D. C. Roy

Vs

The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others

Civil Appeal No. 466(NL) of 1970

(Y.V. Chandrachud, V.R. Krishna Iyer JJ)

23.03.1976

JUDGMENT

CHANDRACHUD, J. -

1. The appellant was working as a Ticket Examiner in the Madhya Pradesh State Road Transport Corporation at its Nagpur Depot. On March 21, 1964 a bus belonging to the corporation was checked by the flying squad when nine and half passengers out of 26 were found travelling without tickets. The appellant was on the bus in the discharge of his duties as a ticket examiner. The flying squad prepared a panchnama on the spot obtaining thereon the signatures of the appellant, the driver and the ticket conductor. It was found that the conductor had collected the fare from all the 26 passengers who were travelling in the bus but had not issued tickets to 9 1/2 passengers. Since it was the duty of the appellant as a ticket examiner to check whether the conductor had collected fare from all the passengers and in token thereof had issued tickets to them, a chargesheet was served on the appellant for breach of Clauses 12(b) and (d) of the Madhya Pradesh Standard Standing Orders which govern the matter by reason of Rule 7 of the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963. A domestic inquiry was thereafter held into the charges and the appellant having been found guilty the corporation, through its Depot Manager, dismissed him by an order dated August 14, 1964.

2. On December 9, 1964 the appellant filed an application in the Labour Court, Jabalpur, under Section 31 of the Madhya Pradesh Industrial Relations Act challenging the validity of the inquiry on various grounds and praying that the order of dismissal be set aside and that an order of reinstatement be passed with back wages. By a preliminary order dated December 7, 1966 the Labour Court held that the domestic tribunal did not hold a proper inquiry into the charges levelled against the appellant but that it was open to the parties to lead evidence before it on the merits of the case and to satisfy it whether the appellant was guilty of the charges and further whether the conduct of the appellant was such as to call for an order of dismissal. Parties thereafter led evidence before the Labour Court, on a consideration of which it held by an order dated August 18, 1967 that the appellant was guilty of the charges levelled against him and that in the circumstances of the case the punishment was neither harsh nor unjust.

3. Feeling aggrieved by the aforesaid order of the Labour Court the appellant preferred a revision application to the Industrial Court, Indore, under Section 66 of the Madhya Pradesh Industrial Relations Act. The Industrial Court confirmed the findings of fact recorded by the Labour Court and upheld the order of dismissal. As regards back wages, the Industrial Court held that the order of the Labour Court dated August 18, 1967 would relate back to the date when the appellant was dismissed by the corporation and therefore the appellant was not entitled to back wages till the date when the

Labour Court passed its final order.

4. The appellant thereafter filed a petition in the High Court of Madhya Pradesh under Article 226 and 227 of the Constitution challenging the order of the Industrial Court. The High Court by its order dated March 6, 1968 dismissed the petition in limine though with a speaking order. It held that the omission of the appellant to check ticketless travellers in the bus which he had boarded as a ticket examiner amounted to major misconduct under Standing Order 12(b). The High Court further held that no interference was called for on the question whether the order of dismissal was justified and since the order of Labour Court related back to the date when the order of dismissal was passed by the corporation, the appellant was not entitled to wages until the date on which the Labour Court passed the judgment. The appellant has filed this appeal in forma pauperis by special leave of this Court.

5. Mr. M. K. Ramamurthi who appeared as an amicus for the appellant raised two points for our consideration in this appeal. He contended in the first place that the charge made against the appellant does not amount to a "major misconduct" under the Madhya Pradesh Industrial Employment (Standing Order) Rules, 1963 and secondly that in any event, the Labour Court having found that the domestic tribunal had failed to hold a proper inquiry, the appellant was entitled to back wages until the final decision of the Labour Court.

6. The Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 provide by Rule 7, to the extent material, that the Standard Standing Orders for all undertakings to which the Madhya Pradesh Industrial Employment (Standing Orders) Act, 26 of 1961, applies shall be those set out in the annexures to the Rules. We are concerned in this case with Standard Standing Order 12(b) which provides that "theft, fraud, or dishonesty in connection with the business or property of the undertaking" shall amount to a major misconduct on the part of an employee. The appellant had evidently entered the particular bus in order to check it in his capacity as a ticket examiner and it is undisputed that it was his duty to check whether the passengers travelling in the bus had paid the fare and whether tickets were issued to them by the conductor on collecting the fare from them. The bus was carrying a complement of 26 passengers out of whom 9 1/2 passengers did not hold tickets. The panchnama which was drawn on the spot shows that the conductor had collected the fare from the passengers but had not issued any tickets to them. There cannot be the least doubt that if the appellant were so minded, he could have easily detached the misconduct of the conductor. Obviously, the appellant had colluded with the conductor in depriving the corporation of its legitimate earnings. The only explanation offered by the appellant was that he was not travelling in the bus at the relevant time and that explanation has been found to be false consistently by all the courts. The appellant having acted dishonestly in connection with the business of the corporation, he was clearly guilty of a major misconduct.

7. On the second question as to whether the appellant is entitled to back wages from the date of dismissal until the date on which the Labour Court delivered it judgment, learned Counsel for the appellant relies strongly on the observations made by this Court in Management of Hotel Imperial, New Delhi v. Hotel Workers' Union ((1960) 1 SCR 476 : AIR 1959 SC 1342 : (1959) 2 LLJ 544), to the following effect :

> In Phulbari Tea Estate v. Workmen ((1960) 1 SCR 32 : AIR 1959 SC 111 : (1959) 2 LLJ 663), the rider laid down in the case Messrs. Sasa Musa Sugar Works (P) Ltd. (Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan, 1959 Supp 2 SCR 836 : AIR 1959 SC 923 : (1959) 2 LLJ 388) was further extended to a case of an adjudication

> under Section 15 of the Act and it was pointed out that if there was any defect in the enquiry by the employer he could make good that defect by producing necessary evidence before the tribunal; but in that case he will have to pay the wages up to the date of the award of the tribunal, even if the award went in his favour. (p. 487)

8. We will consider the impact and implication of the concluding portion of this passage but before we do so, we must draw attention to a 5-Judge Bench decision of this Court in P. H. Kalyani v. M/s. Air France, Calcutta ((1964) 2 SCR 104 : AIR 1963 SC 1756 : (1963) 1 LLJ 679), which is directly in point and concludes the question under consideration. In that case an enquiry was held against an employee of M/s. Air France by the Station Manager, on whose findings the employee was dismissed by the regional representative of the company on payment of one month's wages. The employee challenged the order of dismissal by filing an application under Section 33A of the Industrial Disputes Act, 1947 on the ground that the Station Manager was biased against him and therefore the inquiry was vitiated as being contrary to the principles of natural justice. The labour court took the view that the employee's contention that the Station Manager was biased against him could not be brushed aside lightly but it went on to hold that even if there was some violation of the principle of natural justice on account of the bias of the inquiry officer, the company was entitled to adduce, as it did, all the evidence before it in support of its action and therefore it was open to the Labour Court to decide on that evidence whether the action was justified and whether the approval to the order of dismissal should be granted. On going into that evidence, the labour court held that the breaches committed by the employee were of a serious nature and the order of dismissal passed by the employer was therefore justified. In an appeal by special leave against the decision of the labour court, it was contended in this Court on behalf of the employee that since the domestic inquiry was found defective, the labour court, even if it was of the opinion that the dismissal was justified, should have ordered the dismissal from the date of its award and not from the date when the regional representative passed the order of dismissal. Rejecting this contention, this Court held :

> The present is a case where the employer has held an inquiry though it was defective and has passed an order of dismissal and seeks approval of that order. If the inquiry is not defective, the labour court has only to see whether was a prima facie case for dismissal, and whether the employer had come to the bona fide conclusion that the employee was guilty of misconduct. Thereafter on coming to the conclusion that the employer had bona fide come to the conclusion that the employee was guilty i.e. there was no unfair labour practice and no victimisation, the labour court would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the inquiry is defective for any reason, the labour court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However, on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer in a defective inquiry would still relate back to the date when the order was made.
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> These observations directly cover the case before us because though the labour court, in the instant case, found that the inquiry was defective as it infringed the principles of natural justice, it came to the conclusion after considering the evidence adduced before it, that the dismissal was justified. The award of the labour court must therefore relate back to the date when the order of dismissal was passed on the termination of the domestic inquiry.

9. The observations extracted earlier from the judgment of a 3-Judge Bench in Hotel Imperial's case (p. 478 of the report), on which the appellant relied strongly prima facie support the appellant's contention that if an inquiry is found to be defective, the employer can make good the defect by producing the necessary evidence before the labour court but that in such a case he will have to pay wages up to the date of the decision of the labour court even if that decision went in his favour. The particular observations purport to summarize what was decided by the same Bench a fortnight earlier in Phulbari Tea Estate v. Workmen (supra). Learned Counsel for the respondent took us closely through the judgment in Phulbari Tea Estate but we are unable to find anything in that judgment showing that whenever there is a defect in a domestic inquiry, the employer would have to pay wages up to the date of the award of the labour court or the industrial tribunal even if the order passed in the domestic inquiry was ultimately upheld by the labour court or the tribunal. In Phulbari Tea Estate, the domestic inquiry was in gross violation of the fundamental principles of natural justice and was therefore vitiated. The employers did not lead proper evidence before the tribunal to justify the order of dismissal and were content merely to produce before the tribunal the statements which were recorded during the inquiry. The employee therefore had no opportunity to cross-examine the witnesses before the tribunal. Since the inquiry was bad and the tribunal had no evidence before it to sustain the order of dismissal it set aside that order but held that in the peculiar circumstances of the case, the employee may be granted the alternative relief of compensation instead of an order of reinstatement. The tribunal accordingly granted to the employee pay and allowance from the date of his suspension till payment. The award of the tribunal was upheld in appeal by this Court.

10. It shall have been seen that in the case of Phulbari Tea Estate the employers made no attempt to make good the defect in the inquiry by producing necessary evidence before the tribunal and by affording an opportunity to the employee to cross-examine their witnesses. "This left the matters where they were" as observed by Wanchoo, J. who spoke on behalf of the Court, with the result that the tribunal which found that the inquiry was vitiated had no evidence before it to examine the legality and propriety of the order of dismissal. In the instant case, the domestic inquiry was held to be in violation of the principles of natural justice but the employer led evidence before the labour court in support of the order of dismissal and on a fresh appraisal of that evidence, the labour court found that the order of dismissal was justified. The ratio of P. H. Kalyani's case would therefore govern the case and the judgment of the labour court must relate back to the date on which the order of dismissal was passed.

11. With great respect, the ratio of Phulbari Tea Estate is not stated correctly in the particular passage at page 487 of the report in the case of Hotel Imperial. That passage is partly a reproduction in substance of what is said in Phulbari Tea Estate at page 38 of the report but the last clause of the passage following the semicolon is an addition not borne out by the judgment in Phulbari Tea Estate.

12. Counsel for the appellant also relied on the decision of this Court in M/s. Sasa Musa Works (P) Ltd. v. Shobrati Khan (supra) but that case is clearly distinguishable. As pointed out by this Court in P. H. Kalyani's case, Sasa Musa was a case where an application had been made under Section 33(1) of the Industrial Disputes Act for permission to dismiss the employees and such permission was asked for, though no inquiry whatsoever was held by the employer and no decision was taken that the employees be dismissed. The case for dismissal of the employees was made out for the first time in the proceedings under Section 33(1) and it was for that reason that it was held that the employees were entitled to back wages until the decision of the application filed under Section 33. Commenting on the decision in Sasa Musa, this Court observed in P. H. Kalyani's case that the

matter would have been different if in Sasa Musa, an inquiry had been held, the employer had come to the conclusion that the dismissal was the proper punishment and had then applied under Section 33(1) for permission to dismiss the employees.

In those circumstances the permission would have related back to the date when the employer came to the conclusion after an inquiry that dismissal was the proper punishment and had applied for removal of the ban by an application under Section 33(1). (page 113)

13. The second contention must also therefore fail. We would, however, like to add that the decision in P. H. Kalyani's case is not to be construed as a charter for employers to dismiss employees after the pretence of an inquiry. The inquiry in the instant case does not suffer from defects so serious or fundamental as to make it non est. On an appropriate occasion, it may become necessary to carve an exception to the ratio of Kalyani's case so as to exclude from its operation at least that class of cases in which under the facade of a domestic inquiry, the employer passes an order gravely detrimental to the employee's interest like an order of dismissal. An inquiry blatantly and consciously violating principles of natural justice may well be equated with the total absence of an inquiry so as to exclude the application of the 'relation-back' doctrine. But we will not pursue the point beyond this as the facts before us do not warrant a closer consideration thereof.

14. In the result, the appeal is dismissed but there will be no order as to costs.

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