

Awadesh Kumar Bhatnagar

Vs

The Gwalior Rayon Silk Mfg. Weaving Ltd. and Another

Civil Appeal No. 1835 of 1967

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

17.04.1972

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal, by special leave, is against the orders dated September 27, 1966, of the Industrial Court Madhya Pradesh, Indore, in Revisions Nos. 46 and 50/MPIR/66, reversing the order, dated February 25, 1966, passed by the Presiding Officer, Labour Court, Ujjain, in case No. 17 of 1969, Labour.
2. The appellant, at the material time, was an employee of the respondent-company and was working in its Coal and Bardana section as Coal Ash Supervisor. He was on duty on the morning of April 24, 1963. It was the duty of the appellant to sign and issue slips to the contractors in order to enable the latter to remove coal ash on donkeys outside the premises of the Company. As, according to the Company, some malpractice was suspected on the part of the appellant in the issue of such slips, the latter was suspended and a charge-sheet, dated April 26, 1963, issued. In the charge-sheet it was stated that the appellant had issued gate pass to one Bhagirath on April 24, 1963, in order to enable the latter to remove 48 donkey loads of coal ash. It was alleged that the appellant gave eight more slips to Bhagirath on April 25, 1963, to enable the latter to remove additional material from the Company's premises. On checking at the gate, it was discovered that Bhagirath was removing extra goods which he was not entitled to do. On these allegations, the appellant was charged under Standing Order No. 12 for dishonestly in connection with the business of the Company's property. He was asked to show cause why he should not be dismissed for the said misconduct.
3. The appellant sent on April 29, 1963, a fairly elaborate answer to the show-cause notice. He controverted the allegations that he had acted dishonestly in dealing with the Company's property. On the other hand, he pleaded that there was an enormous rush of work on the relevant date and that by mistake or inadvertence he may have issued additional slips to the contractor Bhagirath. He further pleaded for withdrawal of the show-cause notice and dropping the further proceedings contemplated in the notice.
4. An enquiry was held in respect of the allegations made against the appellant. As a result of the inquiry, the appellant was discharged from service with effect from May 15, 1963. After setting out the allegations against the appellant, the explanation furnished by him as also the substance of the notice recorded in the enquiry, the order proceeds to state that the plea of the appellant that he committed a mistake in issuing additional slips on account of rush of work has not been established and that, on the other hand, it is proved that he deliberately issued the additional slips, with a view to enable Bhagirath to remove extra quantity of coal ash which he was not entitled to do under the

contract. It is further stated that it is not in the interest of the Company to retain the appellant in its service any longer and as such he was discharged from service with effect from May 15, 1963, on being paid one month's salary in lieu of notice.

5. The appellant sent a letter, dated July 26, 1963, to the Company as required by the proviso to Section 31(3) of the Madhya Pradesh Industrial Relations Act, 1960 (Act No. 27 of 1960) (hereinafter to be referred as the Act). This notice is called an Approach Notice and by that notice the appellant requested the Company to reconsider its previous decision, dated May 3, 1963, and reinstate him in service. The Company sent a reply declining to reconsider its previous decision and informed the workman that he cannot be taken back into service.

6. The appellant filed an application before the Presiding Officer, Labour Court, Ujjain under Section 31(3) of the Act, praying for setting aside the order, dated May 3, 1963, passed by the Company discharging him from service. The said application was registered as Case No. 17 of 1963, Labour. In his application the appellant challenged the order of the management on various grounds. He averred that the inquiry proceedings were conducted against him by unauthorised persons and that the order terminating his service has not been passed by the Manager, as is mandatory under the relevant Standing Orders of the Company. He further averred that his request to the Inquiry Officer to arrange for production of certain documents was improperly refused and as such he was very seriously prejudiced in placing his defence in the inquiry proceedings. He further averred that the action has been taken against him mala fide and he has been victimised as he was taking part in the Union's activities. The respondent-Company denied the allegation of mala fide and victimisation. It was alleged that the inquiry proceedings have been conducted in accordance with the Standing Orders of the Company by competent persons and the order terminating the appellant's service has also been passed by the competent authority.

7. The findings recorded by the Labour Court in its order, dated February 25, 1966, are as follows : The appellant was a permanent employee of the Company, though he had been in service only for about a year. Before approaching the Labour Court under Section 31(3) of the Act, he had properly complied with the proviso to the said section. The order, dated May 3, 1963, discharging the workman from service was not vitiated by mala fides, nor was it prompted with a view to victimise the appellant for his Labour Union activities. The serving of the charge-sheet by Sri Bhagrodiya, who was then the Secretary of the Factory was valid and the enquiry conducted by Sri Abde Ali and Sri Trivedi was also proper, as the latter two officers had been given the power to conduct inquiries. For the non-production of the slips, required by the appellant during the inquiry proceedings, both the appellant and the Company are responsible. The appellant did not make the request for their production at the proper time. The appellant may have made a request to Jodha Ram for destroying three pages in the Work Register in order to escape punishment, but that circumstance is not decisive one way or the other.

8. The appellant must have made such a request either to cover up the mistake committed by him or to escape punishment being imposed for his misconduct. The order, dated May 3, 1963, has not been passed by the Manager and therefore, it is not valid. A defeat has taken place in the enquiry by the non-production of the slips required by the appellant. The plea of the appellant that he had issued the extra slips to Bhagirath due to mistake or inadvertence cannot be accepted and there is no evidence to support that plea. It is established that Bhagirath was given additional slips by the appellant and on that basis he was removing extra material from the premises of the Company. If Bhagirath had not been caught at the gate, the Company would have been put to serious loss. Though the misconduct as such is not fully proved, there is a very strong suspicion about the

conduct of the appellant in issuing additional slips to Bhagirath and therefore his honesty has become open to considerable doubt and as such it is not desirable to reinstate the workman in the service of the Company.

9. On the above findings, the Labour Court ordered the Company to pay the workman concerned five month's salary as also one months' salary due to him in lieu of notice. At this stage it may be mentioned that the Labour Court has itself considered the materials that were available before the Enquiry Officer and the additional materials placed before it and recorded the above findings. From the above it will be seen that the order, dated May 3, 1963, has been held to be invalid by the Labour Court for two reasons : (1) It has not been signed by the Manager; and (2) the inquiry proceedings are vitiated by the circumstance that certain slips required by the appellant were not produced by the Company.

10. The respondent-Company filed revision petition No. 46/MPIR of 1966, before the Industrial Court, Madhya Pradesh, challenging the decision of the Labour Court. The workman also filed revision petition No. 50/MPIR of 1966, against the order of the Labour Court challenging the findings recorded against him and also declining to direct the management to reinstate him. The revisions by the Company and the workman were filed under Sections 66 and 67, of the Act. The Industrial Court by its order, dated September 27, 1966, accepted the revision petition filed by the Company and held that the order, dated May 3, 1963, is valid and that the domestic enquiry held by the management does not suffer from any infirmity. The revision filed by the workman was dismissed. The result was that the order of the Company discharging the workman from service was held to be good.

11. In its order the Industrial Court has held that the order, dated May 3, 1963, has been signed both By Bhagrodia, who was the principal officer of the Company and was managing and supervising the same as also by Abde Ali who had the authority to hold the inquiry. As such the order has been passed in full compliance with the provisions of the Standing Orders of the Company. Regarding the second defect, pointed out by the Labour Court, it was held that the reasoning of the Labour Court is very halting. The Industrial Court held that the workman has been given full opportunity to produce evidence in his defence which was availed of by the employee. As the employee did not make any request for the production of the slips in proper time and as witnesses had already been examined, the order of the Enquiry Officer rejecting the request of the workman was justified and cannot be characterised as unreasonable. The Industrial Court further held that no prejudice has been caused to the workman on this account.

12. The three main contentions raised before us by Mr. Naunit Lal, learned counsel for the workman were : (1) The inquiry proceedings against the appellant have been conducted by the officers who had no jurisdiction under the relevant Standing Orders of the Company and thus proceedings have been conducted in violation of the principles of natural justice; (2) the order, dated May 3, 1963, discharging the appellant from service is illegal and void inasmuch as it has not been issued by the Manager, as is mandatory under the Standing Orders of the Company; and (3) The Industrial Court exceeded the jurisdiction conferred on it under Section 66 of the Act when it interfered with the findings recorded in favour of the appellant by the Labour Court.

13. Mr. G. B. Pai, learned counsel for the respondent-Company, on the other hand, has referred us to the relevant provisions of the Standing Orders of the Company as also to the inquiry proceedings conducted against the appellant and pointed out that there is no violation of the principles of natural justice; nor they have been conducted contrary to the Standing Orders of the Company. He pointed

out that the inquiry proceedings were conducted by Abde Ali, who had been authorised to do so by the Manager. He further urged that Abde Ali was competent to pass the order of discharge. In any event, as the order has been signed, both by Abde Ali as well as by Bhagrodia, who was the Secretary of the Mills and the appointing and dismissing authority, no infirmity is attached to the same. He further drew our attention to the findings recorded by the Labour Court itself to the effect that the appellant's plea that he issued the additional slips by mistake or inadvertence is false. In view of the serious errors and illegalities committed by the Labour Court, the counsel pointed out, the Industrial Court was justified in reversing the order passed against the appellant.

14. It is necessary now to refer to the relevant Standing Orders of the Company. Clause 1(a) defines the "Manager" as follows :

"1(a) 'Manager' means, if the undertaking is a factory, a persons nominated as manager under the Factories Act, 1948, or a person whom an undertaking shall nominate as Manager for the purposes of these standing orders and includes a person authorised by him."

15. The definition contemplates three types of persons who come within the definition of the said expression : (1) A person nominated as manager under the Factories Act, 1948; (2) A person who is nominated by the undertaking concerned as Manager for purposes of Standing Orders; and (3) Any person authorised by the said Manager.

16. Clause 12 deals with disciplinary action for misconduct. It deals with the types of major and minor misconduct, the punishment that can be imposed for the same as well as the procedure to be followed by the authority referred to therein, with reference to the misconduct of a workman. Sub-clauses (1) and (2) enumerate the various items of major and minor misconduct respectively. Sub-clause (3) deals with the nature of punishment that can be imposed for minor and major misconduct. Sub-clause (4) deals with the procedure for the inquiry to be conducted against a workman charged with misconduct. The relevant provisions of sub-clause (4) which are to be noted are items (a) and (f) :

"12(4) No punishment shall be imposed on an employee unless proved guilty of misconduct in an enquiry conducted in the following manner -

(a) The manager or other officer authorised by him in this behalf shall give to the employee a charge-sheet clearly setting forth the misconduct charged and the circumstances appearing against him and requiring his explanation;

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(f) An order of punishment shall be in writing and shall be issued over the signature of the manager or other officer authorised under standing order (1)(a). A copy of the order passed awarding the punishment shall be given to the employee."

17. Coming to the first contention of Mr. Naunit Lal, the finding of the Labour Court and accepted by the Industrial Court is that both Abde Ali as well as Trivedi, who conducted the enquiry were persons empowered to do so. The authority letter Ext. D-39-A, clearly shows that both these officers have been authorised by the Factory Manager Sri Srivastava to conduct all enquiries under the Act and the Standing Orders and they have also been authorised to do all things necessary in connection with the enquiry. In view of the concurrent findings of these two authorities, it must be held that the

enquiry proceedings have been properly conducted by the officers, competent under the Standing Orders. The plea that the enquiry proceedings suffer from violation of the principles of natural justice is based upon the circumstance that certain slips that were required to be summoned by the workman were not made available. It is no doubt true that the appellant filed an application before the Enquiry Officer on May 2, 1963, requesting him to make available certain gate passes. The purpose was stated to be to enable the appellant to further cross-examine two witnesses Devidattaji and Jamadar Goverdhan. The Enquiry Officer has made a note that this application was received after the said two witnesses had been examined on May 3, 1963. The Enquiry Officer passed an order that the two witnesses had been examined long ago and there is no justification for recalling them. On this ground the application filed by the appellant for production of slips was rejected. Prima facie it may appear that when an employee who is facing an enquiry for misconduct requires certain materials in the possession of the Company to be produced and they were not made available, the workman may be prejudiced in properly placing his defence. But in the circumstances of this case, the finding of the Industrial Court that no prejudice has been caused to the appellant is justified. The Labour Court itself has recorded a finding to the effect that the appellant is responsible for not having applied for production of the slips in question and that he never put any question to the witnesses concerned regarding these slips. The reasoning of the Labour Court itself clearly shows that this plea of the appellant for having certain slips produced is an after-thought. The Labour Court has also held that the plea of the appellant that he issued the additional slips by mistake cannot be believed. This finding has been recorded by the Labour Court after independently going through the materials on record. The Labour Court has further found that an attempt was made by the appellant to induce Jodha Ram to destroy certain pages in the Daily Work Register. This conduct clearly shows that the appellant tried to destroy the evidence that may be used against him and against the workman, it is difficult for us to appreciate as to how the Labour Court came to record a finding that by mere non-production of the slips, as required by the workman, the enquiry proceedings have been held in violation of the principles of natural justice. The Industrial Court, under those circumstances was perfectly justified in holding that the approach made by the Labour Court was erroneous. We are of the view that the finding of the Industrial Court that there is no violation of the principles of natural justice is correct. Therefore, the first contention of Mr. Naunit Lal has to be rejected.

18. Coming to the second contention, we have already referred to the fact that the Labour Court has found that Abde Ali was competent to hold the enquiry against the appellant. The order of discharge has been held to be invalid by the Labour Court on the ground that it has not been signed by the Manager, namely, Shri Srivastava. So far as this is concerned, the Industrial Court has held that the order has been signed both by Abde Ali as well as by Bhagrodia, who was the Secretary of the Mills and who had the power to appoint and dismiss an employee of the Company. According to Mr. Naunit Lal, though Abde Ali may be competent to conduct an enquiry, the order of discharge has to be passed only by the Manager or other officer authorised as required by clause 12(4)(f). In this case as the Manager Shri Srivastava has not signed the order, it is invalid.

19. We are not inclined to accept the above contention of Mr. Naunit Lal. The matter can be considered from two points of view. We will proceed on the basis that Abde Ali alone has signed the order. Even, according to the appellant, he is a person competent to hold the enquiry. The question is whether he is also competent to pass an order punishing an employee under clause 12(4) (f). We have already referred to the definition of "Manager" as well as clause 12(4)(a) and (f) of the Standing Orders. A person authorised by the Manager is himself a manager under clause (1)(a). Under Ext. D-39-A, Abde Ali has been authorised by Shri Srivastava to conduct all enquiries under the Act in accordance with the Standing Orders applicable to the workman and also to conduct all

proceedings in respect of the enquiry. The authorisation given under Ext. D-39-A, to Abde Ali is comprehensive enough to constitute him as a person authorised by the Manager and as such he is a manager under clause (1)(a) of the Standing Orders. If so, he is a person competent under clause 12(4)(f) to pass an order discharging the appellant by way of punishment.

20. The Industrial Court has found that the order has been also signed by Bhagrodia, who was the Secretary of the Mills. Admittedly, he is an officer superior in rank to that of the Manager and he is the appointing and dismissing authority for all clerical and other staff. When an authority higher than the Manager has passed the order of discharge, it cannot certainly be held to be invalid. A reasonable interpretation of clause 12(4)(f) of the Standing Orders is that an authority lower in rank to that of a manager or other officer authorised under Standing Order 1(a) cannot pass an order of punishment. Therefore, on this ground also the order can be held to be valid.

21. There is an additional circumstance which has not been noted by the Labour Court. Bhagrodia has given evidence to the effect that the Factory Manager, Shri Srivastava was subordinate to him. He has further deposed that whenever Sri Srivastava went out of station, he used to authorise him to exercise all powers of the Manager under the Standing Orders of the Company. During the enquiry proceedings against the appellant, Shri Srivastava went on leave and he authorised the witness to pass the necessary orders on the basis of the enquiry. The witness has further deposed that after considering the enquiry proceeding, he passed the order discharging the appellant from service. This evidence has not been challenged in cross-examination. If so, it follows that even by giving a strict meaning to the expression "Manager" under the Standing Orders, Bhagrodia is a person who has been authorised by the Manager for the purpose of the Standing Orders and as such he is a Manager under the definition and as such competent to pass the order under clause 12(4)(f) of the Standing Orders. Considering the matter from any point of view, it follows that the view of the Industrial Court that the order of discharge has been passed by the competent officer is correct.

22. The above aspects, referred to by us, have not been referred to by the Labour Court when it held that the order is invalid as having been passed by a person without authority. Therefore, the second contention of Mr. Naunit Lal also fails.

23. Coming to the last contention, we are not satisfied that the Industrial Court has in any manner exceeded its jurisdiction under Sections 66 and 67 of the Act. We have pointed out the very serious mistakes committed by the Labour Court. The Industrial Court has acted well within its jurisdiction in setting aside the order of the Labour Court.

24. In the result, the order of the Industrial Court is confirmed and this appeal dismissed. There will be no order as to costs.

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