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Court : Chennai

Decided On : Sep-28-1957

Reported in : (1959)IILLJ193Mad; (1958)IMLJ11

Judge : Rajagopala Ayyangar, J.

Appellant : Abdul Khader

Respondent : Consolidated Coffee Estates (1943), Ltd. and ors.

Judgement :

ORDER

Rajagopala Ayyangar, J.

1. This is an application for the issue of a writ of certiorari to quash an order of the Labour Appellate Tribunal in the following circumstances.

2. The petitioner was employed under the respondent 1 who was the owner of a coffee estate. The duties of the petitioner consisted in driving a tractor. At the time of his appointment, he was notified that he should not permit any other person to travel in the tractor or in any machinery attached to the tractor and that such conduct on his part would entail dismissal. On 1 April. 1954, the petitioner was charged by the management with having knowingly permitted one Natesan to ride on a tiller attached to the tractor. The petitioner denied the charge and stated that if Natesan was on the machine it was without his knowledge. There was an

enquiry in consequence of this denial and at that enquiry it was proved that it was with the petitioner's knowledge that Natesan rode on the tiller. On the ground of misconduct involved in this act, the management dismissed the petitioner from service. The rules of service of the petitioner provided an appeal to a higher authority within the management itself. The petitioner availed himself of this further remedy but did not succeed. Thereupon, the union, of which the petitioner was a member, started a dispute challenging the justness of the petitioner's dismissal from service. As it was not possible to effect a conciliation of this dispute, the matter was taken up to the Government who referred the dispute for adjudication under Section 10(1)(c) of the Industrial Disputes Act. Before the industrial tribunal the union put forward two contentions. The first was that the dismissal was not bona fide in that it involved an unfair labour practice as also that it was the result of victimization of the petitioner; and secondly, they pleaded that as a fact Natesan was carried on the tiller by the petitioner without his knowledge. Evidence was taken by the tribunal and as a result, it negated the allegations regarding unfair labour practice as well as victimization. It also found that the charge made against the petitioner was well founded. The question that then remained for consideration was as regards the justness of the punishment awarded by the employer. As regards this, the tribunal, after citing a number of decisions, came to the conclusion that the punishment of dismissal was too harsh and was not justified by the circumstances, and substituted for the punishment inflicted by the employer one of suspension for a period of six months without pay.

3. The employer, the respondent 1 here, took the matter in appeal to the Labour Appellate Tribunal. Before this appellate authority, the union raised the preliminary objection that no appeal lay to the tribunal under Section 7(1)(a) of the Labour Appellate Tribunal Act for the reason that no substantial question of law was involved in the appeal. The tribunal overruled this objection and after discussing the evidence in the case reached the same conclusion as the tribunal as regards the charge being proved and also as regards the mala fides of the employer. The appellate authority, however, held that there was no justification for interfering with the order of dismissal passed by the employer, and differing in that respect from the industrial tribunal, modified its order and gave as its answer that the dismissal of the employee was justified. It is this order of the Labour Appellate Tribunal that

is challenged before me as being beyond its jurisdiction.

4. The learned Counsel for the petitioner-workman urged that the Appellate Tribunal had no jurisdiction to entertain the appeal or to interfere with the order of the industrial tribunal, as no substantial question of law was involved in the appeal, and, on this ground, it was stated that the Labour Appellate Tribunal had exceeded its jurisdiction in judging the severity of the punishment and that in the circumstances of the case the Appellate Tribunal was incompetent to interfere with the order of the industrial tribunal. It was further urged that as the industrial tribunal had stated that it was setting aside the punishment of dismissal inflicted by the employer and substituted therefor the punishment which it decided was the reasonable one, on the stated ground that that would bring harmony into the relations between the employer and the workmen and would conduce to industrial peace, it could not be interfered with in appeal. In this connexion, reliance was placed on a passage in the judgment of Subba Rao, J., in *Ranganathan v. Madras Electric Tramways* 1952 I .L.J. 772 . The passage relied on was this:

The tribunal (the industrial tribunal) is not bound by the contractual terms between the parties but could make a suitable award for bringing about harmonious relations between the employers and the workmen. ... It would obstruct the work of the tribunal and prevent it from discharging its difficult task of bringing about harmonious relations between the parties. I would, therefore, hold that the industrial tribunal is not fettered by any such limitations on its power. The only limitation on its power is to bring about harmonious relationship between the employer and the workmen.

6. This is not the first occasion when the counsel appearing for workmen has relied on this passage as a charter to each adjudicator to substitute what he considered was fair and as affording legal justification for every order in favour of workmen, provided it was stated to be 'for securing industrial peace.' In my opinion, that proceeds on an entire misreading and misapprehension of what the learned Judge meant and arises out of the reading of this passage divorced from the facts of the case and the context in which it occurs. Subba Rao, J., was considering the right of an industrial tribunal to direct reinstatement of dismissed

workmen and was repelling an argument which attached an inviolable sanctity to contractual rights. In that connexion, the learned Judge said that contractual rights might not wholly determine the reliefs open to be afforded by an industrial tribunal. The words 'for securing harmony between employer and workmen' or 'for securing industrial peace' were certainly not meant to be a magical formula on the incantation of which an absolution was provided which precluded all enquiry into the propriety of the order.

7. It must not be forgotten that it is on the framework and basis of a social order which in great part rests on the sanctity and enforceability of obligations freely and voluntarily undertaken that industrial law itself has to function. Even before industrial tribunals, the contractual obligations of employers are binding and enforceable; similarly the obligations undertaken by workmen: only in their case, owing to the presumed economic inequality of labour vis-a-vis the employer, labour's contractual obligations are not strictly enforced, and the tribunal can disregard them, having regard to the initial inequality between the two contracting parties. It is not, however, correct to assume that before industrial tribunals, the obligations of the employer alone exist and that it is a tabula rasa so far as workmen are concerned. The proper approach, therefore, is to proceed on the basis of contractual obligations, relieving, however, the workmen of their strictness, where the result achieved would be harsh and one to which the workmen would not have agreed, if they were in a position to bargain on equal terms with the employer.

8. The question which the industrial tribunal was called on to adjudicate in this case was the justness of the dismissal of the workmen on the facts which I have already stated. The condition as to not permitting others to ride on the machine was one which was not wholly in the interests of the employer but was designed in the interests and safety of human beings. This would show the serious effect of any disregard of these instructions and the fact that an undertaking was taken from the workman, that if he disobeyed these instructions he was liable to dismissal, was with a view to bring home to the workman the peril involved in any departure from the rule. That condition was, in the present case, on the finding of the tribunal, deliberately broken. The bona fides of the employer in preferring a

charge was impugned; but that was negatived. The employee also pleaded that Natesan rode on the vehicle without his knowledge; that also had been found against. There had been a full-fledged enquiry into the charge by the employer and the charge was held established. It was in those findings that the employee was dismissed and it was in those circumstances that the dispute came before the tribunal. The tribunal rejected every contention regarding the mala fides of the employer as also the case of the employee on the merits and held that the workman was guilty of the misconduct regarding which there was no dispute that it was serious.

9. On these findings, the punishment inflicted by the employer would have had to stand unless, on some intelligible grounds, the tribunal reached the conclusion that it was unreasonable and excessive. I do not find learned Counsel for the petitioner disputing the position so far. But his contention was that if the tribunal repeated the formula 'that industrial peace required it,' but without further elucidating it as to why the employer's discretion should be interfered with, its order could not be interfered with, and could raise no question of law for consideration by the Labour Appellate Tribunal. I am wholly unable to agree with this contention. No doubt, the application of the rules of law to the particular facts of a case might not itself give rise to a point of law.

10. But, on a misapplication of law, a question of law would certainly arise. If the tribunal had a discretion to interfere with the punishment inflicted by the employer only in stated circumstances, the question whether that test was satisfied or not would be a question of law. Again, granting that the tribunal had discretion in the matter, that was a judicial discretion to be exercised on recognized principles, not an arbitrary one to be exercised at pleasure or capriciously, and it was the function, and I would add the duty, of an Appellate Tribunal, even though vested with jurisdiction to interfere only on points of law, to see that the discretion is not used arbitrarily, or in a manner contrary, to intelligible and acceptable principles.

11. In my judgment, the Appellate Tribunal had not exceeded its jurisdiction and the order impugned cannot be set aside. The writ petition fails and is dismissed with costs. Counsel's fee Rs. 50.

