Western India Match Company Ltd.

Vs

Workmen

Civil Appeal No. 2375 of 1968

(P. Jagmohan Reddy, S. N. Dwivedi JJ)

20.08.1973

JUDGMENT

DWIVEDI, J. –

1. The Western India Match Company Limited, Bareilly (hereinafter called the Company) is governed by the Industrial Employment (Standing Orders) Act, 1946 (hereinafter called the Act). It appears that it has a separate standing Order for the Watch and Ward Staff. According to the Standing Order there are five categories of workmen : (1) Permanent, (2) Probationer, (3) Substitute, (4) Temporary and (5) Apprentice. A permanent workman is one "who has completed a probationary period of two months as such and is employed on a permanent post". A probationer is a workman "who is provisionally employed to fill a permanent vacancy and has not completed two months service".

2. The Company appointed one Prem Singh as a watchman on September 1, 1965. The letter of appointment states that he would be "on probation for a period of six months". We shall hereafter refer to this contract of service as a "special agreement". The period of probation expired on March 1, 1966, but he continued to service on his post. On April 13, 1966, the Company passed an order extending the period of his probation by two months with retrospective effect from March 1, 1966. Nine days later, on April 22, 1966, the Company passed this order : "the above watchman has been discharged with effect from May 1, 1966 for the reasons mentioned below :

(1) Probation period not approved, services are no longer required by the Company."

This order gave rise to an industrial dispute. The dispute was referred for adjudication by the Government of Uttar Pradesh to the Labour Court (II), Lucknow. The referring order was made on April 9, 1968. The question referred to the labour Court is :

> "Whether the employers have terminated the services of the workman Shri Prem Singh, son of Shri Bhartu, Watchman T. No. 2 - 47, with effect from May 1, 1966, legally and/or justifiably ? If not, to what relief is the workman concerned entitled ?"

3. Prem Singh was represented before the labour Court by the Matches Mazdoor Sangh, Bareilly. The case of the Sangh was that the employment of Prem Singh on probation for six months was in contravention of the Standing Order. It was maintained that on the expiry of two months Prem Singh automatically became a permanent workman. It was also said that during the entire period of his probation Prem Singh was never told by the Company that it was not satisfied with his work. According to the Company, the term of six months' probation was valid. It was said that as his work

was not found satisfactory, he was discharged.

4. The labour Court has found that the discharge was neither mala fide not an act of victimisation for trade union activities. However, the labour Court has set aside the order of discharge and has directed his reinstatement with continuity of service and back wages. This is so, because it has taken the view that the term regarding six months' probation was in contravention of the Standing Order and was invalid. It has held that on completing two months' probation Prem Singh automatically became a permanent employee.

5. Shri Daphtary, counsel for the Company, has submitted that the labour Court has gone beyond that terms of reference. It is pointed out that the Government Order of reference does not expressly empower the labour Court to decide whether the term regarding six months' probation was valid or invalid. In our view, the labour Court has not travelled beyond the terms of reference. It was called upon to decide whether the order of discharge was legal and/or justified. The validity or invalidity of the discharge obviously depended on the validity on invalidity of the term regarding six months' probation. If this term was invalid the order of discharge also would obviously be invalid.

6. The next submission of Shri Daphtary is that the special agreement is not inconsistent with the Standing Order. According to the Standing Order, a workman shall not be kept on probation for more than two months. If he has worked during these two months to the satisfaction of the Company, he becomes permanent. But as a result of special agreement even though he has worked during these two months to the satisfaction of Company, he will not be a permanent workman. While the Standing Order says : "Confirm him on the expiry of two months", the special agreement says : "No, wait till the expiry of six months". There is thus a conflict between them. They cannot co-exist. So we are of opinion that the special agreement is inconsistent with the Standing Order to the extent of the additional four months' probation.

7. The terms of employment specified in the Standing Order would prevail over the corresponding terms in the contract of service in existence on the enforcement of the standing Order. It was in effect so held in the Agra Electric Supply Co. Ltd. v. Shri Alladin, ((1970) 1 SCR 808 : (1969) 2 SCC 598) Avery India Ltd. v. Second Industrial Tribunal West Bengal, (AIR 1972 SC 1626 : (1972) 3 SCC 585) and the United Provinces Electric Supply Co. Ltd. Allahabad v. Their Workmen. ((1972) 2 SCC 54) While the Standing Orders are in force, it is not permissible to the employer to seek statutory modification of them so that there may be one set of Standing Orders for some employees and another set for the rest of the employees. In Salem Erode Electricity Distribution Company Ltd. v. Salem Erode Electricity Distribution Co. Ltd. Employees Union, ((1966) 2 SCR 498 at p. 504 : AIR 1966 SC 808 : (1966) 2 SCJ 480 : (1966) 1 Lab LJ 443) Gajendragadkar, C.J., said :

> "(T) here is no scope for having two separate Standing Orders in respect to any one of them. Take the case of classification of workmen. It is inconceivable that there can be two separate Standing Orders in respect of this matter. What we have said about classification is equally true about each one of the other said about classification is equally true about each one of the other said clauses; and so, the conclusion appears to be irresistable that the object of the Act is to certify Standing Orders in respect of the matters covered by the Schedule; and having regard to these matters, Standing Orders so certified would be uniform and would apply to all workmen alike who are employed in any industrial establishment."

8. If prior agreement, inconsistent with the Standing Orders will not survive, an agreement posterior to an inconsistent with the Standing Order should also not prevail. Again, as the employer cannot enforce two sets of Standing Orders governing the classification of workmen, it is also not open to him to enforce simultaneously the Standing Order regulating the classification of workmen and a special agreement between him and an individual workman settling his categorization.

9. In view of the decisions of this Court cited earlier, the decisions in M/s. J. K. Cotton Manufacturers Ltd. Kanpur v. J. N. Tewari, (AIR 1959 All 639) and the Banaras Electric Light and Power Co. Ltd. Behlupura v. Government of Uttar Pradesh and Others, ((1962) 1 LLJ 14) no longer lay down good law. They take the view that notwithstanding the Standing Orders it is open to the employer no conclude an agreement with an individual workman which may be inconsistent with the Standing Orders. These decisions are overruled.

10. In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the unity of this law. But the experience of the working of this law over a long period has belied their faith. Later generations discovered that the workman did not possess adequate bargaining strength to secure fair terms and conditions of service. When the workmen also made this discovery, they organised, themselves in trade unions and insisted on collective bargaining with the employer. The advent of trade unions and collective bargaining created new problems of maintaining industrial peace and production for the society. It was therefore considered that the society has also an interest in the settlement of the terms of employment of industrial labour. While formerly there were two parties at the negotiating table - the employer and the workman, it is now thought that there should also be present a third party, the State, as representing the interest of the society. The Act gives effect to this new thinking. By Section 4 the Officer certifying the Standing Order is directed to adjudicate upon "the fairness or reasonableness" of the provisions of the Standing Order. The Certifying Officer is the statutory representative of the society. It seems to us that while adjudging the fairness or reasonableness of any Standing Order, the Certifying Officer should consider and weigh the social interest in the claims of the employer and the social interest in the demands of the workmen. Section 10 provides the mode of modifying the Standing Orders. The employer or the workman may apply to the Certifying Officer in the prescribed manner for the modification of the Standing Orders. Section 13(2) provides that an employer who does any act in contravention of the Standing Order shall be punishable with fine which may extend to one hundred rupees. It also provides for the imposition of a further fine in the case of a continuing offence. The fine may extend to twenty-five rupees for every day after the first during which the offence continues.

11. The special agreement, in so far as it provides for additional four months of probation, is an act in contravention of the Standing Order. We have already held that. It plainly follows from Sections 4, 10 and 13(2) that the inconsistent part of the special agreement cannot prevail over the Standing Order. As long as the standing Order is in force, it is binding on the Company as well as the workmen. To uphold the special agreement would mean giving a go-by to the Act's principle of three-party participation in the settlement of terms of employment. So we are of opinion that the inconsistent part of the special agreement is ineffective and unenforceable.

12. It is pointed out on behalf of the Company that Section 18 of the Industrial Disputes Act provides that any settlement between the employer and the workman is binding on them. It is said

that accordingly the special agreement in the present case would be binding on Prem Singh. It is not necessary to construe Section 18 in this case because it is governed by the provisions of the Uttar Pradesh Industrial Disputes Act. Section 6-B(1) of this Act deals with a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding. Sub section (2) there of provides that after the settlement is arrived at, the parties to the settlement or any one of them may apply to the Conciliation Officer of the area concerned for the registration of the settlement. Sub-section (3) is important. It provides that while considering the question of the registration of a settlement, the Conciliation Officer shall examine whether it is inexpedient to do so on public ground affecting social justice or whether the settlement has been brought about as a result of collusion, fraud or misrepresentation. We think that the word 'may' in sub-section (2) should be read as 'shall' in the context of sub-section (3). If asocial justice is to be ensured and if collusion, fraud or misrepresentation is to be eliminated, it is necessary that every privately negotiated settlement should be submitted for registration to the Conciliation Officer. It may be observed that the U.P. Act also insists on the three party participation in the settlement of terms if employment. In the result, the Company cannot enforce the special agreement on the pretext that Prem Singh had voluntarily agreed to it. The Conciliation Officer having had no say in the making of this agreement, the consent of Prem Singh is meaningless.

13. It is then said that Standing Order can be modified in a suitable case by the labour Court. In this connection reliance is placed on the Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. v. The Workmen. ((1968) 1 SCR 581 : AIR 1968 SC 585 : 1968 Lab IC 558 : (1968)1 Lab LJ 555) It is true that the labour Court may determine terms and conditions of employment which may be inconsistent with the Standing Order. But in the present case the reference did not give jurisdiction to the labour Court to determine terms and conditions of employment of Prem Singh. The reference directed the labour Court to decide whether the discharge of Prem Singh from service was legal or justifiable.

14. Shri Agarwala has argued that the Standing Order is a law and accordingly the special agreement in contravention of it is void. In support of his argument he has relied on a number of decisions of this Court. Shri Daphtary has argued to the contrary and has relied on some other decisions. In the view that we have taken earlier, it is not necessary to consider this question. Accordingly, we do not refer to the authorities cited before us.

15. Another contention of Shri Daphtary is that in the circumstances of this case the labour Court should not have made an order for reinstatement of Prem Singh. Stress is laid on the assertion in the order of discharge that his work during the entire probationary period was not satisfactory. In support of his argument Shri Daphtary has relied on the Hindustan Steels Ltd. Rourkela v. Roy (A.K. and Others) ((1970) 1 LLJ 228 : (1969) 3 SCC 513). This decision does not assist him for in the case before us the Company did not plead in its written statement filed before the labour Court that the work of Prem Singh was unsatisfactory during the probationary period, nor did it lead any evidence in proof of his unsatisfactory work. The argument does not appear to have been raised in the Special Leave Petition also. Accordingly, it is not possible to permit this argument to be raised now. (See Binny Ltd. v. Their Workmen, ((1972) 1 LLJ 478) and The management of Panitole Tea Estate v. The Workmen ((1971) 3 SCR 774 : (1971) 1 SCC 742)).

16. In the end, Shri Daphtary has urged that as the labour Court has found that the discharge of Prem Singh from service was neither mala fide nor a measure of victimisation, he should not have been reinstated to service. Reliance is placed on the Tata Oil Mills Company Ltd. v. Its Workmen and Another. ((1963) 2 LLJ 78 : 24 FJR 472) M/s. Francis Klein & Co. Private Ltd. v. The

Workmen and Another, (AIR 1971 SC 2414 : (1971) 2 Lab LJ 615 : 1971 Lab IC 1393) and the Air-India Corporation, Bombay v. V. A. Rebellow and Another. ((1972) 1 LLJ 501 : (1972) 1 SCC 814) It is settled law now that the Labour Court may interfere with the order of discharge where it is satisfied that it was made mala fide or was a measure of victimisation or unfair labour practice. It has also been held by this Court that the Labour Court may interfere with the order of discharge if it finds that the order is arbitrary or capricious or so unreasonable as to lead to the inference that it is not made bona fide. As there was no plea and no evidence to show that the work of Prem Singh was unsatisfactory, the conclusion is obvious that the order of discharge is arbitrary. Accordingly, the Labour Court could interfere and make an order of reinstatement.

17. There is no force in this appeal and accordingly it is dismissed with costs.

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