

Remington Rand of India Ltd.

Vs

Tahir Ali Saifi and Another

Civil Appeal No. 1704 of 1969

(A. Alagiriswami, P. K. Goswami, N. L. Untawalia JJ)

14.08.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. The first respondent was a mechanic in the appellant company. On September 23, 1965, a chargesheet was served on him on the ground that he sold one secondhand Godrej Standard typewriter to M/s. Jabalpur Enterprise. The chargesheet mentioned that he had transacted the business in the name of his brother, that the machine actually belonged to him and that he had carried on negotiations and concluded the transaction with the party mentioned. He was, therefore, charged for grave and serious misconduct for engaging himself in work similar in nature to that of the company under Clause 12A(29) of the company's standing orders. The First respondent denied the charge levelled against him and claimed that his brother had sold the typewriter and he had nothing to do with it and that the sale of one secondhand typewriter by his brother did not and cannot amount to carrying on business of selling typewriters, that even on the allegations there was no basis for charging him with misconduct under Clause 12A(29) of the Standing Orders. Thereafter an enquiry was held and witness examined. Almost towards the end of the enquiry he was asked whether he would like to say anything and the first respondent requested to be allowed to admit his guilt and also requested the management to take a lenient view of his lapse and reinstate him and allow him to serve the company with all loyalty and sincerity. The enquiry officer held that the charge against the first respondent was made out and the regional manager of the appellant company thereafter dismissed him.

2. A reference was made by the Madhya Pradesh Government to the Labour Court at Jabalpur. The Labour Court held that as the statement of the workman was recorded and he was asked to explain the charges levelled against him before all the prosecution evidence had been completed, it was a serious infirmity and to that extent the domestic enquiry was vitiated. But on the basis of the evidence of witnesses produced by the employer the Labour Court held that the charge against the workman was proved. The Labour Court in particular stressed the fact that the first respondent not only sold the typewriter but undertook to do service of the typewriter for one year and it held that by selling a typewriter and undertaking to do service of the typewriter for one year the first respondent could be said to have engaged in work which was similar in nature to that of the company.

3. The first respondent filed a petition before the High Court for quashing the award of the Labour Court. The High Court held that "engaging in any business" meant a continuity of transactions and not a single casual or solitary transaction and that therefore the first respondent by selling one secondhand typewriter could not be said to have contravened clause (29) of the standing order or

any of the terms of his employment. It was argued before the High Court that as the first respondent had undertaken to repair the typewriter for a period of one year he should be held to have engaged in business of repairing typewriters, which was also a business carried on by the company. This argument was rejected on the ground that it was not mentioned in the chargesheet. In the result the award of the Labour Court was quashed.

4. We are of opinion that the High Court's conclusions were correct. The standing order in question which is alleged to have been contravened by the first respondent is as follows :

12A. Misconduct for commission of any of the following acts the punishment is summary dismissal.

(29) Engaging in any work similar in nature to that of the company and/or in which he may for the time being be engaged by the company.

It would be noticed that the standing order consists of two parts, (1) engaging in any work similar in nature to that of the company, and (2) engaging in any work in which he may for the time being be engaged by the company. Admittedly the first respondent was a mechanic employed by the company. The company is not only engaged in the business of sale of typewriters but also in repairing typewriters. The fact of the first respondent having sold a secondhand Godrej typewriter is established beyond doubt. But as rightly held by the High Court a single act of sale cannot be said to establish that the first respondent was engaging in the business of selling typewriters. Nor was it seriously argued on behalf of the appellant company that a singly act of sale would amount to the first respondent engaging in the business of typewriters. But it was said that he was engaging in the business of repairing typewriters thus engaging in work similar in nature to that of the company as also work in which he was engaged by the company. This was based on the fact that in the letter which the first respondent passed on to the buyer of the typewriter the undertook to do the repairs of the typewriter for one year. We do not think that it can be said that the first respondent by undertaking of typewriter repairs. More important, that was not the charge against him. When in the chargesheet served on the first respondent it was said that he had carried on negotiations and concluded the transaction, the transaction mentioned was the transaction of sale of the typewriter. There was nothing said about his having undertaken to repair the typewriter for a year. That the workman himself understood the chargesheet as referring only to the transaction of sale is clear from the reply he gave in response to the chargesheet served on him. In the circumstance, therefore, we agree with the High Court on this point also. The fact that the workman admitted his guilt is beside the point. He admitted his guilt only in the sense that he admitted having sold a secondhand Godrej typewriter.

5. The appeal is, therefore, dismissed with costs.

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