

Kamal Kishore Lakshman

Vs

Management of M/S. Pan American World Airways Inc. and Others

Civil Appeal No. 2568 of 1986

(CJI Bhagwati, Ranganath Misra JJ)

03.12.1986

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal by special leave assails the Award dated June 13, 1980, passed by the Presiding Officer, Labour Court, Delhi. The following question was referred for adjudication :

Whether the termination of services of Shri Kamal Kishore Lakshman is illegal and/or unjustified; and if so, to what relief is he entitled and what directions are necessary in this respect ?

2. The appellant was employed by respondent 1 on regular vacancy as a Cargo Mail Service Representative at Palam Airport. His services were terminated on March 15, 1974. The appellant maintains that the termination was bad and contrary to principles of natural justice and demanded reinstatement with full back wages and other service benefits. The management resisted this claim and contended that the appellant while on leave in February 1974 had gone to Hong Kong and returned to Delhi in Flight No. PA-1 in the morning of February 22, 1974. During his absence from India, two aluminium foot lockers had been received on February 19, 1974. Those lockers were not meant for New Delhi and had been deposited with the Customs authorities and were taken from Customs custody for being despatched to proper destination in the Company's Flight No. PA-002. These two trunks were not loaded in the flight but were taken out at the instance of Chandu Lal (co-employee) by taxi and delivered at the house of the appellant. When questioned Chandu Lal accepted these allegations. The management undertook some preliminary enquiry and when the appellant arrived in India on February 22, 1974, he too was questioned. His stand and the explanation were not acceptable to the employer and it took the stand that the management had lost confidence in the employee and termination in the circumstances was bona fide and was in accordance with the provisions for separation of employees according to conditions of service.

3. Admittedly no domestic enquiry had been held but before the Labour Court both parties led evidence. The Labour Court considered the entire evidence keeping in mind the legal position indicated by this Court in some decisions and came to the following conclusion :

I am of the clear opinion that the action of the management of Pan Am was prompted only by the desire to have operational efficiency and the decision to separate Kamal Kishore Lakshman was taken only because operational efficiency was endangered in continuing Lakshman in service when there were grave suspicion against Mr Lakshman about being involved in avoidance of customs duties in respect of goods in the two aluminium foot lockers.

The Labour Court also further found that Lakshman had undertaken a trip to Bangkok and Hong Kong in suspicious circumstances and held that :

What is indicated is that in the totality of circumstances the management lost confidence in Lakshman and his involvement in smuggling activities could not be said to be a fanciful or whimsical matter. The order had to be made for a 'good reason' and the reference to the recent happenings in the order of termination does not cast a stigma, but only complies with the requirement of the Separation Rules.

4. The co-employee Chandu Lal for his involvement in the same incident also suffered termination of service and lost before the Labour Court. Chandu Lal's appeal was disposed of by this Court on April 19, 1985 (Chandu Lal v. Pan American World Airways, (1985) 2 SCC 727 : 1985 SCC (L&S) 535). This Court held that want of confidence in an employee did point out an adverse facet in his character and if termination was grounded on such facet of the employee, it amounted to a stigma. Such termination would therefore not amount to retrenchment. In the absence of an inquiry in an appropriate disciplinary proceeding, there could not be a valid order made terminating service. After holding that the termination was bad and accepting the employees' plea that there was loss of confidence, it was concluded that the employee was not to be restored to service. The court ordered lump sum amount to be paid by way of compensation.

5. The appellant's special leave petition, however, was dismissed apparently on the basis of guilty conduct and though his case and Chandu Lal's case suffered from the defect, the appellant had the larger share of responsibility. After the judgment in Chandu Lal case (Chandu Lal v. Pan American World Airways, (1985) 2 SCC 727 : 1985 SCC (L&S) 535) was delivered a review application was filed being R. P. No. 771 of 1985. This Court by its order dated July 24, 1986 accepted the review and restored his special leave petition. Leave was granted and the appeal was directed to be heard.

6. Though new life was injected into the appellant's case by the ratio of Chandu Lal decision (Chandu Lal v. Pan American World Airways, (1985) 2 SCC 727 : 1985 SCC (L&S) 535), at the hearing learned counsel for the appellant focussed his attention to show that the foundation of the judgment of this Court in Chandu Lal's appeal was based upon an untenable view. According to learned counsel termination of service for loss of confidence amounted to retrenchment and nothing more.

7. Having heard learned counsel, we are inclined to reiterate the view taken in Chandu Lal case (Chandu Lal v. Pan American World Airways, (1985) 2 SCC 727 : 1985 SCC (L&S) 535) that the plea of loss of confidence in the employee indeed casts a stigma. As was pointed out in Roble v. Green ((1985) 2 QB 315) the employee is expected to promote the employer's interests in connection with which he has been employed and a necessary implication which must be engrafted on such a contract is that the servant undertook to serve his master with good faith and fidelity. This view has been accepted by several High Courts in India and meets with out approval. In the absence of a statutory definition of the word 'stigma', we shall refer to its meaning as available in dictionaries.

8. According to Webster's New World Dictionary it is something that detracts from the character or reputation of a person, a mark, sign, etc. indicating that something is not considered normal or standard. The Legal Thesuras by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's Third New International Dictionary gives the meaning as a mark or label indicating a deviation from a norm. According to

yet another dictionary 'stigma' is a matter for moral reproach.

9. Loss of confidence by the employer in the employee is a feature which certainly affects the character or reputation of the employee and, therefore, this Court correctly held in Chandu Lal case (Chandu Lal v. American World Airways, (1985) 2 SCC 727 : 1985 SCC (L&S) 535) that allegation of loss of confidence amounted to a stigma. The ratio in Jagdish Mitter case (Jagdish Mitter v. Union of India, AIR 1964 SC 449 : (1964) 1 Lab LJ 418) also supports this conclusion.

10. Retrenchment as defined in Section 2(oo) of the Industrial Disputes Act and as held by this Court in several cases means termination of service for any reason whatsoever otherwise than punishment inflicted by way of disciplinary action and the other exceptions indicated therein. In the present case though no formal domestic inquiry had been held, the employer took the stand in the adjudication that termination was grounded upon loss of confidence and substantiated that allegation by leading evidence. The legal position firmly established is that if there has been no appropriate domestic enquiry or no enquiry at all before disciplinary action is taken, it is open to the employer to ask for such opportunity in the course of adjudication. In the facts of this present case, the order of separation grounded upon loss of confidence has been justified before the Labour Court and the Labour Court has come to that conclusion upon assessment of the evidence.

11. Several decisions were relied upon by respondent's learned counsel in support of his contention that the conclusion in Chandu Lal case (Chandu Lal v. Pan American World Airways, (1985) 2 SCC 727 : 1985 SCC (L&S) 535) that loss of confidence amounted to stigma was wrong. We have not been shown a single case other than Chandu Lal (Chandu Lal v. Pan American World Airways, (1985) 2 SCC 727 : 1985 SCC (L&S) 535) where this aspect has been directly considered. Whether termination is grounded upon stigma would vary from case to case depending upon whether it involves a government servant or a workman. But the procedural safeguards appear to be different when termination is sought to be founded upon stigma. If disciplinary inquiry has not proceeded the prejudicial order in the case of a government servant the action would be bad while in the case of a workman the order could be justified even in the courts of adjudication before the appropriate Tribunal under the Industrial Disputes Act even though no inquiry had been undertaken earlier.

12. Mr Mohanty finally contended that since in Chandu Lal case (Chandu Lal v. Pan American World Airways, (1985) 2 SCC 727 : 1985 SCC (L&S) 535) a lump sum compensation has been awarded, a similar direction should be given in this case. Dr Anand Prakash for the employer rightly indicated that the roles played by Chandu Lal and the appellant in the wrongful act differed and the appellant's responsibility appeared to be more. Perhaps it was on that footing that this Court had initially declined to interfere when the appellant's leave application had come up. Yet, we suggested that a sum of Rs. 25,000 may be paid by way of compensation on humanitarian consideration and though Dr Anand Prakash agreed to do so, the appellant who was present in court, was not prepared to accept the same. The question of compensation, therefore, does not arise.

13. The appeal fails and is dismissed. In the peculiar circumstances of the case we direct parties to pay their own costs.

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