

Ranjit Singh Tomar Vs. Hindustan Export and Import Etc.

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Court : Delhi

Decided On : Sep-10-1982

Reported in : ILR1983Delhi802

Judge : Avadh Behari Rohtagi, J.

Acts : Industrial Disputes Act - Sections 33(2)

Appeal No. : Civil Writ Appeal No. 520 of 1971

Appellant : Ranjit Singh Tomar

Respondent : Hindustan Export and Import Etc.

Advocate for Pet/Ap. : J.L. Kalra and; D.N. Vohra, Advs

Judgement :

Avadh Behari Rosatgi , J.

(1) The petitioner is a dismissed employee. He was dismissed by the employer, the respondent company, for misconduct. He was a peon getting Rs. 105 per month besides Rs. 5.50 per month as cycle allowance. He was in the employ of the company from 1958 to 23-2-1968 when he was summarily dismissed. He willfully refused to obey the orders of the employer. He persistently defied the lawful orders of his superiors. He refused to go to the bank for encashing a cheque. He refused to sign the employment register. He was asked to wind the

clock which he refused. So the employer dismissed him from service.

(2) The petitioner raised an industrial dispute. The Government referred the dispute to the Labour Court. The question referred was whether the termination of petitioner's services was unjustified and illegal. Before the Labour Court it was not disputed that the employer did not hold any enquiry. But the employer produced evidence before the court. The court found the employee guilty of misconduct. It came to the conclusion that he was disobedient. He was insolent. He was defiant. He willfully refused to carry out the orders of the employer. The court on the evidence produced by the employer before it for the first time held that the dismissal was justified. The petitioner has filed this writ petition under Article 226 of the Constitution challenging the award of the Labour Court dated 6-1-1971.

(3) On this petition two questions were raised. Firstly it was said that the employee was entitled to wages from the date of dismissal to the date of the order of the Labour Court, namely, from 23-2-1968 to 6-1-1971. This claim is made on the ground that the employer dismissed the employee without holding any enquiry into the charges. As the enquiry was held before the Labour Court it is said that the dismissal order would take effect from 6-1-71 when the dismissal was held to be justified by the court. For this submission counsel for the employee place reliance on *Hotel Imperial v. Hotel Workers' Union*. : (1959)IILLJ544SC , and in particular on the following observation of Wanchoo J. at page 1347 :

'IN *Phulbari Tea Estate v. Its Workmen*, : (1959)IILLJ663SC , the rider laid down in the case of *M/s. Sasa Musa Sugar Works (P) Ltd.* : (1959)IILLJ388SC was further extended to a case of an adjudication under S. 15 of the Act and it was pointed out that if there was any defect in the enquiry by the employer he could make good that defect by producing necessary evidence before the tribunal; but in that case he will have to pay the wages up to the date of the award of the tribunal, even if the award went in his favor.'

(4) Strong reliance was placed on the observations after the semicolon. These words no doubt support the employee. But in *D. C. Roy v. Presiding Officer. Labour Court*, 1976 Lab. I.C. 1142 the Supreme. Court pointed out that the ratio of *Phulbari Tea Estate*. : (1959)IILLJ663SC was not correctly stated in the above

passage. This passage is partly a reproduction in substance of what was said in *Phulbari Tea Estate* at page 1113 of Air 1959 Supreme Court but the last clause of the passage following the semicolon is an addition not borne out by the judgment in *Phulbari Tea Estate*. The words after semicolon are not a correct statement of the law. In determining the ratio decidendi Wanchoo J was in error in adding these words. This is what was decided in *D. C. Roy*. The Supreme Court has thus corrected its own mistake.

(5) In the instant case no enquiry was held by the employer. The principles of natural justice were not observed. But the employer led evidence before the Labour Court to justify the order of dismissal. On a fresh appraisal of that evidence the Labour Court found that the order of dismissal was justified. Now the judgment of the Labour Court would relate back to the date on which the order of dismissal was passed. The doctrine of relation back was applied in *P. H. Kalvani v. M/s. Air France Calcutta*, : (1963)ILLJ679SC . The principle laid down in that case must apply here. (See *D. C. Roy* (supra) at page 1145).

(6) The principle is this. Where the employer passes an order of termination whether without holding an enquiry or after holding an enquiry which is found to be defective, the order of termination would be effective from the date it was passed by the employer if it is held to be justified by the Tribunal on the evidence produced before it (*Hatakishore Sahu v. Presiding Officer Industrial Tribunal*, 1976 Lab. I.C. 599 .By holding that the order of termination passed by the employer is justified the Tribunal accepts the order of termination having been properly passed by the employer. The doctrine of relation back is applied.

(7) It is universally held that discipline must remain strictly a matter of managerial prerogative. (See 1982 Hamlyn Lecture : The Quest for Security : Employees. Tenants. Wives p. 5). The Labour Court found in this case that the employer was entitled to dismiss summarily for disobedience to lawful orders. Disobedience amounts to a total refusal to cooperate, or in some other way shows that the employee repudiates the contract. (*Laws v. London Chronicle*, (1959) 1 W.L.R. 698 ; *Pepper v. Webb*, (1969) 1 Wlr 514.

(8) Labour law is essentially a functional legal subject which deals with employment in its individual and collective aspects. It is a paradox of our labour law that terms and conditions of employment are settled collectively for the great mass of the working population, whilst the individual contract of employment continues to be treated as 'the cornerstone of the edifice', to use the late Professor Sir Otto Kahn Freund's famous phrase. The contrast is between social reality and legal theory, resolved by Kahn-Freund who saw the contract of employment as the subordination of the employee to the employer and the trade union as using its power of co-ordination with the employer to secure terms and conditions of employment for employees which the 'individual higgling of the market' could not achieve for them. But industrial discipline remains strictly a matter of managerial prerogative. The employee repudiates the contract of service if he willfully disobeys the lawful and reasonable orders of the employer. Misconduct is conduct repudiatory of the contract justifying summary dismissal.

(9) Counsel for the employee relies on the following observation of Chandrachud J. at page 1146 in D. C. Roy (supra):

'WE would, however, like to add that the decision in P.H. Kalyani's case : (1963)ILLJ679SC is not to be construed as a charter for employers to dismiss employees after the pretence of an inquiry. The inquiry in the instant case does not suffer from defects so serious or fundamental as to make it nonest. On an appropriate occasion, it may become necessary to carve an exception to the ratio of Kalyani's case so as to exclude from its operation at least that class of cases in which under the facade of a domestic inquiry, the employer passes an order gravely detrimental to the employee's interest like an order of dismissal. An inquiry blatantly and consciously violating principles of natural justice may well be equated with the total absence of an inquiry so as to exclude the application of the 'relation-back' doctrine. But. we will not pursue the point beyond this as the facts before us do not warrant a closer consideration thereof.'

(10) I am not prepared to hold that the present is a case where the doctrine of relation back ought not' to be applied on the ground that there was a total absence of enquiry which would exclude the application of that doctrine. There is one main

reason. The Parliament is the proper place to settle this. Labour law is a mosaic of statute and judge-made law. It is a combined product of legislation and litigation. Like International Law, the law of industrial relations is still in a fluid state. The statute does not enact that a summary dismissal, even for misconduct, will always be nonest. That happens on the intervention of the statute. If a dismissal is in defiance of the provisions of a statute such a dismissal is a nullity. But if there is no statute the order of dismissal is effective, although it may be in breach of contract and the master may be liable in damages. The relationship of employer and employee does not continue in law or in fact. 'Normally, and apart from the intervention of statute, there would never be a nullity in terminating an ordinary contract of master and servant. Dismissal might be in breach of contract and so unlawful but could only sound in damages (*Vine v. Notional Dock Labour Board*, (1957) A. C. 488). This is why the judges invented the doctrine of relation back. The doctrine is a clear recognition of the principle that facts are stronger than the law. So the fact of dismissal cannot be obliterated from the world of facts. What is done is that the act constructively relates back to the antecedent thing so as to cover up the time lag.

(11) It is now settled by a series of decisions that the employer can justify its action by leading evidence before the Tribunal. This applies equally to cases of total absence of inquiry and defective enquiry. A case of defective enquiry stands on the same footing as no enquiry. (*Workmen of Firestone Tyre & Rubber Co. v. The Management* 973 Lab. I.C. 851). If no evidence is led before the tribunal or the evidence adduced does not justify the dismissal by the employer, the tribunal can order reinstatement or payment of compensation as it may think fit. But if it finds on the evidence adduced before it that the dismissal was justified, as in this case, the doctrine of relation back is pressed into service to bridge the time gap between the rupture of the relationship of employer and the employee and the finding of the tribunal.

(12) If the workman is to be paid wages up to the date of the award of the tribunal the Parliament has to say so Parliament is the proper place to settle this. When there is sufficient support from public opinion. Parliament does not hesitate to intervene. 'Where Parliament fears to tread it is not for the courts to rush in'. (*Shaw*

v. Director of Public Prosecutions. (1961) 2 All E.R. 446 per Lord Reid) Here Parliament fears to tread. So I do not rush in.

(13) Secondly, counsel for the employee said that the dismissal is in contravention of section 33(2)(b) of the Industrial Disputes Act as a dispute for over time wages and D.A. was pending at the time of dismissal before the conciliation officer. There is no evidence on the record to show that such a dispute was pending on the date of dismissal. There is a reference in the judgment of the labour court that a dispute was raised on behalf of the employee by one Mr. Ray, the President of the Union. On this fact the plea of victimisation was put forward which the court rejected. But that the dismissal was in contravention of section 33(2)(b) was neither pleaded specifically nor proved by cogent and satisfactory evidence. The question of pendency of a dispute is essentially a question of fact. There being nothing to show that any dispute was pending on the date of dismissal the argument fails.

(14) For these reasons the writ petition is dismissed. The parties are left to bear their own costs. I announced the order on 6-9-1982 at the conclusion of the argument. I dismissed the petition. Now I have given reasons for doing so.

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