

Banaras Electric Light And Power Co. ... vs The Labour Court li, Lucknow And Ors. on 25 April, 1972

Equivalent citations: AIR1972SC2182, 1972LABLC939, (1972)IILLJ328SC, (1974)3SCC103, 1973(5)UJ10(SC), AIR 1972 SUPREME COURT 2182, 1974 3 SCC 103, 1972 LAB. I. C. 939, 25 FACLR 45, 42 FJR 97, 1972 2 LABLJ 328

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Bench: P. Jaganmohan Reddy

JUDGMENT

P. Jaganmohan Reddy, J.

1. This is an appeal by special leave against the judgment of a Division Bench of the High Court of Allahabad which reversed the judgment of a Single Bench of that Court and restored the award of the Labour Court by which respondent Hans Nath Srivastava, a complaint Attendant/Driver who had been dismissed on the 26th June, 1965 was directed to be reinstated.

2. The Second respondent was working in the Mains Department of the appellant Company and was authorised to deal with live wires. By an office order dated 4th May, 1964 the appellant, after drawing attention of all the workers to a previous notice issued on 23rd March, 1962 they were again warned that no person who is not authorised under the Indian Electricity Rules, 1956 is permitted to climb a ladder where he may come in contact with live lines. On the 31st October, at about 1.30 p.m., on the complaint of a consumer, the second respondent accompanied by two coolies, Shankar Das and Jagdhari, went in a jeep to set right a fuse on the electric transmission line of the appellant at Mohalla Shivpuri. At that time, the Resident Engineer and the Assistant Resident Engineer Chakraborti were returning from Babatpur and when they reached the spot where the second respondent and the coolies had come to put the fuse right, they saw that a ladder had been placed against the electric pole which was being held on the ground by Jagdhari. On the top of the ladder was Shankar Das was trying to replace the fuse with a wooden stick. They found Srivastava standing near the Jeep some 10 or 12 yards away. When the Resident Engineer and the Assistant Resident Engineer found Shanker Das, who was not authorised to work on the live line, repairing the fuse, they stopped and questioned them. Inasmuch as under the office orders only an authorised person could attend to any complaint involving live wires and fuse etc., the Resident Engineer questioned Shanker Das as also the respondent Srivastava, and immediately suspended both of them. Thereafter, a charge-sheet was served on Srivastava on 2nd November, 1964 in answer to which he gave an explanation on 5th November, 1964. The Resident Engineer finding the explanation unsatisfactory appointed the Labour Officer on 11th November, 1964 to conduct a domestic inquiry.

Before the Inquiry Officer, evidence of the employers and the workmen concerned was recorded and he found that Srivastava was guilty of the charge. The report was accordingly submitted to the Resident Engineer who after pursuing the findings of the Inquiry Officer and considering that the misconduct was of grave and serious nature, decided to dismiss him from the employment of the Company. As at that time there was a dispute pending between the employees and the appellant Company and also because Srivastava was a protected workman, a petition to dismiss him was filed before the Industrial Tribunal, Allahabad on 28th November, 1964. The Industrial Tribunal accorded sanction on the 9th May, 1965 and on 26th June, 1965 respondent Srivastava was dismissed. As industrial dispute was raised in respect of this dismissal which was referred to the Labour Court on 27th November, 1965.

3. The Labour Court after inquiry held that there was no mala fide intention on the part of the appellant undertaking and that the inquiry by the inquiry Officer was not defective inasmuch as it was constituted by a competent authority, nonetheless it came to the conclusion that the finding was perverse and there was victimisation. In this view, the order of dismissal was set aside. The judge of the Labour Court gave the following reasons for his conclusions :

I am fully convinced, after going through the statement of Sri Chakraborti, Sri Hans Nath Srivastava and Sri Jagdhari Coolie that Sri Shankar Das had gone up the ladder on his own accord to replace the fuse or to find out whether the stick which was in his hand was of sufficient length to serve the purpose, soon after Sri Srivastava had stopped the Jeep just near the pole.... The Enquiry Officer should not have placed implicit reliance upon the solitary statement of Sri Chakraborty but must have subjected his statement to a careful scrutiny in the light of the defence evidence and the surrounding circumstances which could be of great help in ascertaining the truth. After giving my most anxious thought to the entire evidence which was before the Enquiry Officer, I find it difficult to arrive at the conclusion that the guilt has been brought home to Sri Hans Nath Srivastava (workman concerned) for disobedience of the office order Ext. E-16. The finding of the Enquiry Officer is not, at all justified from the evidence on record and as such can be classed as perverse.

4. The appellant filed a writ petition against this order of the Labour Court which came up before a single Judge. The learned Judge observed that the Labour Court has acted as a Court of Appeal and the finding that after scrutinising the very evidence on which the enquiry Officer had come to the conclusion that Srivastava was guilty of the charge was perverse, was not justified. In his view it was not a case where it can be said that there was no evidence before the Inquiry Officer to support the finding that it was the duty of respondent, Srivastava to replace the fuse himself and to prevent any other unauthorised person from doing so and that on the evidence it was clearly permissible to draw the inference that Srivastava has permitted Shanker Das to go up the ladder and replace the pole fuse. In the circumstances he was of the view that the Labour Court had committed a manifest error in holding that the enquiry Officer's finding was perverse and that it was not entitled to substitute its own decision for that of the Inquiry Officer on the basis of the evidence which had been adduced at the domestic inquiry. It also pointed out, that the Labour Court has acted like a court of appeal was obvious from its observation that the Inquiry Officer should not have placed implicit reliance upon

the solitary statement of Sri Chakraborty but should have subjected his statement to a careful scrutiny in the light of the defence evidence and the surrounding circumstances which could be of great help in ascertaining the truth. In this view it allowed the petition and quashed the award of the Labour Court. The Division Bench reviewed the evidence led before the Inquiry Officer and after reappreciating the evidence came to the conclusion that there was no direct evidence that Sri Hans Nath Srivastava asked Shanker Das to climb the ladder. It also held that if Shanker Das decided to climb the ladder while Srivastava was near the Jeep at a distance of 10 or 12 yards, Srivastava can hardly be blamed for lack of proper vigilance on the coolies. Though the learned Chief Justice while delivering the judgment of the Bench correctly set out the grounds upon which the findings of the domestic inquiry will be interfered with, he seems to have lost sight of those principles when he went into the evidence and came to his own conclusions there on. This Court in several cases while dealing with industrial disputes of this kind, had occasion to point out that an industrial tribunal would not be justified in characterising the finding recorded in the domestic inquiry as perverse unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of the evidence adduced before it. In a domestic inquiry once a conclusion is deduced from the evidence, it is not permissible to assail that conclusion even though it is possible for some other authority to arrive at a different conclusion on the same evidence. In this case as we have pointed out earlier, the evidence of Chakraborty, Assistant Resident Engineer is clear and categorical and the Labour Officer as a domestic tribunal came to the conclusion that on that evidence Srivastava failed in his duty to see that the office order Ex. E. 7 was strictly complied with, as such the charge leveled against him under Clause 18(1) of the Company's standing Orders is proved. The Labour Court thought that the Labour Officer did not consider the defence evidence. We have, however, found from a perusal of the order that the evidence of defence witness Jagdhari as well as that of Srivastava was taken into consideration. There is also no rule of evidence which lays down that the evidence of a solitary witness cannot be relied upon or merely because there is only a solitary witness in support of the charge, no conclusion can be based upon it even though the evidence of that witness is acceptable as true.

5. The approach of the High Court was equally defective in that it mostly addressed its mind to the question whether there was direct evidence that Srivastava had asked Shankar Das to climb the ladder. It was never the case of the appellant that there was any direct evidence in that regard of Srivastava asking Shankar Das to repair the fuse. The Inquiry Officer, however, deduced from certain indisputable facts the conclusion that Shanker Das could not have gone up the ladder to replace the pole fuse without Srivastava's instructions and in any case it was Srivastava's duty to have exercised proper vigilance on his coolies so that the office order in question was strictly observed. The defence of Srivastava that Shanker Das, cooly, had gone up the ladder on his own account to work on the live lines and that he did not allow any cooly to go up, was considered both on the evidence of the employers as well as on the admission of Srivastava and Jagdhari. Chakraborty had spoken to the facts as they were witnessed by him when he and the Resident Engineer came on the scene at the time when Shanker Das was on the ladder and was working on a live line with a stick. This fact was not denied. What was in controversy is that while Chakraborty says that Srivastava was standing near the Jeep at 10 or 12 yards from the ladder. Srivastava says at the time when Resident Engineer and Assistant Resident Engineer came, he was turning the Jeep and did not know that Shanker Das had climbed the pole. It is, however, stated that the Resident

Engineer enquired from Srivastava why the cooly was allowed to work on live lines while he was standing there in contravention of his office order stating that no unauthorised person should be allowed to work on the live lines and also as to why a ladder which was short for work and which did not belong to the Company was being used. Srivastava's reply was that the Company ladder was not long enough to reach the pole fuse to be replaced and it was necessary to secure another ladder. He also said that he was going to park his jeep and did not ask the cooly to work but this explanation was not accepted by the Resident Engineer who chastised Srivastava that he was standing and watching the replacement of the fuse by the cooly. Resident. Engineer also told Srivastava that similar unauthorised work resulted in a fatal accident in Mangari Village and wanted to know why his orders were being disobeyed. The witness was cross-examined and he reiterated what he had said earlier that he saw Shanker Das and Jagdhari, the former on the ladder working on the live lines and the latter standing on the ground holding the ladder and Srivastava standing near the jeep at a distance of 10 to 12 yards where the ladder was fixed. It is further elucidated from the witness that the wooden stick which Shanker Das was using for replacing the fuse was something about 41/2 ft. and Shanker Das was trying to repair the fuse. On seeing this both the witness and the Resident Engineer asked Srivastava as to why he has allowed Shankar Das to climb on the ladder to work on the live lines to which Srivastava replied that he was going to park the jeep. This evidence directly contradicts the statement of Srivastava that he did not know that Shankar Das had climbed up the pole and was attending to the fuse with the stick because at that lime he was parking the Jeep. The statement that he was going to park the Jeep is different from his statement that he was parking the Jeep. Srivastava's evidence was that he did not know when the car of Bare Sahab came as he was completely engrossed in turning the Jeep, that before parking the jeep he ordered the coolies to get down the ladder from the Jeep and set it upon the pole, and that the cooly took the ladder from the jeep while he was parking the jeep. He further says that by the time he managed to stop the jeep, he found Bare Sahab and Chhote Sahab near the pole talking to the coolies, and when questioned by the Bare Saheb, he replied that he did not allow any cooly to go up nor did he know that Shanker Das had climbed the ladder. The evidence of Jagadhari was that Shanker Das had gone up the ladder and was measuring the height of the live line with the stick when the Resident Engineer and the Assistant Resident Engineer arrived. In cross-examination he denies that Shankar Das was replacing the fuse. As to the use of the stick his explanation was that they used it for the purpose because the general order of the immediate officers is to somehow restore the supply and thereafter report it and they took the stick to use it for repairing. He admits that Srivastava did not say anything when the stick was taken. The inquiry Officer asked Srivastava as to whether the cooly collected a wooden stick for the purpose or he had the same with him which he was using but Srivastava replied that he cannot say anything about it. His evidence clearly shows that the stick which was in the jeep was taken by Shanker Das to the knowledge of Srivastava and he was using it on the live wire. Srivastava in his written explanation of 5th November had earlier stated in reply to the letter of the 2nd November calling upon him to explain that he had seen the Assistant Resident Engineer near the pole and that on the very day he had met the Resident Engineer twice and explained to him that neither he ordered Shanker Das nor did he know whether he had climbed on the ladder. In that explanation he, however, admitted that Shankar Das "did so as per usual practice prevailing in Mains Department". This explanation and admission was also considered by the Inquiry Officer in arriving at his finding. The evidence to which we have referred clearly justifies the inquiry officer in arriving at the finding that Srivastava had not only permitted Shankar Das to climb

the pole and repair the fuse but was present at the time when Shanker Das was trying to repair it and did not prevent him from doing, so. In this view the Resident Engineer was perfectly justified in finding the second respondent guilty of disobedience of the standing Orders which were issued for protection of the life of the workers who were not authorised to deal with live wires. The live electric wires contain invisible death and those who come into contact with them suffer dangerous consequences if not fatality. The transgression of the office order therefore was a serious breach which justified the termination of the services of the second respondent.

6. It was lastly contended that because the second respondent was a protected workman and was carrying on the union activities which were disliked by the Resident Engineer he was victimised. We may point out that no complaint was made on this account to the Resident Engineer in his explanation nor was any ground taken before the Labour Officer nor was any evidence led before the Labour Court. The Labour Court as well as the High Court went into this question and found that there was victimisation. These findings are based on no evidence and are wholly unwarranted. In this view the judgment of the Division Bench is set aside and that of Single Judge quashing the dismissal and maintaining the order of termination is restored.

7. The appeal is allowed but in the circumstances without cost.