The Management Of The Bangalore Woollen ... vs B. Dasappa, M. T. Represented By The ... on 3 February, 1960

Equivalent citations: AIR1960SC1352, (1960)IILLJ39SC, AIR 1960 SUPREME COURT 1352, 1960-61 18 FJR 93 1960 2 LABLJ 39, 1960 2 LABLJ 39

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Bench: K. Subba Rao, K.C. Das Gupta

JUDGMENT

K.C. Das Gupta, J.

1. On January 1956 when a reference was pending before an Industrial Tribunal of a dispute between the Management of the Bangalore Woollen Cotton and Silk Mills Co., Ltd., the appellant in both the appeals and its workmen, an application was made by the Management under Section 33 of the Indus trial Disputes Act for permission for discharge of Dasappa, the respondent in both the appeals. It was stated in the application that on an information being received that Dasappa had dishonestly removed property belonging to the Company a charge-sheet was framed against him and an enquiry held in which on a consideration of all the evidence the Manager came to the conclusion that the respondent was guilty of the charge made against him, which justified an order of discharge. This application was opposed by the Workers' Union on behalf of the Respondent, Dasappa and it was stated that the allegation of theft made against Dasappa was false and that the finding of the Manager was arbitrary and opposed to the principles of natural justice.

2. The Industrial Tribunal on a consideration, of the evidence of the witnesses examined by the Manager and also of two witnesses examined before it, formally recorded its conclusion in these words : "Having regard to all the material placed before us we cannot accept the conclusion of the Manager and we hold that no prima facie case of theft is established against the respondent with the result that we cannot grant the permission for discharging the respondent."

3. Against; this order of dismissal the appellant moved a petition under Articles 226 and 227 of the Constitution for the issue of an appropriate writ or directions after quashing the Tribunal's order. This petition was dismissed by the Mysore High Court on September 27, 1957.

4. Special leave to appeal under Article 136 of the Constitution was obtained from this Court on January 13, 1958, by the appellant against the High Court's order. The appeal filed on the basis of this leave is Appeal No. 211 of 1958. On the same day special leave was also obtained by the appellant against the order of the Industrial Tribunal. The appeal filed on the basis of the leave thus

granted is Appeal No. 212 of 1958.

5. Before considering the merits of the appeal, we have to record the fact that an undertaking was given to us on behalf of the appellant by its Advocate on Record that whatever our decision may be, the appellant will not enforce the proposed order of discharge for which the application was made.

6. In the appeal against the Tribunal's order refusing the application for discharge it has been contended that though there is a formal finding that no prima facie case of theft has been established against Dasappa the Tribunal has in coming to this conclusion disregarded the pronouncements of this Court in more than one case as regards the principles which should guide the Tribunals in such matters.

7. The case which the Manager found proved was that Dasappa who was on duty on the Company's Motor Van on December 23, 1955, was found coming out of the second main gate of the Hebbal Mills with a rug piece, a property of the Company, and then concealing it under the cushion of the Van. Direct evidence as regards this was given before the Manager by one Syed Ameer. According to him, his suspicions were aroused by the way Dasappa was furtively looking to either side while coming out of the Spinning gate, and that he saw in Dasappa's hand the striped edge of a rug piece. Dasappa came near the lorry with it and opened the door and lifted the cushion and as he brought out his hand, Ameer found that it was empty. It was further his evidence that he rushed to the second main gate and when at his request the lorry was stopped the rug piece was discovered under the cushion. Corroborative evidence has been given by Subedar Athilingam who states that Syed Ameer reported this incident to him at once. Statements were also made before the Manager by these persons that Dasappa admitted his guilt and begged to be excused. The Driver of the lorry has also stated that when Dasappa at the request of Syed Ameer removed the cushion the rug piece was discovered and Dasappa then said "I did a mistake".

8. That the rug was discovered under the cushion is not disputed. Dasappa's case, however, was that he knew nothing as to how it came there, that he had gone to the dispensary and it was when he had just returned from the dispensary, that the thing: was discovered. The suggestion obviously was that this was planted there by somebody out of enmity with him. It does not appear to have been disputed before the Manager that the piece of rug belonged to the Company. The main question that then remained for consideration was whether the story of the watchman, Syed Ameer should be believed. The manager did believe this witness and held that Dasappa was guilty of the theft. In deciding whether the permission to award the proposed punishment of discharge should be granted or not, it became the duty of the Tribunal to see whether in holding the inquiry the Management had been guilty of any unfair labour practice or victimization, whether principles of natural justice were observed and ultimately whether a prima facie case was made out on the evidence taken in the enquiry and the Management was acting bona fide. In. Lakshmi Devi Sugar Mills Ltd. v. Ram Sarup, this Court considered the scope of enquiry under Section 22 of the Industrial Disputes Act and observed :

> "The Tribunal before whom such an application for permission is made under Section 22 of the Act would not be entitled to sit in judgment on the action of the employer if

> once it came to the conclusion that a prima facie case had been made out for dealing out the punishment to the workman. It would not be concerned with the measure of the punishment nor with the harshness or otherwise of the action proposed to be taken by the employer except perhaps to the extent that it might bear on the question whether the action of the Management was bona fide or was actuated by the motive of victimisation. If on the materials before it the Tribunal came to the conclusion that a fair enquiry was held by the management in the circumstances of the case and it had bona fide come to the conclusion that the workman was guilty of misconduct with which he had been charged a prima facie case would be made out by the employer & the Tribunal would under these circumstances be bound to give the requisite permission to the employer to deal out the punishment to the workman."

9. The matter was again considered in Martin Burn Ltd. v. R. N. Banerjee, where this Court observed, after setting out the materials on the record in that case :

> "The Labour Appellate Tribunal had to determine on these materials whether a prima facie case had been made out by the applicant for the termination of the respondent's service. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence."

10. The settled position in law there fore is that permission should be refused if the Tribunal is satisfied that the Management's action is not bona fide or that the principles of natural justice have been violated or that the materials on the basis on which the Management came to a certain conclusion could not justify any reasonable person in coming to such a conclusion. In most cases it will happen where the materials are such that no reasonable person could have come to the conclusion as regards the workman's misconduct that the Management has not acted bona fide. A finding that the Management has acted bona fide will ordinarily not be reached if the materials are such that a reasonable man could not have come to the conclusion which the Management has reached. In every case therefore it would be proper for the Tribunal to address itself to the question, after ascertaining that the principles of natural justice have not been violated, whether the materials on which the Management has reached a conclusion adverse to the work man, a reasonable person could reach such a conclusion.

11. It appears to us that in the present case the Tribunal has not followed the principles laid down in above cases. While there are certain observations which might make one think that the Tribunal had in mind the principles that the finding on which permission is asked for had to be perverse before permission could be refused, it is clear that the Tribunal instead of addressing itself to the question whether on the materials on the record the conclusion reached by the Management could reasonably be reached, asked itself the question whether that was the correct conclusion. Thus after recording the view that the question whether Dasappa did go to the dispensary or not had not much bearing

on the merits of the case the Tribunal observed: "The main point for consideration is whether from the material placed before us by the Association it could be concluded that it was the respondent who kept the article underneath the cleaner's seat." The question was not whether this could be concluded but whether on the materials on the record any reasonable man could have come to the conclusion that this was true. After discussing the evidence in detail and saying that there was a break in the link in the chain of evidence in so far as the Management had not proved as to where articles of this type had been kept, it proceeded to observe further thus : "We are prepared to observe that the Manager has acted bona fide in the conduct of the enquiry but we are of opinion that having regard to all the circumstances he might not have accepted the version of M. W. 2".

12. It is worth noticing that the Tribunal itself recorded a conclusion that there could be no doubt that the article which was discovered from under the cushion was the property of the Hebbal Mills. The Tribunal seems to have been much concerned about the question as to where such articles had been kept on the particular day. We are unable to agree that the absence of proof as to where the article had been kept on the particular day, would be of much assistance. The really important question was whether --leaving out the story of confession which it must be mentioned was retracted almost immediately--the account given by Syed Ameer was believable. The Tribunal rightly thought, whether Dasappa had really gone to the dispensary or not was not of much importance. For even if he had gone to the dispensary it might not have been impossible for him to remove the rug piece from inside the Mill. The Tribunal was not called upon to decide whether in its opinion the evidence given by these witnesses was true but only whether when the Manager stated that he considered this evidence credible, he had acted like a reasonable person.

13. We are not concerned in this case with the question whether the view taken by the Tribunal was a better view than the view taken by the Manager. It appears clear that the Tribunal placed the wrong standard before it in addressing to itself the question whether the evidence conclusively proved the guilt of Dasappa. In our opinion, if the correct approach as directed in the decisions of this Court had been applied the Tribunal was bound to come to the con-elusion on the materials On the record that a reasonable man could come to the conclusion that Dasappa was guilty of theft and that the Management had acted bona fide.

14. The Tribunal has not recorded any finding that the principles of natural justice were not followed. It was faintly suggested by Mr. Jha on behalf of the respondent that the Management ought to have asked Dasappa whether he wanted to adduce any evidence and in so far as this was not done the principles of natural justice had been violated. It does not appear that at any time any complaint was made that Dasappa had not been given an opportunity to adduce evidence. A perusal of the proceedings before the Manager would indicate that the Manager was really anxious to find out the truth of the matter and for that purpose gave every opportunity to Dasappa to cross-examine the witnesses, had the evidence interpreted in Dasappa's own language and asked him after cross-examination of almost each of the witnesses whether he had any reason to believe that that witness bore any ill-will or any grudge against him. It could not be fairly urged therefore that the principles of natural justice were not observed in this case. Nor is there any justification for thinking that the Management had any intention to victimise this man.

15. Our conclusion therefore is that the Tribunal erred in refusing the permission asked for. In view, however, of the undertaking given to us on behalf of the appellant that the proposed order of discharge will not be enforced, it is not necessary for us to make any order granting permission. In view of this, we dismiss both the appeals, but in the circumstances without costs.