

Ved Prakash Gupta

Vs

M/s. Delton Cable India (P) Ltd.

Civil Appeal No. 1673 of 1982

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

08.03.1984

JUDGMENT

VARADARAJAN, J. -

1. This civil appeal by special leave is directed against the judgment delivered by the Division Bench of the Punjab and Haryana High Court on January 11, 1982 dismissing in limine Writ petition No. 26 of 1982 which had been filed by the appellant Ved Prakash Gupta. The Appellant was an employee of the first respondent M/s. Delton Cable India (p) Ltd., Faridabad, Haryana He was given a charge-sheet by the management in August 5, 1979 and dismissed from service on September 13, 1979 after having been found guilty of the charge in the domestics enquiry conducted by the Enquiry Officer who has been examined as one of the witnesses on the side of the management before the Labour Court at a later stage. There was a reference of the dispute arising out of the dismissal of the appellant to the Labour Court, Faridabad in Reference No. 143 of 1980 under Section 10(1)(c) of the industrial Disputes Act, hereinafter referred to as the 'Act'. The Labour Court framed the following issues :

(i) Whether the claimant Shri Ved Prakash Gupta was in the position of a workman under the Industrial Disputes Act ? If so, to what effect ?

(ii) Whether the reference is bad in law in view of the objections raised in the written statement ? If so, to what effect ?

(iii) Whether proper and valid domestic enquiry has been conducted ? if so to what effect ?

(iv) Whether the termination of the service of the workman is proper, justified and in order If not, to what relief is he entitled ?

2. Issues 1 and 2 were tried as preliminary issues by the Labour Court. The Labour Court held on issue 1 that the appellant is not a workman within the meaning of the definition of workman contained in Section 2(s) of the Act. Consequently, it was held that the reference is bad in law in the light of the objections raised by the management in the written statement. The Labour Court held that there was no need to consider the other two issues and passed an award against the appellant. It was against that award that the appellant filed the writ petition which was dismissed by the Division Bench of the High Court in limine on January 11, 1982. This Court granted special leave to appeal against the judgment of the High Court and later directed the Labour Court to try the other issues on the basis that the appellant is a workman as per the Act. The Labour Court accordingly tried the

other two issues and held that though the domestic enquiry was fair and proper the finding of the enquiry officer was perverse. The Labour Court has observed :

The Enquiry Officer should have given findings according to the evidence before him in the enquiry proceeding. He has neglected Exs. M-4 and M-6 while giving the findings in the enquiry. He also failed to summon the necessary witnesses and rejected the request of the workman for challenging those witnesses.

3. The Labour Court found that the punishment of dismissal awarded to the appellant was disproportionate to the gravity of the charge framed against him and that he is entitled to reinstatement with full back wages and continuity of service.

4. The management filed Writ petition No. 4567 of 9182 in the High Court against the order of the Labour Court holding that the finding of the Enquiry Officer was perverse and that the appellant is entitled to reinstatement with full back wages and continuity of service. The writ petition has been withdrawn to this Court by order dated July 9, 1983 to be heard along with the civil appeal. This is how the civil appeal and the writ petition have come up before us.

5. Arguments were advanced before us by Mr. O. P. Malhotra appearing for the appellant and Mr. V. P. Choudhary appearing for the management on two points viz. (1) whether the appellant was a workman at the relevant time and (2) whether his dismissal is valid in law.

6. The charge framed against the appellant as follows :

You were on duty on July 31, 1979 and August 1, 1979 from 8 a.m. to 4 p.m. It was reported against you as under;

On July 31, 1979 a person from M/s. Gurumukh Dass (building material supplier) came to IMI department with two copies of challan No. 105 dated July 15, 1979 for obtaining the signature of the person concerned in token of having received 2000 bricks. The copies of the challan were having the entry. Shri Durg Singh on instructions of Mr. S. K. Bagga, Junior Engineer, went to the gate for confirming whether the bricks have been received in the factory premises as per the challan. It was found that the gate entry for the supply of 2000 bricks as per the challan aforesaid had been cancelled in the gate register. You, however, took the challan (both copies) from Shri. Durg Singh and cancelled the gate entry from the challan and returned both the copies to the person of M/s. Gurumukh Dass.

That on August 1, 1979 as per the instructions of IMI department on Mr. Hira Lal, the worker of IMI department was sent to the gate office in connection with a challan of a water pump. As the worker i.e. said Mr. Hira Lal did not come back to IMI department for quite some time Mr. S. K. Bagga, Junior Engineer of IMI department personally went to the gate office. He (S. K. Bagga) apprised Mr. Deep Chand, Senior Security Officer of the irresponsible manner in which you delivered the challan to the persons of M/s. Gurumukh Dass instead of to IMI department. When Mr. Deep Chand further verified this fact from you, you showed ignorance and demanded to know the name of the person who said so. When informed that it was Durg Singh you without any rhyme and reason or provocation abused Shri. Durg Singh in a filthy manner saying translated in English as - I fuck the mother of Durg Singh; bring him). You were advised that being a responsible employee and that too belonging to the security department you should not abuse any employee but you continued in hot temper and demanded Mr. Durg Singh to be called in the gate office. When

Shri. Durg Singh was brought and in your presence he once again confirmed and reiterated that you had given the challan to the person of M/s. Gurumukh Dass you lost all your senses and started abusing Shri S. K. Bagga left and right in a filthy, Derogatory and abusive manner. You said (translated in English as - you should try hard to your gandh : you cannot do anything wrong to me. You may go to Ram Kumar or you may go to Vijay Kumar).

The above conduct of yours is gross misconduct as you have lost the basic courtesy which you were supposed to extend to the employees as a responsible member of the security staff. The charges if proved will result in total loss of confidence in your.

7. The two questions arising for out consideration in the civil appeal and writ petition are;

- (i) whether the appellant was a workman within the meaning of Section 2(s) of the Act; and
- (ii) whether the termination of the appellant's service is proper ?

8. On the first question there is evidence of only the appellant examined as WW 1 on his side and of the Personnel Manager examined as MW 1 on the side of the management. The evidence of WW 1 shows that he was originally recruited as a clerk on a salary of Rs. 160 per mensem. It was admitted by MW 1 that at the time of the termination of his service WW 1 was drawing total emoluments of Rs. 581 per mensem as Chargeman Security equivalent to a security Inspector as stated in the appellant's claim statement. He was working under the Security Officer and various other heads of department of the management. He has deposed that he used to perform the duty of a Chowkidar whenever one left the place temporarily for taking tea etc. He has also deposed that he used to accompany accounts branch people as a guard whenever they carried money. He has stated that he was ordered to fill up leave application forms of other workmen and countersign them before they were approved by the Security Officer. It has been elicited from him that he has filled up duty registers of workmen and that some small store items like torchcells were issued from the stores under his signatures. It is seen from his evidence that such store items could be got from the stores under the signatures of even watchmen. On the other hand, MW 1 has stated in his evidence that Exs. M-1 to M-7 are copies of leave applications of workmen containing the appellant's signatures and that Exs. M-50 and M-51 bearing the appellant's signatures are identity cards issued by the management to workmen. He has stated that the Security Inspector is provided with a chair and a table and three telephones - one of them an intercom, one connected with the factory and the third connected with the exchange of the telephone department and that the appellant was an officer of the first rank in the respondent's factory. There is no doubt whatsoever that MW 1 is exaggerating the position which the appellant was holding in the respondent's factory. He has admitted that the telephone is provided in the Security Inspector's room at the gate of the factory premises only to pass on immediate information to other place from the gate of the factory. The telephone provided in the security Inspector' room at the gate of the factory premises are not intended for the Security Inspector to carry on any managerial function. MW 1 has admitting in his evidence that the Security inspector could not appoint or dismiss or even take any disciplinary action against any workman of the establishment. He has stated that the security Inspector has control over 5 watch-men, drivers, rickshaw-pullers and sweepers - 16 persons in all - and is in overall charge of the factory during the first and third shifts which cover the period from 12 midnight to 8 a.m. while the important second shift is from 8. a.m. to 5. p.m. According to the evidence of MW 1 the Security Inspector allots duties to persons working under him by way of retaining them at the factory's gate or sending them to watch-towers or for moving around the factory or accompanying visitors to the factory. He could order his subordinates to come for overtime duty, sanction leave for them and recommend for

advances and for their promotion. He has admitted that the Security inspector has writing work for only 10 to 30 minutes in the second shift and almost no writing work at all in the first and third shifts and that the writing work consists of entering the names of visitors in the visitors register and making entries in respect of incoming and outgoing materials in the concerned registers.

9. Section 2(s) of the Act describes a workman and reads; 'Workman' means any person (including apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include an such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity : or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions, mainly of a managerial nature.

10. The respondent-management can at best contend that the appellant would fall under-Section 2(s)(iii). That has been its attempt before the Labour Court and also in this Court. The management's endeavour is to show that the appellant who admittedly was drawing total employments of only Rs. 581 per mensem at the relevant time was employed in a managerial or administrative capacity and was therefore not a workman who could raise a dispute under the Act.

11. This Court has stated in *Lloyds Bank Ltd., v, Panna Lal Gupta* ((1961) 1 LLJ 18 : AIR 1967 SC 428 : 19 FJR 307) that though it would be legitimate to say that the work done in the audit department is important for the proper and efficient functioning of the bank it would be idle to elevate that work to the status of officers who supervise the work of everybody concerned with the bank's establishment. It would be useful to members in this connection what this Court had stated in *Hind Construction and Engineering Company Ltd. v. Their workmen* ((1965) 1 LLJ 462 : AIR 1965 SC 917 : 27 FJR 232). It is this :

The tribunal's power has been stated in this Court in a large number of cases and it has been ruled that the tribunal can only interfere if the conduct of the employer shows lack of bona fides or victimization of employee or employee or unfair labour practice. The tribunal may in a string case interfere with a basis error on a point of fact or a perverse finding but it cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic enquiry though it may interfere where the principles of natural justice or fair play have not been followed or where the enquiry is so perverted in its procedure as to amount to no enquiry at all ... The tribunal is not required to consider the propriety or adequacy of the punishment or whether it is

excessive or too severe. But where the punishment is shockingly disproportionate regard being had to the particular conduct and the past record or is such as no reasonable employee would ever impose in like circumstances, the tribunal may treat the imposition of such punishment as itself showing victimization of unfair labour practice.

12. A perusal of the evidence of WW 1 and MW 1 regarding the nature of the duties performed by the appellant shows that the substantial part of the work of the appellant consisted of looking after the security of the factory and its property by deputing the watchmen working under him to work at the factory gate or sending them to watch-towers or around the factory or to accompany visitors to the factory and making entries in the visitors' register as regard the visitors and in the concerned registers as regard materials entering or going out of the premises of the factory. It must be noted that MW 1 has admitted in his evidence that there is nothing in writing to show what duties are to be carried out by the appellant. Placed in such a situation the appellant might have been doing other items of work such as signing identity cards of workmen, issuing some small items of stores like torch-cells etc. to his subordinate watchmen, which can be got from the stores even under the signatures of watchmen and filling up application forms of other workmen and countersigning them or recommending advances and loans or for promotion of his subordinates. It must also be remembered that the evidence of both WW and MW 1 shows that the appellant could never appoint or dismiss a workman or order any enquiry against any workmen. In these circumstances we hold that the substantial duty of the appellant was only that of a Security Inspector at the gate of the factory premises and that it was neither managerial nor supervisory in nature in the sense in which those terms are understood in industrial law. In the light of the evidence and the legal position referred to above we are of the opinion that the finding of the Labour Court that the appellant is not a workman within the meaning of Section 2(s) of the Act is perverse and could not be supported. On the evidence available on record we hold that the appellant clearly falls within the definition of a workman in Section 2(s) of the Act and that the reference of the dispute under Section 10(1)(c) of the Act is valid in law.

13. The finding of the Labour Court that the enquiry was fair and proper in the light of its own finding that the enquiry officer failed to summon the necessary witnesses and rejected the request of the appellant for challenging the witnesses could not be stated to be correct. On the merits some witnesses were examined on the side of the management before the Labour court and they are S. K. Bagga, MW 2, Hira Lal, MW 3, Deep Chand, MW 4 and Laxmi Chand, MW 5 and Accountant of M/s. Gurumukh Dass. MW 2 has deposed about the appellant abusing Durg Singh who according to the appellant was the Secretary of a Labour Union while the appellant and other were trying to canvass membership for a rival trade union. MWs 3 and 4 are stated to have corroborated the evidence of MW 2. MW 5 is the only independent witness examined on the side of the management. It is seen from the judgment of the Labour Court relating to the merits of the case that MW 5 who has deposed about the challans Exs. M-7 and M-8 having been returned to the person who accompanied him from the maintenance department had not supported the management that the appellant abused Durg Singh or another person within the premises of the factory, it is also seen from the judgment of the Labour Court that though the appellant had produced before 100 workman of the factory in support of the statement that the appellant had not abused anyone in the factory during the copies of his service and the management had produced Exs. M-6, a list of 90 persons before the Enquiry Officer, he had not called anyone of those erroneous to ascertain the truth regarding the alleged abuse of Durg Singh and S. K. Bagga by the appellant It is also seen from the judgment of the Labour Court that the appellant was not given a list of the management's witnesses before the commencement of that the domestic enquiry. In these circumstances, we are of the

opinion that the conclusion of the Labour Court that the Enquiry Officer had not acted properly in the proceedings and that he had not given for an interference. The charge levelled against the appellant is not serious one and it is not known how the charge even if proved would result in any much less total loss of confidence of the management in the appellant as the management would have it in the charge, It was argued in the Labour Court that there was no previous adverse remark against the appellant. There is nothing on record to show that any previous adverse remark against the appellant had been taken into consideration by the management for awarding the extreme penalty of dismissal from service to the appellant even if he had in fact abused in finally language Durg singh and S. K. Bagga. We are therefore of the opinion that the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him. We are also of the opinion that no responsible employer would ever impose in like circumstances the punishment of dismissal on the employee and that victimization or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory. We therefore hold that the termination of the appellant's service is invalid and unsustainable in law, and that he is entitled to reinstatement with full back wages and other benefits including continuity of service. The appeal is allowed accordingly with costs quantified at Rs. 1000. The writ petition is dismissed without costs.

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