The Municipal Corporation of Greater Bombay

Vs

P. S. Malvenkar and Others

Civil Appeal No. 2161(L) of 1977

(P. N. Bhagwati, Jaswant Singh JJ)

05.05.1978

JUDGMENT

JASWANT SINGH, J. -

This appeal by special leave which is directed against the judgment and order dated July 5, 1977 of the Bombay High Court dismissing the appellant's special civil application 614 of 1972 and refusing to quash the order dated April 5, 1972 of the President, Industrial Court, Maharashtra, Bombay, whereby the latter set aside the order of the Fourth Labour Court at Bombay and directed reinstatement in service of Miss M. P. Padgaonkar, Respondent 2 (hereinafter referred to as 'the respondent') with full back wages on the ground that her termination of service was bad in law raises the following questions :

Whether the termination of service of a permanent employee of the Bombay Electric Supply and Transport Undertaking on account of his unsatisfactory record of service can be regarded as punitive so as to compel the employer to hold a disciplinary enquiry ?

or

whether such termination can be effected by giving in writing to the employee the aforesaid reason for termination and one calendar month's written notice or pay including allowances admissible in lieu thereof ?

2. For a proper determination of the above-mentioned questions, it is desirable to state the circumstances which have given rise to the appeal. The respondent who was working since February 4, 1959 as a clerk in grade A/C-V in the Consumers Department (North) of the B.E.S.T. (Bombay Electric Supply & Transport) Undertaking (hereinafter referred to for the sake of brevity as 'the Undertaking') which is run by the appellant was informed by the Executive Assistant to the General Manager of the Undertaking vide communication dated January 20, 1968, that her services would stand terminated from the close of work on January 23, 1968, as her record of service was unsatisfactory. It was, however, stated in the communication that she would be paid one month's wages in lieu of notice and would also be eligible for all the benefits as might be admissible under the Standing Orders and Service Regulations of the Undertaking. The appeal preferred by her against this order to the Assistant General Manager having remained unsuccessful, the respondent made an application before the Labour Court under Section 42(4) of the Bombay Industrial Relations Act contending that the order terminating her services was invalid as it was not passed by the competent authority as envisaged by the Standing Orders and that the so-called Executive Assistant to the General Manager had no authority to terminate her services because no validly

sanctioned post of that designation existed on January 20 or 23, 1968. It was also contended by the respondent that the aforesaid order terminating her services besides being mala fide was violative of the principles of natural justice inasmuch as the same was passed without holding any enquiry or giving her a reasonable opportunity of defending herself against the vague and general allegations which formed the basis of the order. The Labour Court dismissed the application observing that though the post of Executive Assistant did not exist at the relevant time, the termination did not suffer from the vice of mala fides nor could it be said to be invalid as it was actually effected by the General Manager and was merely communicated by his Executive Assistant. The Labour Court further held that despite the fact that unsatisfactory record of service was mentioned as the reason for termination, it could not be said to be punitive. Aggrieved by this order of the Labour Court, the respondent filed an appeal to the President of the Industrial Court which was allowed by him vide his order dated April 5, 1972 on the findings that J. P. Fernandes who used the appellation of the Executive Assistant to the General Manager was not competent or authorised to terminate the service of the respondent; that the conclusion of the Labour Court that the impugned order was made by the General Manager himself was not warranted by the facts and conduct of the parties; that the law required the authority invested with the power of terminating the services of an employee to exercise that power in a conscious manner reflecting due care and attention and the draft order (Exhibit 41) which merely bore the initials of the General Manager could not be regarded as a valid substitute for the conscious exercise of the power; that the order which expressly stated the unsatisfactory record of service as the reason for terminating the respondent's services and this case a stigma on her was patently punitive and that Standing Order 26 did not create an absolute right in the management to terminate the services of an employee for misconduct without holding an enquiry of giving him a fair opportunity of being heard. Accordingly, the Industrial Court held that the impugned order was bad in law on both the counts viz. (i) that it was passed by an authority which was absolutely lacking in competence and (ii) that despite its punitive character, it was passed without holding a domestic enquiry or giving an opportunity to show cause thereby violating the principles of natural justice. The appellant thereupon made an application to the High Court under Article 226 of the Constitution challenging the order of the President of the Industrial Court. The High Court dismissed the petition holding inter alia that the fact that Standing Order 26 required reasons to be mentioned in the order terminating the services of an employee did not mean that an order of dismissal on the ground of misconduct could be converted into an order of discharge simpliciter by mentioning therein the nature of misconduct. It is against this judgment and order of the High Court that the present appeal is directed.

3. Appearing for the appellant, Mr. K. K. Singhvi has, in the first instance urged that the order terminating the respondent's services could not be held to have been passed by an authority which was lacking in competence as it was actually made by the General Manager was merely communicated over the signature of his Executive Assistant. Mr. Singhvi has alternatively urged that the Corporation having accorded sanction to the creation of the post of Executive Assistant on the Management Establishment (which was from time to time included in the Establishment Schedule prepared and sanctioned by the B.E.S.T. Committee) for the period beginning from July 25, 1967 to September 30, 1974 vide Resolution 1083 passed by it under Section 460-R of the Bombay Municipal Corporation Act III of 1888 at its meeting held on December 16, 1974, even the Executive Assistant had plenary authority to take the impugned action. The learned Counsel had next contended that the impugned order was one of discharge or termination of service simpliciter and could not be regarded as punitive regard being had to the fact that besides one month's pay in lieu of notice, the respondent was paid all the benefits admissible to her under the Standing Orders and Service Regulations; that it was only to satisfy the requirement of proviso (i) to Standing Order

26 that unsatisfactory record of service was mentioned in the order as the reason for termination; that Standing Orders gave two options to the appellant, (1) to terminate the service of the respondent in the manner it had done, or (2) to impose the penalty of dismissal as a result of a domestic enquiry. He has further submitted that even if the order is treated as punitive which could not have been passed without the prescribed enquiry, it could not be held to be bad in law as it was made good by the appellant on merits by adducing evidence before the Labour Court.

4. It has, on the other hand, been argued by the learned Counsel appearing on behalf of the respondent that the order suffered from an inherent infirmity in that it was passed by the Executive Assistant to the General Manager who did not have de jure existence on the relevant date in view of the fact that the duration of the post held by him has not be validly extended by the Corporation. He has further contended that as the impugned order which clearly cast aspersion on the respondent amounted to an order of dismissal, it could not have been passed without complying with the formalities prescribed by the Standing Orders.

5. All the rival contentions require careful examination.

6. The question as to whether the post of Executive Assistant to the General Manager validly existed on the relevant date or not does not require to be gone into as we are satisfied that the impugned order terminating the respondent's services was in fact and in reality passed by the General Manager himself who was the competent authority as defined by clause (e) of Standing Order 3 and was merely communicated by his Executive Assistant to the respondent. This is amply borne out from the material placed before the Labour Court. The draft of the termination order (Exhibit 41) which has been duly proved by Dandekar who was working as Personnel Officer on the relevant date clearly shows that it was put up before the General Manager by the Superintendent of the Consumers Department and was duly proved and initialed by the former. In this state of affairs, we are unable to appreciate the observations of the Industrial Court that since the decision to terminate the service of an employee is an act consciously to be undertaken and performed by the concerned officer, the mere initialing of the draft order by the General Manager was not enough to make it an authenticated order of termination. Whether a written document or order bears full signatures or only initials of the competent authority does not, in our judgment, make any significant difference not does the affixation of signature by initials on a document or order detract from its authenticity unless the law or the rule specifically requires full signature to be affixed thereto to make it authentic. In Volume 5 of Stroud's Judicial Dictionary of Words and Phrases (Fourth Edition), it is stated by reference to the decision in Re Wingrove (15 Jur 91) that signature by initials is good. Again as stated in Black's Law Dictionary (1951 Edition) speaking generally when a person attaches his signature to a written document he does so in token of knowledge, approval or acceptance. Then again according to Chambers New English Dictionary, the word 'sign' means a mark with a meaning. We are, therefore, of the opinion that since it is established on the record that the impugned order was in fact and in reality made by the General Manager and there is nothing to indicate that it was not consciously made by him, it could not have been quashed on the ground that it was passed by an incompetent authority.

7. Let us now proceed to consider whether the impugned order was covered by Standing Order 26 or it was punitive in character and could not, therefore, be passed except after a disciplinary inquiry under clause (2) of Standing Order 21 read with Standing Order 23. It is now well-settled that the question whether a particular order terminating the service of an employee is by way of punishment or not has to be determined on the facts and circumstances of each case and the form of the order is not decisive of the matter. Here, under Standing Orders, two powers are given to the management;

one is the power to impose punishment for misconduct after a disciplinary inquiry under clause (2) of Standing Order 21 read with Standing Order 23 and the other is the power to terminate the service of an employee by one calendar month's written notice or pay in lieu thereof under Standing Order 26. The question is as to which power has been exercised by the management in the present case and this question has to be determined having regard to the substance of the matter and not its form. Now, one thing must be borne in mind that these are two distinct and independent powers and as far as possible, neither should be construed so as to emasculate the other or to render it ineffective. Once is the power to punish an employee for misconduct while the other is the power to terminate simpliciter the service of an employee without any other adverse consequence. Now, proviso (i) to clause (1) of Standing Order 26 requires that the reason for termination of the employment should be given in writing to the employee when exercising the power of termination of service of the employee under Standing Order 26. Therefore, when the service of an employee is terminated simpliciter under Standing Order 26, the reason for such termination has to be given to the employee and this provision has been made in the Standing Order with a view to ensuring that the management does not act in an arbitrary manner. The management is required to articulate the reason which operated on its mind in terminating the service of the employee But merely because the reason for terminating the service of the employee is required to be given - and the reason must obviously not be arbitrary, capricious or irrelevant - it would not necessarily in every case make the order of termination punitive in character so as to require compliance with the requirement of clause (2) of Standing Order 21 read with Standing Order 23. Otherwise, the power of termination of service of an employee under Standing Order 26 would be rendered meaningless and futile, for in no case it would be possible to exercise it. Of course, if misconduct of the employee constitutes the foundation for terminating his service, then even if the order of termination is purported to be made under Standing Order 26, it may be liable to be regarded as punitive in character and hence attracting the procedure of clause (2) of Standing Order 21 read with Standing Order 23, though even in such a case it may be argued that the management has no punished the employee but has merely terminated his service under Standing Order 26. It is, however, not necessary for us in the present case to pronounce on this controversy, since we find that in the present case the reason given for terminating the service of the respondent was unsatisfactory record of service. No misconduct was alleged against the respondent nor was any misconduct made the foundation for passing the impugned order of termination. The order of termination was clearly not passed by way of punishing the respondent for any misconduct. The view that the service of the respondent was not satisfactory was undoubtedly based on past incidents set out in the record but for each of these incidents punishment in one form or another had already been meted out to her and it was not by way of punishment for any of these incidents, but because, as gathered from these incidents, her record of service was unsatisfactory that her service was terminated by the management under Standing Order 26. It is, therefore, not possible for us to regard the order of termination as punitive in character so as to invite the applicability of clause (2) of Standing Order 21 read with Standing Order 23.

8. But even if the view were taken that the impugned order of termination of service of the respondent was punitive in character and could not have been passed save an except as a result of a disciplinary inquiry held under clause (2) of Standing Order 21 read with Standing Order 23, the impugned order cannot be struck down as invalid on the ground of non-compliance with the requirement of these Standing Orders, since the appellant availed of the opportunity open to it before the Labour Court and adduced sufficient evidence justifying the action taken by the management. The appellant produced satisfactory evidence to show that the impugned order terminating the service of the respondent was justified and hence the impugned order must be

sustained despite its having been passed without complying with requirements of clause (2) of Standing Order 21 read with Standing Order 23. We are fortified in this view by a catena of decisions of this Court where it had been consistently held that no distinction can be made between cases where the domestic enquiry is invalid or defective and those where no enquiry has in fact been held as required by the relevant Standing Orders and in either case it is open to the employer to justify his action before the Labour Tribunal by adducing all relevant evidence before it. (See The Punjab National Bank Ltd. v. Its Workmen ((1960) 1 SCR 806 : AIR 1960 SC 160 : (1959) 2 LLJ 666), Management of Ritz Theatre (P) Ltd. v. Its Workmen ((1963) 3 SCR 461 : AIR 1963 SC 295 : (1962) 2 LLJ 498), Workmen of Motipur Sugar Factory (P) Ltd. v. Motipur Sugar Factory ((1965) 3 SCR 588 : AIR 1965 SC 1803 : (1965) 2 LLJ 162), Delhi Cloth & General Mills Co. Ltd. v. Ludh Budh Singh ((1972) 1 LLJ 180 : (1972) 1 SCC 595), State Bank of India v. R. K. Jain ((1972) 1 SCR 755 : (1972) 4 SCC 304), Workmen of Messrs. Firestone Tyre & Rubber Company of India (P) Ltd. v. Management ((1973) 3 SCR 587 : (1973) 1 SCC 813 : 1973 SCC (L&S) 341) and Cooper Engineering Limited v. P. P. Mundhe ((1976) 1 SCR 361 : (1975) 2 SCC 661 : 1975 SCC (L&S) 443)).

9. For the foregoing reasons, we allow the appeal, set aside the judgment and other of the High Court and uphold the impugned action of the appellant's management. In view of the Court's order dated September 19, 1977, the appellant shall pay costs quantified at Rs. 1500 (one thousand and five hundred) to Respondent 2. This judgment should not, however, stand in the way of Respondent 2 being paid Rs. 15,000 by the appellant which, in view of former's unfortunate position, the appellant's learned Counsel was good enough on our suggestion to agree to pay her as an ex-gratia payment. This amount of Rs. 15,000 shall be in addition to the amount of Rs. 1500 which the appellant is required to pay to Respondent 2 by way of costs.

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