

SUPREME COURT OF INDIA

Tirupati Jute Industries P. Ltd.

Vs.

State of West Bengal

C.A.No.2429 of 2009

(R.V.Raveendran and Lokeshwar S.Panta JJ.)

13.04.2009

JUDGEMENT

R.V. Raveendran, J.

1. Leave granted. Heard learned counsel. The appeals involve a common question. Kashinath, Keshab Lal Shaw, Shambu Nath and Bhupen Lal (the fourth respondent in the four appeals) were workmen of the appellant.

2. The first three appeals relate to a charge-sheet dated 7.6.1990 issued to Kashinath, Keshab Lal Shaw and Shambu Nath alleging that on 2.6.1990, they along with some other workmen kept the General Manager of the company (S. R. Singh) under wrongful confinement, misbehaved with him and used filthy language and threatened to assault him physically if the charge-sheet cum suspension earlier issued to some workmen was not withdrawn. It was also alleged that on 6.6.1990 the said workmen again kept the General Manager (S.R. Singh) under wrongful confinement in the Spinning Department and later at the Mill office and threatened him with dire consequences if the charge-sheet cum suspension in respect of one Jayaram was not withdrawn immediately; and that they also used filthy language against him, shouted derogatory slogans and even prevented him from attending to calls of nature. An enquiry was held into those charges and the Enquiry Officer submitted a report dated 16.12.1990 holding them guilty of the charges. Thereafter by orders dated 21.12.1991, the appellant informed the said three workmen that the management had considered and accepted the proceedings and findings of the Enquiry Officer, and having found that there were no extenuating circumstances, had decided to dismiss them from service for proved misconduct with effect from that date.

3. The facts in the last appeal relating to Bhupen Lal are similar. He was issued a charge-sheet dated 14.5.1991 alleging that earlier on the same day, he was sitting idle and smoking in the vice room of the spinning department, and when he was asked by the Chief Engineer to attend to his job, he failed to comply; and later, he followed the Chief Engineer to the batching line and started abusing him in filthy language and threatened him with dire consequences and also tried to physically assault the Chief Engineer but was prevented by

other workmen and the said acts constituted a misconduct. After holding an inquiry, the Enquiry Officer submitted a report dated 7.7.1991 holding the fourth respondent guilty of the charge. Thereafter the General Manager by letter dated 19.7.1991 informed the workman that the management has agreed with the said findings of the Enquiry Officer and there were no extenuating circumstances in his favour and consequently he was dismissed from service with effect from that date.

4. Disputes were raised in regard to the said four dismissals and the appropriate government referred the disputes as to whether the dismissal of the workmen was justified and to what relief they were entitled, to the Industrial Tribunal. Though the appellant-employer initially appeared in the reference cases before the Industrial Tribunal, it did not subsequently contest the matters. The Industrial Tribunal, by separate awards accepted the contention of the workmen that they were not given due opportunity to contest the enquiry and therefore held that the orders of dismissal were opposed to the principles of natural justice. Consequently it directed reinstatement of the workmen with full backwages from the date of their dismissal till the date of reinstatement.

5. The four awards were challenged by the management in a common batch of writ petitions (WP No.1941-44/1998) contending that the enquiry was fair and proper and adequate opportunity was given to the employees.

“The workmen however raised a fresh contention at the hearing before the learned Single Judge that their orders of dismissal were illegal as they were not approved by the Manager of the establishment or the employer as required by Standing Order 14(e) which reads thus:

"No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. The approval of the Manager of the establishment and, where there is no manager, of the employer, is required in every case of dismissal, and when circumstances appear to warrant it, the manager or the employer may, whether an appeal has or has not been preferred, institute independent inquiries before dealing with the charges against a workman."

A learned Single Judge of the Calcutta High Court disposed of the writ petitions by order dated 9.12.2004. He held that the Tribunal committed an error in not taking notice of the fact that the workmen were given due opportunity to defend themselves in the domestic enquiry; that though the Enquiry Officer had served several notices directing them to appear in the enquiry, the workmen did not choose to appear in the enquiry; and that therefore it could not be said that the enquiry was opposed to principles of natural justice. In the case of Bhupen Lal, the workman had in fact appeared and participated in the enquiry. The learned Single Judge, being of the view that the finding of the Tribunal was contrary to the record, set aside the said finding in all the four awards. But the learned Single Judge accepted the new contention urged by the workmen and held that as there was no approval in regard to the dismissal as

required under Standing Order 14(e), the order of dismissal passed by the disciplinary authority had no effect in the eye of law.

Consequently the learned Single Judge quashed the orders of dismissal for want of approval under Standing Order 14(e) and directed that the workmen be reinstated with all consequential benefits as per the award of the Industrial Tribunal.”

6. The appellant challenged the common order of the learned Single Judge in MAT No.80-83/2005. A Division Bench of the High Court disposed of the four appeals by order dated 8.9.2005. The appellate court confirmed the finding of the learned Single Judge that adequate opportunity had been given to the workmen in the enquiry. It concurred with the learned Single Judge that the awards of the Tribunal setting aside their dismissals on the ground that due opportunity was not given to the workmen, were liable to be set aside.

“The appellate court then examined the contention based on Standing Order 14 (e). The Division Bench held that Rule 14(e) of the Standing Order imposed a legal obligation upon the disciplinary authority to secure the approval of the Manager of the establishment (and in the absence of a Manager, approval of the employer) in respect of the dismissal; that the appellant had failed to contest the proceedings before the Tribunal and place any material to show that there was such prior approval. It was of the view that though the workmen had not raised such a contention before the Industrial Tribunal, there was no need to remand the matter to the Tribunal to consider whether prior approval was in fact obtained before issuance of dismissal orders nor any need to give any opportunity to the management to place necessary material, having regard to the fact that the matter was more than a decade old and two of the employees had already reached the age of superannuation and other two were about to reach the age of superannuation. The Division Bench therefore upheld the order of the learned Single Judge.”

7. The said order is challenged in these appeals by special leave. The question that arises for consideration is whether the High Court could have permitted the workmen to raise a contention based on a disputed question of fact for the first time in the writ proceedings and then decide the same against the management without giving it an opportunity to let in evidence thereon.

8. The appellant contended that the workmen ought not to have been permitted to raise a new contention alleging non-compliance with Standing Order 14(e) for the first time before the High Court, thereby denying them an opportunity to establish that there was no violation of the said Standing Order. The appellant also contended that in the first three cases, the order of dismissal was signed by the Director of the appellant company (and by the Manager himself in the fourth case) and the order clearly stated that the management/Manager had considered the findings and proceedings of the Enquiry Officer and had accepted the same. It was contended that a reading of the order clearly showed that the findings of the enquiry were accepted by the management, which meant the Board of Directors of the company, which was the employer. It was contended that Standing Order 14(e) was intended to apply

only where the disciplinary authority was lower in rank to the Manager or the Board of Directors of the company. The appellant therefore contends that the decision of the High Court that there was no compliance with Standing Order 14(e) was unwarranted and erroneous.

9. Learned counsel for the workmen, on the other hand, contended that as the appellant failed to participate in the proceedings before the Tribunal, the contention of the workmen that due opportunity was not given to them in the domestic enquiry was rightly accepted. It was also contended that the High Court ought not to have interfered with such a finding. They supported the ultimate decision directing reinstatement with back-wages, not only on the ground of non-compliance with Standing Order 14(e) but also on the ground that the enquiry was not fair and proper.

10. The enquiry report makes it clear that sufficient opportunity was granted to the workmen to participate in the inquiry and in spite of it, they did not participate in the enquiry (except Bhupen Lal who participated in the enquiry). The learned Single Judge after considering the question of due opportunity, recorded a finding that such opportunity had been given to the workmen and therefore, set aside the Tribunal's finding in that behalf. That was not challenged by the workmen, presumably because ultimately the appellant's writ petition was dismissed on some other ground. The Division Bench also affirmed the said finding that due opportunity was given to the workmen. In fact the Division Bench specifically recorded that the workmen did not challenge that part of the order of the learned Single Judge holding that due opportunity was given. No ground has been made out to interfere with the concurrent findings of the learned Single Judge and the Division Bench that the workmen were given due opportunity. Therefore, the enquiry was fair and proper.

11. In regard to the finding that there was no approval by the manager/employer, it is not in dispute that such a contention was never raised before the Tribunal. What was urged before the Industrial Tribunal by the workmen was that they were not given due opportunity to defend themselves and therefore the inquiry was opposed to principles of natural justice. The workmen did not contend before the Industrial Tribunal that the order of dismissal was bad for want of approval of the manager or of the employer under Standing Order 14(e). The issue of violation of Standing Order 14(e) was raised before the High Court for the first time and as rightly contended by the learned counsel for the appellant, the appellant did not have an opportunity to demonstrate that such an approval was in fact available or that such approval was not required, having regard to the fact that a decision was taken by the Manager or the Board of Directors, which was the employer.

“Neither the learned Single Judge nor the Division Bench could have assumed that there was no approval without giving an opportunity to the appellant to establish that there was approval. Merely on the ground that the matter was pending for a considerable time, the Division Bench could not say that there was no need to remit the matter back to the Tribunal or chose to assume that there was non-compliance with the requirement of Standing Order 14(e).”

12. We are of the view that if the High Court felt that the matter need not be remitted and that it should decide the issue on merits, it ought to have given due opportunity to the appellant employer to produce before it, relevant material to establish that it had complied with Standing Order 14(e). That was also not done. Therefore, the finding of the learned Single Judge affirmed by the Division Bench, holding that there was no approval as required by Standing Order 14(e), requires to be set aside, as the same is based on no evidence.

13. In the usual course, this would have necessitated referring back the matter to the Tribunal for examination of the issue relating to compliance with Standing Order 14(e). But certain subsequent events have necessitated exercise of our jurisdiction under Article 142 to do complete justice. The orders of termination in regard to the employees were passed in the years 1990 and 1991. All the four employees have reached the age of superannuation long ago. There is therefore no question of any of them being reinstated, even if the matter is referred to the Tribunal and they succeed before the Tribunal. The High Court has found that the charges are proved.

“Only the technical contention about approval remains. On the facts and circumstances, we are of the view that a quietus should be given to this litigation by directing the appellant to pay one-third of the back-wages (less any amounts already paid/deposited by the appellant) in full and final settlement, to the four workmen.”

14. We therefore allow these appeals, set aside the awards of the Tribunal and the orders of the learned Single Judge and Division Bench of the High Court. The orders dismissing the four workmen from service passed by the employer is not disturbed. Instead, the appellant is directed to pay to the four workmen, one-third of the back-wages for the period between the respective dates of dismissal and superannuation (less any amount already paid/deposited). No costs.