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Court : Supreme Court of India

Decided On : Oct-11-1977

Reported in : AIR1977SC2257; [1977(35)FLR422]; 1977LabIC1843; (1978)ILLJ23SC; (1977)4SCC377; [1978]1SCR693; 1977(9)LC706(SC)

Judge : Jaswant Singh and; N.L. Untwalia, JJ.

Acts : General Clauses Act, 1897 - Sections 16; Industrial Employment (Standing Orders) Act, 1946 - Sections 5(3)

Appeal No. : Civil Appeal No. 1346 of 1977

Appellant : Heckett Engineering Co.

Respondent : their Workmen

Advocate for Def. : P.K. Chatterjee, Sr. Adv. and ; Rathin Das, Adv.

Advocate for Pet/Ap. : Lal Narain Sinha, Sr. Adv.,; D.P. Ghosh and; Sukumar Ghose,

Prior history : Appeal by special Leave From the Award dated March 26, 1977 of the Ninth Industrial Tribunal, West Bengal, Durgapur in Case No. X-39 of 1975, published under the Notification No. 1624-IR/IR-IDL-84 of 1977, dated April 29, 1977

Judgement :

Jaswant Singh, J.

1. This appeal by special leave is directed against an award dated March 26, 1977 of the Ninth Industrial Tribunal, Durgapur, made in case No. X-39/75 and published vide Notification No. 1624-I.R., dated April 29, 1977 issued by the Labour Department of the Government of West Bengal.

2. The appellant, M/s. Heckett Engineering Company (India Branch) Burnpur (West Bengal) (hereinafter referred to as 'the Company') is a division or branch in India of M/s. Harsco Corporation, a limited liability company incorporated and registered in U.S.A. It carries on the business of recovery of iron and steel scrap from slags at its plant located within the Steelworks of the Indian Iron and Steel Company Limited, Burnpur. The workmen employed by the company are represented by Heckett Engineering Company (India Branch) Employees' Union, Puranhut, Burnpur (hereinafter referred to as the Union') which is recognised by the Company.

3. It appears that Mihar Majhi (hereinafter referred to as 'the workman') who was employed as a permanent driver by the Company was deputed on October 9, 1974, to carry some materials in Fargo Truck No. WGH 6891 from its Burnpur plant to its Jamshedpur plant and to bring certain other materials from Jamshedpur plant to Burnpur plant in the same truck. One Shankar Kumar Gupta, an employee of a contractor working for the Company, was asked by the Company to accompany the workman on the aforesaid mission as a helper. After loading the truck with the materials which had to be brought over from Jamshedpur plant of the Company, the workman accompanied by Shankar Kumar Gupta set off for Burnpur on October 12, 1974. While the truck was thus on its way back to Burnpur, the workman stopped the truck near a tyre repairing shop at Chandil to have a punctured tube repaired. While leaving the said shop, the workman picked up four strangers in the truck in contravention of a circular of the Company forbidding the carriage of any unauthorised person in any of its vehicles and resumed his backward journey to Burnpur. At about 7.00 P.M. when the aforesaid truck driven by the workman was going down a slope, it dashed violently against a wall of a culvert at a place about two to three kilometres from Chandil check post

within the jurisdiction of Nimdih police station resulting in extensive damage to the truck. Instead of reporting the matter to the police, the workman went to the residence of Mr. Bhattacharya, Chief Accountant of the Company's plant at Jamshedpur and told him that the differential of the aforesaid truck in which he was carrying magnet and other material belonging to the Company and which was being driven by him broke down on the road at about 7.00 P.M. a few miles after Chandil due to overloading whereupon Mr. Bhattacharya advised the workman to go and see the Works Manager of the plant at Jamshedpur. The workman did not pay any heed to this advice and left for Burnpur where he verbally informed Mr. V. K. Balan, the Plant Manager of the Company at about 6.00 P.M. on October 13, 1974, that the aforesaid truck which was loaded beyond its carrying capacity had met with an accident at a place two miles before Chandil Check Post in consequence of his losing control thereof due to failure of the brakes because of which the truck dashed against a wall of a culvert. The Plant Manager directed the workman to submit a report of the accident in writing at, the office. Accordingly, the workman made the report Exhibit 'S' (PH) on the following morning after getting the same written by an office assistant named B. K. Guhathakurata. Thereupon the Plant Manager accompanied by the workman visited the place of accident for verification of the. incident and assessment of the damage. On October 17, 1974, the Plant Manager vide his communication No. HB/CS/23/1974 called upon the workman to show cause why disciplinary action should not be taken against him for the following acts of misconduct which fall within the purview of Sub-clauses (o), (m) and (v) of Clause 31(11) of the Standing Orders of the Company which are certified under Section 5(3) of the Industrial Employment Standing Orders Act, 1946 and as held in. Agra Electric Supply Co. Ltd. v. Sri Alladin and Ors. : (1969)IILLJ540SC bind the Company as well as all its employees:

1. Due to rash and negligent driving of Fargo Truck No. WGH 6891 (PT-518-D) on 12th October, 1974 on your way back to Burnpur, the truck was involved in a serious accident.

2. You have picked up from Chandil four unauthorised passengers to travel into the said truck.

3. You have also allowed one of the unauthorised passenger to drive the said truck.

4. You have suppressed the true facts in your report submitted on 14th October, 1974 and given a false statement regarding the accident.

4. Not satisfied with the explanation tendered by the workman, the Plant Manager deputed Mr. M. M. Das, the then Personal Officer of the Company, to hold a domestic inquiry into the above mentioned charges. Accordingly, Mr. Das conducted a regular inquiry and found all the charges to have been established against the workman. On the receipt of the report submitted by Mr. Das, the Plant Manager passed an order on November 6/7, 1974 dismissing the workman. On being apprised of the order of his dismissal, the workman approached: the Union which raised an industrial dispute whereupon the matter was referred for settlement to the Conciliation Officer, Asansol. As the conciliation proceedings proved abortive, the Government of West Bengal referred the following issues under Section 10 read with Section 2-A of the Industrial Disputes Act, 1947, to the Ninth Industrial Tribunal, Durgapur for adjudication.

1. Whether dismissal of Shri Mihir Majhi, driver, is justified?

2. What relief, if any, is he entitled to?

5. On a consideration of the material adduced before it, the Tribunal while finding that the Company had been able to establish charges Nos. 2 and 3 against the workman held that the aforesaid order of dismissal could not be upheld as it was not made by an authorised person. The relevant portion of the order of the Tribunal is extracted below for ready reference:

Ext. 1 is the appointment card. It shows that Shri Balan signed the appointment card on behalf of the General Manager. It goes to show that the General Manager was. the appointing authority and Mr. Balan only acted on his behalf. Therefore, it cannot be said that Mr. Balan was the appointing authority.

Be that as it may, let me see whether under the Standing Orders Shri V. Balan, the Plant Manager was competent to dismiss an employee. Ext. O is the copy of the

Standing Orders. Para 32 of the Standing Orders contains the provision regarding the disciplinary action. This para enjoins that the Manager may appoint an officer to hold the enquiry. It does not expressly set out as to who is to pass an order of dismissal. But in this para it has been enjoined that the company may, however, at his discretion award the other punishment mentioned in this para in lieu of dismissal... Under Clause 4(b) of the Standing Orders, a Manager includes the Plant Manager. But it does not include or mean the company because the definition of the company is given in Clause 4(a) of the Standing Orders. The definition of the company does not include either the General Manager or the Plant Manager, who has dismissed the workman in question. There is not (sic) scrap of paper to show that Mr. Balan was authorised by the company to pass an order of dismissal. On the other hand, in para 32 of the Standing Orders it has been clearly laid down that the company only has that right. I am, therefore, of opinion that the order of dismissal was not passed by a person authorised by the Standing Orders. Consequently the order of dismissal cannot be upheld and the workman is entitled to reinstatement.

6. Aggrieved by this order, the Company has come up in appeal to this Court as stated above.

7. Appearing on behalf of the appellant, Mr. Lalnarayan Sinha has urged that the Industrial Tribunal has erred in holding that charges Nos,. 1 and 4 had not been brought home to the workman. He has. further urged that the appointment of the workman having been made by Mr. V. K. Balan, the Manager of the Company's plant at Burnpur, the latter was fully competent to dismiss the former and that the Industrial Tribunal was not right in holding that the impugned order of dismissal was passed by an unauthorised person.

8. Mr. Chatterji has, on the other hand, submitted that the findings of fact arrived at by the Industrial Tribunal in respect of charges Nos. 2 and 3 are wholly unjustified. He has further contended that the order of appointment of the workman having been made by the General Manager, the dismissal in question could not be effected by an authority other than the General Manager. Mr. Chatterji has lastly submitted that the misconduct attributed to workman did not warrant the major

penalty) of dismissal.

9. We have gone through the entire record and have given our earnest consideration to the submission made by learned Counsel for the parties. While we are of the view that there is no warrant for interfering with the findings of fact arrived at by the Tribunal with regard to the establishment or otherwise of any of the charges against the workman which are based upon the evidence on the record, we think that the other finding arrived at by it viz. that Mr. V. K. Balan, Plant Manager of the Company, had no authority to pass the impugned order of dismissal cannot be sustained. It would, in this connection, be profitable to find out in the first instance as to who would make the permanent appointment of the workman. A plain reading of Clause 5(b) read with Clause 7(d) of the Standing Orders shows that it was the Plant Manager of the Company who was competent to make the appointment of the workman. That it was Mr. V. K. Balan who actually made the appointment in question cannot also admit of any doubt. This is crystal clear from the appointment card, Exhibit I(MH) which is signed both by Mr. V. K. Balan as well as the workman.

10. Let us now see whether Mr. V. K. Balan, Plant Manager, acted for or on behalf of General Manager of the Company in making or signing the appointment card of the workman. A glance at the appointment card. Exhibit I(MH) is enough to show that Mr. V. K. Balan did not sign the said card for or on behalf of the General Manager. It is true that the prefix 'General' before the word 'Manager' on the printed card on which Mr. V. K. Balan put his signatures does no appear to have been struck off at the time of the issue of the card but that by itself is not enough to show that the appointment was made by Mr. V. K. Balan acting for or on behalf of the General Manager of the Company. There is nothing on the record to indicate that on the relevant date, the General Manager of the Company was away on leave or was otherwise absent and Mr. V. K. Balan had been deputed to officiate or act for or on behalf of the General Manager. On the contrary, in the course of his statement as O.P. witness, Mr. V. K. Balan has categorically affirmed that he has been holding the office of the Plant Manager of the Company for the last ten years. Thus neither the Standing Orders nor the appointment card nor the statement of Mr. V. K. Balan nor any other material on the record supports the

observation of the Industrial Tribunal that 'the General Manager was the appointing authority and Mr. V. K. Balan only acted on his behalf.

11. The submission made on behalf of the workman that in signing his appointment card, Mr. V. K. Balan acted for and on behalf of the General Manager cannot be accepted for another reason also. If Mr. Balan was competent to make the appointment of the workman as we have, by reference to the Standing Orders, shown that he was, there could be no question of his acting for or on behalf of the General Manager in signing the appointment card. The contention advanced in this respect on behalf of the workman is, therefore, repelled.

12. Having settled that Mr. V. K. Balan, who was the Plant Manager on the relevant date was competent to make the appointment of the workman and it was he who actually made the crucial appointment in that capacity, let us now advert to the question whether Mr. Balan was competent to pass the impugned order of dismissal.

13. Mr. Chatterji has, by reference to Standing Order No. 32 of the aforesaid Standing Orders, stressed that it was only the Company which was competent to pass the order of dismissal of the workman. The relevant portion of the Standing Order on which reliance is place runs thus:

32....A workman shall be liable to be summarily dismissed without notice or pay or wages in lieu of notice if he is found guilty of any misconduct amounting to major misdemeanour. A workman dismissed for misconduct will not be entitled to any past benefits or privileges of service provided by the Company. The Company may however at its discretion give the workman concerned the following punishments in lieu of dismissal:

(i) Discharge from Service with past benefits of service,

(ii) Suspension without pay not exceeding fifteen days,

(iii) Censure or warning,

(iv) Withholding increment for one year,

(v) Fine.

14. The Standing Order extracted above is not helpful to the workman. It does not put any fetter on the power of the Plant Manager to dismiss a. workman whose appointment is made by him if he is guilty of a misconduct. It only confers, in our opinion, an overall power on the Company to substitute the penalty of discharge from service with past benefits of service or any other lighter penalty specified therein for the penalty of dismissal awarded to a workman and can by no means be interpreted to imply that the penalty of dismissal can be inflicted only by the Company and not by the Plant Manager. It is a well settled rule of construction that the language of a provision or a rule should not be construed in a manner which would do violence to the phraseology used therein. It is rather strange that the Industrial Tribunal has despite its observation that the above quoted Standing Order does not expressly set out as to who is to pass an order of dismissal held that the impugned order was not passed by a person authorised by the Standing Orders. It may also be mentioned at this stage that appearing as a witness for the Company, Mr. V.K. Balan has unequivocally stated that he was entitled to pass the order of dismissal against the concerned workman under the Standing Orders and that he did not need any delegation of powers for passing such order. We may also in this connection recall the provisions of Section 16 of the General Clauses Act, 1897, Whether or not the section in terms applies to the aforesaid Standing Orders of the Company which are certified under Section 5(3) of the Industrial Employment Standing Order Act, 1946 may be a moot point but the general doctrine underlying the section can well be made applicable to a case of the present nature for it is now firmly established that the power to terminate service is a necessary adjunct of the power of appointment and is exercised as an incident to or consequence of that power (See Lekhraj Satramdas Lalvani v. Deputy Custodian-cum-Managing Officer and Ors. : [1966]1SCR120 and Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Madhavi Amma and Ors. [1949] F.C.R. 66. In Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Valia Madhavi Amma and Ors. (supra) Mahajan, J. (as he then was) speaking for the Federal Court approved the statement of Woodroffe On Recei-vers, Fourth Edition, that the power to terminate flows naturally and as a necessary sequence from the power to create. In other words, it is a necessary adjunct of the power of appointment and is

exercised as an incident to, or consequence of that power; the authority to call such officer into being necessarily implies the authority to terminate his functions.

15. As in the instant case, the appointment of the workman was made by Mr. V. K. Balan as a Plant Manager and not for or on behalf of the General Manager and as the power of appointment implies and carries with it the power of dismissal, we are of the opinion that the order of dismissal did not suffer from the infirmity of want of competence or of authority to pass the order.

16. The decision of this Court in Hindustan Brown Boveri Ltd. v. Their Workmen and Anr. [1968] I L.L.J. 571 relied upon by Mr. Chatterji in support of his contention that the Plant Manager was not competent to pass the impugned order of dismissal is clearly distinguishable. In that case, despite the issue raised before the Labour Court as to whether the demotion of one workman and the termination of service of the other was in order, the Company did not at the proper stage inform or contend before the Labour Court that the Works Manager was empowered to recruit and dismiss the workman by virtue of the power of attorney executed in his favour by the Company. The judgment in that case also does not show that the Works Manager was competent to appoint the workman under the standing orders of the Company.

17. In conclusion, we would like to make it clear that as charges Nos. 2 and 3 have been held by the Industrial Tribunal to have been established against the workman and they constitute major misdemeanours falling within the purview of Sub-clauses (a) and (m) of Clause (ii) of Standing Order 31 of the aforesaid Standing Orders, we think that the order of dismissal could have been passed by the punishing authority which in this case, as already stated, was the Plant Manager. We may also observe that it is not open to us to substitute the order of discharge with benefits of past service for the impugned order of dismissal. The workman may, if so advised, approach the Company in this behalf.

18. For the foregoing reasons, we allow the appeal and set aside the aforesaid award of the Ninth Industrial Tribunal. However, in view of the order of this Court dated June 1, 1977, the appellant shall pay the costs of the appeal to the respondents.

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