

Lalla Ram

Vs

D. C. M. Chemical Works Ltd. and Another

Civil Appeal No. 35(L) of 1971

(V. R. Krishna Iyer, Jaswant Singh JJ)

16.02.1978

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by Special leave is directed against the judgment and order dated November 19, 1970 of the High Court of Delhi rendered in Civil Writ Petition 373 of 1969 setting aside the order dated April 23, 1969 of the Additional Industrial Tribunal, Delhi, rejecting first respondent's application under Section 33(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') seeking approval of its order of the appellant's dismissal from service passed during the pendency of an industrial dispute.

2. The facts and circumstances giving rise to this appeal are : Behind the premises situate on Najafgarh Road, Delhi of Respondent 1 which is a unit of the Delhi Cloth and General Mills Company Ltd. (hereinafter referred to as 'the Company') there is a plot of land admeasuring 181 acres, ownership whereof was transferred in favour of the Company by the erstwhile Delhi Improvement Trust (now constituted as Delhi Development Authority) vide sale deed dated May 20, 1964. The plot being adjacent to the premises of Respondent 1, the same was being looked after by the management of the respondent which also constructed some quarters thereon for the use of its employees. There are also some jhuggies (hutments) standing on the land in which live 172 families out of which 70 are of the employees of Respondent 1 and the rest are of some outsiders. After taking over the watch and ward of the plot, the management of Respondent 1 posted some sentries to prevent encroachment and unauthorised construction thereon. On the Company's taking up construction of a boundary wall on the aforesaid plot in April or May, 1967, the appellant, who was the president (Pradhan) of the Jhuggi Joupari Sudhar Sabha and a few other Jhuggi dwellers brought a suit, being Suit 418 of 1967 in the Court of the Sub-Judge, First Class, Delhi for injunction restraining the Company and Respondent 1 from constructing the boundary wall and from evicting them from the Jhuggies. On the basis of the voluntary statement made on behalf of the Company to the effect that it would not evict the appellant and his co-plaintiffs except by a due process of law, the Sub Judge issued a temporary injunction restraining the Company and Respondent 1 from evicting the appellant and his co-plaintiffs except by a due process of law but refused their prayer for injunction restraining the Company and Respondent 1 from building the boundary wall. The Sub-Judge, however, directed the Company and Respondent 1 to leave 10 feet wide gate for the passage of the appellant and his co-plaintiffs. Aggrieved by the rejection of their prayer with regard to issue of injunction regarding construction of the boundary wall, the appellant and his co-plaintiffs preferred an appeal to the Senior Sub-Judge, Delhi, who dismissed the same by his order dated February 28, observing :

The dispute between the parties is only regarding the construction of the boundary wall along the Najafgarh Drain. This Boundary wall is admittedly sought to be constructed by the defendant-respondents in their own land and the plaintiff-appellants did not claim any right of ownership in the site on which the Jhuggies existed or on which the wall in question is sought to be constructed. The appellants had not claimed any right of easement or irrevocable licence against the construction of this wall so, they do not appear to have any right to compel the defendant-respondents not to construct this wall. The learned counsel for the appellant has contended before me that their passage from the Jhuggies towards the Najafgarh Drain would be obstructed by the construction of this wall. The learned trial court, it appears, ordered the defendant to leave a gate of about 10 feet width for the passage of the Jhuggi dwellers, while constructing the boundary wall in question. The learned trial court exercised the discretion keeping in view the right of the defendant to construct the boundary wall in their own land as also the convenience of plaintiff-appellants. There is hardly any justification to interfere in the discretion exercised by the learned trial court.

3. On the evening of March 2, 1968 Shyam Singh, Assistant Security Officer of Respondent 1 received a report from sentry Dharam Singh alleging that one Sheo Ram had started making an unauthorised construction on the aforesaid plot. In the discharge of his official duties of preventing encroachment and unauthorised construction on the immovable property belonging to the Company, Shyam Singh proceeded to the spot accompanied by two members of his staff to investigate into the matter. On reaching the spot and finding Sheo Ram constructing a new Jhuggi in front of his existing Jhuggi, Shyam Singh pleaded with the former and asked him to desist from constructing the new Jhuggi. While he was so engaged, the appellant who was also an employee of Respondent 1 made his appearance along with eight to ten Jhuggi dwellers and adopting a very aggressive attitude intervened on behalf of Sheo Ram and questioned the authority of Shyam Singh, who was senior to him, to make inquiries in regard to the construction during the pendency of the aforesaid litigation. He also manhandled Shyam Singh, hurled highly provocative invectives at him and his companions and made them to quit on pain of dire consequences. Unnerved by the threats held out by the appellant, Shyam Singh left the place along with his security personnel and hastened to make a report of the incident to his immediate superior which led to the suspension of the appellant and issue to him of a notice by General Manager of Respondent 1 calling upon him to show cause as to why he should not be dismissed for his aforesaid misbehaviour towards and attempt to assault Shyam Singh who was discharging his official duties which were acts subversive of discipline within the meaning of Standing Order 27(i) applicable to him. The appellant submitted his explanation denying the charges leveled against him and questioning the authority of the respondent to charge-sheet him in respect of an incident which was purely private. Not satisfied with the explanation tendered by the appellant, the management of Respondent 1 detailed two of its officers to inquire into the aforesaid charges against the appellant. On completion of the inquiry in accordance with the Standing Orders, the Enquiry Officers submitted a unanimous report observing therein that it was not the appellant's case that either Sheo Ram or any other person was being evicted from any of the Jhuggies standing on the area which was admittedly known as 'D.C.M. Chemical Works Jhuggi Area', that it was clear that Dharam Singh, a member of the watch and ward staff placed of duty to protect the property of the Company had noticed Sheo Ram constructing new walls in front of his Jhuggi; that on reaching the spot on the evening of March 2, 1968, Shyam Singh saw the freshly constructed walls of the height of about 5 feet and some building material lying in front of Sheo Ram's Jhuggi and was accordingly justified investigating into the matter; that

Shyam Singh was telling Sheo Ram that he should not construct a new Jhuggi or extend the Jhuggi, the appellant questioned the authority of Shyam Singh, and abused and manhandled him and in so doing was guilty of misconduct within the meaning of Standing Order 27(i). It would be profitable to refer to the concluding portion of the report which reads thus :

Shri Shyam Singh is a member of the Security Staff and a responsible officer of the Company. Shri Shyam Singh is an officer of the Company and is senior to Shri Lalla Ram. In the discharge of official duties of protecting the property of the Company and preventing its misuse, if Shri Shyam Singh Wanted to investigate into the matter reported to him by Shri Dharam Singh he was perfectly within his rights. The action of Shri Lalla Ram is certainly not justified in so far as he intervened and obstructed Shri Shyam and other security staff; and in the process Shri Lalla Ram questioned the authority of a superior officer/security staff, called him and his sepoy "goondas", caught hold of him by his hand and pushed him and threatened him .... Shri Lalla Ram also said that they were not afraid of the uniform i.e. security staff, who are meant for safeguarding the property of the Company and enforcing the discipline. Under the circumstances, we conclude that Shri Lalla Ram committed the acts alleged against him, namely, obstructing the assistant security officer in the discharge of official duties, and threatening him and catching hold of him by hand and thereby committed acts subversive of discipline, a misconduct under the Standing Order 27(i). We find Shri Lalla Ram guilty of the charge.

4. Agreeing with the findings of the Enquiry Officers that the aforesaid acts committed by the appellant were subversive of discipline and constituted misconduct as contemplated by Standing Order 27(i), the General Manager of Respondent 1 passed an order on May 2, 1968, dismissing the appellant from service. Since, however, an industrial dispute was pending, the General Manager directed the appellant to take his final dues together with one month's pay in lieu of notice and made an application on the same day to the Industrial Tribunal, Delhi seeking its approval of the order of the appellant's dismissal as required by Section 33(2)(b) of the Act.

5. While holding that the Enquiry Officers were not biased against the appellant; that was no violation of the principles of natural justice and that it could not be said that the findings of the Enquiry Officers were not based upon any evidence or that same were perverse, the Additional Industrial Tribunal, Delhi refused by its order dated April 23, 1969 to accord its approval to the appellant's dismissal on the grounds that the disciplinary action taken against the appellant was misconceived; that since there was no rational connection between the employment of the appellant and Shyam Sing in regard to the affairs of the D.C.M. Chemical Works, Standing Order 27(i) was not attracted in the present case which "was really a case of civil dispute between the Company and Jhuggi dwellers who were long being pressurised to surrender possession of the area to the Company and the machinery of security of D.C.M. Chemical Works was pressed into service for that purpose."

6. Aggrieved by the aforesaid order of the Additional Industrial Tribunal, Respondent 1 moved the High Court of Delhi under Article 226 of the Constitution. The High Court allowed the petition holding that since there was a clear finding by the Enquiry Officers about the existence of rational connection between the aforesaid incident and the duties of the appellant herein and Shyam Singh and there was nothing in the order of the Tribunal to show that the Enquiry Officers had arrived at that finding without any evidence, it was not open to the Tribunal to come to a different conclusion on the facts or to hold that the present was a case of victimisation and then to refuse its approval. In

this view of the matter, the High Court quashed the order of the Additional Industrial Tribunal and directed it to consider the aforesaid application of Respondent 1 in the light of its judgment. Not satisfied with this order, the appellant has come up in appeal to this Court under Article 136 of the Constitution.

7. Appearing for the appellant, Mr. S. C. Agarwala has urged that since the quarrel between the appellant and Shyam Singh was purely private and the misconduct attributed to the appellant had no rational connection with his employment and that of Shyam Singh, the dismissal of the appellant under Standing Order 27(i) was not valid and legal; that the additional Tribunal was well within its authority to refuse to accord its approval to the action taken by the management of Respondent 1 in dismissing the appellant and that the order under appeal which is erroneous cannot be sustained. He has, in support of his contentions referred us to two decisions of this Court in *Tata Oil Mills Co. Ltd. v. Its Workmen* ((1964) 7 SCR 555 : AIR 1965 SC 155 : (1964) 2 LLJ 113 : 26 FJR 199) *W. M. Agnani v. Badri Das* ((1963) 1 LLJ 684 : (1963) 6 FLR 440 (SC)).

8. In *Agnani's* case, this Court held as under (LLJ p. 690) :

It is true that if a domestic enquiry is properly held and the employer terminates the services of his employee, the industrial tribunal dealing the industrial disputes arising out such dismissal is not authorized to sit in appeal over the findings of the enquiry committee, or to examine the propriety of the ultimate order dismissal passed by the employer.

9. Though it is true that private quarrel between an employee and a stranger with which the employer is not concerned as in *Agnani's* case falls outside the categories of misconduct, it cannot be reasonably disputed that acts which are subversive of discipline amongst employees or misconduct or misbehaviour by an employee which is directed against another employee of the concern may in certain circumstances constitute misconduct so as to form the basis of an order of dismissal or discharge. It cannot also be disputed that the extent of jurisdiction exercisable by an approving authority under Section 33(2)(b) of the Act is very limited as has been clearly and succinctly pointed out by this Court in a number of decisions. In *The Lord Krishna Textile Mills v. Its Workmen* ((1961) 3 SCR 204 : AIR 1961 SC 860 : (1961) 1 LLJ 211 : (1960-61) 19 FJR 504) this Court after referring to its earlier decisions and explaining the distinction between 'permission' and 'approval' observed and follows :

There, putting it negatively the jurisdiction of the appropriate industrial authority in holding an enquiry under Section 33(2)(b) cannot be wider and is, if at all, more limited, than that permitted under Section 33(1) and in exercising its powers under Section 33(2) the appropriate authority must bear in mind the departure deliberately made by Legislature in separating the two classes of cases falling under the two subsections, and in providing for express permission in one case and only approval in the other. It is true that it would be competent to the authority in a proper case to refuse to give approval, for Section 33(5) expressly empowers the authority to pass such order in relation to the application made before it under the proviso to Section 33(2)(b) as it may deem fit; it may either approve or refuse to approve; it can, however, impose no conditions and pass no conditional order (SCR p. 212).

In view of the limited nature and extent of the enquiry permissible under Section 33(2)(b) all that the authority can do in dealing with an employer's application is to consider whether a *prima facie*

case for according approval is made out by him or not. If before dismissing an employee the employer had held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribed by Section 33(2)(b) and the proviso are satisfied or not. Do the standing orders justify the order of dismissal ? Have the wages for the month been paid as required by the proviso ?; and, has an application been made as prescribed by the proviso ? (SCR p. 216)

10. In another case between P. H. Kalyani v. M/s. Air France, Calcutta ((1963) 1 LLJ 679 : (1964) 2 SCR 104 : AIR 1963 SC 1756 : (1963-64) 24 FJR 464), Wanchoo, J. (as he then was) speaking for a Bench of five Judges of this Court said (SCR p. 113) :

If the enquiry is not defective, the labour court has only to see whether there 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 victimization, the labour court would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry 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 enquiry would still relate back to the date when the order was made.

11. In Central Bank of India Ltd., New Delhi v. Shri Prakash Chand Jain ((1969) 1 SCR 735 : AIR 1969 SC 983 : (1969) 2 LLJ 377 : 36 FJR 420), this Court laid down :

These decisions of this Court make it clear that when an industrial tribunal is asked to give its approval to an order of dismissal under Section 33(2)(b) of the Act, it can disregard the findings given by the Enquiry Officer only if the findings are perverse. The test of perversity that if indicated in these cases is that the findings may not be supported by any legal evidence at all. (SCR p. 739)

... a finding by a domestic tribunal like an Enquiry Officer can be held to be perverse in those cases also where the finding arrived at by the domestic tribunal is one at which no reasonable person could have arrived on the material before it. (SCR p. 740)

12. The position that emerges from the above quoted decisions of this Court may be stated thus. In proceedings under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and Principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. v. Ram Prabesh Singh ((1964) 1 SCR 709 : AIR 1964 SC 486 : (1963) 1 LLJ 291 : 24 FJR 406), Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar ((1961) 1 LLJ 511 : (1960-61) 19 FJR 15), Hind Construction & Engineering Co. Ltd. v. Their Workmen ((1965) 2 SCR 85 : AIR 1965 SC 917

: (1965) 1 LLJ 462 : 27 FJR 232), Workmen of Messrs. Firestone Tyre & Rubber Company of India (P) Ltd. v. Management ((1973) 3 SCR 587 : AIR 1973 SC 1227 : (1973) 1 SCC 813 : 1973 SCC (L&S) 341) and Eastern Electric & Trading Co. v. Baldev Lal (1975 Lab IC 1435 : (1975) 4 SCC 684 : 1975 SCC (L&S) 382) that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part or the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

13. Let us now see whether the aforesaid requirements are satisfied in the present case or not. As stated earlier the Enquiry Officers had after a regular enquiry properly made according to the requirements of the Standing Orders and principles of natural justice, come to a categorical and bona fide conclusion that the appellant obstructed Shyam Singh in the execution of his legitimate official duties (of protecting the immovable property of the company and preventing its improper and unauthorised use) by abusing, threatening and roughly handling him and thereby committed misconduct as contemplated by Standing order 27(i). The Industrial Tribunal had itself also clearly found that the Enquiry officers were to be biased against the appellant; that the domestic enquiry held against the appellant was not violative of the principles of natural justice and that it could not be said that the findings of Enquiry Officers were not based upon evidence or were perverse. The material on record also disclosed that the employer paid one month's wages to the appellant and simultaneously made an application to the specified authority before which the main industrial dispute was pending for grant of approval of the dismissal of the appellant. Further the misconduct for which the disciplinary action was taken against the appellant was undoubtedly directed against Shyam Singh to prevent him from investigating into a matter relating to immovable property belonging to the Company which he was bound to protect in discharge of the duties which devolved upon him as a security officer. In face of all the aforesaid factors which make out a strong prima facie case against the appellant, it is difficult to understand how the Additional Industrial Tribunal could legitimately ignore the bona fide findings of the Enquiry Officers which it had itself endorsed by holding that there was no rational nexus between the appellant's misconduct and his employment and that of Shyam Singh and withhold its approval of the action taken by the management of Respondent 1. On a careful consideration of the entire facts and circumstances of the case, we are therefore clearly of the view that the requisite nexus was there and the Industrial Tribunal unauthorisedly assumed the role of an appellate authority and exceeded the well-defined limits of its jurisdiction in refusing to accord its approval of the action taken against the appellant by holding not on the basis of any legal evidence but purely on the basis of conjectures and surmises that the present was a case of victimisation. We would like to call attention at this stage to the decisions of this court

in Tata Engineering & Locomotive Co. Ltd. v. S. C. Prasad ((1969) 2 LLJ 799 : (1969) 3 SCC 372) and Hamdard Dawakhana Wakf v. Its Workmen ((1962) 2 LLJ 772) and reiterate and re-emphasize that no question of victimisation or management having a bias against the appellant can arise once it is held that the findings of misconduct alleged against the workman were properly arrived at and the domestic enquiry was in no way vitiated. We would also like to emphasize that it is not necessary as stressed by the learned Counsel for the appellant that both the victim and the delinquent workman should be engaged in the performance of their official duties when the act which is the subject-matter of misconduct is directed against the former while he is acting in the discharge of the duties imposed on him by virtue of his office. Thus the jurisdiction of the Industrial Tribunal being a limited one, as stated above and all the essential requisites of the proviso to Section 33(2)(b) of the act being present in the instant case, the Industrial Tribunal was not, in our opinion, justified in withholding its approval and the High Court was perfectly right in passing the impugned judgment and order.

14. For the foregoing reasons we find no merit in this appeal which is dismissed but without any order as to costs.

15. We have disallowed costs to express our thought that notwithstanding the gravity of the misconduct the management could be a little magnanimous while awarding punishment. The broad guideline which persuaded us not to interfere was the reluctance of this court to demolish a finding by the High Court unless there was something seriously wrong with it and our further view that unless there is a serious error or infirmity, as we have indicated earlier, with the enquiry or the order by the disciplinary authority, the Tribunal should not interfere. We indicated to the management, through its Counsel, that this was pre-eminently a case for desirability of the dismissal being tempered with some solatium to the workman so as to soften the blow. But there are employers and employers and some have their own reasons and difficulties and so nothing came out of the suggestion. We have left it at that and have indicated, by denial of costs, what our attitude about the refusal of the management is.

</html