SUPREME COURT OF INDIA

United Bank of India

Vs.

Tamil Nadu Banks Deposit Collectors Union

C.A.No.5344 of 2005

(Dr. Arijit Pasayat and S.H. Kapadia JJ.)

05.12.2007

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order Passed by a Division Bench of the Madras High Court allowing the writ appeal filed by the respondents.

2. Background facts in a nutshell are as follows:

Two persons named Koshi Kottikeran and Liakath Ali were engaged as Commission agents with the appellant Bank in its Coimbatore Branch. On 11.10.1984 and 12.12.1984 engagements of Koshi Kottikeran and Liakath Ali came to be terminated by the appellant-Bank. Respondent No.1-The Union raised two disputes purported to be an industrial dispute with regard to alleged termination of the aforesaid two persons. The matter was referred to the Industrial Tribunal, Tamil Nadu (in short the 'Tribunal') I.D. Case Nos.26 and 44 of 1987. Appellant Bank took the stand that these two persons were not workmen and in any event the dis-engagement was legal, justified and permissible. The Tribunal passed a common award answering the reference against the claimant and in favour of the management.

Aggrieved by the award the respondent No. 1-Union preferred Civil Writ Petition No. 15538 of 1997 before the Madras High Court.

Learned Single judge by order dated 15.10.1997 dismissed the writ petition. The Union carried the matter further in writ appeal. By the impugned order the Division Bench of the High Court allowed the writ appeal. The High Court came to hold that a Tiny Deposit Collector was a workman. Therefore, it is a valid dispute, and the dispute referred to can be adjudicated by the Tribunal. It referred to the letters of disengagement and came to hold that the termination orders disclosed that they were simple orders of termination. That being so no specific reason for termination of services was disclosed. They did not refer to any misconduct and therefore there was no justification for the Tribunal to permit the appellant-bank to rely upon documents and materials to justify the orders. It was also held that there was absolutely no acceptable evidence placed before the Tribunal to justify the orders of termination. Accordingly writ appeal was allowed.

3. Learned counsel for the appellants submitted that it was permissible for the Tribunal to allow the

employer to lead evidence. The learned Single judge categorically observed that the evidence led before the Tribunal was to substantiate the stand of the employer about the misconduct of the two workmen.

4. There is no appearance on behalf of respondent No.1- Union in spite of service of notice.

5. Circumstances, when permission can be granted to an employer to lead evidence to justify its order of termination, have been highlighted by this Court in several cases.

6. The reference to the Tribunal was as follows:

"ID 26/87 :Whether the action of the management of the United Bank of India, Madras, in terminating the services of Shri Koshy Kottikaran, Tiny Deposit Collector, United Bank of India, Oppanakkara Street, Coimbatore from 20.12.1984 is legal? If not to what relief is workman concerned entitled?"

ID 44/87 : Whether the action of the Management of the United Bank of India, Madras, in terminating the services of Shri Liakath Ali, Tiny Deposit Collector, United Bank of India, Oppanakkara Street,

Coimbatore from 11.10.1984 is legal? If not to what relief is the workman concerned entitled?"

7. The reasons which weighed with the Tribunal for deciding in favour of the appellant bank read as follows:

"The Dy. General Manager asked the Regional Manager to give the particulars regarding the non-engagement of Commission Agent for TSS is disclosed by Ex. M 10. The commission Agents decided to demonstrate at 5.00 p.m. from 28.8.1984 in front of the Bank for one week and 28t" onwards is revealed by Ex. M.

11. This scheme was abolished due to complaints and problems. The object of the introduction of the Tiny Deposit Scheme is to create a Saving habit of the weaker section of the society is proved by Ex. M. 13. The Manager wrote to the Regional Manager, Southern Region, regarding the Tiny Deposit Scheme, one depositor

A. Ali paid Rs. 1,,000/- to the petitioner in I.D. No. 44/87 and he has not passed any receipt is disclosed by Ex. M 15. He obtained a loan from the bank, is established by Ex. M.

16. Rs. 1,000/- was remitted on 15.11.84 is proved . The Manager sent a letter to the appellant in I.D. No. 44/87 to submit his explanation as to why action should not be taken against him within 24 hours from the date of receipt of the notice. He submitted his explanation. The appellant in I.D. no. 44/87 did not immediately report the missing of the bag to the bank is made out by Ex. M 21. The petitioner in I.D. No. 44/87 did not immediately report the missing of the bag to the bank is made out by Ex M 21 the petitioners in I .D. No. 44/87 did not immediately report the missing of the bag to the bank, is made out by Ex. M. 21. The petitioner in I.D. No. 44/87 remitted the collection of Rs. 455 /- to the bank is established by Ex. M. 22. The Manager sent a confidential letter to the Regional Manger, Southern Region, is supported by Ex.M. 23. The Bank issued Show Cause Notice to the Petitioner in I.D. No. 44/87 is proved by Ex. M. 24. He submitted his explanation is proved

by Ex. M. 25. The bank published the notice in Tamil News Paper is proved by Ex M 20 The Petitioners in both the I.D.s demanded coupon for Rs. 500/- and 1 000/- and signatures of the Manger in the coupon. The Bank refused to concede to the demand of the Commission Agents. Ravi kumar was also a Commission Agent and he committed several malpractice and action was taken against him. The Commission Agents and two staff of the b demonstrated in front of the bank and shouting vulgar slogans against the Dy. General Manager is proved by the Evidence of M.Ws 1 and 2. Admittedly there is no enmity between the Commission Agents and M.Ws 1 and 2. The Petitioner in the two I.Ds and Ravi Kumar, used vulgar words is proved by the legal evidence of M.Ws 1 and 2, the petitioner in both the ID were given warning and put on notice about their misconduct. The petitioners in both the I.Ds were given opportunities and warnings to rectify their mistakes. The termination of the petitioner in both the I.Ds is legal. Even no enquiry enquiry as conducted, it will not vitiate the order of dismissal is held in 1973 I LLJ 78 S.C. Workmen of Firestone Tyre Rubber Co. Vs. Management. Even no enquiry was conducted and the enquiry conducted is defective, an opportunity must be given to the employee to prove the charges and opportunity must be given to the employee to evidence control is held in the above cited case. In these two I.Ds. opportunity was given to the appellant and respondent to adduce evidence, to prove the charge in this Tribunal. The charge is proved by the evidence of M.Ws. 1and 2. There is no evidence contrary."

8. In Workmen of Motipur Sugar Factory (Private) Limited v. Motipur Sugar Factory [(1965) 3 SCR 588] it was observed as follows:

"It is now well-settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic inquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic inquiry has been properly held (see Indian Iron & Steel Co. v. Their workmen [[1958] S.C.R. 667] but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to M/s Sasa Musa Sugar Works (P) Limited v. Shobrati Khan [[1959] Supp. S.C.R. 836], Phulbari Tea Estate v. Its Workmen and Punjab National Bank Limited v. Its Workmen. There three cases were further considered by this court in Bharat Sugar Mills Limited. v. Shri Jai Singh, and reference was also made to the decision of the Labour Appellate Tribunal in Shri Ram Swarath Sinha v. Belaund Sugar Co. [[1954] L.A.C. 697]. It was pointed out that "the import effect of commission to hold an enquiry was merely this : that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out". It is true that three of these cases, except Phulbari Tea Estate's case were on applications under Section 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate's was on a reference under s. 10, and the same principle was applied there also, the only difference being that in that case, there was an enquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper.

9. Again in Delhi Cloth and General Mills Co.Vs. Ludh Budh Singh [1973(3) SCR 29] this Court held as follows: "When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But. if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct."

10. In Workmen of Fire Stone Tyre Rubber Company v. Management [1973(1)LLJ 78] it was inter alia held as follows:

"4. Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first

time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization."

11. In view of the aforesaid position in law, the inevitable conclusion is that the Division Bench of the High Court was not justified in allowing the writ appeal. A wrong permission granted to lead evidence and absence of acceptable evidence are conceptually different. The Division Bench appears to have been confused between the two concepts. There is no finding recorded that the permission was wrongly granted. That being so, the appeal deserves to be allowed, which we direct. No costs.