M/S Lakshmi Precision Screws Ltd vs Ram Bahagat on 13 August, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2914, 2002 AIR SCW 3324, 2002 LAB. I. C. 2968, 2002 (4) SLT 694, 2002 (4) PATLJR 20.1, (2002) 6 JT 162 (SC), 2002 (8) SRJ 201, 2002 (3) LRI 479, 2002 LAB LR 961, 2002 (5) SCALE 593, 2002 (6) SCC 552, (2002) 4 PAT LJR 20, (2002) 3 LABLJ 516, 2002 SCC (L&S) 926, (2002) 101 FJR 398, (2002) 3 CURLR 299, (2002) 95 FACLR 43, (2002) 4 LAB LN 25, (2002) 3 SCJ 738, (2002) 5 SERVLR 612, (2002) 5 SUPREME 315, (2002) 5 SCALE 593, (2002) 3 ESC 133, (2002) 3 JLJR 86

Bench: Umesh C. Banerjee, K.G. Balakrishnan

CASE NO.:
Appeal (civil) 4964 of 2002

PETITIONER:
M/S LAKSHMI PRECISION SCREWS LTD.

Vs.

RESPONDENT:
RAM BAHAGAT

DATE OF JUDGMENT: 13/08/2002

BENCH:
Umesh C. Banerjee & K.G. Balakrishnan.

JUDGMENT:

Banerjee, J.

Leave granted.

Relying upon the well-accepted and settled principles of law as regards the norm of interference with the order of inferior Tribunals, the High Court negated the plea of the Appellant herein that Certified Standing Order being a part of the conditions of service, ought to be strictly interpreted and there is no scope of reading into the same, some other element. It is in this score the decision of this Court in Syed Yakoob (Syed Yakoob v. K.S. Radhakrishnan & Ors. :AIR 1964 SC 477) ought to

be noticed. This Court in Yakoob's decision stated:

> "7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised."

The decision in Syed Yakoob (supra) stands considered in a recent judgment of this Court in P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar (2001 (2) SCC 54), wherein this Court in paragraph 9 stated as below :

> "9. The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is

> based on any misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though, however, perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in Syed Yakoob Vs. K.S. Radhakrishnan (AIR 1964 SC 477)."

It is at this juncture the factual matrix of the matter ought to be adverted : The facts reveal : The petitioner company engaged Ram Bahagat, the respondent-workman as a Helper on 8.12.1980. On 6.11.1989, he was promoted as Operator. For the discharge of his duties against the post of Operator, he was deputed to work in the elector-plating unit of the factory. He continued to work till 12.10.1990 and thereafter absented himself without any prior information with effect from 13.10.1990. The Management waited for some days and eventually addressed a communication dated 17.10.1990 to the workman informing him that he had been absenting himself from duty with effect from 13.10.1990, without authorised leave or notice, he was advised to report back on duty within 48 hours of the receipt of the aforesaid letter and also to tender his explanation for his absence. In the letter dated 17.10.1990, he was warned that in case he failed to report for duty within the specified time, it would be presumed that he was no longer interested in serving the management and his name would be struck off from the rolls of the company under the Certified Standing Orders of the Company. The respondent workman did not comply with the condition stipulated in the letter dated 17.10.1990. He was informed through registered post, vide letter dated 25.10.1990, that his name had been removed from the muster rolls of the company. A perusal of the aforesaid letter shows that the aforesaid action had been taken under Clause 9(f) (ii) of the Certified Standing Orders of the Company, in view of the fact that the respondent-workman had remained absent from duty for a period of 10 days continuously. Clause 9(f)(ii) of the Certified Standing Orders of the Company is being reproduced hereunder :-

> "9(f) Any workman who, xxx xxx xxx
>
> (ii) absents himself for ten consecutive working days without leave shall be deemed to have left the firm's service without notice, thereby terminating his service."

The respondent-workman is stated to have refused to receive the registered communication dated 25.10.1990. He, however, addressed a letter dated 30.1.1991 requesting the management to take him back on duty. In the aforesaid letter, he informed the management that he had been unwell during the period of his absence. In this behalf, he also enclosed his medical certificate as also a fitness certificate. In the letter dated 30.1.1991 he made a reference of the earlier letter dated 24.10.1990 sent by him to the management, requesting for leave on medical grounds. On the same date i.e. 30.1.1991, he was informed that he had remained absent from duty without getting sanctioned leave and without any notice to the management, and that his name had been struck off from the rolls of the company under the Certified Standing Orders of the Company, vide letter dated 25.10.1990. Accordingly, the request of the respondent-workman for being taken back on duty was declined.

Having failed to persuade the management to take him back into service, the respondent-workman served a demand notice dated 29.3.1991. On failure of conciliation proceedings, the State Government made a reference of the dispute raised by the respondent-workman to the Presiding Officer, Labour Court, Rohtak (hereinafter referred to as the 'Labour Court'). On the basis of the evidence produced by the respondent- workman, the Labour Court concluded that almost the whole period of alleged absence of the respondent-workman was proved to be on account of his illness and the respondent-workman's absence from duty was not intentional. Having arrived at the aforesaid conclusion, the Labour Court considered the validity of the order of the management on the basis of clause 9(f)(ii) of the Certified Standing Orders of the Company and held that the action of the management in terminating the services of the respondent- workman was not justified and thus ordered his reinstatement with continuity in service along with 67% back wages and being aggrieved by the award of the Labour Court dated 1.2.1999, the management approached the High Court through a writ petition under Article 226 of the Constitution.

Significantly, the High Court did not, however, in the matter under consideration find any misreading or mis-appreciation of evidence resulting into perversity as regards the order of the Tribunal and thus concurred upon the conclusion of the Tribunal The issue thus raised - Can it be said to be within the jurisdiction of this Court under Article 136 of the Constitution to intervene or interfere with an appraisal of evidence on record ?

A further question also in consequence thereof arises that in the event the High Court records a finding in terms of the order of the Tribunal and in the event of a party being aggrieved, would there be an inevitable refusal of this Court to entertain Can it be said to be the true purport of our justice delivery system ? It is again answered in the negative by reason of the fact that in the event of there being a misreading of law or applicability of law wrongly, the intervention cannot but be said to be the correct approach to the matter.

Let us, therefore, analyse as to whether this particular Standing Order in fact warrant a conclusion without anything further on record or to put it differently - does it survive on its own and that being a part of the contract of employment ought to govern the situation as is covered in the contextual facts. This Court in DK Yadav's case [D.K. Yadav v. J.M.A. Industries Ltd. (1993 (3) SCC 259)] strictly speaking did not answer the same in a categorical fashion though undoubtedly read into Certified Standing Order compliance with the doctrine of natural justice as also the principles underlying in Article 14 of the Constitution. The observations in Yadav (supra) seems to be rather apposite on this score. As such the same is set out hereinbelow:

> "8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

> 9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice"

It is on the basis of the aforesaid however, this Court in Yadav (supra) upon consideration of the entire gamut of judicial precedents since Anwar Ali [State of West Bengal v. Anwar Ali Sarkar (1952: SCR 284)] came to the conclusion as below:

> 11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive.

.

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence.

When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable."

Subsequently as well in Uptron India Ltd. v. Shammi Bhan & Anr. (1998 (6) SCC 538) upon reliance on Yadav (supra) this Court stated :

> "9. The general principles of the Contract Act, 1872 applicable to an agreement between two persons having capacity to contract, are also applicable to a contract of industrial employment, but the relationship so created is partly contractual, in the sense that the agreement of service may give rise to mutual obligations, for example, the obligation of the employer to pay wages and the corresponding obligation of the workman to render services, and partly non- contractual, as the States have already by legislation, prescribed positive obligations for the employer towards his workmen, as, for example, terms, conditions and obligations prescribed by the Payment of Wages Act, 1936; Industrial Employment (Standing Orders) Act, 1946; Minimum

Wages Act, 1948; Payment of Bonus Act, 1965; Payment of Gratuity Act, 1972 etc.

10. Prior to the enactment of these laws, the situation, as it prevailed in many industrial establishments, was that even terms and conditions of services were often not reduced to writing nor were they uniform in nature, though applicable to a set of similar employees. This position was wholly incompatible to the notions of social justice, inasmuch as there being no statutory protection available to the workmen, the contract of service was often so unilateral in character that it could be described as mere manifestation of subdued wish of the workmen to sustain their living at any cost. An agreement of this nature was an agreement between two unequals, namely those who invested their labour and toil, flesh and blood, as against those who brought in capital. The necessary corollary of such an agreement was the generation of conflicts at various levels disturbing industrial peace and resulting necessarily in loss of production and sometimes even closure or lockout of the industrial establishment. In order to overcome this difficulty and achieve industrial harmony and peace, the Industrial Employment (Standing Orders) Act, 1946 was enacted requiring the management to define with sufficient precision and clarity, the conditions of employment under which the workmen were working in their establishments. The underlying object of the Act was to introduce uniformity in conditions of employment of workmen discharging similar functions in the same industrial establishment under the same management and to make those terms and conditions widely known to all the workmen before they could be asked to express their willingness to accept the employment.

11. The Act also aimed at achieving a transition from mere contract between unequals to the conferment of "status" on workmen through conditions statutorily imposed upon the employers by requiring every industrial establishment to frame "Standing Orders" in respect of matters enumerated in the Schedule appended to the Act. The Standing Orders so made are to be submitted to the Certifying Officer who is required to make an enquiry whether they have been framed in accordance with the Act and on being satisfied that they are in consonance with the provisions of the Act to certify them. Once the Standing Orders are so certified, they become binding upon both the parties, namely, the employer and the employees. The Certified Standing Orders are also required to be published in the manner indicated by the Act which also sets out the Model Standing Orders. Originally, the jurisdiction of the Certifying Officer was limited to examining the Draft Standing Orders and comparing them with the Model Standing Orders. But in 1956, the Act was radically amended and Section 4 gave jurisdiction to the Certifying Officer, as also the appellate authority, to adjudicate and decide the questions, if raised, relating to the fairness or reasonableness of any provision of the Standing Orders."

This Court further in fine in paragraph 25 of the report stated as below :

> "25. In view of the above, we are of the positive opinion that any clause in the Certified Standing Orders providing for automatic termination of service of a permanent employee, not directly related to "production" in a factory or industrial establishment, would be bad if it does not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically."

While it is true that a later Three Judge Bench decision of this Court in Punjab and Sind Bank & Ors. v. Sakattar Singh (2001 (1) SCC 214) sounded a different note but the same should not detain us any further, since the factual context differs in material particulars and even the bi-partite settlement involved therein was of much accommodative in nature.

It is thus in this context one ought to read the doctrine of natural justice being an in-built requirement on the Standing Orders. Significantly, the facts depict that the respondent- workman remained absent from duty from 13th October 1990 and it is within a period of four days that a letter was sent to the workman informing him that since he was absenting himself from duty without authorised leave he was advised to report back within 48 hours and also to tender his explanation for his absence, otherwise his disinterestedness would thus be presumed. Is this in strict compliance with the Certified Standing Order the answer possibly cannot be in the affirmative. Though however, if the letter dated 25th October, 1990 as noticed above is to be taken note of, then and in that event the same thus come within the ambit of the Certified Standing Order of 10 days' continued absence the situation however is slightly different in the present context since the letter of 25th October is an intimation of his name being struck off the rolls of the company. It is an act; subsequent to the order of termination and if the letter of 17th October is an indication for such an order of termination the same does not come within the ambit of the Certified Standing Order. The High Court on this score stated as below:

> "Even if it presumed that the petitioner- management may have afforded an opportunity to the respondent-workman to tender his explanation and as such complied with the principles of natural justice in terms of the decision rendered by the Apex Court in Hindustan Paper Corporation's case (supra), yet the question remains, whether the determination of the petitioner management was arbitrary and without application of mind?"

..

In our considered view, the rejection of the claim of the respondent-workman is absolutely arbitrary and without consideration of the material placed on record by the respondent-workman (as discussed in the foregoing paragraph). The Labour Court examined in detail the factual position and returned a finding that the respondent workman had not absented himself from service deliberately or intentionally and also that he had not abandoned his service. It was further concluded that his absence was based on account of his illness which could be affirmed from the medical certificates produced by him. In the aforesaid view of the matter, in our considered view, the action of the petitioner-management in rejecting the representation of the respondent- workman dated 30.1.1991

was clearly arbitrary and as such it is not sustainable in law."

Having regard to the well settled principle of law as in Yadav (supra), the decision to terminate by reason of a presumption as noticed above, we cannot but lend concurrence to the conclusion of the High Court that the action is purely and surely arbitrary in nature. Arbitrariness is an anti-thesis to rule of law: equity: fair play and justice contract of employment there may be but it cannot be devoid of the basic principles of the concept of justice. Justice oriented approach as is the present trend in Indian jurisprudence shall have to read as an in-built requirement of the basic of concept of justice, to wit, the doctrine of natural justice, fairness, equality and rule of law : The letter dated 17th October cannot by any stretch be treated to be an opportunity since it is only on the fourth day that such a letter was sent the action of the appellant herein stands out to be devoid of any justification, neither it depicts acceptability of the doctrine of natural justice or the concept of fairness arbitrariness is written large and we confirm the finding of the High Court as also that of the learned Trial Judge and the Tribunal as regards issue as noticed above. In that view of the matter, there cannot thus be any perversity or any miscarriage of justice warranting intervention of this Court under Article 136 of the Constitution. The appeal therefore fails and is dismissed.