Indian Telephone Industries & Anr vs Prabhakar H. Manjuare & Anr on 30 October, 2002

Equivalent citations: AIR 2003 SUPREME COURT 195, 2003 (1) SCC 320, 2002 AIR SCW 4635, 2002 LAB. I. C. 3746, 2002 AIR - KANT. H. C. R. 3174, 2003 LAB LR 68, 2002 (2) UJ (SC) 1541, (2003) 1 ALLMR 781 (SC), (2003) 1 JCR 83 (SC), (2002) 9 JT 183 (SC), 2002 (8) SCALE 235, 2002 (9) JT 183, 2002 (10) SRJ 505, 2002 (6) SLT 291, 2002 UJ(SC) 2 1541, 2003 BLJR 1 686, (2003) 2 PAT LJR 75, (2003) 1 BLJ 817, (2002) 4 LAB LN 1161, (2002) 8 SUPREME 215, 2003 SCC (L&S) 46, (2003) 2 JLJR 19, (2002) 7 SERVLR 187, (2002) 3 LABLJ 1134, (2003) 102 FJR 1, (2002) 95 FACLR 1108, (2003) 1 MAHLR 480, (2003) 1 SCT 39, (2002) 8 SERVLR 187, (2003) 1 ANDHLD 77, (2002) 8 SCALE 235, (2003) 1 ANDH LT 28, (2002) 3 CURLR 993, (2003) 95 CUT LT 490

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Bench: Doraiswamy Raju, Shivaraj V. Patil

CASE NO.:
Special Leave Petition (civil) 15054-15055 of 1998

PETITIONER:
Indian Telephone Industries & Anr.

RESPONDENT:
Prabhakar H. Manjuare & Anr.

DATE OF JUDGMENT: 30/10/2002

BENCH:
DORAISWAMY RAJU & SHIVARAJ V. PATIL.

JUDGMENT:

J U D G M E N T SHIVARAJ V. PATIL J.

The judgment and order dated 15.6.1998 of the Division Bench of the Karnataka High Court passed in Writ Appeal Nos. 8826/96 and 265/97 are under challenge in these appeals. In the written submissions filed on behalf of the petitioners, it is stated that Mr. T.Pionnagiri left the service of the petitioner-company and hence the SLP and the reliefs may be confined to Mr. Prabhakar H. Manjare. Hence the special leave petition is confined to him only. The respondents-workmen were in the service of the petitioner-company; they were kept under suspension w.e.f. 4.5.1984; since an industrial dispute was already pending, the company moved an application seeking approval of the

order of dismissal dated 21.1.1986 of the respondents under Section 32(2)(b) of the Industrial Disputes Act, 1947 (for short `the Act'). The National industrial Tribunal by two separate orders, both dated 1.9.1987 held that the orders of dismissal were invalid for non-compliance of the provisions of Section 33(2)(b) of the Act in that wages for one month were not paid; these orders of the Tribunal remained unchallenged and reached finality. The petitioners, treating the non-compliance of Section 33(2)(b) as mere technical breach, passed orders of dismissal for the second time on 9.10.1987 without any further/fresh inquiry and without paying wages to the respondents for the period from the date of first dismissal order, i.e., 21.1.1986 to 9.10.1987, i.e., date of second dismissal order; the company again moved applications seeking approval of the orders of dismissal before the National Industrial tribunal; this time the Tribunal granted approval on 2.3.1989 relying on the judgment of this Court in M/s.Punjab Beverages Pvt. Ltd., Chandigarh vs. Suresh Chand & Anr. [(1978) 2 SCC 144). In the writ petition filed by the respondents, the learned Single Judge of the High Court upheld the order of the Tribunal; the respondents filed writ appeals challenging the order of the Tribunal as affirmed by the learned Single Judge; the Division Bench of the High Court by the impugned order allowed the appeals and set aside the order of the learned Single Judge affirming the order of the Tribunal and held that the respondents shall be deemed in continuous service of the petitioners and were entitled to all consequential benefits. Aggrieved by the same, the petitioners have filed special leave petitions in this Court raising the questions similar to the questions raised in Civil Appeal Nos. 87-88 of 1986 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Others) [(2002) 2 SCC 244] and those appeals were referred to the Constitution Bench. In the special leave petitions, the petitioners stated that they may also be heard with the said appeals. This Court on 9.8.2001 ordered that the special leave petitions filed by the company be also heard alongwith Civil Appeal Nos. 87-88 of 1986. The Constitution Bench decided the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra) holding Punjab Beverages vs. Suresh Chand [(1978) 2 SCC

144) is no more a good law and approved the judgment in Straw Board Manufacturing Co. vs. Govind [1962) Supp. 3 SCR 618] and Tata Iron and Steel Co. Ltd. Vs. S.N. Modak [(1965) 3 SCR 411]. The questions raised in the special leave petitions filed by the petitioners are covered by the Constitution Bench judgment delivered on 17.1.2002 in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra). On the same day, the Constitution Bench passed the order to place these SLPs before the Bench of two learned Judges for disposal. Thus, these SLPs came up for hearing before this Bench.

Mr. K.N. Rawal, learned Addl. Solicitor General, being conscious of the fact that the questions raised in SLPs. are covered against the petitioners by the Constitution Bench judgment aforementioned, urged that the Company was not precluded from passing a second order of dismissal after payment of one month's wages to the respondents complying with the requirements of the proviso to Section 33(2)(b) of the Act and seeking approval for the same by the Tribunal. According to him, the Tribunal was right in granting approval to the second order of dismissal which the learned Single Judge of the High Court affirmed; the Division Bench of the High Court committed an error in taking a contrary view in the impugned judgment. In support of his submission, he strongly relied on Tata Iron & Steel Co. (supra) drawing our attention to the observation in the said judgment that if the approval is not accorded by the Tribunal, the employer would be bound to treat the

respondent as its employee and pay his full backwages for the period even though the appellant may subsequently proceed to terminate the respondent's services.

On the other hand, learned counsel for the respondent made submissions supporting the impugned judgment and reiterated the submissions that were made before the Division Bench of the High Court. The learned counsel added that the case of Tata Iron & Steel Co. (supra) does not help the petitioners on facts of the present case.

We have carefully considered the submissions made by the learned counsel for the parties.

A Constitution Bench of this Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., has ruled that the conditions contained in the proviso to Section 33(2)(b) are mandatory in nature and their non-compliance would render the order of discharge or dismissal void or inoperative. It is further held that if the Tribunal refuses to grant approval sought for under Section 33(2)(b), the effect of it shall be that the order of discharge or dismissal had never been passed and consequently the employee would be deemed to have continued in service entitling him to all the benefits available. It is also made clear that not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). While approving the cases of Straw Board (supra) and Tata Iron & Steel Co. (supra), the case of Punjab Beverages (supra) is overruled.

It is admitted position that the petitioners did not reinstate the respondents after the Tribunal passed order on 1.9.1987 refusing to approve the first order of dismissal dated 21.1.1986; they were also not paid their wages between the first order of dismissal dated 21.1.1986 and the second order of dismissal dated 9.10.1987; the judgment of the Tribunal dated 1.9.1987 had attained finality inasmuch as it was not challenged any further before the High Court or this Court. It appears the second order of dismissal was passed on the assumption that non- compliance with the requirements of the proviso to Section 33(2)(b) was only a technical breach and, therefore, by paying one month's wages, second order of dismissal could be passed. The approach of the Tribunal as can be seen from its judgment is on the same lines. Referring to the judgment in Punjab Beverages (supra), in para 9 of the order of the Tribunal, it is stated that if an application for approval is rejected on the ground that one month's wages were not paid simultaneously with the dismissal order, it would not have the effect of invalidating the order of dismissal; an application for approval which is rejected on the ground that Section 33(2)(b) is not complied with, cannot be considered to be refusal of approval; it is only when the question is considered by the Tribunal on merits and approval is refused, such refusal would have the effect of invalidating the dismissal order. Again in para 11, the Tribunal based on the observations made in Punjab Beverages (supra) has held that rejection of the earlier application as not maintainable on the ground that one month's wages were not fully paid along with the dismissal order did not invalidate it and it would not bar a fresh application for approval. In para 12, it is further stated thus:-

> "As the earlier dismissal order was not null and void, there was no question of allowing the workman to resume duty or to pass a formal order of reinstatement. As a matter of fact, it was not even necessary to pass a second order of dismissal, because,

> as held by the Supreme Court in Punjab Beverages case (supra), contravention of Section 33(2)(b) while dismissing the workman, does not have the effect of rendering the order of dismissal void or inoperative. But, when an application for approval is rejected, before filing a fresh application for approval, the management will have to withdraw the earlier dismissal order and pass a fresh dismissal order, not because the earlier dismissal order had become void ab initio, but because filing of an application under Section 33(2)(b) has to be simultaneous with the passing of the dismissal order. The present application for approval is therefore perfectly legal and maintainable."

As already noticed above, the Punjab Beverages case (supra) on these points is overruled by the Constitution Bench judgment (supra).

The judgment dated 1.9.1987 given by the Tribunal had reached the finality inasmuch as it was not challenged by the petitioners any further. The respondents were not reinstated in service even thereafter. In the light of the Constitution Bench judgment aforementioned, the order refusing to give approval for dismissal on the ground of non-compliance with the proviso to Section 33(2)(b) rendered it void and inoperative and the respondent was deemed to have continued in service as if no order of dismissal was passed. Admittedly, no wages were paid to the respondent for the period between the first and second order of dismissal. The main question that came up for consideration in Tata Iron and Steel Co. (supra) was whether the proceeding validly commenced under Section 33(2)(b) would automatically come to an end merely because the main industrial dispute had meanwhile been finally determined. In the said case, it is held thus:-

> "...even if the main industrial dispute is finally decided, the question about the validity of the order would still have to be tried and if the approval is not accorded by the Tribunal, the employer would be bound to treat the respondent as its employee and pay him his full wages for the period even though the appellant may subsequently proceed to terminate the respondent's services. Therefore, the argument that the proceedings if continued beyond the date of the final decision of the main industrial dispute would become futile and meaningless, cannot be accepted."

Having not challenged the earlier order dated 1.9.1987, it was not open to the petitioners to make a second application seeking approval for the order of dismissal of the respondent, that too without paying full wages. The Division Bench of the High Court has found that the second order of dismissal amounted to unfair labour practice and victimization. The Tribunal was not justified in allowing the second application seeking approval by ignoring the dismissal of the earlier application made by the management for non-compliance of the mandatory provisions of law. The Tribunal proceeded on the ground that the earlier application was not decided on merits and held that it was open to the petitioners to file a second application. This is clearly contrary to decision of the Constitution Bench. It appears to us that the petitioners designed to defeat the claim of the respondents by making a second application when the order suffered by them on the first application had become final. Even as stated in the decision of Tata Iron & Steel Co. (supra) the

petitioners failed to pay full wages to the respondents between the period of two dismissal orders. The case of Tata Iron & Steel Co. (supra) on facts of the present case does not help the petitioners. The question that was dealt in that case was altogether different.

Thus, having regard to all aspects of the matter, we are not inclined to interfere with the impugned judgment exercising our jurisdiction under Article 136 of the Constitution of India. Accordingly, these special leave petitions are dismissed. No costs.