PATNA HIGH COURT

Muzaffarpur Electric Supply Co

Vs

K. Dutta

(N Untwalia, C.J. B Sinha , J.)

JUDGMENT

N.L. Untwalia, J.

1. The Muzaffarpur Electric Supply Co., Ltd. filed an application under the proviso to Clause (b) of Sub-section (2) of Section 33 of the Industrial Disputes Act, 1947, Central Act 14 of 1947 (hereinafter called the Act), before the Deputy Labour Commissioner, Patna, for according approval of the dismissal order passed by the management against respondent No. 2 on the 11th April, 1968. This application was put up for hearing by the Deputy Labour Commissioner in his camp at Muzaffarpur on 21st September, 1968. On that date the management filed an application, a copy of which is annexure 7 to this writ application, praying to stay the hearing of this case on the ground that in accordance with standing order No. 25, which is applicable to the petitioner company, respondent No. 2 had filed an appeal on 29th April, 1968, before the Labour Commissioner. The Deputy Labour Commissioner did not allow this application and proceeded to hear the case. Upon this, as it appears, no opportunity was asked on behalf of the management to adjourn the case for adducing evidence. Some documents on behalf of the management had been filed earlier. The workman concerned, namely, respondent No. 2, examined himself. Arguments were heard on 19th October, 1968. The Deputy Labour Commissioner passed his order on 7th May, 1969, a copy of which is annexure 9 to this writ application, refusing to accord his approval to the order of dismissal. The company has obtained a rule against the respondents from this Court under Articles 226 and 227 of tae Constitution of India to show cause why the said order be not called up and quashed.

2. In support of this writ application learned Counsel for the petitioner made two submissions(i) that no reasonable opportunity was given to the petitioner to adduce its evidence in support of his application filed under Section 33(2)(b) of the Act. and (ii) that the order of the Deputy Labour Commissioner (respondent No. 1) is erroneous in law on toe face of it even on the materials placed by the parties before him.

3. In our opinion, none of the points on behalf of the petitioner can succeed in this case. After

having gone through the relevant statements made in the petition, the counter-affidavit filed by respondent No. 2 and the affidavit in reply filed by the petitioner company, we have come to the conclusion that nowhere the petitioner claims, alter the rejection of its petition dated 21st September, 1968, (annexure 7) that a prayer was made on its behalf by the resident engineer who was present before the Deputy Labour Commissioner, to adjourn the case for a short while in order to enable the company to adduce its evidence. On the other hand, the facts stated in the various affidavits show that the resident engineer informed the Deputy Labour Commissioner that no witness on behalf of the company would be examined. Upon this respondent No. 2 was allowed to examine himself on his own behalf. The resident engineer put a question to him in cross-examination. On the first occasion, therefore, that is, on 21st September, 1968, there was no illegal or unreasonable denial of opportunity to the petitioner company to adduce its evidence, To be more exact or accurate, no opportunity having been asked for can be said to have been denied.

4. Learned Counsel for the petitioner then drew our attention to a petition filed of 19th October, 1968, before the Deputy Labour Commissioner, a copy of which is annexure 10 to this writ petition. After having seen the statement made in the counter-affidavit and the affidavit in reply in that regard we accept the case of the petitioner that such an application was filed although respondent No. 2 does not admit it. We, at one stage of the hearing of this case, felt inclined to take the view that on 19th October, 1968, when arguments were being heard, the Deputy Labour Commissioner ought to have given an opportunity to the management to put in the documents which it proposed to put on that date in reply to the argument put forward on behalf of respondent No. 2. But, on examining the matter further, as pointed out by learned Counsel for respondent No. 2, we do not feel inclined to adopt this course.

5. In the letter of dismissal undoubtedly there was an unconditional offer of one month's wages to the workman concerned. In paragraph 3 of the petition filed by the management before the Deputy Labour Commissioner, a copy of which is annexure 10 to this writ petition, it is stated that the workman had been paid wages for one month. This fact was denied in the written statement filed by respondent No. 2 before the Deputy Labour Commissioner. In his evidence, however, the workman stated that in response to the offer of one month's wages he went to the resident engineer and asked for payment of one month's wages, but the resident engineer refused to pay on the plea that it would be paid after the decision of this case. To controvert this statement of the workman, made before the Deputy Labour Commissioner, the management along with their petition dated 19th October, 1968, (annexure 10) filed a registered letter dated 13th April, 1968, which was returned to the company and the money order receipt showing that a sum of Rs. 130-50 paise had been remitted to the workman concerned on 13th April, 1968. These documents were not, as it seems, before the Deputy Labour Commissioner from before as

he has not referred to them. It was for this purpose that we were feeling inclined to send the case back to the Deputy Labour Commissioner. But, it was pointed out to us on behalf of respondent No. 2 that even on the statement made in paragraph 3 of the petition dated 19th October, 1968 (annexure 10) it would be clear that there was no compliance with the mandatory requirement of the payment of one month's wages in accordance with proviso to Clause (b) of Sub-section (2) of Section 33 of the Act inasmuch as the total wages was Rs. 207 per month and the management could not say that they had validly paid one month's wages when according to the said statement only a sum of Rs. 130-50 paise was remitted by money order after deducting a sum of Rs. 74-40 paise on account of the balance of the famine loan and the money order commission of Rs. 2.10 Paise. Even assuming that the management was justified in deducting the money order commission, we see no justification in law to take the view that the management, in payment of one month's wages, had any right to deduct the amount on account of the balance famine loan or any such or similar loan. It has to be pointed out here that the requirement of payment of one month's wages is, as pointed out by the Supreme Court in the case of *Syndicate Bank Ltd. v V. Ramnath Bhat*[1]*.,* "to soften the rigour of unemployment that will face the workman, against whom the order of discharge or dismissal has been passed". If it were to be held that the payment of one month's wages can be made after deducting the previous dues due to the management from the workman, the very purpose of the mandatory requirement Will be frustrated or is likely to be frustrated in many cases. In many cases there may be disputes in regard to the past dues. While hearing the application under Section 33(2)(b) of the Act, a Tribunal or the authority concerned in such a situation will be under a duty to find out whether the deduction made or proposed to be made by the management, on account of any past dues, was correct, justified and legal. This does not seem to be the intention of the legislature when it provided in the proviso that one month's wages should be paid at the time of the dismissal of the workman concerned. The accounting or the adjustment of the past dues and the method of realization from the workman may follow later on. But, this one month's wages must be paid or offered to be paid in full and at that stage the management cannot be allowed to make any deduction or adjustment against the allegedly past dues. In that view of the matter, we are inclined to accept the argument put forward on behalf of respondent No. 2 that no useful purpose will be served by giving a fresh opportunity to the petitioner company to adduce its own evidence before the Deputy Labour Commissioner.

6. Learned Counsel for the petitioner endeavoured to argue that the offer in the letter of dismissal dated 11th April, 1968, was of one month's wages and therein it was not indicated that the famine loan would be deducted and hence the statement of the management as made in paragraph 3 of annexure 10 should be ignored. We are not impressed by this argument. If the offer was unconditional it must be followed by an action of the management which would indicate that the

offer was unconditional. But, on the subsequent action which they themselves state in paragraph 3 of annexure 10, it is not possible to take the view that the offer was unconditional. Even if the offer was unconditional, the subsequent action of the management shows that is the particular circumstances of the case the offer cannot be taken to be payment of full one mouth's wages to the dismissed workman.

7. On the simple ground which we have discussed above, we hold that the dismissal on the workman was not fit to be approved by the Deputy Labour Commissioner. The application, therefore, fails and is dismissed. But, in the circumstances, we make no order as to costs.

Cases Referred.

1(1967) 32 F.J R. 490 at page 497