

Workmen of Hindustan Steel Ltd. and Another

Vs

Hindustan Steel Ltd. and Others

Civil Appeal No. 1137(NI) of 1981

(D. A. Desai, V. Khalid JJ)

12.12.1984

JUDGMENT

DESAI, J. –

1. In exercise of the power conferred by Section 10 of the Industrial Disputes Act, 1947, the Government of the State of West Bengal as an appropriate Government referred the following dispute to the Ninth Industrial Tribunal, West Bengal for adjudication. The reference reads as under :

Whether the termination of services of Shri Manas Kumar Mukherjee is justified ?
To what relief, if any is he entitled ?

2. Hindustan Steel Ltd. ('employer' for short) dismissed Manas Kumar Mukherjee ('workman' for short) without holding any inquiry and without giving any opportunity to the workman to question or correct the allegation of misconduct levelled against him and in violation of principles of natural justice. The employer tried to sustain its action by invoking its powers under Standing Order 32 of the certified Standing Orders of the Hindustan Steel Ltd. S.O. 32 reads as under :

32. Special Procedure in certain cases. - Where a workman has been convicted for a criminal offence in a court of law or where the General Manager is satisfied, for reasons to be recorded in writing, that it is inexpedient or against the interests of security to continue to employ the workman, the workman may be removed or dismissed from service without following the procedure laid down in Standing Order 31.

S.O. 31 prescribed detailed procedure for dealing with cases of misconduct. Briefly stated, the procedure prescribed in S.O. 31 for imposing major penalty is that the employer has to draw up a charge-sheet and give an opportunity to the delinquent workman to make his representation within seven days. If the allegations are controverted, an inquiry has to be held by an officer to be nominated by the management and in such an inquiry reasonable opportunity of explaining and defending the alleged misconduct must be given to the workman. The delinquent workman may also be given the assistance of a fellow employee. The procedure also permits suspension of the delinquent workman pending inquiry. At the end of the inquiry, if the charges are held proved, and it is provisionally decided to impose major penalty, the delinquent workman has to be afforded a further reasonable opportunity to represent why the penalty should not be imposed on him. According to the employer it can dispense with such an inquiry in exercise of the power conferred by S.O. 32. The scope and ambit of S.O. 32 will be presently examined.

3. The Tribunal held that as the employer dispensed with the disciplinary inquiry in exercise of the power conferred by S.O. 32, it cannot be said that dismissal from service was not justified. The Tribunal observed that even if there were allegations of misconduct, the employer was quite competent to pass an order of removal from service without holding any inquiry in view of the provision contained in S.O. 32. The Tribunal concluded that the employer accused the workman of committing misconduct and proceeded to pass the order of removal from service without holding any inquiry into the allegations of misconduct, it cannot be said to be a colourable exercise of power and the workman would not be entitled to any relief. The Tribunal accordingly rejected the reference. Hence this appeal by special leave.

4. The only question that must engage our attention is what is the scope and ambit of S.O. 32. It has already been extracted. Upon its true construction, the Standing Order does not provide that for reasons to be recorded in writing, an inquiry into misconduct can be dispensed with. S.O. 32 clearly confers power upon the General Manager that on his being satisfied that it is inexpedient or against the interest of security to continue to employ the workman, then for reasons to be recorded in writing the workman may be removed or dismissed from service without following the procedure laid down in Standing Order 31. This archaic standing order reminiscent of the days of hire and fire is relied upon by a public sector undertaking to sustain an utterly unsustainable order and to justify an action taken in violation of the principles of natural justice, an action which has the effect of denying livelihood and casting a stigma. One can appreciate that in a given situation, an inquiry into misconduct may be counter-productive. Constitution itself contemplates such a situation when it enumerates situations in which a punishment of dismissal, removal or reduction in rank can be imposed without holding a disciplinary inquiry. Let it be extracted :

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. (1) * * *

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges :

* *

Provided further that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his convicted on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

A bare perusal of the situations and contingencies in which a disciplinary inquiry affording a reasonable opportunity of being heard before imposing the enumerated penalty can be dispensed with will clearly show that the power is not given to dismiss, remove or reduce in rank the delinquent worker but the power conferred by the aforementioned provision is to dispense with an inquiry before imposing major penalty. Sub-article (3) of Article 311 provides that "if, in respect of

any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final". Now the three situations contemplated by the provision are such that holding of an inquiry would be counter-productive. Where the penalty of dismissal, removal or reduction in rank is to be imposed on the ground of a conduct which has led to his conviction on a criminal charge, obviously, the inquiry will be superfluous or a repeat performance because a judicial tribunal has held the charges proved. But where the authority empowered to impose the penalty is satisfied for reasons to be recorded by it in writing to dispense with an inquiry, the reasons so recorded must ex facie show that it was not reasonably practicable to hold a disciplinary inquiry. Similarly, where in the interest of the security of the State, the President or the Governor, as the case may be, is satisfied that it is not expedient to hold such inquiry, the same can be dispensed with. In the last mentioned situation, the highest executive of the country, the President and the highest executive of the State, the Governor alone is entitled to dispense with the inquiry, if it is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry. Dispensing with the inquiry in the first and third situation does not present a difficulty because in the first situation there is a conviction by a criminal court and in the third situation, the highest executive in the Centre and the State is empowered to dispense with the inquiry. It is in the second fact situation that one must evaluate the width of discretionary power to dispense with inquiry. The appointing authority is invested with power to dispense with inquiry. And in case of persons belonging to Class IV services, the appointing authority may be someone in the lower administrative hierarchy and such an officer is invested with such draconian powers. Where such a power is conferred, on an authority entitled to impose penalty of dismissal or removal or reduction in rank, before it can dispense with the inquiry, it must be satisfied for reasons to be recorded in writing that it is nor reasonably practicable to hold such an inquiry. Power to dispense with inquiry is conferred for a purpose and to effectuate the purpose power can be exercised. But power is hedged in with a condition of setting down reasons in writing why power is exercised. Obviously therefore the reasons which would permit exercise of power must be such as would clearly spell out that the inquiry if held would be counter-productive. The duty to specify by reasons the satisfaction for holding that the inquiry was not reasonably practicable cannot be dispensed with. The reasons must be germane to the issue and would be subject to a limited judicial review. Undoubtedly sub-article (3) of Article 311 provides that the decision of the authority in this behalf is final. This only means that the court cannot inquire into adequacy or sufficiency of reasons. But if the reasons ex facie are not germane to the issue namely of dispensing with inquiry the court in a petition for a writ of certiorari can always examine reasons ex facie and if they are not germane to the issue record a finding that the prerequisite for exercise of power having not been satisfied, the exercise of power was bad or without jurisdiction. If the court is satisfied that the reasons which prompted the concerned authority to record a finding that it was not reasonably practicable to hold the inquiry, obviously the satisfaction would be a veneer to dispense with the inquiry and the court may reject the same. What is obligatory is to specify the reasons for the satisfaction of the authority that it was not reasonably practicable to hold such an inquiry. Once the reasons are specified and are certainly subject to limited judicial review as in a writ for certiorari, the court would examine whether the reasons were germane to the issue or was merely a cloak, device or a pretence to dispense with the inquiry and to impose the penalty. Let it not be forgotten what is laid down by catena of decisions that where an order casts a stigma or affect livelihood before making the order, principles of natural justice namely a reasonable opportunity to present one's case and controvert the adverse evidence must have fill play. Thus even where the Constitution permits dispensing with the inquiry, a safeguard is introduced that the concerned authority must specify reasons for its decision why it was not reasonably practicable to hold the inquiry.

5. Turning to S.O. 32, it nowhere obligates the General Manager to record reasons for dispensing with the inquiry as prescribed by S.O. 31. On the contrary, the language of S.O. 32 enjoins a duty upon the General Manager to record reasons for his satisfaction why it was inexpedient or against the interest of the security of the State to continue to employ the workman. Reasons for dispensing with the inquiry and reasons for not continuing to employ the workman stand wholly apart from each other. A Standing Order which confers such arbitrary, uncanalised and drastic power to dismiss an employee by merely stating that it is inexpedient or against the interest of the security to continue to employ the workman is violative of the basic requirement of natural justice inasmuch as that the General Manager can impose penalty of such a drastic nature as to affect the livelihood and put a stigma on the character of the workman without recording reasons why disciplinary inquiry is dispensed with and what was the misconduct alleged against the employee. It is time for such a public sector undertaking as Hindustan Steel Ltd. to recast S.O. 32 and to bring it in tune with the philosophy of the Constitution failing which it being other authority and therefore a State under Article 12 in an appropriate proceeding, the vires of S.O. 32 will have to be examined. It is not necessary to do so in the present case because even on the terms of S.O. 32, the order made by the General Manager is unsustainable.

6. The view we are taking gets some support from a decision of this Court. In a slightly different situation, this Court in *L. Michael v. Johnston Pumps India Ltd.* ((1975) 3 SCR 489 : AIR 1975 SC 661 : (1975) 1 SCC 574 : 1975 SCC (L&S) 169 : (1975) 1 LLJ 262 : 1975 Lab IC 399) observed that discharge simpliciter on the ground of loss of confidence when questioned before a court of law on the ground that it was a colourable exercise of power or it is a mala fide action, the employer must disclose that he has acted in good faith and for good and objective reasons. Mere ipse dixit of the employer in such a situation is of no significance. Where a disciplinary inquiry is dispensed with on the specious plea that it was not reasonably practicable to hold one and a penalty of dismissal or removal from service is imposed, if the same is challenged on the ground that it was a colourable exercise of power or mala fide action, the same situation would emerge and the employer must satisfy the court the good and objective reasons showing both proof of misconduct and valid and objective reasons for dispensing with the inquiry. In our opinion, when the decision of the employer to dispense with inquiry is questioned, the employer must be in a position to satisfy the court that holding of the inquiry will be either counter-productive or may cause such irreparable and irreversible damage which in the facts and circumstances of the case need not be suffered. This minimum requirement cannot and should not be dispensed with to control wide discretionary power and to guard against the drastic power to inflict such a heavy punishment as denial of livelihood and casting a stigma without giving a slightest opportunity to the employee to controvert the allegation and even without letting him know what is his misconduct.

7. Turning to the facts of the case, a bare perusal of the impugned order is both instructive and provides ample material for pointing out how the drastic power can be arbitrarily exercised without keeping in view the prerequisite to be satisfied for exercise of the power. The order reads as under :

HINDUSTAN STEEL LIMITED DURGAPUR STEEL PLANT

Ref. No. Order/PF/MN/1215 August 24, 1970

ORDER

Having considered the matter fully, I am satisfied that it is no longer expedient to employ Shri Manas Mukherjee, Assistant, Order Department, Durgapur Steel Plant any further.

It is therefore, ordered that Shri Manas Mukherjee be removed from the service of the Company with effect from August 24, 1970.

He is allowed three months' salary which he may collect from the cash section of the Finance Department by August 26, 1970.

Sd/- Maj. Gen. Director Incharge.##

The expression 'no longer expedient' as used in the order clearly spells out the fact that some inquiry started. What prompted the General Manger to close the inquiry, one cannot gather from the order. But our attention was invited to Ann. R-2 which according to the respondents specifies the reasons recorded in writing for dispensing with the inquiry. Briefly, in Ann. R-2, it is stated that the authority concerned has looked into the secret report sent to him by Shri P. S. Rao Naidu, Planning and Progress Officer, Order Department and the comments of DGM thereon. He has also stated that he has looked into the report received from Sr. AO(E) and the copy of the complaint lodged by Smt Gita Majumdar, wife of an employee in the plant with the police. These recitals have been considered sufficient to dispense with the inquiry. If Smt Gita Majumdar did file a report with the police making accusation against the appellant, she would have to be examined in the criminal case. She could have been more conveniently called before the inquiry officer. And the secret reports remain secret. The reasons for dispensing with the inquiry do not spell out what was the nature of the misconduct alleged to have been committed by the appellant and what prompted the General Manager to dispense with the inquiry. It is difficult to hold that the recitals of the order spell out some objective reasons and the reasons were germane to the question of dispensing with the inquiry. Frankly speaking, we are not satisfied in this case that for valid, objective and relevant reasons, the inquiry was dispensed with.

8. An attempt was made to urge that some annexures to the counter-affidavit would show certain complaints received against the appellant. We decline to look into them as they were not given to the appellant in the course of inquiry to meet or explain the same. We consider them irrelevant at this stage.

9. Once we hold that there was no justification for dispensing with the inquiry, imposition of penalty of dismissal without disciplinary inquiry as contemplated by S.O. 31 would be illegal and invalid.

10. Two options are thereupon open to us. One would be to permit the General Manager, if he is so minded to hold the disciplinary inquiry and come to his own decision and the second would be to remit the matter to the Labour Court to permit the respondent-employer if it is entitled in law to substantiate the charges of misconduct before the Tribunal.

11. The order removing the appellant from service was passed way back on August 24, 1970. More than 14 years have rolled by. In such a situation, to start the whole thing de novo would neither be of any help to the appellant nor would be conducive to the maintenance of discipline in the plant. Undoubtedly, once a workman is removed from service a stigma attaches to him, and if the order is held to be in consonance with the provisions of the relevant standing orders at any rate, the stigma has to be removed.

12. Having given the matter out anxious consideration, we dispose of the appeal as under.

13. The respondent shall recall and cancel the order dated August 24, 1970 removing the appellant from service and reinstate him and on the same day the appellant shall tender resignation of his post

which shall be accepted by the respondent. The respondent shall pay as and by way of back wages and future wages, a sum of Rs 1,50,000 to the appellant within 2 months from today to be spread over from year to year commencing from the date of removal from service. We give one more opportunity to the respondent to recast its Standing Order 32 within a period of two weeks to be brought at best in conformity with the second proviso to sub-article (2) of Article 311 failing which its validity will be re-examined by this Court.

14. The amount of Rs 1,50,000 directed to be paid to the appellant by the respondent comprises back wages, and all other allowances admissible to him from year to year from 1970 up to the end of 1984. The amount shall be spread over from year to year. If because of the lump sum payment as directed herein the respondent is required to deduct income tax as enjoined by Section 192 of the Income-tax Act, 1961, the appellant shall be entitled to relief under Section 89 of the Income-tax Act, 1961. For this purpose, the appellant shall make an application as required by Section 89 read with Rule 21-A to the appropriate authority, who would consider granting of relief to the appellant under Section 89 of the Income-tax Act. The proceeding in this behalf shall be disposed of within a period of six months. The appeal is disposed of in these terms with no order as to costs.

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