

The Imperial Tobacco Company Of India ... vs Its Workmen on 16 March, 1961

Equivalent citations: AIR1962SC1348, [1961(3)FLR524], (1961)IILLJ414SC

Author: K.N. Wanchoo

Bench: P.B. Gajendragadkar, K.N. Wanchoo

JUDGMENT

K.N. Wanchoo, J.

1. This appeal by special leave arises out of a dispute between the appellant and its workmen with respect to the dismissal of one Akhileshwar Prasad. Akhileshwar Prasad was responsible for the maintenance of leave registers. In December, 1957, he was charged with regard to his wilfully omitting to make entries in respect of the annual leave, sick leave and casual leave taken by him during the period from January 1, 1957 to September 28, 1957. He was also charged with altering and overwriting without the appellant's knowledge entries relating to 1957 leave and leave carried forward from the previous year 1956 in respect of certain other employees, thereby intentionally causing wrongful gain to himself and to other clerks. The last charge was with respect to his neglecting the duty of keeping in safe custody the leave register for 1956 which was missing. Akhileshwar Prasad denied his responsibility with respect to these charges and consequently an inquiry was made against him.

2. Under the Standing Orders of the appellant an elaborate procedure is provided for inquiries into charges of misconduct like the present. The charge has to be read out to the employee & all witnesses in support of the charge are to be examined in his presence unless he deliberately absents himself, in which case a note to that effect has to be recorded. The employee charged is allowed to cross-examine the witnesses, if he declines to do so a note to that effect has to be recorded. The employee has liberty to produce such witnesses as he wishes, unless he refuses to do so, in which case a note to that effect has to be recorded. After the evidence is over, the branch manager has to make a brief appraisal of the evidence recorded and has to record his conclusion and the punishment if any intended to be imposed by him in writing. In doing so he has to take into consideration the service record of the employee concerned and has to record what such employee has to say against the intended punishment. He then passes the order of punishment in writing, recording the misconduct proved and the punishment imposed in the service record of the employee concerned.

3. The main contention on behalf of the respondents was that the procedure prescribed for an inquiry was not followed and therefore the dismissal of Akhileshwar Prasad was invalid. It appears from the record of the inquiry proceeding that after two witnesses were examined on behalf of the appellant there was a dispute as to the cross-examination of the second witness. In consequence of this Akhileshwar Prasad declined to cross-examine the second witness further and withdrew from the inquiry. Thereafter it seems that the inquiry was closed and the branch manager passed the following order against Akhileshwar Prasad:--

"Akhileshwar Prasad dismissed from service under Branch Standing Order 17 (d) with effect from November 27, 1957. This decision has been communicated to him by letter No. P/64/33 dated December 11, 1957."

A reference was made to the labour court by the Government of Bihar on February 25, 1958, asking it to decide whether the dismissal of Shri Akhileshwar Prasad was justified and if not, whether he was entitled to reinstatement or any other relief. The labour court held that Akhileshwar Prasad was in-charge of the leave register. It also held that the inquiry was not carried out as required by the Rules and therefore the order of dismissal was invalid. It then went into the question whether the appellant had justified the order of dismissal before it & came to the conclusion that though there was some negligence on the part of Akhileshwar Prasad, it was not such as to bring the case within Standing Order 16(d), (k) or (l) with which he was charged. However, it held that as the omissions were also in respect of Akhileshwar Prasad's own leave account of which he should have been more particular, it ordered his reinstatement with only 50 per cent of his wages for the period of his absence from duty, as, in its opinion, that penalty was proper in the ends of justice.

4. There can be no doubt in this case that the inquiry was not conducted in the manner required by the Standing Orders of the appellant. Even though Akhileshwar Prasad had withdrawn from the inquiry-- whether rightly or wrongly--the inquiry should have been completed and all evidence should have been taken ex parte. Thereafter it was the duty of the branch manager to appraise that evidence and record his conclusion as to what misconduct had been proved and also to decide what punishment he intended to inflict. Thereafter he had to ask the employee what he had to say against the intended punishment and it was only after taking the explanation of the employee as to the intended punishment that he could pass an order punishing him. The fact that Akhileshwar Prasad withdrew from the inquiry at an early stage did not absolve the inquiry officer from concluding the inquiry by taking evidence ex parte. It also did not absolve the branch manager from following the procedure prescribed in Clause 18 (b) (10) of the Standing Orders. Even though Akhileshwar Prasad had withdrawn from the inquiry, the branch manager should have appraised the evidence, recorded his conclusions and the punishment he intended to inflict and should have called upon Akhileshwar Prasad to say what he wanted to say against the intended punishment. It was only thereafter that he could proceed to punish Akhileshwar Prasad. What happened in this case however was that as soon as Akhileshwar Prasad withdrew from the inquiry, it was closed and the branch manager proceeded to pass the order of dismissal which we have already set out above, without seeing that the inquiry was completed and all that was required by Clause 18(b)(10) to be done was done. In the circumstances the labour court was right in holding that the inquiry which resulted in the dismissal of Akhileshwar Prasad in this case was not a valid inquiry as required by the Standing Orders of the

appellant.

5. Once this conclusion was reached, the matter was open before the labour court to decide for itself whether the charges on which Akhileshwar Prasad was dismissed had been proved before it; but as to that no evidence was led before the labour court except the production of the record of the inquiry proceedings and certain documentary evidence. On considering whatever evidence was produced before it--and it was meagre enough -- the labour court came to the conclusion that of the three charges framed against Akhileshwar Prasad two, viz., (i) relating to altering and over-writing the entries in the leave register with respect to other employees, and (ii) relating to neglect in keeping in safe custody the leave register of 1956, had not been proved. As to the charge with respect to omitting the entries in respect of the annual, sick and casual leave taken by Akhileshwar Prasad himself, the labour court was of the view that though there was negligence on his part it was not such as to come within Clause 16 (d), (k) or (l) of the Standing Orders. We cannot say in this case that the labour court was patently wrong in holding that charges under Clauses 16 (d) and 16 (k) had not been prayed. As to the charge under Clause 16(l) which relates to habitual negligence or neglect of work of a serious nature, the matter may be somewhat open to doubt inasmuch as the entries which were omitted were spread over a period of nine months and related to the case of Akhileshwar Prasad himself; but we do not think we would be justified in an appeal under Article 136 of the Constitution to reverse the view taken by the labour court unless it can be said that the view was perverse or patently wrong on the materials before the court That however is not possible for us to say and the view taken by the labour court on the evidence before it was a possible view. In these circumstances we are of opinion that there is no case for our interfering with the order of the labour court.

6. Finally it was urged on behalf of the appellant that this was not a case where the labour court should have ordered reinstatement of Akhileshwar Prasad and the ends of justice would have been met by compensating him, and in this connection reference was made to the entries in his service record. We have looked into those entries and all that we need say is that the sort of negligence which has occurred in this case has happened for the first time. In the circumstances we do not think that there is any justification for interfering with the order of reinstatement. The appeal fails and is hereby dismissed with costs.