Management Of Murgugan Mills Ltd vs Industrial Tribunal Madras And Anotmr on 11 November, 1964

Equivalent citations: 1965 AIR 1496, 1965 SCR (2) 148, AIR 1965 SUPREME COURT 1496, 1965 (1) LABLJ 422, 1965 (10) FACLR 162, 1965 (1) SCWR 397, 1965 SCD 432, 1965 2 SCR 148, 1965 2 SCJ 779, 1964 27 FJR 141

Author: K.N. Wanchoo

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

PETITIONER:
MANAGEMENT OF MURGUGAN MILLS LTD.

Vs.

RESPONDENT:
INDUSTRIAL TRIBUNAL MADRAS AND ANOTMR

DATE OF JUDGMENT:
11/11/1964

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.

CITATION:
1965 AIR 1496 1965 SCR (2) 148
CITATOR INFO :
R 1975 SC 661 (13,14,18,19)
E 1976 SC2062 (27,28)
RF 1980 SC1896 (68)

ACT:
Industrial Disputes Act (14 of 1947), s. 33(2)(b), proviso-it applicable to s. 33 (2) (a) -Jurisdiction of Tribunal to entertain application under S. 33-A.

HEADNOTE:
During the pendency of an industrial dispute between the appellant and its workmen, the services of the respondent, who was an employee, were terminated without giving any reasons. He filed a petition before the Industrial

Tribunal, under s. 33-A of the Industrial Disputes Act, 1947, complaining that the approval of the Tribunal for terminating his services as required by the proviso to s. 33(2)(b) was not obtained. The appellant justified the termination by contending that cl. 17(a) of the Standing Orders enabled the management to terminate the services of an employee by fourteen days' notice, that though the respondent was deliberately going slow in his work the termination was not for misconduct, and that therefore s. 33 (2) (b) and its proviso did not apply. The Tribunal held, that as the termination was under cl. 17(a) of the Standing Orders, s. 33(2) (a) applied. The Tribunal however held that the proviso applied to s. 33(2)(a)also, and that, since the approval of the Tribunal was not obtained, theapplication under s. 33-A was maintainable. The Tribunal then considered the evidence adduced on merits, held that the allegation that the respondent had been deliberately going slow was not made out, and ordered the reinstatement of the respondent. The appellant filed a writ petition in the High Court, which held, that the proviso applies only to cl. (b) and not to cl. (a), that action was taken against the respondent by way of punishment and therefore was covered by cl. (b) to which the proviso applies, and that therefore the Tribunal had jurisdiction to entertain the application and pass order on merits. In appeal to the Supreme Court, it was contended that since the Tribunal took the view that the case was covered by s. 33 (2) (a), it had no jurisdiction to entertain the application because, the proviso is not applicable to that sub-section.

HELD : Even though the Tribunal was in error in holding that the proviso applied to s. 33(2) (a), there was no reason to. interfere with its order. The contention of the respondent was that there was a contravention of cl. (b) and its proviso and that contention gave jurisdiction to the Tribunal in the absence of a domestic enquiry to consider the evidence and find that the respondent was not guilty of dereliction of duty, and to order reinstatement. [153 A-C]

The form used for terminating the services is not conclusive and the Tribunal has jurisdiction to enquire into. the reasons which lead to the termination. [152 B]

Chartered Bank v. Chartered Bank Employees Union, [1960]3 S.C.R. 441 and Management of U. B. Dutt & Co. v. Workmen of U. B. Dutt & Co. [1962] Supp. 2 S.C.R. 822, followed

JUDGMENT:

CIVIL, APPELLATE JURISDICTION.--Civil Appeal No. 1036 of 1963.

Appeal by special leave from the judgment and order dated November 8, 1960 of the Madras High Court in Writ Appeal No. 146 of 1960.

A.V. Viswanatha- Sastri and R. Ganapathy Iyer, for the appellant.

M.S. K. Sastri and M. S. Narasimhan, for respondent No. 2 The Judgment of the Court was delivered by Wanchoo, J. This is an appeal by special leave against the judgment of the Madras High Court. The appellant is a textile mill. Rangarathinam Pillai respondent was employed as an accountant in the mill for over 13 years by he appellant. On September 11, 1958, the appellant served a notice on the respondent under cl. 17 (a) of the Standing Orders terminating his services on and from September 24, 1958. No reasons were given in the order terminating the service. The respondent protested against his dismissal and said that he had a blameless record and had not done anything meriting the termination of his services. He added that no showcause notice had been served upon him, no explanation was asked for and no enquiry whatsoever had been held before the order was issued. He further alleged that he had been victimised for his trade union activities as he was a member of the Executive of the Coimbatore District Textile Mill Staff Union. When his protest had no effect, he made an application under S. 33-A of the Industrial Disputes Act, No. 14 of 1947, (hereinafter referred to as the Act), as an industrial dispute was pending at the time, between the appellant and its workmen. The main contention of the respondent was that the order terminating his services had been passed without obtaining the approval of the industrial tribunal and this was against the provision contained in S. 3 3 (2) (b) of the Act, which lays down that during the pendency of any proceeding in respect of an industrial dispute the employer may in accordance with the standing orders applicable to a workman concerned in such dispute, discharge or punish him whether by dismissal or otherwise for any misconduct unconnected with the dispute, provided that no such discharge or dismissal may be made unless the workman has been paid wages for one month and an application has been made by the employer to the authority for approval of the action taken by the employer. The contention of the appellant before the tribunal was that the services of the respondent had been terminated under cl.

> (a)of the Standing Orders. It enables the management to terminate the services of a worker by 14 days' notice. It was further contended that the termination was not for any misconduct and was not meted out as punishment and therefore S. 33 (2) (b) did not apply and it was not necessary to obtain the approval of the tribunal. It was also stated that the reason for the termination of service was that the respondent had been deliberately going slow in his work for some months prior to the date on which his services were terminated. This was because he had asked for increase in pay sometime back and that had been refused. It was further stated that the balance-sheet for the year 1957 had not been prepared till August 1958 and therefore when the appellant found that the respondent was deliberately going slow his services were terminated as provided in the Standing Orders.

The tribunal took the view that as the termination of service had taken place under cl. 17 (a) of the Standing Orders, this was not a case covered by s. 33 (2) (b) of the Act, which provides for discharge or punishment by way of dismissal or otherwise for any misconduct unconnected with the dispute. The tribunal however held that the case was covered by s. 33 (2) (a). It further held that the proviso to S. 33 (2) not only applies to a case covered by cl. (b) but also to cl. (a). Therefore, as the proviso was not complied with, the tribunal held that the termination of service of the respondent was in

contravention of the section and the application under S. 33-A of the Act was maintainable. However, as evidence had been adduced on both sides on the merits of termination of service, the tribunal went into the matter. It took the view that even under the Standing Orders, the appellant could terminate respondent's services only for proper reason or the particular standing order provides that reasons should be recorded and communicated to the workman if he so desired. The tribunal went into the question whether the appellant had proper reasons for terminating the services of the respondent. It came to the conclusion that the reason given by the appellant to the effect that the respondent had been deliberately going slow because his requests for rise in pay had been refused was not made out. As to the non- preparation of the balance-sheet for the year 1957 up to August 1958, the tribunal seems to have accepted the explanation of the respondent that the delay was due to the appellant's desire not to publish the balance-sheet till fresh shares issued by it had been taken up by the public for if the loss incurred for the year 1957 were known to the public before the fresh shares were subscribed, the public response might be poor. The tribunal finally held that the delay in the finalisation of the accounts for the year 1957 could not be said to be due to solvenliness or dereliction of duty on the part of the respondent. The tribunal therefore allowed the application under S. 33-A and ordered the reinstatement of the respondent with back wages. The appellant then filed a writ petition before the High Court, which came before a learned Single Judge. The learned Single Judge did not decide the question whether the proviso to s. 33 (2) applied only to cl. (b) and not to cl.

> (a). He held that as the action against the respondent was taken by way of punishment for negligence etc., the case was clearly covered by cl. (b) of s. 3 3 (2) to which the proviso undoubtedly applied. He therefore held that the industrial tribunal had jurisdiction to entertain the application under s. 33-A in the circumstances. Finally he held that as the tribunal had held on the merits that the charge against the respondent of dereliction of duty was not made out, the writ petition must fail. The appellant then went in appeal to the Division Bench, which upheld the order of the learned Single Judge. Then there was an application for leave to appeal to this Court, which was rejected. The appellant then applied for and obtained special leave from this Court and that is how the matter has come up before us.

The right of the employer to terminate the services of his workman under a standing order, like cl. 17(a) in the present case, which amounts to a claim "to hire and fire" an employee as the employer pleases and thus completely negatives security of service which has been secured to industrial employees through industrial adjudication, came up for consideration before the Labour Appellate Tribunal in Buchkingham & Carnatic Co. Ltd. v. Workers of the Company(1). The matter then came up before this Court also in Chartered Bank v. Chartered Bank Employees Union(2) and the Management of U. B. Dutt & Co. v. Workmen of U. B. Dutt & Co.(3) wherein the view taken by the Labour Appellate Tri- bunal was approved and it was held that even in a case like the present the requirement of bona fides was essential and if the termination of service was a colourable exercise of the power or as a result of victimisation or unfair labour practice the industrial tribunal would have the jurisdiction to intervene and set aside such termination. The form of the order in such a case is not conclusive and the tribunal can no behind the order to find the reasons which led to the order and then consider for itself whether the (1) (1952) L.A.C. 490. (2) [1960]3 S.C.R. 441. (3) (1962)

Supp. 2 S.C.R. 822, termination was a colourable exercise of the power or was a result of victimisation or unfair labour practice. If it came to the conclusion that the termination was a colourable exercise of the power or was a result of victimisation or unfair labour practice it would have the jurisdiction to intervene and set aside such termination.

The form therefore used in the present case for terminating respondent's services under cl. 17 (a) is not conclusive and the tribunal was justified in enquiring into the reasons which led to such termination; even the Standing Orders provide that an employee can ask for reasons in such a case. Those reasons were given before the tribunal by the appellant viz the respondent's services were terminated because he deliberately adopted go-slow and was negligent in the discharge of his duty. His services were therefore terminated for dereliction of duty and go-slow in his work. This clearly amounted to punishment for misconduct and therefore to pass an order under cl. 17 (a) of the Standing Orders in such circumstances was clearly a colourable exercise of the power to terminate the services of a workman under the provision of the Standing Orders. In those circumstances the tribunal would be justified in going behind the order and deciding for itself whether the termination of the respondent's services could be sustained. In the present case, evidence was led before the tribunal in support of the appellant's case that the respondent was guilty of dereliction of duty and go-slow in his work. The tribunal has found that this has not been proved. In these circumstances the case was clearly covered by cl. (b) of S. 33 (2) of the Act as the services of the respondent were dispensed with during the Pendency of a dispute by meeting out the punishment of discharge to him for misconduct. As this was done without complying with the proviso, the termination of the service was rightly set aside. It is however urged on behalf of the appellant that the tribunal found that the case under S. 33 (2) (b) had not been made out. It also found that the case which had been made out was one under S. 33 (2) (a). It then went on to hold that the proviso applied to S. 33 (2) (a). The appellant contends that the view of the tribunal that the proviso applied to S. 33 (2) (a) is incorrect and therefore the tribunal was not right in entertaining the application under S. 33-A and ordering reinstatement of the respondent. It is clear from a bare perusal of S. 33 (2) that the proviso thereto only applies to cl. (b) and not to cl. (a) and the tribunal therefore was in error when it held that it also applied to cl. (a). But that in our opinion makes no difference in the present case as pointed out by the High Court. The contention of the respondent was that there had been a contravention of S. 33 (2) (b). It was that contention which gave jurisdiction to the tribunal and which the appellant had to meet and it did meet it by producing evidence. That evidence was considered by the tribunal and it found that the appellant's contention that the respondent was guilty of dereliction of duty and go-slow had not been made out. In these circumstances even though the tribunal was in error in holding that the proviso to S. 33 (2) applied to cl. (a) thereof also, there in no reason for us to interfere with the order passed by the tribunal. As the High Court has rightly pointed out, the case is clearly covered by s. 33 (2) (b) to which the proviso undoubtedly applies. As the proviso was not complied with the application under S. 33-A could be entertained by the tribunal and the tribunal did entertain it and went into the merits of the charge and came to the conclusion that the charge had not been proved. In these circumstances the order passed by the tribunal, and upheld by the High Court, is substantially correct, in spite of the error of law committed by the tribunal. The appeal therefore fails and is hereby dismissed with costs.

Appeal dismissed.

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