Firestone Tyre and Rubber Company of India (P) Ltd.

Vs

Workmen Employed, Represented by Firestone Tyre Employees' Union

Civil Appeal No. 1794 (NL) of 1977

(A.C. Gupta, V.D. Tulzapurkar, R.S. Pathak JJ)

22.07.1981

JUDGMENT

GUPTA, J. –

1. This is an appeal by special leave from an award made by the Industrial Tribunal, Bombay, on December 9, 1976 in Reference No. 307 of 1968 directing reinstatement of 12 workmen dismissed by the appellant, Firestone Tyre and Rubber Company of India Private Limited. The appellant company carries on the business of manufacturing tyres, tubes and several other products in Bombay. Disputes arose between the management and the workmen employed in the company's tyre curing department leading to a strike by these workmen from March 3, 1967. This strike was called off on May 15, 1967, according to workmen on certain assurances given by the Commissioner of Labour. The case of the management is that even after the workmen resumed work, they adopted a deliberate 'go-slow' policy resulting in fall in production. On September 14, 1967 the management put up a notice asking the workmen to desist from continuing with the go-slow tactics. The notice however had no effect and from October 4, 1967 the workmen working in the tyre curing department again went on a strike.

2. Between October 27 and 31, 1967 the management issued charge-sheets to 102 workmen alleging that they had resorted to wilful go-slow. The charge-sheets issued were in identical language and they read as follows :

> You are charged with the following act of misconduct under the Company's certified Standing Order No. 24(C), viz.
>
> 'wilful slowing down in performance of work or abetment, or instigation thereof.'

You have wilfully slowed down in performance of work as per particulars given below :

> The particulars were then mentioned. Three inquiry officers were appointed to inquire into the charges. Almost all the workmen refrained from participating in the inquiries; the 12 workmen concerned in this appeal also remained absent. The inquiry officers found the workmen guilty of adopting wilful go-slow tactics. The management accepted the findings of the inquiry officers and dismissed the workmen other than those who were 'protected workmen' as defined in the explanation to Section 33(3)(b) of the Industrial Disputes Act, 1947. The management also decided to dismiss the protected workmen. As a reference concerning an earlier dispute (Reference No. 406 of 1967) was pending before the Tribunal, applications were

made under section 33(2)(b) of the Industrial Disputes Act for approval of the action of the management in dismissing the workmen and under Section 33(3)(b) for permission to dismiss the protected workmen.

3. It appears that subsequently, on April 17, 1968 the parties reached a settlement. The more important terms of the settlement were :

(1) The Firestone Tyre Employees Union agreed to withdraw the strike.

(2) The dispute relating to the dismissal of 101 workmen (one of the workmen concerned having died in the meantime) was to be referred for adjudication by a joint application made by the parties under Section 10(2) of the Industrial Disputes Act.

(3) 77 of the dismissed workmen were to be re-employed on temporary basis till the disposal of the adjudication by the Industrial Tribunal.

(4) The remaining 25 workmen, including the 12 we are concerned with in this appeal, were not to be taken back but the management would pay to them 50 per cent of their basic wages and dearness allowance from the date of the retirement till the disposal of the adjudication by the Tribunal.

4. As agreed a joint application by the parties was made on which the Deputy Commissioner of Labour, Bombay, under Section 10(2) of the Industrial Disputes Act (Reference No. 307 of 1968) referred to the Industrial Tribunal, Bombay, the disputes between the parties relating to the demands detailed in the schedule to the order of reference. Two distinct matters are mentioned in Paragraphs 1 and 2 of the schedule. The second matter mentioned in Paragraph 2 does not survive for consideration. The first paragraph which is divided into two parts, (A) and (B) read as follows :

SCHEDULE

1. (A) The workmen listed at Serial Nos. 1 to 25 of 'Schedule I' (which contains names of the 12 workmen concerned in this case) hereto should be reinstated in their former employment with continuity of service and other benefits and should be paid full wages, dearness allowance and other allowances from the date of dismissal of each of the workmen till each is so reinstated without any condition attached to such payment.

(B) The workmen listed at Serial Nos. 26 to 101 of 'Schedule I' hereto who are at present re-employed on a temporary basis should be granted reinstatement in their employment from the date of dismissal of each and should be granted continuity of service and other benefits and also should be paid full wages, dearness allowance and other allowances from the date of dismissal of each till each was re-employed, without any condition being attached to such payment.

5. During the pendency of the reference all the 76 workmen covered by Paragraph 1(B) of the Schedule who had been taken back on temporary basis were made permanent as a result of settlements reached between these workmen and the management. On behalf of 33 out of 76 of these workmen, the union entered into a settlement with the management, the remaining workmen of this group individually entered into settlements with the management. The period during which the workmen were absent from duty was treated as leave without pay and continuity of their service

was maintained. The union representing the aforesaid 33 workmen, and the remaining workmen out of this group of 76 individually, withdrew demand No. 1(B) in view of the settlements entered into by and between these workmen and the management. By an award dated January 10, 1973 the Tribunal disposed of demand No. 1(B) as not pressed.

6. In the meantime 13 out of the 25 workmen covered by demand 1(A) also reached a settlement with the management and withdrew the dispute relating to them; the terms of settlement were that these workmen would submit their resignations and be paid one month's basic wages and dearness allowance for each year of service along with gratuity, leave wages, provident fund and the balance bonus due to them. They were also to retain the wages for one month paid to them when they were dismissed. The dispute on which the impugned award was made was thus restricted to demand No. 1(A) concerning 12 workmen only out of 25.

7. The Tribunal by its award dated December 9, 1976 directed the appellant company to reinstate the 12 workmen named against serial Nos. 2, 3, 5, 7, 8, 10, 11, 13, 18, 22, 23, 25 of Schedule I to the order of reference with continuity of service and full wages, dearness and other allowances. On the question of back wages, the matter was left to be decided later on evidence.

The dismissal of these workmen was set aside on the following findings :

> (1) The inquiry held by the management was vitiated because,
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> (a) charge-sheets had not been served and notice of inquiry not given to 2 out of 12 workmen;
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> (b) 2 out of the 3 inquiry officers were biased;
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> (c) some of the workmen were not furnished with copies of certain documents relied on by the inquiry officers; and
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> (d) the charge-sheets served on the workmen did not contain necessary particulars regarding the go-slow tactics adopted by each of them.
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> (2) All the 101 workmen had been found guilty of go-slow but 76 of them were reinstated on a permanent basis and the remaining 25 workmen were denied the same treatment for no good reason. The management was thus guilty of discrimination and unfair labour practice.

8. We will take the finding of discrimination first as this is the ground on which the 12 workmen were straightaway ordered to be reinstated. The Tribunal having found that the inquiries held against the workmen had not been proper noted that it was well settled that in such a situation the employer should be given an opportunity to adduce evidence before the Tribunal in support of the action taken by them, but proceeded to hold that in view of the order finding that the 12 workmen had been unfairly discriminated against, they were entitled to reinstatement and therefore no useful purpose would be served by permitting the management to adduce evidence seeking to justify the dismissal of the workmen on the ground of misconduct. It was contended on behalf of the appellant that the Tribunal had no jurisdiction to address itself to the question of discrimination. Section 10(4) of the Industrial Disputes Act lays down :

> Where in an order referring an industrial dispute to a Labour Court, Tribunal or

> National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or Tribunal or National Tribunal as the case may be, shall confine its adjudication to those points and matters incidental thereto.

9. In this case the points of dispute were specified in the schedule to the order of reference, and the Tribunal was therefore, required to confine its adjudication to those points and matters that were incidental to them. From a reading of demands 1(A) and 1(B) as a whole it is clear that the demand for reinstatement in respect of both groups of workmen as made arises on the alleged invalidity of the action taken by the management in dismissing these workmen. The issue of unfair labour practice or discrimination by reason of subsequent reinstatement on a permanent basis of some and not all the 25 workmen was not a matter referred to the Tribunal for adjudication, nor it can be said to be in any way connected with or incidental to the right of reinstatement claimed by the 101 workmen from the date of their dismissal. The fairness of subsequent absorption of some workmen is a matter quite irrelevant for judging the validity of the earlier dismissal of these workmen along with others; it is an entirely separate and independent question. The Tribunal also did not frame an issue on the alleged discrimination. That being so, we think the Tribunal travelled outside its jurisdiction in recording a finding of unfair labour practice and discrimination.

10. We find no reason to disturb the finding that the inquiry held was not proper. The Tribunal has found that the charge-sheets issued were vague as they did not disclose the relevant material on which the charges were based. It was contended on behalf of the union on the basis of this finding that no useful purpose would be served by remitting the case to the Tribunal. It is settled law now that when no inquiry has been held or the inquiry held has not been proper, the Tribunal has jurisdiction to allow the management to lead evidence to justify the action taken. The contention is that the charge-sheets being vague, the Tribunal would not be in a position to decide what evidence to let in, and, therefore, sending the matter back to the Tribunal would only be an idle formality. It is not possible to accept this contention. Normally an inquiry by the management starts by issuing a charge-sheet to the workman proposed to be discharged or dismissed. In a case where a charge-sheet is vague, it must be held that there has been no proper inquiry. In Bharat Sugar Mills Ltd. v. Shri Jai Singh ((1962) 3 SCR 684(690) : (1962) 1 SCJ 340 : (1961) 2 Lab LJ 644 : 21 FJR 118) this Court held :

> But the mere fact that no inquiry has been held or that the inquiry has not been properly conducted cannot absolve the Tribunal of its duty to decide whether the case that the workman has been guilty of the alleged misconduct has been made out. The proper way for performing this duty where there has not been a proper enquiry by the management is for the Tribunal to take evidence of both sides in respect of the alleged misconduct.

Whether in a case, as the one before us, where it is found that proper charge-sheets had not been served on the workmen, the Tribunal can ask the parties to lead evidence to enable the Tribunal to decide the dispute between them is directly covered by an authority of this Court. In Ritz Theatre (P) Ltd. v. Its workmen ((1963) 3 SCR 461(468) : AIR 1963 SC 295 : (1962) 2 Lab LJ 498 : 23 FJR 171), Gajendragadkar, J. (as he then was) speaking for the Court said :

> . . . if it appears that the departmental enquiry held by the employer is not fair in the sense that proper charge had not been served on the employee or proper or full opportunity had not been given to the employee to meet the charge, or the enquiry

> has been affected by other grave irregularities vitiating it, then the position would be that the Tribunal would be entitled to deal with the merits of the dispute as to the dismissal of the employee for itself. The same result follow if no enquiry has been held at all. In other world, where the Tribunal is dealing with a dispute relating to the dismissal of an industrial employee, if it is satisfied that no enquiry has been held or the enquiry which has been held is not proper or fair or that the findings recorded by the Enquiry Officer are perverse, the whole issue is at large before the Tribunal. This position also is well settled.

11. In view of the well-settled legal position, the order directing reinstatement of the 12 workmen without a consideration of the merits of the case cannot be sustained. We therefore remit the case to the Industrial Tribunal to decide the dispute concerning the demand specified in Paragraph 1(A) of the Schedule to the order of reference after giving the parties concerned an opportunity to lead evidence in support of their respective cases.

12. The appeal is allowed to the extent indicated above. This court by order dated August 2, 1977 had directed the appellant to pay the costs of the appeal to the respondents is any event. The respondents will be also entitled to retain the sums of money paid to them by the appellant under orders of this Court.

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