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Court : Kerala

Decided On : Aug-12-1958

Reported in : (1959)ILLJ153Ker

Judge : N. Varadaraja Ayyangar, J.

Appellant : Augustine

Respondent : Port of Cochin

Judgement :
ORDER

N. Varadaraja Ayyangar, J.

1. This is a petition under Article 226 of the Constitution by Raphael Augustine, an employee in the dry dock of the Cochin port questioning an order of suspension passed against him by the respondent, the Mechanical Superintendent of the port.

2. Petitioner is a first-class fitter in the dry dock under charge of the respondent. On 2 August 1956, himself and certain co-employees were asked to report for duty on the dredger 'Lady Wellingdon' on Sunday, 5 August following. Petitioner and some few did not turn up for work. Petitioner failed also to submit explanation on being called on. He was then asked to show cause why action should not be taken against him under the standing order No. 18 (C)(5) for

insubordination or disobedience, whether alone or in combination with others to any lawful and reasonable orders of a superior.

Vide Ex. I notice, dated 14 August 1956. In due course an enquiry was held on 23,24 and 25 August 1956 in the office of the respondent. The petitioner refused to cross-examine the witnesses or otherwise participate in the proceedings. By Ex. III order, dated 29 August 1956, he was found guilty of the misconduct alleged against him and by way of punishment was suspended for four days without pay with effect from 4 September 1956. This petition was filed thereafter on 19 September 1956.

3. The main grounds relied upon by the petitioner in support of the petition were:

(1) The standing orders had not been exhibited as per Section 9 of the Industrial Employment (Standing Orders) Act XX of 1946 (Central) and the petitioner had also no knowledge of their provisions otherwise. The standing orders were therefore inapplicable and inoperative so far as the petitioner was concerned.

(2) The order to work on Sunday and out-Bide the normal workspot which petitioner failed to carry out was not a lawful or reasonable order under standing orders. There was therefore no actionable default as against the petitioner,

(3) The enquiry conducted against the petitioner was opposed to the principles of natural justice in that he was not in effect allowed to cross-examine the witnesses.

The prayer was accordingly made for issue of a Writ of certiorari or other writ or direction to quash Ex. III order.

4. By detailed counter-affidavit, the respondent resisted the petition. In doing so, he specifically affirmed that the standing orders were sufficiently exhibited on the notice board from March 1952 onwards and there was no question of the ignorance of the petitioner as regards the particular work allotted to him on the Sunday in question and the consequence of his breach under the standing orders. Further it is the practice and custom in the port to depute employees inclusive of the petitioner for work as here in question and no one had objected previously. Finally the enquiry against the petitioner was just and fair and legal.

5. Taking up the first ground as to the validity of the standing orders: It is common ground that the Cochin port is an industrial establishment as defined by the Industrial Employment (Standing Orders) Act XX of 1946. That Act was passed with a view to subserve two main considerations:

(i) to require employers in industrial establishments to define with sufficient precision the conditions of employment under them, and

(ii) to make the said conditions known to workmen employed by them.

The first consideration was achieved by the provision of a certification procedure after hearing the employer and the representatives of the workmen and the coming into force of the standing orders in time limited thereafter, vide Section 7. As regards the second, Section 9 of the Act said :

The text of the standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

By virtue of the enabling provisions of Section 14 of the Act XX of 1946, however, the Central Government by notification dated 7/8 May 1952, exempted the Port of Cochin (including the dry dock) from all the provisions of the said Act. It was not therefore correct for the petitioner to maintain that anything turned on Section 9 of the Act.

6. But the exemption granted under this notification as above was subject to two conditions, viz.:

(1) the port authority shall publish or cause to be published consolidated rules relating to the matters set out in the schedule to the said Act in a pamphlet form in the English language and the language understood by the majority of the workmen.

(2) A copy of such pamphlet shall be supplied to each.

And it was conceded for the respondent that the standing orders governing the Cochin port had, until some time after the enquiry here, been only exhibited in notice boards and that again only in English, though at the same time it was claimed that there has been no lack of publicity on that account. Basing himself on this concession, learned Counsel for the petitioner urged that the standing orders should be taken to be invalid because at any rate there was a breach of ' conditions ' involved. In my opinion this does not follow. For the standing orders create rights and liabilities not only on the employees but also on the employers, And if as is insisted on the side of the petitioner, they are binding on the employers they cannot but be considered to be equally binding on the employees. The requirement as to issue of the standing orders in English and vernacular in a pamphlet form, and supply individually to all workmen, was only in the nature of device meant to ensure adequate publicity. So if it is clear otherwise that the workmen knew exactly where they were, the fact that the conditions were not in their letter carried out, is not of any significance.

7. Reference may in this connexion be made to the decision of Chagla, C.J., and Tendolkar, J., in Ismail Papamia v. Labour Appellate Tribunal 1957-I L.L.J. 51, as to the scope of Section 9 of the Act XX of 1946 Itself. In the course of the judgment Chagla, C.J., observed:

The object of standing orders is to regulate the conditions of service between the employer and the employees; and in view of the language used by Section 7, even though in certain cases it may cause inconvenience or even injustice, it is impossible to give any other construction to Section 9 than that its provisions are directory and not mandatory. If any prejudice is caused and the industrial tribunal is satisfied, it would be the duty of the industrial tribunal to take this circumstance into consideration in deciding whether the application made by the employer for dismissing the employees should be granted or not.

The absence of notice is an important circumstance which any tribunal dealing with the merits of the application made by the employer should take into consideration. But when one asks to elevate the absence of notice to that high position that it must render the provision of Section 7 nugatory and unworkable, it

cannot be acceded to. The date when the standing orders came into operation, they bind both the employer and the employees. Section 9 is merely directory and the employer should carry out the provisions which the legislature clearly enacted to be in the interest of the workers and non-compliance with that direction may result in employer not succeeding in satisfying the industrial tribunal that it is a proper case for dismissing its employees.

8. In this case it has come out clearly that the standing orders were explained to the' workmen when they were exhibited on the notice board and this was not the first time when disciplinary action had been taken against the workmen under the standing orders. Indeed the refusal of the petitioner and others to work on the present occasion turned on the failure of the authorities to comply instantly with their demand for one day off as per Factories Act and eight hours' wages. And when the labour officers sought to explain to them that this stand would not come ' within the purview of any legislation or standing orders applicable to them ' and that contravention of the orders would involve them in disciplinary action under the standing orders, the only answer was that they were prepared to face the consequences. It follows, therefore, that there is no substance in the first ground.

9. The second ground also is not of any substance. Rule 8 of the standing orders, dealing with weekly working days, so far as relevant, says:

All employees except the crew of the floating craft of the port department will work only for six days in a week. In case of emergency the head of the department or his assistant in charge of works engages any particular class of employees for all the seven days in a week. Such instances will, however, be exceptional. Any employee working for seven days in a week due to exigencies of work shall either be given a day off immediately such emergent work is over, or shall be granted overtime pay or wages for the day at time and a half.

The argument is that there was nothing in the order as issued to the petitioner to show that there was any emergent work to be attended to. There is no provision, however, to that effect. And after all the matter was one for the employer. Indeed on previous occasions the petitioner himself had, without demur, attended work on Sundays. Nor is there any point in the argument that work on Sunday must, if at

all, be limited to normal work in the dry dock, particularly in the absence of any limiting rule to that effect.

10. There remains now the third and last ground as to violation of the principles of natural justice on the score that opportunity was not afforded for cross-examination. It would appear that after the charge was read out in Malayalam, evidence was let in by examination of five witnesses. The questions and answers were explained to the petitioner in Malayalam as the examination went on and were recorded in both the languages. At the end of the examination of every witness in chief the petitioner was asked to cross-examine but he refused and this refusal was also recorded. On 27 August 1956 after the witnesses' examination was over, the petitioner put in request for copies of all the depositions in Malayalam. But this was refused on the ground that the proceedings were all conducted in petitioner's presence and were explained to him finally and it was not also the practice to give such copies. Vide Ex. II order, dated 29-August 1956.

11. It is hardly possible in these circumstances to say that any principle of natural justice has been violated so far as the petitioner's enquiry was concerned. Now what exactly are the requirements of natural justice came up for consideration recently in the Supreme Court in Union of India v. T.R. Varma 1958-II L.L.J. 259. T.L. Venkatarama Ayyar, J., delivering the judgment of the Court, observed:

The Evidence Act has no application to enquiries conducted by tribunals even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a Court of law. Stating it broadly and without intending to be exhaustive, it may be observed that rules of natural justice require that a party should have an opportunity of adducing all relevent evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witneses examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the

procedure laid down in the Evidence Act for taking evidence was not strictly followed.

In this case, the petitioner would appear in effect to have waived cross-examination because apparently he had nothing to bring out in contradiction of the answers already recorded. The petitioner would not even take advantage of opportunity afforded to him to give statement in defence. Considering the matter from these aspects I have no doubt that the proceedings of the enquiry were fair and the petitioner can have no cause to complain. The punishment finally meted out was lenient and in no way vindictive. And it is of some significance that the provision for appeal under Rule 19 of the standing orders was not availed of by the petitioner.

12. The original petition is therefore without merit and is dismissed with costs. Counsel's fee Rs. 100.

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