

The Workmen Employed In B & C Mills, ... vs The Management Of B & C Mills, Madras on 31 July, 1969

Equivalent citations: (1970)ILLJ26SC, 1969(1)UJ494(SC), AIRONLINE 1969 SC 92

JUDGMENT

Vaidialingam, J.

1. This appeal, by special leave by the workman employed in B & C Mills, Madars, is directed against the award, dated February 24, 1968 of the Labour Court, Madras. The dispute that was referred for adjudication related to the legality of the order passed by the management dismissing a worker, Loganathan, from service. The worker Loganathan was employed as a clerk in the Preparation Department of the respondent Mills. A charge-sheet, Exhibit M-7, was issued on October 18, 1965 alleging that the worker had committed certain acts which amounted to misconduct under standing Order 13 (d) and though he was liable for summary dismissal, the management was giving him an opportunity to state his defence to the charges. As the actual findings recorded on merits against the workmen are not canvassed before us, it is not necessary to refer to the nature of the allegations contained in the charges.

2. The workman submitted an explanation, Exhibit M-8, on October 20, 1965 denying allegations. The Senior Labour Officer of the management recorded the evidence of the management's witnesses and also the statements of the worker and submitted the proceedings to the Mill Manager. The record of the proceedings before the Senior Labour Officer is Exhibit M-9. The Mill Manager, after scrutinising the proceedings of the enquiry and after getting the further explanations of the worker, passed an order. Exhibit M-10, on November 4, 1965 holding "the worker guilty of the charges dismissing him from service. The dismissal of the worker led to an industrial dispute which was referred for adjudication to the Labour Court concerned, by the State of Madras.

3. Before the Labour Court, the Union contended that the entire enquiry proceedings were illegal and void as they had been conducted by the Senior Labour Officer who had no authority. According to the Union, under Standing Order 14, it is only the Mill Manager who is competent to conduct the enquiry. The Union further contended that even assuming that the Senior Labour Officer had jurisdiction to conduct the enquiry, he had not recorded any findings as to the guilt or otherwise of the workman. On the other hand, it was the Mill Manager, who passed the order of dismissal after recording the findings. According to the Union this was really a case of one authority conducting an enquiry and another authority recording its findings and taking disciplinary action against the workman and, as such, the entire proceedings were contrary to the principles of natural justice. Even to the findings recorded by the Mill Manager objections were taken on the ground that they were not supported by the evidence recorded in the case. A further objection was taken that the

Senior Labour Officer had really acted both as a Judge and as a Prosecutor in as much as he had very severely cross-examined the workman and this was also not permissible under law.

4. The management, on the other hand, supported the domestic enquiry conducted against the worker and urged that the enquiry proceedings had been held in conformity with the provisions of the Standing Orders and that the findings recorded at the enquiry were all based on the evidence adduced in the case. The management further contended that the enquiry was really conducted by the Mill Manager in as much as he gave the charge-sheet to the workman and passed the order of dismissal after considering the evidence recorded by the Senior Labour Officer and after giving an opportunity to the worker to place his defence. The Senior Labour Officer did nothing but collect the necessary material in the form of evidence of witnesses and statements from the workman to enable the Mill Manager to take the necessary action.

5. The Labour Court has held that the enquiry proceedings are valid and that the Mill Manager has jurisdiction to delegate another to hold an enquiry. The Court has also held that the findings recorded by the Mill Manager are correct and based on the evidence recorded in the case. It has further held that the domestic enquiry held by the management is unassailable and, in consequence, the order of dismissal is legal and valid. But, in coming to this conclusion the Labour Court has observed that the Standing Orders of the Company which have been certified under the Industrial Employment (Standing Orders) Act, 1948 though binding on the employer and the workers have no statutory force and, in consequence, they are merely directive and not mandatory. It has further observed that any non-compliance of the Standing Orders will not render an enquiry bad, for that reason.

6. We may straight away say that these observations of the Labour Court are erroneous. The Labour Court has mis-understood the decisions of this Court on this point. This Court has held that standing Orders, which have been certified under the Industrial Employment (Standing Orders) Act, 1948 become part of the statutory terms and conditions of service between the industrial employer and his employees and that they will govern the relations between the parties. (i) Vide; Workmen of Dewan Tea Estate and Ors. v. The Management, .

7. Mr. Mohan Kumaramangalam, learned counsel for the workman appellants, has contended (i) that the enquiry proceedings are illegal and void in as much as the Mill Manager did not conduct the enquiry as laid down by Standing Order 14; and (ii) even assuming that the Senior Labour Officer was competent to conduct the enquiry, he has not recorded any findings whereas the findings have been recorded by the Mill Manager and that amount to a violation of the principles of natural justice. There has been a subsidiary contention that the Senior Labour Officer has acted both as a Prosecutor and as a Judge, which again vitiates the enquiry.

8. Mr. Gokhale, learned counsel for the respondent-management, has urged that the enquiry in this case has been conducted in accordance with Standing Order 14. It was the Mill Manager who had given the charge-sheet to the worker and, after considering the evidence collected by the Senior Labour Officer under his direction, the Mill Manager that recorded findings holding the worker guilty of misconduct. Those findings have been recorded by the Mill Manager after giving the worker

a full opportunity to substantiate his defence. What had been done by the Senior Labour Officer was only to record the evidence of witnesses and the statements of the worker and to forward the same to the Mill Manager for taking the necessary decision in the matter.

9. There is no prohibition in the Standing Orders which places any limitation on the power of the Mill Manager to direct another officer to record the evidence for the purpose of taking action against a workman. In as much as the Senior Labour Officer was only recording the evidence it was unnecessary for him to give any findings. On the other hand, Mr. Gokhale further urged, that the proper authority, the Mill Manager, had considered the evidence and recorded his findings. The Senior Labour Officer had allowed the workman full opportunity to cross-examine the witnesses on the side of the management and as such there was no violation of the principles of natural justice vitiating the proceedings conducted by the Senior Labour Officer.

10. All the three contentions of Mr. Mohan Kumaramangalam may be dealt with together. The relevant part of Standing Order 14 relating to dismissal or suspension by way of substantive punishment is as follows :

"14. ...

No order of dismissal or suspension as substantive punishment shall be valid--

(1) unless the employee concerned--

(a) is informed in writing of the alleged misconduct, with a list of witnesses appended to the charge-sheet.

(b) is given a reasonable opportunity and time of at least 48 hours' duration to explain the circumstances alleged against him, and

(c) is, if the employee so desires in writing, allowed the help, in the conduct of the enquiry regarding dismissal or suspension, of any co-worker of the same department as the worker, whether a member or an officer of a labour union or not, and (2) unless an enquiry is held by the Manager in conformity with the principles of natural justice, and the order of suspension or dismissal states in a clear, brief and concise manner the reasons for the order of suspension or dismissal. . . ."

Having due regard to the enquiry proceedings in this case, evidenced by Exhibits M-7 to M-11, we are satisfied that the enquiry in this case has been conducted by the Mill Manager.

11. It was the Mill Manager who furnished the charge-sheet to the workman, under Exhibit M-7, charging him with misconduct under Standing Order 13 (d). The Senior Labour Officer had been authorised by the Mill Manager to record the evidence and collect the necessary materials. The Senior Labour Officer commenced the proceedings on October 21, 1965 and, after drawing the attention of the workman concerned to the charge-sheet and his reply, asked him whether he was

pleading guilty or not guilty. On the workman pleading not guilty the witnesses on the side of the management were examined. The workman was given full opportunity to cross-examine the witnesses and, after those witnesses had been examined and cross-examined, the worker was asked to state whether he had anything further to say. Exhibit M-9 further shows that the Senior Labour Officer has stated that he will place the proceedings before the Mill Manager who will send for the worker and give his decision. When the Secretary of the Staff Union later on made a representation that the extent of the damage which could be attributed to the conduct of the worker was to be ascertained as that information might have a bearing on the question of the punishment to be imposed, the Senior Labour Officer, in view of this representation, again summoned the worker and placed before him the particulars regarding the quantum of damage. The worker indicated that he did not wish to examine the Assistant in the Finished Warehouse from whom the particulars had been collected. Finally the Labour Officer was stated that the Mill Manager would look into the evidence and given his decision. It will therefore be seen that excepting the necessary materials and placing them before the Mill Manager for the purpose of enabling the latter, who is the authority to impose a punishment under the Standing Orders, to come to a conclusion regarding the guilt or otherwise of the worker, the Senior Labour Officer had not expressed any opinion regarding the merits of the case. That is as it should be in view of the limited function that the Senior Labour Officer was discharging.

12. Exhibits M-10 and M-11 clearly show that the Mill Manager, after elaborately going into the various items of evidence collected under Exhibit M-9 and after giving a fair and full opportunity to the worker to explain the circumstances bearing against him in the evidence, has recorded a finding that the worker concerned is guilty of misconduct and, in consequence, passed the order of dismissal.

13. As the findings recorded by the Mill Manager are not under challenge before us it becomes unnecessary to consider the various items of evidence taken into account by the Mill Manager for holding the worker guilty of misconduct. The question naturally arises whether the Mill Manager has acted legally in delegating to the Senior Labour Officer, in this case, the task of collecting the necessary evidence. We do not find any such prohibition in the Standing Orders. The requirement is that the enquiry is to be in conformity with the principles of natural justice. As pointed out by this Court in *Pradyat Kumar Base v. The Hon'ble the Chief Justice of Calcutta High Court*, .

" . the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power. It is nonetheless so, by reason of the fact that an opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereof. It is well-recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides--is the ultimate responsibility for the exercise of such power."

We have already pointed out that in the case before us the function of the Senior Labour Officer was only to collect the necessary evidence in respect of the charges and place it before the Mill Manager. There is no Standing order prohibiting the Mill Manager from so authorising the Senior Labour Officer. The order finding the worker guilty, and in consequence dismissing him from service, was passed by the Mill Manager. Therefore in our opinion, the enquiry proceedings cannot be held to have contravened the provisions of Standing Order 14.

14. In the nature of the jurisdiction exercised by the Senior Labour Officer he had no authority to record any findings on the basis of the evidence recorded by him. On the other hand it is the Mill Manager, the authority competent to impose the punishment that has gone into the evidence and ultimately found the worker guilty of misconduct and imposed the punishment of dismissal. Therefore there is no violation of the principles of natural justice, nor this is a case of an enquiry being conducted by one officer and the finding being recorded by another.

15. There is no warrant for the criticism leveled by the appellant that the senior labour Officer has acted both as the prosecutor and the Judge when he recorded the evidence in this case. No doubt there was no officer separately conducting the prosecution on the side of the management, but what the Labour Officer had done, as evidenced by Exhibit M-9, was to put questions to the witnesses and elicit answer and allow the worker to cross-examine those witnesses. Similarly he has also taken the statements of the worker and asked for clarification from him wherever necessary. Therefore the enquiry proceedings, as held by the Labour Court, have been completely fair and impartial. In fact we find that even after the evidence was closed on Oct. 29, 1965 when the Secretary of the Staff Union desired the Senior Labour Officer to collect materials regarding the extent of damage, as that might go to mitigate the offence, if any, committed by the worker, the Labour Officer reopened the proceedings on November 2, 1965 after intimation to the worker. The worker was made aware of the particulars of damage collected and his comments regarding those particulars have been recorded by the Labour Officer and the entire proceedings have been forwarded by him to the Mill Manager. These circumstances clearly show that the Senior Labour Officer has conducted the proceedings in an impartial manner.

To conclude, all the contentions of the appellant fail. The appeal is accordingly dismissed but, in the circumstances, without costs.