

M/s. Podar Mills Ltd.

Vs

Bhagwan Singh and Another

Civil Appeal No. 2084 of 1968

(C.A. Vaidialingam, A.N. Grover JJ)

25.04.1973

JUDGMENT

GROVER, J. –

1. This is an appeal by special leave from an order of the Industrial Tribunal, Rajasthan, dismissing the application of the appellant mills under section 33(2)(b) of the Industrial Disputes Act, 1947, hereinafter called the 'Act' and refusing to accord approval to the dismissal of the workmen concerned.

2. On December 18, 1947, the respondent workmen were charge-sheeted for certain acts of misconduct. Since they were not available for service, copies of the charge-sheet were forwarded to their addresses by registered post on December 20, 1967. The copies were also affixed on the notice board of the mills. The charge-sheet posted to Respondent 1 was returned undelivered on or about December 24, 1967. However, the charge-sheet, which was sent by registered post to the other respondent, was delivered to him on December 23, 1967. On that very day, letters were issued to the respondents fixing the date of enquiry on December 30, 1967. Copies of those letters were posted on the notice board, and the mills also published in a local daily newspaper 'Rashtrdoot' in its issue of December 24, 1967, a notice to the respondents, informing them that the enquiry would be held on December 30, 1967, with regard to the charges preferred against them. Notices were also sent by registered post to their addresses which were returned undelivered. The respondents did not present themselves for enquiry before the enquiry officer who proceeded to hold it in their absence on December 31, 1967. That report was considered by the Manager of the mills, and he passed an order, directing the dismissal of the respondents. Pursuant to the order of the Manager, dismissal orders were issued to the respondents on January 4, 1968, by registered post. These letters were however, returned undelivered on January 8, 1968. On January 8, 1968, the appellant-mills forwarded an application under Section 33(2) of the Act to the Industrial Tribunal for approval of the action. That application was dismissed.

3. In the application, which was filed under Sections 33 (2)(b) of the Act, after setting out some of the facts that have been already mentioned, it was stated in para 11 that a voucher for an amount equivalent to each of the opposite party's one month's wages had been sent along with the dismissal order under clause (b) of sub-section (2) of Section 233 of the Act. The workmen filed a written statement raising some preliminary objections, but in para 3 of the written statement, it was alleged by them that the so called enquiry was completed on December 30, 1967, and the report was submitted on the same day. Thereupon the workmen were ordered to be dismissed with immediate effect on January 4, 1968. The application for approval of the dismissal of the workmen was made before the Tribunal on January 25, 1968, and one month's wages as required under the Act, were

given to the workmen only on February 2, 1968. Thus the appellant mills had failed to carry out the mandatory provisions of Sections 33 (2)(b) of the Act. It is unnecessary to refer to the pleas taken on other matters.

4. A rejoinder was filed by the mills and it is necessary to set out the reply to para 3 of the written statement of the workmen :

"That the contents of para 3 are not admitted as stated. It may be mentioned here that the workmen were served with the dismissal order and the acknowledgment due form was received by the mills on January 1, 1968 and along with the dismissal order the workman was also given pay slip authorising him to collect one month's notice wages from the cashier of the company. An application for the approval of the order of dismissal was submitted before the Hon'ble Court on January 8, 1968. It is wholly incorrect that the workmen was ordered to be dismissed with effect from January 4, 1968, or that the application for the approval of the dismissal of the workman was made before the Hon'ble Tribunal on January 25, 1968. The question of the workman collecting one month's wages on February 2, 1968, is wholly immaterial. It may be mentioned that the workman was intimated on the date on which the dismissal order was served to collect his dues from the cashier. It was his outlook as to when he collects the amounts. His delay in collecting the amount can have possibly no bearing in this case. It may be further mentioned that the application was submitted on January 8, 1968 and subsequently for the supply of some further information the office of the Tribunal put a note thereon."

5. The Tribunal observed that there was nothing in the application for approval to show why the mills had delayed the making of that application. The only contention of the mills was that since the order could not be effective unit served on the workmen, they moved the application simultaneously with the service of the order on them i.e., on January 8, 1968. The contention, however, was repelled by the Tribunal after referring to certain decisions, including the decisions of this Court.

6. Before us, the learned counsel for the mills took up a position which is not consistent with the pleadings. It has been contended that although service of the registered letters, which were sent on January 4, 1968, to the respondent workmen could not be served on them., the respondents came to the mills on January 8, 1968 when they were actually served and they received the amount of the month's pay. This contention appears to be based on what is stated in para 5 of the petition for special leave, which is reproduced below :

"Pursuant to the order of the Manager, dismissal orders against the respondents were issued on January 4, 1968. Since the respondents were not available to the mills for personal service of the dismissal orders, the orders were forwarded to them by registered post A.D. on January 5, 1968. The registered cover containing the dismissal order in respect of respondent No. 1 was returned undelivered on January 8, 1968. However, respondent No. 1 could be personally served with the dismissal order on January 8, 1968, at the mills and along with the dismissal order he was also given a pay slip authorising him to collect forthwith one month's notice pay from the cashier. The respondent No. 1 has, subsequently, collected his notice pay. So far as respondent No. 2 was concerned, the registered cover containing the dismissal order was returned undelivered on January 18, 1968. However, respondent No. 2 could be personally served with dismissal order on January 8, 1968 and with the dismissal

order he was given pay slip authorising him to collect notice pay from the cashier. The respondent no. 2 subsequently collected the notice pay and his other dues and the aforesaid amount were received by the respondents Nos. 1 and 2 herein without day protest."

7. It appears to us that the pleadings of the appellant mills were highly defective and did not contain any averment which would support the case now sought to be made out. The facts stated in paragraph 5 are entirely different from what was stated either in the application or in the rejoinder before the tribunal. As a matter of fact, if the workmen were served on the 8th and had received their wages simultaneously, as stated in para 5 of the special leave petition, there is no reason or justification why those facts should not have been stated in the application filed for obtaining the approval of the tribunal.

8. When the appeal was originally heard by us learned counsel for the appellant invite our attention to certain documents which, according to him, establish that the service was effected on January 8, 1968, on the workmen concerned of the order of dismissal and that they were paid their wages on that very date as stated in para 5 of the special leave petition. We were of this view that these documents could not be relied upon as there was nothing to indicate that they had been admitted into evidence. After the hearing but before the announcement of the judgment a petition was moved inviting our attention to certain admissions made in the affidavit filed on behalf of the respondents which was part of the record of this Court. In that affidavit it was admitted in paragraph 8 that the respondents had been served with the dismissal orders outside the mills' gate on the evening of January 8, 1968, by the chowkidar of the mills. Even if that be so, there is no admission in the said affidavit that the wages were also paid on that day. It is apparent that the case now sought to be made out on the basis of what was stated in para 5 of the special leave petition is quite different from the one which is to be found in the pleadings. We are unable to hold that there is any satisfactory proof that the wages were also paid to the respondent in accordance with the requirements of provision to Section 33(2)(b) of the Act. The point of view law which was considered by the tribunal and which has been reargued before us need not to be decided in the above circumstances. As one of the essential requirements of the proviso to Section 33 (2)(b) of the Act was not satisfied the order of the Tribunal must be upheld though on different grounds.

9. The appeal fails and it is dismissed with costs.

</html