

Jai Bhagwan

Vs

Management of The Ambala Central Co-Operative Bank Ltd. and Another

Civil Appeals Nos. 5274

(D. A. Desai, A. Varadarajan, O. Chinnappa Reddy JJ)

29.09.1983

JUDGMENT

CHINNAPPA REDDY, J. -

1. Shri Phulel Singh had a savings account with the Naraingarh Branch of the Ambala Central Co-operative Bank Limited. A cheque for Rs. 4200 purporting to have been signed by Shri Phulel Singh, drawn on the Ambala Central Co-operative Bank was presented through the Punjab and Sind Bank Limited, Dhulkot and the proceeds were duly remitted to the latter bank. The account of Shri Phulel Singh was debited with that amount. Later when Shri Phulel Singh presented his pass book, appropriate entries were made. Shri Phulel Singh objected to the entry relating to the debit of Rs. 4200. He alleged that he had never issued the cheque for Rs. 4200 said to have been issued by him. A complaint was also lodged with the police. The present appellant, who was clerk-cum-cashier of the Naraingarh Branch of the bank, and who was apparently suspected in connection with the presentation of the bogus cheque, was interrogated by the police and his statement was also recorded. A First Information Report was registered against him, but the case ended in discharge. In the meanwhile, the Managing Committee of the bank placed the appellant under suspension. Shri Hans Raj, an Assistant Manager was appointed to enquire into the matter in order to ascertain the genuineness of the complaint made by the customer. The appellant was advised to be present at the Naraingarh Branch of the bank on July 29, 1974 in connection with the enquiry. No charge-sheet was ever issued to the appellant. The statement of the appellant was however recorded by the enquiry officer on July 29, 1974 along with the statements of several other persons. The enquiry officer submitted his report on August 21, 1974. The finding of the enquiry officer may be extracted here. It was as follows :

As a result of enquiry and on the basis of the points given in the report, there lies the possibility that the complaint of the applicant may be genuine.

The enquiry officer thus indicated that there might be truth in the complaint of the customer that a bogus cheque was presented and his account debited with the amount. There was, however, no indication in the report that the appellant, Jai Bhagwan was guilty or had anything to do with the presentation of the bogus cheque. Thereafter, on January 31, 1975, the appellant was informed that his services had been terminated with immediate effect. No reason was mentioned in the order terminating the services of the appellant. We have no information nor was his learned counsel in a position to tell us as to any immediate steps taken by the appellant to question the order of termination of his services. But he did ultimately raise an industrial dispute and by an order dated December 15, 1980 the Governor of Haryana referred the following dispute for adjudication to the Industrial Tribunal, Haryana at Faridabad :

Whether the termination of services of Shri Jai Bhagwan was justified and in order ?
If not, to what relief is he entitled ?

2. Even from the brief narration of facts, it is obvious that there was a total breach of the principles of natural justice. The appellant was never asked to answer any charges, there was no enquiry against him, no notice was issued to him to show cause why his services should not be terminated and even the order terminating his services failed to mention any reason. The order terminating the services of the appellant was wholly unsustainable. If, therefore, the bank wanted to sustain the order terminating the services of the appellant, it was up to the bank to lead necessary evidence to prove such charges as it desired to establish against the appellant. The bank made an effort by adducing the evidence of three witnesses MW-I, the Establishment Officer, MW-II, Assistant Manager, Karnal and MW-III, the enquiry officer, none of whom could either prove that the cheque was a forgery or that it had been presented by the appellant. Shri Phulel Singh, who would have been the most crucial witness, was not examined. In the absence of the evidence of Shri Phulel Singh, no case could possibly be said to have been made out against the appellant. Yet by a very curious process of reasoning, the Industrial Tribunal upheld the order of termination of the appellant's services. He dismissed the contention that principles of natural justice had not been observed with the observation that strict rules of evidence were not applicable to domestic enquiries and "not too much legalism was expected in such matters from the enquiry officer". We are unable to understand what the Industrial Tribunal meant. There was not the slightest semblance of observance of the principles of natural justice. The enquiry made by the enquiry officer was not directed against the appellant, but was held with a view to find out whether there was any truth in the complaint of the customer that somebody had presented a bogus cheque and drawn Rs. 4200 from his account. The report of the enquiry officer also contained no finding against the appellant. At no time was the appellant informed of any charges against him or his explanation sought. Commenting on the report of the enquiry officer, the Industrial Tribunal stated :

I have gone through the documents produced by the management and found that the enquiry officer took great pain in finding out the facts of the case as was evident from his report Ex. M-8 which was dated August 21, 1974. The report gives minute details and is logical. The enquiry officer reached the conclusion by going through the records of the bank and also of the drawee branch of Punjab and Sind Bank, Dhulkot and ascertaining the person in whose account the sum of Rs. 4200 was deposited and also the connection of Shri Jai Bhagwan concerned workman with that person. I am convinced by reading the enquiry report that the concerned workman was involved into withdrawal and, therefore, he was found guilty by the enquiry officer.

This shows a total non-application of the mind by the Industrial Tribunal since the appellant was never found guilty by the enquiry officer. The Industrial Tribunal also stated that a final show-cause notice had been issued to the workman on September 17, 1974 in which the findings of the enquiry officer were briefly given. This is another indication that the Industrial Tribunal never applied his mind to the issues before him. The letter dated September 17, 1974 had nothing whatever to do with the presentation of the cheque or the withdrawal of the money. It was concerned with the absence of the appellant from duty on August 13 and 14, 1974 and the signatures said to have been found in the attendance register against the dates August 13 and 14, 1974. Thus, the Industrial Tribunal, apparently without supplying his mind to the facts of the case and without bothering even to peruse the records, gave a finding that the termination of the services of the workman was justified and in order. We are constrained to reject the findings and the conclusion of the Industrial Tribunal as

entirely worthless. The appellant filed a writ petition in the High Court of Punjab and Haryana, but the writ petition was unfortunately summarily rejected. The workman has filed these two appeals under Article 136 of the Constitution, one against the decision of the Industrial Tribunal and the other against the summary dismissal of the writ petition by the High Court. Both the appeals have to be allowed in the circumstances mentioned by us.

3. Shri Rohtagi, learned counsel for the respondent-bank, was unable to contend that there was even a remote compliance with the principles of natural justice. He was also unable to urge that the Industrial Tribunal had truly applied his mind to the case. He, however, argued that the appellant had a remedy against the order of termination of services by way of an appeal to the Board of Management and that his failure to pursue that remedy barred him from raising any industrial dispute. He also attempted to connect the order of termination of services with the absence of the workman from the bank on August 13 and 14, 1974, on days when his signature was found in the attendance register. We see no substance in either of the submissions. Raising an industrial dispute is a well recognised and legitimate mode of redress available to a workman, which has achieved statutory recognition under the Industrial Disputes Act and we fail to see why the statute-recognised mode of redress should be denied to a workman because of the existence or availability of another remedy. Nor are we able to understand how an Industrial Tribunal to whom a dispute has been referred for adjudication can refuse to adjudicate upon it and surrender jurisdiction which it undoubtedly has to some other authority. While the Government may exercise their discretion in deciding whether to refer or not to refer a dispute for adjudication, the Tribunal to whom the dispute has been referred has no discretion to decide whether to adjudicate or not. Once a reference has been properly made to an Industrial Tribunal, the dispute has to be duly resolved by the Industrial Tribunal. Resolution of the dispute cannot be avoided by the Tribunal on the ground that the workman had failed to pursue some other remedy. The attempt of Shri Rohtagi to connect the order terminating the appellant's services with his absence from the bank on August 13 and 14, 1974 is an attempt made before us for the first time. At no earlier stage was the order of termination of services sought to be sustained on the basis of the absence of the workman from the bank on August 13 and 14, 1974. It cannot be done now.

4. The appellant is, therefore, entitled to be reinstated in service with continuity of service from the date on which his services were terminated. Having regard to the circumstance that the workman raised an industrial dispute after considerable delay without doing anything in the meanwhile to question the termination of his services, we do not think that we will be justified in awarding full back wages. We think that award of half the back wages from the date of termination of service until today and full wages from this day until reinstatement will meet the ends of justice. The appellant will be entitled to his costs which we quantified at Rs. 5000.

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