Caltex (India) Ltd. vs E. Fernandes And Anr. on 31 October, 1956

Equivalent citations: AIR1957SC326, 1957(0)KLT212(SC), AIR 1957 SUPREME COURT 326, 1957 KER LT 212, 1957 (1) LABLJ 1, 1956-57 11 FJR 287

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Bench: S.K. Das

JUDGMENT

Bhagwati, J.

1. The facts leading up to this Special Leave Appeal lie within a very narrow compass. The first respondent was engaged in the service of the appellants as a Driver at their Santa Cruz Airport Service Station. On the morning of the 28th November, 1952, while on duty at the Santa Cruz Aerodrome in an area where smoking is prohibited and at a time when an aircraft was being re-fuelled by the appellants the first respondent was found smoking within about 25 ft. of the said aircraft. Smoking while on duty is prohibited by the appellants; the area in which the first respondent was found smoking is an area where smoking is prohibited; and under the Aircraft Ground Fire Precaution Rules, smoking is prohibited within 100 ft. of an aircraft being re-fuelled. At the time when the re-fuelling was in progress a "No Smoking" sign was placed on the re-fueller with a view to prevent anyone in the vicinity from smoking and definite instructions had been given to this effect to all the staff concerned including the first respondent. The first respondent was caught red-handed in the very act of smoking within 25 ft. of the said aircraft by the District Manager of the appellants and as a result of the first respondent smoking in the manner stated above the Airport authorities decided not to permit him to operate on the Aerodrome. A charge-sheet was furnished to the first respondent and he was called upon to answer the charge of serious misconduct. An enquiry into the matter was held on the 4th December, 1952, by the Sales Manager of the appellants. The District Manager who was himself an eye-witness gave evidence. The first respondent was afforded a full opportunity to be represented at the enquiry and to defend and to cross-examine the witnesses. The first respondent not only pleaded guilty but was also found guilty of misconduct on the evidence and as a result of the enquiry the appellants desired to punish him by dismissing him from their employ, dismissal being a normal punishment for such an act of misconduct. As adjudication proceedings in respect of Reference (IT) No. 78 of 1952 were pending before the Industrial Tribunal at Bombay, the appellants made an application under Section 33 of the Industrial Disputes Act, 1947, asking for the permission of the Tribunal to dismiss the first respondent from their employ.

2. The Industrial Tribunal, Bombay, apparently went into the merits of the case and, felt that dismissal was not an appropriate punishment in the circumstances but would be excessive particularly in view of certain alleged extenuating circumstances, as for example, his service record,

his admission of guilt and plea for leniency and the assurance given by the Union concerned that such lapse would not recur. The Industrial Tribunal attempted to impose conditions on the appellants by putting it to them that, if they amended their application to ask for something less than dismissal, permission would be readily granted but that otherwise the application would be entirely rejected. The appellants who were acting bona fide in the interests of public security and safety as well as in the interests of the whole petroleum industry and the safety of life and property for which it was necessary to maintain discipline rigidly did not agree to a punishment less than dismissal in view of such gross and wilful misconduct as had been proved. The Industrial Tribunal in the result rejected the application of the appellants.

3. The appellants preferred an appeal to the Labour Appellate Tribunal for having the said order of the Industrial Tribunal set aside and for grant to the appellants of permission to dismiss the first respondent from their employ. The Labour Appellate Tribunal by its decision dated the 1st April, 1953, set aside the said order of the Industrial Tribunal and granted such permission to the appellants. The Labour Appellate Tribunal was of opinion that there was a substantial question of law involved and that there had been a perverse exercise of jurisdiction by the Industrial Tribunal. It held that in a case of this kind where the offence was prima facie proved and there was not even an allegation of want of bona fides, unfair labour practice or victimization on the part of the appellants, much less any proof thereof, the Industrial Tribunal had no jurisdiction to refuse the permission sought for.

4. The first respondent thereupon presented a petition to the High Court of Judicature at Bombay, being Miscellaneous No. 167 of 1953, for issue of a writ of certiorari or any other appropriate writ or directions under Article 226 of the Constitution on the ground, inter alia, that the said decision of the Labour Appellate Tribunal was without jurisdiction inasmuch as the said appeal before the Labour Appellate Tribunal did not involve any substantial question of law.

5. Mr. Justice Desai issued a rule nisi on the 29th April, 1953, to show cause why the writ prayed for should not be issued. The said petition came on for hearing before the said learned Judge who delivered a considered judgment on the 14th July, 1953, dismissing the said petition and discharging the said rule nisi. The first respondent then preferred an appeal in the High Court of Bombay, being Appeal No. 77 of 1953, on the ground, inter alia, that the Industrial Tribunal hearing even an application under Section 33 of the Industrial Disputes Act, was meant to function as an arbitrator with a wide and unfettered discretion and that, in the circumstances, the learned Judge, Mr. Justice Desai, had erred in holding that the first respondent's contention that the discretion of the Industrial Tribunal under Section 33 of the Act was unfettered raised a substantial question of law.

6. The said appeal was heard by the Division Bench of the High Court of Bombay consisting of Chagla, C. J. and Shah, J., and the learned Judges allowed the said appeal and issued a writ against the 2nd respondent, the Labour Appellate Tribunal of India, Bombay, holding that the Labour Appellate Tribunal had no jurisdiction to entertain the appeal as it did not involve any substantial question of law. A petition filed by the appellants before the High Court for the grant of a Certificate under Article 133(1)(c) of the Constitution was also dismissed with the result that the appellants applied for and obtained from this Court Special Leave to Appeal under Article 136 of the

Constitution.

7. This appeal raises the identical question which has been the subject-matter of our decision in Atherton West & Co. Ltd. v. Suti Mill Mazdoor Union, , The Automobile Products of India Ltd. v. Rukmaji Bala, as also Lakshmi Devi Sugar Mills Ltd. v. Ram Sarup, Civil Appeal No. 244 of 1954: . We have clearly laid down there that the Industrial Tribunal has no jurisdiction while entertaining an application under Section 33 of the Industrial Disputes Act, 1947, to consider whether the punishment sought to be meted out by the employer to the workman is harsh or excessive. The measure of punishment to be so meted out is within the sole discretion of the employer who is to judge for himself what is the punishment commensurate with the offence which has been proved against the workman. The only jurisdiction which the Industrial Tribunal has under Section 33 is to determine whether a prima facie case for the meting out of such punishment has been made out by the employer and the employer is not actuated by any mala fides or unfair labour practice or victimization. Once the Industrial Tribunal came to the conclusion in the present case that the enquiry which was conducted by the appellants was fair and no principles of natural justice had been violated in the conduct of the enquiry and the appellants bona fide came to the conclusion that dismissal was the only punishment which should be meted out by them to the first respondent, the Industrial Tribunal had no power to substitute another punishment for the one which was sought to be meted oat by the appellants to the first respondent nor to impose any conditions on the appellants before the requisite permission could be granted to them. The whole approach of the Industrial Tribunal was wrong, and, in so far as the Industrial Tribunal had sought to impose on the appellants the conditions set out hereinabove before the requisite permission could be granted to them, the Industrial Tribunal was exercising a jurisdiction which was not vested in it by law and a substantial question of law in regard to the jurisdiction of the Industrial Tribunal did arise in the appeal which was filed by the appellants before the Labour Appellate Tribunal. That being so, the Labour Appellate Tribunal had jurisdiction to entertain the appeal and the decision of the Division Bench of the High Court at Bombay in exercise of its appellant jurisdiction holding that the Labour Appellate Tribunal had no jurisdiction to entertain such appeal was clearly wrong.

8. The appeal will, therefore, be allowed. The decision of the Division Bench of the High Court of Bombay in appeal will be set aside and the judgment and order passed by Mr. Justice Desai will be restored. The appellants will accordingly have the permission to dismiss the first respondent from their employ as per the order of the Labour Appellate Tribunal dated the 1st April, 1953. Under the peculiar circumstances of the case, however, each party shall, bear and pay its own costs throughout.