjudication before the Tribunal as Miscellaneous Case No. 11 of 1967.
3. In the meanwhile, the appellant, on the basis of certain allegations of misconduct against the workmen, took disciplinary proceedings and ultimately passed orders of dismissal. The workmen concerned, filed applications before the Tribunal, under Section 33-A of the Industrial Disputes Act, (hereinafter to be referred to as the Act) on the ground that the appellant committed a breach of the provisions of Section 33 of the Act inasmuch as orders of dismissal have been passed in violation of the said provisions. On January 31, 1967, the workmen filed applications before the Tribunal for directing the appellant to pay them full wages during the pendency of the adjudication of their complaints filed under Section 33-A. On August 7, 1967, the Tribunal issued notice to the appellant and on August 9, 1967, the applications were directed to be posted for hearing on December 21, 1967.
4. In the meanwhile, on November 28, 1967, the workmen filed fresh applications, claiming interim relief, for payment of half the wages. These applications were directed to be posted on December 4, 1967, to be heard in the presence of parties. On December 4, 1967, according to the Tribunal, the copies of the petition, filed by the workmen, were given to the representative of the appellant and the hearing was adjourned to December 15, 1967. On December 15, 1967, the Tribunal, after hearing parties, reserved orders. On December 19, 1967, the Tribunal passed the Interim Awards, directing the appellant to give half wages to the workmen and the said rate was to be on the basis of the wages they were getting at the time of their dismissal. A further direction was given that the wages so ordered to be paid will include also Dearness Allowance. The Award, after being sent to the Government, was ultimately pronounced on January 19, 1968. As three Interim Awards were passed in the three applications filed by the workmen, these three appeals have been filed in this Court.
5. Mr. Daphtary, learned counsel for the appellant, referred us to be various endorsements made in

the Order-sheet of the Tribunal, as well as to the statements in the affidavit filed by the appellant's Works manager, and pointed out that, as a matter of fact, his clients had no knowledge of the filing of the applications, dated November 28, 1967. According to the learned counsel, the appellant's representative became aware of these applications only on December 15, 1967, when he appeared before the Tribunal in connection with the main dispute namely, Reference No. 11 of 1967 which was posted on that day. On coming to know then that the applications for interim payments were being taken up, a request was made to the Tribunal for adjourning the matters to enable the appellant to file its objections to the grant of the relief claimed by the workmen. It is the contention of the learned counsel that this request, which is a very reasonable one, was refused by the Tribunal and the Interim Awards, under challenge, came to be passed. That is, in short, the grievance of the appellant is that the Interim Awards were made without being given an opportunity to place its objections before the Tribunal. Mr. Daphtary drew our attention to the various endorsements made in the Order-sheet and the different phraseology, which according to him, have been used therein whenever the parties represented by their counsel or their authorised agent appeared before the Tribunal. In fact, the learned counsel urged that some of the statements contained in the endorsements of December 4, 1967 and December 15, 1967 in the Order-sheet of the Tribunal are not correct. As the Interim Awards in question have been passed without the appellant being heard and without being given an opportunity to place its objections before the Tribunal to the claims made by the workmen, Mr. Daphtary urged that the proceedings will have to be remanded to the Tribunal for fresh consideration. He further pointed out that if an opportunity had been given to the appellant to place its objections before the Tribunal, it would have been possible for the appellant to satisfy the Tribunal that even prima facie the orders of dismissal are valid and that there had been no breach of the provisions of Section 33 of the Act. The appellant could have also satisfied the Tribunal that most of the workmen have taken service elsewhere and therefore no interim relief need be granted. In any event, the appellant could have requested the Tribunal to give suitable directions to safeguard the interests of the appellant for recovery of any amount that may be directed to be paid in case the applications of the workmen are dismissed.

6. Mr. Nag, learned counsel for the respondents, on the other hand, referred us to the averments made by his clients in the counter-affidavit filed in this Court when opposing the applications for stay made by the appellant. The learned counsel also pointed out that in the counter-affidavit, it has been clearly stated that copies of the petitions filed by the workmen were given to the representative of the appellant on December 4, 1967 and time was taken for filing objections and that it was on that basis that the proceedings stood adjourned to December 15, 1967. That is, according to Mr. Nag, the grievance of the appellant that they were not aware of the filing of the applications, dated November 28, 1967 and that they did not have notice that the applications will be taken up on December 15, 1967, are totally unfounded, especially, in view of the record made by the Tribunal, in the Order-sheet on the relevant dates. The counsel further pointed out that on December 15, 1967, a further request made by the appellant's representative for postponing the hearing was declined by the Tribunal and the proceedings were closed. On December 19, 1967 the Interim Awards were passed on a consideration of the claims made by the workmen. If the appellant did not choose to put forth its objections on the date when the matter was taken up in the presence of the appellant's representative, the fault is entirely that of the appellant. The counsel further pointed out that there is no infirmity in the proceedings conducted by the Tribunal.

7. From, what is stated above, it is clear that there is a keen controversy raised by the appellant, regarding their not having had any knowledge of the applications, dated November 28, 1967, and a serious dispute is also raised with regard to the truth of the endorsements contained in the Order-sheet of the Tribunal. Before we can satisfactorily consider and adjudicate upon the grievance of the

appellant, it would be necessary for us to call for a report from the Tribunal concerned, especially, when the endorsements in the Order-sheet are under serious challenge. For instance, we may point out that on December 4, 1967, according to the Order-sheet parties were present and that the copies of the petition, dated November 28, 1967, filed by the workmen were given to the Management. Again, on December 15, 1967, it is seen that the workmen were represented by Shri J. Krishna and R. S. Sinha, and that the opposite party (the appellant before us) was represented by Shri P. K. Sharma and Shri C. B. Tewary. The further endorsement on December 15, 1967, is to the effect that the complaints filed on November 28, 1967, were taken up and that the representative of the workmen was heard and that a request for adjournment was made by the representative of the appellant, Shri Sharma, on the ground that some more time is required. The Tribunal declined to grant any further time and reserved orders. In view of these categorical statements contained in the Order-sheet, prima facie, it is difficult for us to accept the contention urged on behalf of the appellant that the statements contained therein do not represent the true facts. Normally, we have to proceed on the basis that the records made by the Court or Tribunal regarding what happened before it represent the correct facts, unless there is any strong circumstance established which would indicate to the contrary. However, a point has been raised in the Special Leave Petitions that the statements contained in the Order-sheet that the appellant's representative was present on December 4, 1967 and that on the said date he was furnished with copies of the applications filed by the workmen are not true. These grounds in the Special Leave Petitions have also been supported by the affidavit of C. B. Tewary, Works-Manager of the appellant. In the said affidavit he has categorically denied having been present before the Tribunal on December 4, 1967, and he has also denied having been furnished with copies of the applications filed by the workmen. No doubt, these averments made by Mr. Tewary in his affidavit as well as the ground taken in the Special Leave Petitions on this aspect are controverted by the respondents in the counter-affidavit filed by them in this Court. That is why, we say that if we have to consider, the claim made on behalf of the appellant, a fuller and more detailed investigation will have to be made. If such an investigation is to be made, we have to call for a report from the Tribunal regarding the statements contained in the Order-sheet on the relevant dates as well as its comments regarding the allegations made in the Special Leave Petitions as also in the affidavit of the Works-Manager of the appellant. If, ultimately we are satisfied that the Interim Awards have been made without hearing the appellant, the result will be that we will have to remand the claim for interim relief to the Tribunal for fresh consideration. This naturally will result in considerable delay in the Tribunal adjudicating the main complaints filed under Section 33-A. However, we are not disposed at this interlocutory stage to embark upon an inquiry regarding this aspect, especially as the Interim Awards have been made as early as 1967 and the original complaints under Section 33-A are still pending adjudication.

8. Without expressing any opinion on the contentions urged on behalf of both parties, we are of the view that interests of justice will be best served by modifying the directions given in the Interim Awards of the Industrial Tribunal by directing that the amounts ordered to be paid to the workmen can be drawn by them on their furnishing security to the satisfaction of the Industrial Tribunal concerned. This direction is given without prejudice to the contentions of the parties in respect of the points arising for consideration in the applications for interim relief and in the main complaints filed under Section 33-A of the Act.

9. We make it clear that we should not be understood as having approved as correct the directions given by the Tribunal regarding payment of half wages including Dearness Allowance. We have given the directions in our order solely on the ground that the claims for interim relief filed as early as 1967, if sent back to the Tribunal will be a stale claim, especially when the main applications under Section 33-A should have been disposed of by this time. It should be remembered that the

complaints related to the orders of dismissal passed by the management. We express our opinion on the question whether in cases where the workmen have been dismissed by an employer and that dismissal forms the subject of a complaint or dispute, the Tribunal can properly give a direction regarding the payment of wages in part or in whole pending adjudication of the main complaint or dispute. Even assuming that it has got jurisdiction to give such directions, whether the Tribunal should not take into account all circumstances including the manner in which the interest of the employer has to be safeguarded, in case the Tribunal ultimately finds that the action of the employer is justified.

10. The appellant will deposit before the Tribunal the amounts as directed by it on or before the 10th of every month and the workmen will draw the same on furnishing security to the satisfaction of the Tribunal. To this extent, the Interim Awards are modified and the appeals allowed in part. There will be order as to costs in the appeals.

11. If the amounts have been deposited by the appellant as per orders of this Court, September 13, 1968, in C.M. Ps. Nos. 849-851 of 1968, the appellant will be given credit for the same. Similarly, if the employees, referred to in the said order have withdrawn moneys on furnishing security, that security will be treated as sufficient for the purposes of our order also. But it is made clear that the directions given by us regarding the deposit of the amounts and furnishing of security will apply to all the employees who have filed the applications under Section 33-A before the Tribunal.

12. As the complaints, filed under Section 33-A, have been pending for a fairly long period, it is highly desirable that the Tribunal takes up these applications and disposes them of within a period not exceeding three months from today. The records will be sent immediately to the Tribunal.

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