PATNA HIGH COURT

Jagdish Vastralaya

Vs

State of Bihar

Misc. Judl. Cases Nos. 643, 1141, 1234, 636 and 619 of 1960; 633, 330, 343, 54, 233, 320, 405 539, 778 of 1961 and 1255 of 1962

(V. Ramaswami, C.J. and N.L. Untwalia, J.)

07.08.1963

JUDGMENT

Ramaswami, C.J.

1. In all these applications which have been heard together a common question of law arises for determination, namely, whether the provisions of Section 26 of Bihar Act 8 of 1954 as amended by Bihar Act 26 of 1959 are constitutionally valid. Section 26 of the Bihar Shops and Establishments Act (Bihar Act 8 of 1954) as previously enacted read as follows.-

> "26. Notice of discharge - (1) No employer shall discharge from his employment any employee who has been in such employment continuously for a period of not less than six months except for a reasonable cause and without giving such employee at least one month's notice or one month's wages in lieu of such notice.
> Provided that such notice shall not be necessary where the services of such employee are dispensed with on a charge of such misconduct as may be prescribed by the State Government supported by satisfactory evidence recorded at an inquiry held for the purpose.

2. Every such employee shall have a right of appeal to such authority and within such time as may be prescribed either on the ground that –

(i) there was no reasonable cause for dispensing with his services, or

(ii) no notice was served on him as required by Sub-Section (i), or

(iii) he had not been guilty of any misconduct as held by the employer.

3. The decision of the appellate authority shall be final and binding on both the employer and the employee." The constitutional validity of this section was challenged before the Patna High Court in *Jugal Kishore v. Labour Commissioner, Bihar*[1], and it was held in that case that Section 26(2) and (3) of the statute was unconstitutional as violating the guarantee under Article 19(1)(g)

of the Constitution. It was pointed out in that case that the absence of any right in the statute to go up in appeal against the order of the appellate authority under Section 26(2) of the Act was a great lacuna in the Act and the restriction imposed on the guarantee under Article 19(1)(g) of the Constitution was not reasonable. After the decision of the Patna High Court was given in this case there was an amendment of Section 26 by the Bihar Legislature by the amending Act, Bihar Act 26 of 1959, which came into force on the 25th November, 1959, and received the assent of the Governor on that date. After the amendment Section 26 of the Act reads as follows : -

"26. Notice of dismissal or discharge - (i) No employer shall dismiss or discharge from his employment any employee who has been in such employment continuously for a period of not less than six months except for a reasonable cause and without giving such employee at least one month's notice or one month's wages in lieu of such notice :

Provided that such notice shall not be necessary where the services of such employee are dispensed with on a charge of such misconduct as may be prescribed by the State Government supported by satisfactory evidence recorded at an inquiry held for the purpose.

(2) Every employee, so dismissed or discharged may make a complaint in writing", in the prescribed manner, to a prescribed authority within 30 days of the receipt of the order of dismissal or discharge on one or more of the following grounds, namely : -

(i) there was no reasonable cause for dispensing with his services; or

(ii) no notice was served on him as required by Sub-Section (i); or

(iii) he had not been guilty of any misconduct as held by the employer.

(3) Notwithstanding anything contained in Sub-Section (2), where the order of dismissal or discharge was received by an employee at any time before the commencement of the Bihar Shops and Establishments (Amendment) Act, 1959, he may make a complaint in writing in the prescribed manner before a prescribed authority within sixty days of the commencement of the said Act :

Provided that such complaints, if any, pending before an authority prescribed prior to the commencement of the said Act shall be deemed to have been duly filed before the authority prescribed after such commencement and the said authority shall dispose of the same in accordance with the provisions of this Act.

4. The prescribed authority may condone delay in filing of such a complaint if it is satisfied that there was sufficient cause for not making the application within the prescribed time.

5. (a) The prescribed authority shall cause a notice to be served on the employer relating to the said complaint, record briefly the evidence adduced by the parties, hear them and after making such inquiry as it may consider necessary pass orders giving reasons therefor.

(b) In passing such order the prescribed authority shall have power to give relief to the employee by way of reinstatement or money compensation or both.

6. The decision of the prescribed authority shall be final and binding on both the employer and employee."

(2) On behalf of the petitioners in all these applications learned Counsel submitted the

argument that, even after the amendment, Section 26 of Bihar Act 8 of 1954 was constitutionally invalid as there was violation of the guarantee under Article 19(1)(g) of the Constitution. It was pointed out that under Section 26(3) of the amended Act the employee was given the right to complain in writing in the prescribed manner before a prescribed authority within sixty days of the commencement of the Act, and under Sub-Section (6) of Section 26 the decision of the prescribed authority shall be final and will be binding upon both the employer and the employee. Learned Counsel on behalf of the petitioners stressed the argument that the lacuna pointed out by the Division Bench in AIR 1958 Patna 442 still remained and the statute was open to attack for the same constitutional reason. I am unable to accept the argument put forward on behalf of the petitioners as correct. In my opinion Section 26(3) of the amended Act must be read along with Rule 21(1) which was made by the State Govt. under the powers conferred upon it by Section 40 of the Act. Rule 21(1) states that

"any employee aggrieved by an order of dismissal or discharge under Section 26, may make a complaint to a labour Court constituted under the Industrial Disputes Act, 1947 (14 of 1947) or to an officer authorised in this behalf by a notification in, the official gazette, either himself or through an officer of a registered trade union." In the course of argument it was conceded by learned counsel on behalf of both the parties that there was no notification of the State Government authorizing any special officer to hear the complaint of the employee under Rule 21(1) of the Rules. It is also the admitted position that it was the Labour Court constituted under the Industrial Disputes Act which was the authority to which, the employee in all these applications had made their complaints. As the sections stood before the amending Act 26 of 1959, the authority empowered to hear the complaint was the Labour Commissioner who was a mere administrative or executive officer of the State.

After the amending Act the prescribed authority empowered under Section 26 of the Act to hear the complaint of the employee is the Labour Court constituted under the Industrial Disputes Act. Reference was made in this connection to Section 7 of the Industrial Disputes Act which provides that the appropriate Government may, by notification in the official gazette, constitute one or more Labour Courts for the adjudication of industrial disputes and for performing such offer functions as may be assigned to them under that Act. The section also provides that a person shall not be qualified for appointment as the presiding officer of a Labour Court, unless (a) he has held any judicial office in India for not less than seven years, or (b) he has been the presiding officer of Labour Court constituted under the Provincial Act or State Act for not less than five years. It is, therefore, manifest that the authority empowered under Section 26 of the amended Act is an officer who has held judicial office or has had judicial experience, and the mere fact that no right of appeal is provided against his decision to any higher judicial authority in the Act is not a circumstance for holding that there is an unreasonable restriction on the right guaranteed under Article 19(1)(g) of the Constitution. This view is supported by the decision of the Patna High Court in a later case, *Raghavacharya v. Saligramacharya*[2], where it is pointed out that the

provision of a right of appeal may be one of the factors to be taken into account for considering

whether the law is reasonable from the procedural standpoint, but it is not a conclusive factor. The absence of a provision with regard to the right of appeal does not necessarily mean that the law is unreasonable from the procedural aspect. It is important in this context to bear in mind that no abstract test of reasonableness of the law under Article 19(5) of the Constitution can be laid down as being applicable to all cases and the test of reasonableness cannot be confined within the straight jacket of any narrow and rigid formula; on the contrary, the question of reasonableness of the law has to be answered with reference to the circumstances of each particular case. We have to take into account the character of the right which is said to be infringed, the underlying purpose for which the restriction is imposed, the authority upon whom the power of decision is conferred and the character, and status of the deciding authority. The provision of the right of appeal may be one of the factors to be taken into account in considering whether the law is reasonable from the procedural standpoint, but it is not a conclusive factor. It is equally manifest that the absence of a provision with regard to the right of appeal does not necessarily mean that the law is unreasonable from the procedural aspect. In the present case, having regard to the circumstance that the prescribed authority under Section 26(3) of the Act is a labour Court by virtue of Rule 21(1) of the Rules made by the State Government under its rule making power, I am of opinion that the restriction imposed under Section 26 of the Act is not unreasonable from the procedural standpoint and there is no violation of the guarantee under Article 19(1)(g) of the Constitution.

3. It was also argued on behalf of the petitioners that Section 26(3) of the Act does not itself mention that the Labour Court is the prescribed authority to whom complaint is to be made by the employee with regard to dismissal or discharge. It was submitted that the section was framed in wide language and power was given to the State Government to prescribe authorities other than the Labour Court for the adjudication of the complaint under that section. I do not think there is any substance in this argument. It is a well established rule of interpretation that the validity of an Act should be tested not merely with regard to the language of any section of the Act but also with regard to the rules made by the State Government under the rule-making power conferred by the Act. This doctrine was adopted by the Supreme Court in *State of Bombay v. F.N. Balsara*[3], and in a later decision. *State of Bombay v. United Motors (India) Ltd*[4]., If this doctrine is adopted in the present case, is follows that Section 26 of the amended Act must be read along with the provisions of Rule 21(1) of the rules made by the State Government by its rule-making power, and, if so construed, it is manifest that there is no violation of the constitutional guarantee under Article 19(1)(g) of the Constitution by reason of the restriction imposed by that section.

4. I shall then proceed to consider the argument that Section 26(1) of Bihar Act 8 of 1954 as amended prohibited an employer from dismissing or discharging his employee except for a reasonable cause and without giving such employee at least one month's notice or one month's wages in lieu of such notice. It was submitted that the expression "for a reasonable cause" in Section 26(1) was vague and indefinite and the restriction imposed by that Section must be held to be unreasonable from the
substantive aspect of the law. I see no warrant for this argument. In my opinion the language of Section 26(1) must be construed to mean that the employer is empowered to discharge or dismiss an employee on grounds which are reasonable in the eye of law. In other words Section 26(1) must be construed in the context of the existing law of master and servant, and, if so construed, it means that the section merely empowers an employer to discharge or dismiss an employee on lawful grounds. For instance, if the employee is guilty of misconduct, wilful disobedience or

habitual neglect, it is deemed in the eye of law that the employee has repudiated the contract of employment and it is open to the employer in such a case to treat the contract of employment as at an end and to summarily dismiss or discharge the employee, it was also 'submitted on behalf of the petitioners that the proviso to Section 26(1) of the Act is unreasonable because there was an excessive delegation of legislative power to the State Government. It was pointed out that according to the proviso one month's notice to the employee is not necessary if the services of such an employee are dispensed with on a charge of such misconduct as may be prescribed by the State Government, supported by satisfactory evidence recorded at an inquiry held for the purpose. I do not think there is any substance in this argument Rule 20(1) of the rules framed by the State Government under Section 40 of the Act reads as follows : -

> "20. Lists of acts which may be termed as misconduct.- (1) The following acts shall each be treated as misconduct for the purposes of the proviso to Sub-Section (1) of Section 26 :-
> (a) Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;
> (b) wilful damage or loss of employers' property;
> (c) taking or giving bribes or any illegal gratification;
> (d) theft, fraud, or dishonesty in connection with the employers' business or property;
> (e) habitual absence without leave or absence without leave for more than ten days;
> (f) habitual breach of any law applicable to the establishment;
> (g) habitual late attendance;
> (h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;
> (i) habitual or gross negligence or neglect of work;
> (j) striking work or inciting others to strike; work in contravention of the provisions of any law or rule having the force of law;
> (k) breach of the provisions of the Standing Orders applicable to the establishment and certified under the Industrial Employment (Standing Orders) Act, 1946."

In this rule the State Government has already prescribed the types of misconduct referred to in the proviso to Sub-Section (1) of Section 26, and the constitutional validity of the proviso must be tested not merely with reference to the language of the proviso but also with reference to the language of Rule 20 made by the State Government. I have already pointed out in the course of this judgment that this doctrine was adopted by the Supreme Court, in AIR 1951 SC 318 at p. 328 and in a later decision, AIR 1953 SC 252 at p. 263. Applying the principle to the present case it is manifes that there is no violation of the guarantee under Article 19(1)(g) of the Constitution and the proviso to Section 26(1) of the Statute cannot be said to be unreasonable.

5. I pass now to consider the contention of the petitioners under the amending Act (Bihar Act 26 of 1959) is repugnant to certain provisions of the Industrial Disputes Act (Central Act 14 of 1947), the Industrial Employment (Standing Orders) Act (Central Act 20 of 1946) and the Payment of Wages Act (Central Act 4 of 1936). It was submitted that the provisions of Section 26 of Bihar Act 8 of 1954 as amended are repugnant to Sections 10, 16 and 33-A of the

Industrial Disputes Act (Central Act 14 of 1947). It was also contended that the Bihar Act is repugnant to Sections 2(g), 3(1) and 10 of the Industrial Employment. (Standing Orders) Act (Central Act 20 of 1946) and Section 15 of the Payment of Wages Act (Central Act 4 of 1936). It was also pointed out by learned Counsel on behalf of the petitioners that the amending Act, namely, Bihar Act 26 of 1959, did not receive the assent of the President, though the parent Act received such assent, and, therefore, the provisions of Section 26(1) of the Bihar Act after the amendment must be held to be void and inoperative. I see no warrant for accepting this submission. In my opinion there is no repugnancy between the provisions of Bihar Act 8 of 7954 as amended by Bihar Act 26 of 1959 and those of the Industrial Disputes Act, the Industrial Employment (Standing Orders) Act, and the Payment of Wages Act, namely. Central Acts 14 of 1947, 20 of 1946 and 4 of 1936. It is manifest that the subject-matter of the Bihar Act is different from the subject-matter of the Central Acts and the field of operation is distinct and. separate. In my opinion, there is no actual collision or conflict between Section 26 of the Bihar Act with any provision of the Central Acts already referred to, and there is no, question of any repugnancy arising within the meaning of Article 254(1) of the Constitution. In this connection it is necessary to emphasise Chat whenever a question is raised whether the State legislation is repugnant to the Central law, the onus of showing its repugnancy and the extent to which it is repugnant lies on the party attacking the validity of the State legislation, and, furthermore, the repugnancy must exist in fact and not depend on a mere possibility. The meaning of repugnancy of legislation has been discussed in Australian cases. In *Attorney General for Queensland v. Attorney-General for the Commonwealth*[5], Higgins, J., said :

> "What does 'repugnant' means I am strongly inclined to think that no colonial Act can be repugnant to an Act of the Parliament of Great Britain unless it involves, either directly or ultimately, a contradictory proposition-probably, contradictory duties or contradictory' rights."

Again, in *Clyde Engineering Co. Ltd. v. Cowburn*[6], the learned Judge observed :

> "When is a law 'inconsistent' with another laws Etymologically, I presume that things are inconsistent when they cannot stand together at the-same time; and one law is inconsistent with another law when the command or power or other provision in one law conflicts directly with the command or power or provision in the other. Where two Legislatures operate over the same territory
> and come into collision, it is necessary that one should prevail; but the necessity is confined to actual collision, as when one Legislature says 'do' and the other says 'don't.

According to Griffith C.J. "the test of inconsistency is, of course, whether a proposed act is consistent with obedience to both directions." The opinion of the majority (Knox C.J. and Gavan Duffy, J., with the concurrence of Isaacs, J.,) was :

> "Two enactments may be inconsistent although obedience to each of them may be possible without disobeying the other. Statutes may do more than impose duties they may, for instance, confer rights; and one statute is inconsistent with another even it takes away a right conferred by that other even though the right be one which might be waived or

abandoned without disobeying the statute which conferred it."

Applying this principle to the present case it is manifest that there is no inconsistency between the j provisions of Section 26 of the Bihar Act after its amendment and the. Central Acts, to which I have already made reference, and, in my opinion, learned Counsel for the petitioners has not made good his submission on this aspect of the case.

6. For the reasons I have already expressed I reject the constitutional argument addressed on behalf of the petitioners and hold that the provisions of Section 26 of Bihar Act 8 of 1954 as amended by Bihar Act 26 of 1959 are constitutionally valid.
Miscellaneous Judicial Cases Nos. 330 of 1961, 405 of 1961, 778 of 1961, 1255 of 1962 and 633 of 1961.

7. In these five applications the only argument advanced on behalf of the petitioners was the argument with regard to the constitutional validity of Section 26 of Bihar Act 8 of 1954 as amended by Bihar Act 26 of 1959. I have already rejected the argument for the reasons given. I would accordingly dismiss all these applications. Miscellaneous Judicial Case No. 636 of 1960

8. In this case no argument has been advanced apart from the constitutional argument I have already dealt with. No one also appeared at the time of the hearing in support of this application. I would accordingly dismiss this application also.
Miscellaneous Judicial Case No. 643 of 1060.

9. It was argued on behalf of the petitioners in this case that had Prasad Sah, respondent No. 3, was not discharged by the petitioners but he left the job of his own accord. It was, therefore, contended that the provisions of Section 26 of the Bihar Act have no application to the case and the order of the Labour Court dated the 3rd June, 1960, is ultra vires and without jurisdiction. In my opinion there is no substance in the argument advanced on behalf of the petitioners. The Labour Court has discussed the case of the petitioners that the employee left the job of his own accord and after considering the evidence given on both sides has reached the conclusion that the cafe of the petitioner is not correct and that the employee was dismissed from service. The finding of the Labour Court is a finding on a question of fact and it is not open to the petitioners to challenge it in this case. I would, therefore, dismiss this application.
Miscellaneous Judicial Case No. 619 of 1960.

10. On behalf of the petitioner an additional argument was advanced in this case that the Labour Court had no jurisdiction to examine the evidence with regard to the misconduct of the employee and come to an independent finding whether such a charge of misconduct was proved against the employee or not. It was submitted that the Labour Court had jurisdiction to interfere only in a case where the employer has contravened the rule of natural justice or when the employer has-dismissed or discharged any employee without holding any inquiry at all. In support of this argument learned Counsel referred to the principle enunciated in certain Supreme Court decisions with regard to the ambit of the inquiry permissible under the Industrial Disputes Act in case of dismissal of an employee by the employer under the Standing Order applicable to his case. In my opinion this argument must be rejected in view of the language of Section 26(5) of the Act which a empowers the prescribed authority to "record briefly the evidence adduced by

the parties, hear them and after making such inquiry as it may consider-necessary pass orders giving reasons therefor.'" Section 26(5) also empowers the authority to give relief to the employee by way of reinstatement or money compensation or both. I would accordingly reject the argument of the petitioners and!' dismiss this application also.
Miscellaneous Judicial Case No. 343 of 1961.

11. On behalf of the petitioner the argument has been advanced that the order of condonation of delay made by the Labour Court on the 4th April, 1961, was defective in law because the petitioner was not heard on the point. I do not think there is any substance in the argument, because the order of the Labour Court shows that the petitioner was given an opportunity to present his viewpoint against condonation of delay, and after hearing both the parties the Labour Court considered that this was a fit case for condonation of delay. I hold, therefore, that there is no merit in this application and it must be dismissed. Miscellaneous Judicial Case No. 233 of 1961.

12. On behalf of the petitioner it was submitted in this case that the order of the Labour Court dated the 18th February 1961, is ultra, vires and illegal because the Labour Court had refused to hear the petitioner with regard to the question of condonation of delay and rejected his application on that point. In my opinion this argument is well founded and must be accepted as correct. It has been held by the Judicial Committee in *Brij Indar Singh v. Kanshi Ram*[7], and Krishnasami v.. Ramasami, 45 Ind App 25 : (AIR 1917 PC 179) that a question of limitation in an appeal should be determined finally only after giving notice to both the parties. In view of the principle laid down in these authorities it is manifest that the order of the Labour Court dated the 18th February, 1961, is ultra vires and illegal and must be set aside. Acting, therefore, under the authority under Article 227 of the Constitution, I would set aside the order of the Labour Court dated the February, 1961, and remand the case to the Labour Court for deciding the question of limitation after hearing both the parties and then proceeding with the case in accordance with law.
Miscellaneous Judicial Case No. 320 of 1961.
13. In this case the contention on behalf of the petitioner is that the Labour Court has rejected the application for re-hearing under Rule 21, sub-rule (7), without giving any reasons and, therefore, the order of the Labour Court dated the 20th March, 1961, is ultra vires and without jurisdiction. In my opinion the argument of the petitioner is well founded and must be accepted as correct. It appears that the Labour Court disposed of the complaint of the employee ex parte under Rule 21(5) on the 17th February, 1961, and thereafter the employer made an application for review of the order under sub-rule (7) of Rule 21. This application for review has been summarily rejected by the Labour Court on the 20th March, 1961. It is manifest that the Labour Court has not given any reasons for rejecting the application for review and, therefore, the order of the Labour Court dated the 20th March, 1961, is ultra vires and illegal and must be set aside by virtue of the authority under Article 227 of the Constitution. I accordingly set aside the order of the Labour Court dated the 20th March 1961, and remand the case to the Labour Court for dealing with the review application in accordance with law.

Miscellaneous Judicial Case No. 539 of 1961.

14. On behalf of the petitioner the contention put forward is that the order of the Labour Court dated the 22nd May, 1961, is ultra vires and illegal because the Labour Court has not taken into

account the case of the petitioner that the respondent Punit Raut was involved in a criminal case on the 12th November, 1960, and therefore left the job of his own accord. It was argued by learned Counsel that this fact was mentioned by the petitioner in his show cause petition; even so, the Labour Court has not applied its mind to it in delivering its order dated the 22nd May, 1961. In my opinion the argument of the petitioner must be accepted as well founded and correct. It follows, therefore, that the order of the Labour Court dated the 22nd May, 1961, is ultra vires and illegal and must be set aside by virtue of the authority under Article 227 of the Constitution. I accordingly set aside the order of the Labour Court dated the 22nd May, 1961, and remand the case to it for being dealt with in accordance with law.

Miscellaneous Judicial Case No. 54 of 1961.

15. Having heard learned Counsel for both the parties I am satisfied that the order of the Labour Court is legally correct so far as respondent No. 1, Hardin Mahraj, is concerned. With regard to respondent No. 2, Kauleshwar Mandal, it was submitted on behalf of the petitioner that the Labour Court has not given a clear finding whether the respondent was guilty of any misconduct as held by the employer, and that in the absence of any such clear finding it is not open to the Labour Court to order reinstatement of Kauleshwar Mandal. In my opinion the submission of learned Counsel on behalf of the petitioner is correct on this point. I, therefore, set aside the order of the Labour Court dated the 7th December, 1960, so far as Kauleswar Mandal is concerned, and order that the relevant portion of the case dealing with respondent No. 2, Kauleshwar Mandal, should be tried afresh in accordance with law.

Miscellaneous Judicial Case No. 1234 of 1960.

16. In this case it was submitted on behalf of the petitioner that the order of the Labour Court dated the 22nd October 1960, is ultra vires and illegal because the provisions of Section 26 of Bihar Act 8 of 1954 as amended do not apply to the establishment of the petitioner which is an institution for the treatment and care of the infirm, sick and ailing persons. Reference was made in this connection to Section 4(2) of the Act which states that "notwithstanding anything contained in this Act the provisions thereof specified in the third column of the Schedule shall not apply to the establishment, employees and other persons referred to in the corresponding entry in the second column." Referring to the Schedule it appears that none of the provisions of the Act are applicable to the establishments for the treatment or the care of the infirm, sick, destitute or mentally unfit. It was also urged on behalf of the petitioner that in paragraph 1 of his application there is a statement that "Messrs. Popular Nursing Home is an institution for the treatment or the care of the infirm, sick and ailing persons". There is no reply to this paragraph in the counter-affidavit filed on behalf of the respondents. In view of this circumstance, it must be held that the provisions of Section 26 of the Act do not apply to the establishment of the petitioner and the order of the Labour Court dated the 22nd October, 1960, must be accordingly held to be ultra vires, illegal and without jurisdiction For these reasons I would allow this application and set aside the order of the Labour Court dated the 22nd October, 1960, by virtue of the authority granted under Article 227 of the Constitution.
Miscellaneous Judicial Case No. 1141 of 1960.

17. In this case the allegation of the petitioner is that he was compelled to close down the sweets section of the establishment for business reasons with effect from the 1st July 1960, and on the

30th June, 1960, he terminated the services of respondents Nos. 1 to 4 by serving the following notice :

"(1) Sri Thakan Mandal, Salesman, Mithai Vibhag.
(2) Sri Parmeshwar Karigar, Karamchari,
(3) Sri Banwari Karigar, Karamchari,
(4) Sri Arjun Rai, Mithai Vibhag
Marwari Hotel, Fraser Road, Patna.

Apko is patra dwara suchit kiya jata hai ki hotel ko kafi arse se mithai vibhag men koi bhi mimafa nahin ho raha hai jis byapar men koi faida na ho use chalana hamen sambhav nahin hai. In karno 'ko dhyan men rakhte huye yah tai kiya gaya hai ki ta : 1-7-60 se hotel ka mithai vibhag band kar diya jai isliye apko soochna di jati hai ki aap ta :' 1-7-60 se kam band kar den aur apai tankhab tatha ek mab ki notice talab lekar fauran hotel chhor den -iti

Bhavdiya
Sd/- Mahendra Chaturvedy,
Manager.

Respondents Nos. 1 to 4 thereafter filed a complaint under section 26(2) of the Bihar Stops and Establishments Act to the Labour Court. The complaint was duly heard by the Labour Court and on the 26th September, 1960, the Labour Court held that the termination of the services of the workmen was more due to victimisation than actual loss in the sweets section of the establishment and, therefore, ordered that respondents Nos. 1 to 4 should be reinstated, and for the idle period they should be allowed 50 per cent of their wages. The argument put forward on behalf of the petitioner is that the order of the Labour Court dated the 26th September, 1960, is ultra vires without jurisdiction because Section 26(2) of the Act has no application to the case of an employee whose services are terminated by the employer in accordance with the contract of service. It was contended by learned Counsel that there was no misconduct alleged against respondents Nos. 1 to 4 and there was no repudiation of the contract on their behalf and there was no discharge or dismissal within the meaning of Section 26(1) of the Act. The argument was, therefore, stressed that the Labour Court had no jurisdiction to entertain the complaint of respondents Nos. 1 to 4 or to give them any relief by way of reinstatement or otherwise. In my opinion the argument put forward on behalf of the petitioner is correct. I consider that the provision of Section 26(1) of the Act applies only to a case where an employer "dismisses" or "discharges" an employee who has been in such employment continuously for the prescribed period. To put it in other words Section 26(1) applies to a case where the employee is guilty of a fundamental breach of his duties under the contract of employment. In 3, case where the employee is guilty of misconduct, wilful disobedience or habitual neglect, it is deemed in law that there is wrongful repudiation of the contract on the part of the employee, and the employer is entitled in such a case to treat the contract as at an end and to summarily discharge or dismiss the employee. In my opinion Section 26(1) of the statute contemplates a situation of this kind and does not apply to a case where there is termination of the contract of employment by the employer by virtue of an express or implied term in the contract itself. For instance Section 26(1) is not applicable where the contract of employment expires by lapse of time, in a case where the parties have agreed upon the duration of the contract. The section is also not applicable to a case

where the employee is discharged after giving a month's notice under an express or implied term of the contract or employment itself. It follows, therefore, that the present case does not fall within language of Section 26(1) of Bihar Act 8 of 1954 as amended, and the Labour Court had no jurisdiction to take cognizance of the complaint filed under Section 26(1), the reason being that the petitioner has terminated the employment of respondents Nos. 1 to 4 in terms of the contract because of the closure of part of his establishment, namely, the sweets section. On behalf of the respondents, however, the argument was stressed that the Labour Court has found that the action of the petitioner in giving notice to respondents Nos. 1 to 4 was colorable and not a *bona fide* exercise of the power under the contract. In support of this argument reference was made to the decisions of the Supreme Court in the *Chartered Bank, Bombay v. Chartered Bank Employees' Union*[8]*, Assam Oil Co. Ltd., New Delhi v. Its Workmen*[9]*,* and *Management of U.B. Dutt and Co. (Private) Ltd. v. Workmen of U.B. Dutt and Co. (Private) Ltd*[10]*,* In my opinion the principle laid down in these authorities has no application to the present case because the power conferred upon the prescribed authority under Section 26 of the Bihar Shops and Establishments Act is more restricted than the power of the Industrial Tribunal under the Industrial Disputes Act. In *Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi*[11]*,* Mukherjee, J. pointed out that the function of the Industrial Tribunal was not merely to interpret or give effect to contractual rights but it can create new rights and obligations for the purpose of keeping industrial peace. It is manifest that the power of the authority under Section 26 of the Bihar Act cannot be given this extended scope and the ratio of the Supreme Court decision in AIR 1960 SC 919; AIR 1960 SC 1264 and AIR 1963 SC 411 cannot be applied to this case.

18. For these reasons I hold that the order of the Labour Court, Patna, dated the 26th September, 1960, is ultra vires and illegal and should be set aside under Article 227 of the Constitution.

19. There will be no order as to costs with regard to any of these applications.

Untwalia, J.

20. I agree.

Order accordingly.

Cases Referred.

[1] AIR 1958 Pat 442
[2] AIR 1960 Pat 148
[3] AIR 1951 SC 318 at p. 328
[4] AIR 1953 SC 252 at p. 263
[5](1915) 20 Com WLR 148 at p. 178
[6](1926) 37 Com-W LR 466
[7]44 Ind App 218 : (AIR 1917 PC 156)
[8] AIR 1960 SC 919
[9] AIR 1960 SC 1264
[10] AIR 1963 SC 411
[11] AIR 1950 SC 188 at p. 209