Metal Press Works Ltd. Vs. Deb (H.R.) and ors.

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Court : Kolkata

Decided On : Jun-01-1961

Reported in : (1962)ILLJ75Cal

Judge : D.N. Sinha, J.

Appellant : Metal Press Works Ltd.

Respondent : Deb (H.R.) and ors.

Judgement :

D.N. Sinha, J.

1. The facts in this case are shortly as follows: The petitioner, Metal Press Works, Ltd., owns and runs a factory at premises No. 156, Victoria Road, Baranagore, in the suburbs of Calcutta. The respondents 2 to 5 were employed therein as (1) fitter, (2) welder, (3) solder man and (4) press man, respectively. By an order of reference, dated 11 July 1858 made under Section 10 of the Industrial Disputes Act, 1947, the Government of West Bengal referred certain disputes between the petitioner and its workmen, for adjudication of the second labour court, being respondent 1 herein. According to the petitioner, respondents 2 to 5 were guilty of various unlawful and subversive activities, viz., instigating and inciting other workmen to disobey the lawful and reasonable orders of the management, creating hooliganism inside the factory Staging demonstrations, etc. On or about 24/27 February 1958, charge-sheets were issued to the said respondents by the management. Thereafter, an enquiry was held by the management on 5 July 1958, but it is stated that respondents 2 to 5 failed to attend on that day and it was continued on 19 July 1958. The management came to be of the opinion that the charges have been proved and on 26 July 1958, notices were served on the said respondents dismissing them from service, 'with immediate effect.' One month's wages was forwarded to the said respondents with the said notices. On 28 August 1958, the company made an application under Section 33(2)(b) of the said Act, for approval of the said orders of dismissal before the second labour court. On 15 September 1960, respondent 1 rejected the application on the ground that there was unreasonable delay of more than one month in making the application and, therefore, the application was ab initio void. The said respondent held that as a result thereof he could not enter into the merits of the application. It was, further, stated that there was nothing in the application to show why the employer had to make 'such a delay 'In making the application. In other words, the application was rejected on a preliminary ground, namely, delay, without going into the merits of the ease. It is against this order that this application is directed.

2. The main point that arises in this case is the interpretation of Section 33(2)(b) and the proviso thereto, of the said Act. It is necessary for our purposes to set out the

provision of Section 33(1) and (2):

33. (1) During the pendency of any conciliation proceeding before a conciliation officer or a board or of any proceeding before a labour court or tribunal or national tribunal in respect of an industrial dispute, no employer shall--

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may in accordance with the standing orders applicable to a workman concerned in such dispute:

(a) alter in regard to any matter not connected with the disputes, the conditions of service applicable to that workman Immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

3. In this case, we are concerned with Sub-section (2)(b) and the proviso. Coming to the proviso, It is admitted on all hands that it is very inartistically worded. If the word 'unless' qualifies the application to be made, then the plain meaning would be that such an application must be made before effecting the discharge or dismissal of the workmen. Yet, the application has to be made ' for approval of the action taken by the employer.' The plain meaning of this is that the action should first be taken and then an application made for approval. These two parts of the proviso are, therefore, in conflict. The question is as to whether under the proviso, an order for discharge or dismissal should be made prior to the application for approval or subsequent thereto. Upon this point there are conflicting decisions of different High Courts and unfortunately, although the matter came up for consideration by the Supreme Court, it left the point undecided. I shall now proceed to consider the said decisions. The first case to be cited is a decision of the Bombay High Court--Premier Automobiles, Ltd. v. Ramachandra Bhimayya and Anr. 1960--I L.L.J. 443. The problem that arose in that case has been described by Chainani, C.J., as follows:

The question, which arises for determination, is whether the application to the authority should be made before the order of dismissal or discharge has been made or whether such an application can be made even after the workman had been dismissed or discharged. The proviso begins with the words '...no workman shall be discharged or dismissed, unless ... an application has been made by the employer to the authority.... 'The word unless' indicates an intention of making what follows as conditions precedent. The words' has been made' also suggest that the application

must be made before dismissal or discharge takes place. Consequently, if the words used in the first part of the proviso are taken into consideration, there can be no doubt that the making of an application is a condition precedent to discharge or dismissal. The difficulty is created by the words which follow, 'for approval of the action taken by the employer.' These words clearly imply that the action must precede approval. The two parts of the proviso, therefore, appear to be in conflict and we will have to consider whether it is possible to harmonize them.

4. It was held that the only way of harmonizing all the words used, is to read the words 'action taken' as 'action proposed to be taken.' In this view of the matter, the application for discharge or dismissal must precede the discharge or dismissal which can only be effected if sanction is given by the tribunal or the Court concerned. In that case, the dismissal took place on 10 October 1958 and an application was made for approval on 19 November 1958. The tribunal took the view that the application should have been made before the dismissal and dismissed the application, refusing to grant approval. The High Court upheld the said order. The next case to be cited is a judgment of the Rajasthan High Court, Associated Cement Co., Ltd. Lakheri v. A.N. Kaul and Anr. 1959--II L.L.J. 810. According to Bhandari, J., an employer should pass an order of discharge or dismissal under Section 33(2) in such manner that it comes into effect from a future date, and in the meantime, the employer should pay to the workman concerned a month's wages and also make the application to the industrial tribunal for approval of the action. Modi, J., held that the employer should make a payment of a month's wages or offer the same to the workman and make an application to the industrial tribunal, simultaneously with the action taken against the workman or on the day following or within a reasonable time, for approval thereof. Both the learned Judges, however, agreed that in such a case the tribunal cannot dismiss the application on the sole ground that the employer had not complied with the terms of the proviso to Section 33(2), because the question whether there has been a contravention of Section 33(2) would arise for decision by the tribunal only on a complaint by the aggrieved workman under Section 33A of the Act. The last case to be cited is a decision of the Supreme Court, Lord Krishna Textile Mills v. Its workmen 1961--I L.L.J. 211. This case was under the Uttar Pradesh Industrial Disputes Act, 1947, but the Court was called upon to interpret Section 6E(2)(b) of the said Act which corresponds to Section 33(2)(6) of the Industrial Disputes Act. Gajendragadkar, J., noticed the difficulty that arose in the interpretation of the section and the proviso and set out in detail the respective oases that may be made out in support of the different view-points. Unfortunately, however, he did not decide the point because it was held that the point had not been taken before the tribunal or in the statement of case before the Supreme Court. The learned Judge stated that two views were possible on the question as to when the employer is required to make an application under the proviso. The first view is that the proviso imposed two conditions precedent for the exercise of the right recognized in an employer to dismiss or discharge his workmen pending a dispute. He has to pay wages for one month to the employee, and he has to make an application for approval; and both these conditions must be satisfied before the employee is discharged: or dismissed. If he has done so, then he need not wait for the final order which the authority may pass upon such an application. This view proceeds on the assumption that the word 'unless' really means 'until' and introduces a condition precedent. The second view is that the application need not be made before any action has been taken, because the application is for the approval of the action taken by the employer, and approval, according to the ordinary dictionary meaning, suggests that what is to be approved had already taken place, it being in the nature of ratification of what has already happened or taken place. As

the Supreme Court has not indicated as to which of the two views should be accepted, the matter is Open so far as this Court is concerned. As I have stated, there are two conflicting views of two High Courts upon the point.

5. Before I proceed to deal with the point, I must say that the proviso has been very inartistically worded and on the face of it there appears to be a conflict. The conflict has been sufficiently enumerated above, and need not be repeated. In order to resolve the problem one must first look to the history of Section 33. As the section originally stood in 1947, it categorically provided that no employer could, during the pendency of any conciliation proceeding, dismiss any workman except for misconduct not connected with the dispute. In 1950, this provision was amended and made more stringent. The amendment provided that no employer could dismiss any workmen save with the express permission in writing of the authority concerned, whether the misconduct related to any matter connected with the dispute or not. In 1956, however, the severity of the provision was relaxed, and Section 33 as it now stands, was substituted by the amending Act 36 of 1956, Since the amendment introduced is ambiguous, it is permissible to refer to the objects and reasons of the Bill by which the Amending Act 36 of 1956 came into existence. In Commissioner of Income-Tax, Madhya Pradesh v. Sodra Devi : AIR1958SC832 , it has been held by the Supreme Court that statements of objects and reasons may be referred to 'for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy.' The following statement appears in the statement of objects and reasons:

It is proposed to alter the existing provisions so as to provide that, where, during the pendency of proceedings an employer finds it necessary to proceed against any workman in regard to any matter unconnected with the dispute, he may do so in accordance with the standing order applicable to the workman, but where the action taken involved in discharge or dismissal, he will have to pay the workman one month's wages and simultaneously file an application before the authority, before which the proceeding is pending for its approval of the action taken.

6. From this it is clear that the object of the provision was not to make the application a condition precedent to the order of discharge or dismissal, but on the other hand, the application has to be made simultaneously with the action taken. In my opinion, at least this much is clear that it was not contemplated that the application should be made for approval before effecting the dismissal or discharge. I do not think that the words 'action taken by the employer' can be said to be ambiguous. This will also be apparent from the rules framed under the Act, in exercise of the power conferred by Section 38. Rule 70 lays down how applications under Section 33 are to be made. Sub-rule (2) of Rule 70 lays down that an employer seeking the approval of the conciliation officer, board, labour court or tribunal, as the case may be, of any action taken by him under Clause (a) or Clause (6) of Sub-section (2) of Section 33 shall present an application in form M. Form M contains a heading where the applicant has to mention the action already taken under Clause (a) or Clause (b) of Sub-section (2) of Section 33. In my opinion, if we are to construe the words 'action taken' as 'action proposed to be taken,' then not only have we to change the wordings in the section Itself, but in Rule 70 and in form M. In my opinion, this is not permissible. The idea in the minds of the framers of the Bill resulting in the amendment was that in the case of discharge or dismissal of workmen for any misconduct not connected with the dispute, pending reference, the discharge or dismissal can be effected provided two

conditions were satisfied. One is that the workmen have been paid wages for one month, and an application is made simultaneously by the employer to the authority before whom the dispute was pending, for approval of the action taken. The word 'simultaneously' must of course be taken reasonably and we should not import into it a split-second timing. It should be done at once and without delay. It has been suggested in some quarters that a month's time would be a reasonable time. Perhaps this is derived from the fact that one month's wages is to be paid to the workman as a condition precedent. In my opinion, if the employer waits for one month without reason, the action can scarcely he said to be simultaneous; by any stretch of imagination. The application must be made quickly and without a time-lag. Modi, J., in the case of Associated Cement Co., Ltd., Lakheri v. A.N. Kaul 1959--II L.L.J. 810 (supra) held that it should be done the next, day. This is much nearer the mark than the decision of Bhandari, J., who held that an order of discharge or dismissal may be made before making the application, but in a form so as to take effect at a future date. This latter interpretation seems to be unacceptable. What should be the time-lag between the discharge or dismissal and the making of the application depends on the facts of each case. Judged from this point of view, the period that has elapsed in the present case, if unexplained is inexcusable and if the matter merely stood there then the decision in the present case would be quite in order and would have to be upheld. There is, however, another aspect of the matter which has to be considered. Even assuming that the application for approval of the action taken, has been made beyond time, does it follow that the application must necessarily be dismissed and the industrial tribunal refuses to go into the merits of the matter This is an aspect of the matter which has been dealt within the Rajasthan case cited above and not in the others. In the Supreme Court case mentioned above 1961--I L.L.J. 211, this aspect has not been discussed, but Gajendragadkar, J., has laid down what matters the tribunal has to consider under Section 33(2)(6). The learned Judge stated as follows (at p. 215):

It would be noticed that even during the pendency of an industrial dispute the employer's right is now recognized to make an alteration in the conditions of service so long as it does not relate to a matter connected with the pending dispute, and this right can be exercised by him in accordance with the relevant standing orders. In regard to such alteration no application is required to be made and no approval required to be obtained. When an employer, however, wants to dismiss or discharge a workman for alleged misconduct not connected with the dispute, he can do so in accordance with the standing orders, but a ban is imposed on the exercise of this power by the proviso. The proviso requires that no such workman shall be discharged or dismissed unless two conditions are satisfied; the first is that the employee concerned should have been paid wages for one month, and a second is that an application should have been made by the employer to the appropriate authority for approval of the action taken by the employer. It is plain that whereas In oases falling under Section 33(1) no action can be taken by the employer unless he has obtained previously the express permission of the appropriate authority in writing in cases falling under Sub-section (2), the employer is required to satisfy the specified conditions, but he need not necessarily obtain the previous consent in writing before he takes any action. The requirement that he must obtain approval as distinguished from the requirement that he must obtain previous permission, indicates that the ban imposed by Section 33(2) is not as rigid or rigorous as that imposed by Section 33(1). The jurisdiction to give or withhold permission la prima facie wider than the jurisdiction to give or withhold approval. In dealing with cases falling under Section 33(2), the industrial authority will be entitled to enquire whether the proposed action

is in accordance with the standing orders, whether the employee concerned had been paid wages for one month, and whether an application has been made for approval as prescribed by the said sub-section. It is obvious that in cases of alteration of conditions of service falling under Section 33(2)(a), no such approval is required and the right of the employer remains unaffected by any ban. Therefore, putting it negatively, the jurisdiction of the appropriate industrial authority in holding an enquiry under Section 33(2)(b) cannot be wider and is, if at all, more limited, than that permitted under Section 33(1), and In exercising its powers under Section 33(2), the appropriate authority must bear in mind the departure deliberately made by the legislature in separating the two classes of cases falling under the two sub-sections, and in providing for express permission in one case and only approval in the other. It is true that it would be competent to the authority in a proper case to refuse to give approval, for Section 33(5) expressly empowers the authority to pass such order in relation to the application made before it under the proviso to Section 33(2)(6) as it may deem fit; it may either approve or refuse to approve; it can, however, impose no conditions and pass no conditional order.

7. The learned Judge then held that in view of the limited nature and extent of the enquiry permissible under Section 33(2)(b), all that the authority could do in dealing with an employer's application was to consider whether a prima facie case for according approval had been made out by him or not. If before dismissing an employee, the employer has held a proper domestic enquiry, and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority could do was to enquire whether the conditions prescribed by Section 33(2)(b) and the proviso were satisfied or not.

Do the standing orders justify the order of dismissal Has an enquiry been held as provided by the standing order Have the wages for the month been paid as required by the proviso and has an application been made as prescribed by the proviso?

8. In such enquiries, the tribunal can treat an application out of time, as a valid application if it is satisfied that on the merits there is a case in favour of the employer and against the employee. In such a case the delay may be treated to be merely a technical breach. It is not as if the first question to be asked is as to the technical compliance with the form of the application. As has been pointed out by the Supreme Court itself, wide power in that behalf is conferred by Section 33(5). Under that sub-section, the authority concerned is required to hear the application and pass orders in relation thereto, 'as it deems fit.' In this respect, the test to be applied is not any different from the tests laid down in respect of Sections 22 and 23 of the Labour Appellate Tribunal Act. As was held by the Supreme Court in Automobile Products of India v. Rukmaji Bala 1955--I L.L.J. 346, the question of a breach of Section 22 may be regarded as a technical breach only, if the merits of the case are abundantly clear. Coming to the facts of this case, we find that no application has been made by the workmen under Section 33A. Further, they did not take any objection as to delay in their written statement or statement of objection filed in the case. Had they taken the objection of delay, the petitioner might have filed an affidavit showing the reasons which caused the delay. As appears from the facts in the petition and affidavits, the petitioner was going through a period of very great stress and strain. Regard being had to the constant strikes and acts of indiscipline on the part of its workmen, the undertaking was in a state of collapse, and there might exist very cogent reasons for the delay. It appears that the workmen took the plea of delay at the hearing, without any prior notice, and the petitioner had no opportunity to explain the delay. Further,

as has been pointed out in the Rajasthan's case, Associated Cement Co., Ltd. Lakheri v. A.N. Kaul and Anr. 1959--II L.L.J. 810 (supra), the industrial tribunal ought to have gone into the facts of the case before dismissing the application on a technical point only. It appears to have come to the conclusion that once there was delay, the application was void abinitio. In my opinion that is an erroneous interpretation of the law. I do not say, that having gone into the merits, the tribunal could not, even under the existing circumstances, have dismissed the application because of the delay. It might have come to the conclusion that the delay was unwarranted, even In the background of the merits of the case. The error lies in refusing to go into the merits, or into any facts other than the delay. In my opinion, as the matter stands, the decision of the tribunal cannot be upheld. The rule is made absolute. There will be a writ in the nature of certiorari quashing or setting aside the order of the tribunal, dated 15 September 1960. The tribunal will be at liberty to deal with the application in the light of the observations made above. There will be no order as to costs.