

Ziakh Vs. Firestone Tyre and Rubber Company and anr.

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Court : Mumbai

Decided On : Jul-16-1953

Reported in : (1954)ILLJ278Bom

Judge : Desai, J.

Appellant : Ziakh

Respondent : Firestone Tyre and Rubber Company and anr.

Advocate for Pet/Ap. : Mr. Rajni Patel, Mr. Latiffi

Judgement :

Desai, J.

1. This is a petition for a writ of certiorari against the second respondent, the Labour Appellate Tribunal of India, in a matter decided by it and relating to the dismissal of the petitioner by the first respondent.

2. The petitioner's case is that; he has been an employee of the first respondents for nine years. In respect of certain disputes between their employees and the first respondents an appeal was pending before the Labour Appellate Tribunal, the second respondent. Pending that appeal the first respondents decided to dismiss the petitioner. As there was the appeal pending in respect of an industrial dispute the first respondents were under Section 22 of the Industrial Disputes (Appellate

Tribunal) Act bound to apply to the second respondent for permission to dismiss the petitioner. They preferred such an application to the second respondent, and the second respondent granted the permission asked for. It is against that order of the second respondent that this petition has been preferred.

3. The ground on which the order of dismissal was sought to be made was that the petitioner had deliberately slowed down production. The allegation was that the petitioner was on that ground guilty of misconduct and, therefore, liable to be dismissed. An inquiry was held by the first respondents and a chargesheet was prepared. The petitioner appeared before the first respondents and the entire proceedings which consisted of questions and answers are annexed to the petition as Ex. B. As I have already stated at the end of one inquiry the first respondents decided to dismiss the petitioner and applied for sanction under Section 22 of the Industrial Disputes (Appellate Tribunal) Act.

4. The second respondent considered the grounds on which the application was made. It appears that the grounds urged before the Appellate Tribunal were substantially the same as urged before me in this petition. The petitioner in his petition raises a number of contentions but I shall only refer to and deal with those which were urged before me by Mr. Rajni Patel, learned Counsel for the petitioner.

5. The first contention urged by Mr. Patel was that there was a failure on the part of the second respondent to exercise jurisdiction. He drew my attention to paragraph 6 of the judgment of the Labour Appellate Tribunal, in which it was stated that it was clear to the tribunal this was not a solitary act of slowing down of the work by an employee but that it was the result of a concerted action and that it was done because certain demands of the workmen had not been met by the company. That there was slowing¹ down of the work could not be seriously disputed before the tribunal although a feeble attempt was made before me by learned Counsel that there was no slowing down of the work. I am not sitting in appeal and am not entitled to go into the findings recorded by the Tribunal and which are based on proper material.

6. It was argued before me-this was the principal point argued before-that the slowing down was deliberate because the workmen had certain grievances which

had not been redressed. The second respondent in its judgment observed that the more fact that such a statement was made did not mean that there was in fact any grievance but even if there was such grievance the course permissible to the petitioner was not, to do an act which would amount to misconduct on his part but to seek redress in proper proceedings. The second respondent expressed a view that it could not sit down in the application before it to decide the question of this grievance, nor can it take the view that because there was such a grievance the slowing down tactics were justified. Learned Counsel argued this point at considerable length but in my opinion there is little substance in this contention of the petitioner. The tribunal was only concerned with deciding the questions: 'Was the Act complained of established, and if so, did it amount to misconduct, and whether the punishment sought to be inflicted, viz., dismissal, would be justified in the circumstances of the particular case?' In my opinion the Tribunal did apply its mind to all these questions and therefore, the argument advanced before me necessarily fails. What was really sought to be argued before me was not a question of jurisdiction but in fact, a point, which could at the utmost be the subject-matter only of an appeal. Not sitting in appeal or revision, I have to take the findings of the Tribunal as they are as long as they are based on some material. I have only got to see whether the decision of the tribunal contravenes any fundamental principle of natural exercise of jurisdiction by the tribunal, It cannot be said in this case, nor has it been suggested, that there has been any abrogation of jurisdiction by the tribunal.

7. The next point urged by Mr. Patel was based on certain standing orders. Considerable criticism was levelled at the contents of the chargesheet. Now in the chargesheet which was given to the petitioner it was stated as follows:

You are charged with the following act of misconduct: wilfully slowing down in the performance of your work.

The argument was that this chargesheet did not give any information to the petitioner about the charge which he had to meet. Then it was stated at the commencement of the inquiry before the management the petitioner handed in a letter to the first respondents in which a request was made for detailed particulars

of the charge. At the very beginning of the inquiry the petitioner was asked if he knew what was written in that letter and he said that he did not know what was written in the letter. I have carefully gone through the questions and answers which formed the subject-matter of the inquiry by the management and there is not the slightest doubt in my mind that the petitioner, before, as well as all along the inquiry, fully knew what was the charge that he had to meet. He was asked a number of questions about slowing down the work done by him. He admitted that during September he had been building 22 to 23 tyres a day. On 3 October his production fell to 14 tyres a day. When asked why he could build only 14 tyres he stated that he was the third shift, and when he came in he had found that the previous shifts had built 14 tyres only and the line-up had been that 14 tyres only should be built. On 15 October his production fell to 11 tyres; he could not give any explanation for that. In November there was a drop to 10 tyres, and ultimately in December his production was as low as 8 tyres per day. When asked to give the reason for that he stated: 'When every one was making 8 tyres how could I make ten?' As I have stated, the evidence clearly shows that the petitioner had full knowledge of what charge was that he had to meet. He was not in the least prejudiced by any absence of detailed particulars in the chargesheet in conducting his defence during the departmental inquiry. The present contention of Mr. Patel therefore fails.

8. Learned Counsel drew my attention to two or three decisions. They do not help me in the decision of the present case. One of the decisions lays down the fundamental principle that if the chargesheet was vague and the court came to the conclusion that the employee was prejudiced in conducting his case because of the vagueness of the charge the order of dismissal would be contrary to rules of natural justice. This is a fundamental principle and it is not necessary for me to go into any discussion of the same. This Court like any other court is bound to see that in the departmental inquiry there, was no-deviation from any fundamental principle of justice. I do not think that the management was guilty of any such error. These were the two main points urged by Mr. Patel. Both the points must be decided against the petitioner.

9. The petition which next appears on my board is by another workman against whom also an application was made by the first respondents under Section 22 of the Industrial Disputes (Appellate Tribunal) Act. Mr. Latiffi, learned Counsel for the petitioner, in that petition, asked me this morning that before I delivered my judgment in the present petition I should hear him on the questions of law involved in that petition. Mr. Latiffi, in the course of his argument, has stressed a number of principles which must govern the decision by a Labour Appellate Tribunal in a matter like this.. I do not find anything in the judgment of the Labour Appellate Tribunal which contravenes any of the fundamental principles. Mr. Latiffi laid particular stress on one aspect of the case and it was this. That it does not appear anywhere on the record that the management has properly applied its mind to the quantum of punishment. I do not see how this can actually appear on the record of the inquiry, but I am not satisfied that the mind of the management was not applied to the question of punishment. In any event the first respondents had to seek permission of the Labour Appellate Tribunal before they could dismiss Mr. Latiffi's client and in fact did so and it is clear from the judgment of the Labour Appellate Tribunal that it certainly applied its mind to the question of punishment. This contention of Mr. Latiffi also fails.

10. The result is that the petition fails and must be dismissed. The rule will be discharged.

12. Mr. Seervai, learned Counsel for the first respondents, states that the first respondents do not ask for costs. There will, therefore, be no order as to costs.