SUPREME COURT OF INDIA

Management of Sundaram Industries Ltd.

Vs.

Sundaram Industries Employees Union

C.A.No.11016 of 2013

(T.S. Thakur and Vikramajit Sen, JJ.)

13.12.2013

JUDGMENT

T.S. Thakur, J.

1. Leave granted.

2. This appeal arises out of a judgment and order dated 27th April, 2011 passed by a Division Bench of the High Court of Judicature at Madras whereby Writ Appeal No.702 of 2011 and M.P. No.1 of 2011 filed by the appellant have been dismissed and order dated 28th February, 2011 passed by a learned Single Judge of that Court in Writ Petition No.8019 of 2010 affirmed.

3. The appellant-company is engaged in the manufacture of rubber products for various industrial applications. It had, at the relevant point of time, 877 employees in its establishment. As many as 488 of these employees were working as molders to operate the rubber mounding machines. The mounding work involved placing rubber into the mounding press which would then be pressed into rubber components and marketed for varied industrial and commercial uses.

4. In March 1999, the management of the appellant- company required the workmen engaged as molders to place their individual bags of production on the weighing scale at

the end of their work shift. That procedure was observed for about a week where after 13 out of 488 molders declined to abide by the instructions issued by the management. The defaulting members of the work force were on that basis placed under suspension by the management. Aggrieved by the action taken against its members, the respondent-union raised a dispute before the Labour Officer who advised the union and its workmen to tender an apology to the management and an undertaking to the effect that they would not repeat their acts in future.

5. The appellant's case is that despite the apology and undertaking furnished pursuant to the said advice, the defaulting workmen not only continued disobeying the instructions but succeeded in enticing three others to follow suit, thereby disrupting the work in the factory. The appellant took note of the disobedience shown by the workmen concerned and initiated disciplinary proceedings against them in April, 1999. Pending such proceedings the workmen concerned were placed under suspension on the charge of their having persistently refused to follow the instructions despite an apology and undertaking furnished by them earlier. The inquiry initiated against the workmen culminated in the dismissal of the delinquent workmen based on the charges of misconduct, persistent disobedience and insubordination proved against them. The respondent- union once again espoused the cause of the workmen and approached the Industrial Tribunal, Chennai in a reference made by the Government for adjudication of the dispute.

The Tribunal came to the conclusion that although the domestic inquiry conducted by the management against the delinquent workmen was fair and proper and the charges stood proved, the punishment of dismissal imposed upon the workmen was shockingly disproportionate to the gravity of the offence. The Tribunal accordingly set aside the order of dismissal passed against the workmen and directed their reinstatement with 50% back wages.

6. Aggrieved by the award made by the Tribunal, the appellant preferred Writ Petition No.8019 of 2010 before the High Court at Madras which was heard and dismissed by a learned Single Judge of that Court by his order dated 28th February, 2011. Writ Appeal No.702 of 2011 and M.P. No.1 of 2011 filed by the management also failed and were dismissed by a Division Bench of that Court. The present appeal assails the said orders as noticed above.

7. Appearing for the appellant Mr. K.K. Venugopal, learned senior counsel, strenuously argued that the Tribunal and so also the High Court were in error in interfering with the punishment imposed upon the defaulting workmen. He urged that the conduct of the delinquent workmen was wholly unjustified having regard to the fact that they had, in the course of the proceedings before the Labour Officer, Madurai, not only apologized for their misconduct but filed an undertaking in writing to obey their superior officers in the future. It was only on that basis that the management had revoked the orders of suspension issued by it and permitted the workmen to resume their duties. Viewed in that background the workmen were not justified, argued Mr. Venugopal, to go back on their

promise and undertaking and refuse to place their individual bags of production on the weighing scale as instructed to do so. Inasmuch as the workmen had continued with their deliberate and defiant attitude despite a chance given to them to improve their conduct, they did not deserve any sympathy, nor could the punishment of dismissal from service on proof of the charges framed against them be considered disproportionate to the gravity of the misconduct committed by them.

8. On behalf of the respondent-union it was argued by Mr.V. Prakash that the Tribunal and so also the High Court were justified in interfering with the orders of dismissal passed against the workmen. The orders of dismissal were, according to the learned counsel, not only on facts but even in equity unsustainable, the same having been passed in a spirit of vengeance and with a view to deter other workmen from objecting to a practice which was, on the face of it, unjustified involving additional work beyond the shift hours without the management paying any additional wages for the same. The Tribunal and the High Court having exercised their powers fairly and reasonably, there was, according to the learned counsel no reason, much less a compelling one, for this Court to interfere with the impugned orders.

9. The short question that falls for determination is whether the Tribunal and the High Court were justified in holding that the penalty of dismissal imposed upon the workmen was disproportionate to the gravity of the misconduct allegedly committed by them. Whether or not the punishment is disproportionate more often than not depends upon the circumstances in which the alleged misconduct was committed, as also the nature of the misconduct. That makes it necessary for us to briefly refer to the real controversy that gave rise to the proceedings culminating in the dismissal of the workmen. The proceedings, it is common ground, started with a report dated 11th April, 1999 submitted by the Supervisor to the Manager (Personnel) in which he said:

> "All the workmen had been earlier informed that instead of placing the bags of their production on the floor at end of shift they were to place the bags on the electronic weighing scale placed there. Mr. J.D. Jose Balan also knows about it. While all the workmen were adhering to the above procedure, Mr. Jose Balan refused to place his bag of production on the weighing scale on the above said dates. Every time I mentioned about this he said "my shift time has ended. I will not work after that. Therefore I cannot weigh." On all the days he refused to do the work, I informed him that work even for five minutes after shift end, cannot be considered as overtime and that already he was working only for 7-1/2 hours in a shift of 8 hours the balance half hour being lunch time and so he would be wrong in saying that shift has ended or this is more work. In spite of this he refused to do that work, but placed the bags of washers produced on the floor and left without getting his time-card signed."

10. It is evident from the above that the discord between the workmen and the management arose entirely out of the management requiring the workmen to place the bag

of their production on the electronic weighing scale instead of placing them on the floor at the end of the shift as they were doing till the management issued fresh instructions that demanded that the workmen carry their production bags to the electronic weighing scale for weighment. The workmen considered this additional responsibility to be involving not only additional work in carrying the production bag to the weighing machine but also in devoting additional time beyond the shift hours without any additional remuneration for the same. The workmen set out the necessary facts in the claim statement filed by the Union on their behalf before the Industrial Tribunal in which they stated:

> "The management had also directed the molders to put all the produced rubber washers in a gunny bag and tie them, which work was hitherto done by another team. For this work also, the management promised higher wages and the workers are now doing both the aforesaid works, but the management failed to fulfill its promise to pay higher wages for doing the extra work. This takes one hour more to do the quality control check and also put all the manufactured washers into the gunny bag after the shift hours. For this overtime work, the management is not giving any overtime pay to the workers."

11. Before the Tribunal the respondent-union adduced evidence to substantiate their claim that the instructions issued by the management required the workmen to tie the bag of their production, carry the same to the weighing machine, wait for their turn in a queue to have the production bag weighed and get the necessary entries regarding the same made, which in turn took up to an hour after the shift was over. Deposition of S. Thangaswamy, President of the respondent-union, in this regard is relevant when he states:

> "In the respondent establishment the work of the molders is only to do the operations in connection with the production of the rubber auto components. The inspection of the components produced was that of another group consisting of the Manager, Supervisors and a team of ten workmen. The Management suddenly disbanded this group and directed the molders themselves to do the inspection of the components produced. The Management assured to monetarily compensate the molders for this additional work. In addition the Management directed them to put and keep the finished components in a bag. For this also the Management assured to monetarily compensate the molders.
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> They had to bag the components produced after shift was over and take it, stand in a queue and have the bags weighed. The weighing machine was situated about 100 to 150 feet from the production table. The weight of the bags containing the washers produced by me could be from 10 kilos to 150 kilos. After weighment the weight must be entered in the press card and we must have to stand in queue to get it signed as well as the time card. To do all this, it will take one hour. As measure of victimization disciplinary action was taken against 15 workers for having raised a dispute before the court and we were dismissed."

12. More importantly, the deposition of Mr. Damodaran a witness examined by the

appellant who was at the relevant point of time working as manager in the mounding department, makes it clear that the workman had refused to place bags on the weighing machine at the end of the shift as any such work had to be done after the shift hours. This is evident from the following part of the deposition:

> "We have three shifts. 8 AM to 4 PM; 4PM to 12 Midnight, 12 Midnight to 9 AM. It will be right to say that the Management's charge against the workmen concerned in the dispute is that they refused to place the bags on the weighing machine at end of shift. The stand of the workman is that they will not do this work after shift hours."

13. It is thus evident that the refusal of the workmen to carry out the instructions issued by the management was not without a lawful or reasonable justification. The same could not at any rate be described as contumacious. The essence of the matter was whether the management could, without additional remuneration, ask the workmen who were responsible for attending to the production work alone to do additional work which was hitherto being done by another group of workmen, especially when compliance with the instructions to the workmen would require them to tie their production bags, carry them to the weighing machine, wait in the queue till the process was to be completed and leave only thereafter. In the course of hearing before us, it was fairly conceded by the representative of the appellant that since the number of molders working in the establishment was fairly large and weighing machines limited in number, the workmen had to wait in a queue for their turn to have their production weighed which was earlier being done by some other workmen who were disbanded. Inasmuch as the workmen concerned had declined to undertake this additional responsibility which was not only consuming additional time but also additional effort they could not be accused of either deliberate defiance or misconduct that could be punished. The Tribunal was in that view wrong in holding that the charge framed against the respondents was proved. Refusal to carry out the instructions requiring workmen to do additional work beyond the shift hours was clearly tantamount to changing the conditions of service of the workmen which was impermissible without complying with the requirements of Section 9-A of the Industrial Disputes Act.

14. On behalf of the appellant it was contended that the respondents-workmen were not legally entitled to assail the finding of the tribunal, on the charges framed against them, as the workmen had not assailed the award made by the Tribunal before the High Court. The findings of the Tribunal had on that account attained finality. We do not think so.

The Tribunal had no doubt held the charges to have been proved but it had, despite that finding, set aside the dismissal of the workmen on the ground that the same was disproportionate to the gravity of the misconduct. It had on that basis directed reinstatement with 50% back wages. To that extent the award was in favour of the workmen which they had no reason to challenge. But that did not mean that in any proceedings against the award the respondent workmen could not support the direction for

their reinstatement on the ground that the finding of the Tribunal regarding proof of misconduct was not justified. The legal position is fairly well settled that a judgment can be supported by the party in whose favour the same has been delivered not only on the grounds found in his favour but also on grounds that may have been held against him by the Court below. This is evidenced from Order XLI Rule 22 of the CPC which reads:

> "22. Upon hearing respondent may object to decree as if he had preferred a separate appeal. - (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellant Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.
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> [Explanation.--A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.]
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> (2) Form of objection and provisions applicable thereto. - Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.
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> 3[***]
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> (4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.
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> (5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule."

15. The principle underlying the above provision is applicable even to Appeals by Special Leave under Article 136 of the Constitution of India as held by this Court in *Jamshed Hormusji Wadia vs. Board of Trustees, Port of Mumbai and Anr*[1], where this Court observed:

> "35. A few decisions were brought to the notice of this Court by the learned Additional Solicitor General wherein this Court has made a reference to Order 41 Rule 22 CPC and permitted the respondent to support the decree or decision under

appeal by laying challenge to a finding recorded or issue decided against him though the order, judgment or decree was in the end in his favour. Illustratively, see Ramanbhai Ashabhai Patel, Northern Rly. Coop. Society Ltd. and Bharat Kala Bhandar Ltd. The learned Additional Solicitor General is right. But we would like to clarify that this is done not because Order 41 Rule 22 CPC is applicable to appeals preferred under Article 136 of the Constitution; it is because of a basic principle of justice applicable to courts of superior jurisdiction. A person who has entirely succeeded before a court or tribunal below cannot file an appeal solely for the sake of clearing himself from the effect of an adverse finding or an adverse decision on one of the issues as he would not be a person falling within the meaning of the words "person aggrieved". In an appeal or revision, as a matter of general principle, the party who has an order in his favour, is entitled to show that even if the order was liable to be set aside on the grounds decided in his favour, yet the order could be sustained by reversing the finding on some other ground which was decided against him in the court below. This position of law is supportable on general principles without having recourse to Order 41 Rule 22 of the Code of Civil Procedure. Reference may be had to a recent decision of this Court in *Nalakath Sainuddin vs. Koorikadan Sulaiman* and also *Banarsi vs. Ram Phal*. This Court being a court of plenary jurisdiction, once the matter has come to it in appeal, shall have power to pass any decree and make any order which ought to have been passed or made as the facts of the case and law applicable thereto call for. Such a power is exercised by this Court by virtue of its own jurisdiction and not by having recourse to Order 41 Rule 33 CPC though in some of the cases observations are available to the effect that this Court can act on the principles deducible from Order 41 Rule 33 CPC. It may be added that this Court has jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. Such jurisdiction is conferred on this Court by Article 142 of the Constitution and this Court is not required to have recourse to any provision of the Code of Civil Procedure or any principle deducible there from. However, still, in spite of the wide jurisdiction being available, this Court would not ordinarily make an order, direction or decree placing the party appealing to it in a position more disadvantageous than in what it would have been had it not appealed."

16. We have, therefore, no hesitation in rejecting the contention that the finding regarding commission of misconduct by the workmen cannot be assailed by the workmen in these proceedings.

17. Even assuming that the finding regarding the commission of misconduct is left undisturbed, the circumstances in which the workmen are alleged to have disobeyed the instructions issued to them did not justify the extreme penalty of their dismissal. At any rate, the Labour Court having exercised its discretion in setting aside the dismissal order on the ground that the same was disproportionate; the High Court was justified in refusing to interfere with that order under Article 226 of the Constitution. There is in any event no compelling reason for us to invoke our extraordinary power

under Article 136 of the Constitution or to interfere with what has been done by the two Courts below. But for the fact that there is no appeal or challenge to the denial of full back wages to the workmen, we may have even interfered to award the same to the workmen.

Be that as it may, this appeal destined to be dismissed and is, hereby, dismissed with costs assessed at Rs.25, 000/-

Judgment referred

[1] *(2004) 3 SCC 0214*