Mill Manager, Model Mills Nagpur Ltd. vs Dharam Das, Etc. on 25 October, 1957

Equivalent citations: AIR1958SC311, AIR 1958 SUPREME COURT 311, 1958 (1) LABLJ 539 1957-58 13 FJR 449, 1957-58 13 FJR 449

Bench: N.H. Bhagwati, P.B. Gajendragadkar

JUDGMENT

Jafer Imam, J.

1. These nine appeals are by special leave against the order of the State Industrial Court at Nagpur reversing the order of the Assistant Labour Commissioner of Nagpur who rejected the applications of the respondents under Section. 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 (hereinafter referred to as the Act). The respondents had applied to the Labour Commissioner under Section 16 to set aside the order of the appellant dismissing them from the service of the Model Mills Ltd., Nagpur with effect from 11th of January, 1956. The State Industrial Court purported to exercise its revisional powers under Section 16 (5) of the Act.

2. In the Model Mills Ltd., Nagpur machines known as "Seven Bowl Calender Machines", generally described as Calender machines, were used. According to the respondents, at least three persons were required for working each of these machines and this had been the practice for many years. The management of the Model Mills Ltd., however, ordered that each machine was to be worked by two persons. On 16th of December, 1955, while such a machine was being worked by two persons one of them was seriously injured. It was contended that by reducing the number of persons to work each machine the management had not only increased the workload of the worker but had positively made the working of any such machine a dangerous operation and it was alleged that the action of the management was illegal. On the 19th of December, 1955, the respondents refused to work, as again on that day, only two persons were deputed to work such a machine. On the refusal of the respondents to work, the management held an enquiry and framed a charge against the respondents on the 20th of December, 1955.After the enquiry the appellant passed the orders of dismissal against the respondents.

3. It may be mentioned at this stage that out of the nine respondents only two were deputed on 19-12-55 to work a Calender machine. The other seven were deputed to work in other departments. These seven persons refused to work out of sympathy for and in support of those persons who refused to work a Calender machine with only two persons.

4.The appellant's case was that every such Calender machine did not ordinarily require more than two persons to work it. Sometimes three persons were deputed to work such a machine if there was

an extra load of work and sometimes also three persons were deputed to work such a machine, even if there was no need for it, in order to save the workers from loss of wages. It was contended that the action of the respondents in refusing to work amounted to an illegal strike and was contrary to the provisions of the Standing Orders of the Model Mills Ltd. The appellant, after due enquiry, found the respondents guilty and consequently dismissed them in accordance with the provisions of the Standing Orders.

5.The Assistant Labour Commissioner, who heard the applications of the respondents to set aside the orders of dismissal passed by the appellant, was of the opinion that the respondents could not prove that three persons were required to work a Calender machine so far as could be gathered from the records of the enquiry. He was further of the opinion that he had no jurisdiction to adjudicate upon this issue although an attempt had been made to lead evidence before him as to the nature of the work and the number of workers required to work each Calender machine. He was further of the opinion that even if it be assumed that the appellant had reduced the number of workers on a Calender machine, the respondent's action to go on strike or refuse to work was illegal when legal remedies were open to them to ventilate their grievances. He, accordingly, dismissed the applications of the respondents and declined to set aside the orders of the appellant dismissing the respondents from the service of the Model Mills Ltd.

6. The State Industrial Court, after referring to some of the evidence, came to the conclusion that the order of the management that each Calender machine should be worked by two persons only was inconsistent with the previous practice which was in existence for thirty years and it had clearly increased the workload of each employee. It was of the opinion that the management was not justified in effecting this change without following proper procedure, giving notice and entering into agreement after entering into negotiations or conciliation and as the order directing the working of each Calender machine by two instead of three persons was not a lawful order, the respondents could not be punished for refusing to obey such an order. It finally came to the following conclusion:

> "Moreover, the refusal to share additional burden of work gave rise to the industrial dispute and the refusal to accept additional work could not be said to be in consequence of an industrial dispute. There is no doubt that the employees refused to bear the additional burden of work but that would not amount to refusal to continue to work in the normal way that is to share the usual or customary burden of work. Here, therefore, there was actually no refusal to continue to work in the usual manner or to accept the usual work and it could not, therefore, amount to a strike as defined in the C. P. & Berar Industrial Disputes Settlement Act."

So far as the respondents who were not actually working a Calender machine on 19th of December, 1955, were concerned, the State Industrial Court was of the opinion that their refusal to work amounted to a strike but it thought that the order of dismissal was an extremely harsh punishment as the action of the management was high handed. It was further of the opinion that there were extenuating circumstances and the management had failed to take into account the extenuating circumstances and had violated the mandatory provision of the Standing Order 26(4). The State Industrial Court, accordingly, set aside the order of dismissal passed by the appellant in the case of

each respondent.

7. Under Section 16(5) of the Act, an appeal; against an order passed by the Labour Commissioner under Section 16 is expressly prohibited, although revisional jurisdiction is conferred by the section upon the State Industrial Court against any such order of the Labour Commissioner. It follows from this that the power of revision should be exercised by the Slate Industrial Court on a point of law and not merely because the State Industrial Court takes a different view to that of the Labour Commissioner on questions of fact; otherwise there would be no distinction between a revision and an appeal and the State Industrial Court, in purporting to act in the exercise of its revisional jurisdiction, would in effect be hearing the matter as an appeal, which is specifically prohibited. It remains, therefore, to consider how far the orders of the State Industrial Court passed in the revisional applications filed by the respondents is in accordance with law. For this purpose, reference to some of the provisions of the Act becomes necessary.

8. "Strike" has been defined in Section 2(27) of the Act to mean a total or partial cessation of work by employees employed in an industrial undertaking acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work where such cessation or refusal is in consequence of an industrial dispute in any industry. Industry has also been defined in the Act to which a detailed reference is unnecessary as there can be no question that the Model Mills Ltd., Nagpur is an industry within the said definition. Section 2(12) of the Act defines "industrial dispute" and this means any dispute or difference connected with an industrial matter arising between employer and employee or between employers and employees. Industrial matter" has been defined in Section 2 (13) of the Act to mean any matter relating to work, pay, wages, reward, hours, privileges, rights or duties of employers or employees or the mode, terms and conditions of employment or refusal to employ and includes questions pertaining to-(a) the relationship between employer and employee, or to the dismissal or non-employment of any person, (b) the demarcation of function, of any employee or class of employee, (c) any right or claim under or in respect of or concerning an agreement, submission or award made under the Act, and (d) what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of society as a whole. "Change" has been defined in Section 2(6) to mean a change in any industrial matter. Under Section 40(1) (c) of the Act a strike or a lock out shall be illegal if it is commenced or continued only for the reason that the employer had not carried out the provisions of any Standing Order or had made an illegal change. It is unnecessary to make reference to Clauses (a), (b), (d), (e), (f), (g) and (h) of this Sub-section.

9. It is clear from the material on the record that the respondents who were the employees of the Model Mills Ltd. - an industrial undertaking - ceased to work on 19th of December, 1955, acting in combination and their refusal to work was a concerted action.

10. The principal questions which arise for consideration are whether the cessation of work by the respondents or their refusal to work was in consequence of an industrial dispute and whether there had been a change in any industrial matter at the instance of their employer, the Model Mills Ltd.

11. As already stated, the Assistant Labour Commissioner did not consider that he had jurisdiction to adjudicate upon the issue whether three persons were required to work a Calender machine which had been reduced to two persons, but he was firmly of the opinion that even if there had been a reduction in the number of persons to work a Calender machine, the action of the respondents to go on strike or refuse to work was illegal. He did not refer to the material on the record in order to ascertain whether there was an industrial dispute which led to the cessation of work by the respondents. The State Industrial Court, however, found, on the material before it, that three persons used to work a Calender machine and the order of the management in reducing them" to two was not a lawful order. The State Industrial Court made no reference to the definition of the word "strike" in the Act. It made no reference to the material on the record concerning the existence of an industrial dispute previous to the respondents refusing to work. Before the orders of dismissal passed by the appellant against the respondents could be set aside by the State Industrial Court, it was essential for it to find whether there was an industrial dispute in consequence of which the respondents refused to work. It may be conceded that the plea made by the appellant before the Labour Commissioner is inconsistent with the argument that the strike was illegal; but in view of the material on the record consisting of the conduct of the appellant immediately after the incident and the admission made by the workmen, the said defect in the pleading cannot be allowed to prejudice or adversely affect the appellant's case. Having regard to the definition of "industrial dispute" in the Act, there can be no question, on the material on the record, that there was such a dispute previous to the respondents' ceasing to work. On this question, the evidence of the respondents and the appellant is in substantial agreement; for instance, Gulabchand Nanhelal, a Calenderman, had stated that previous to 19th of December, 1955,- three persons worked a Calender machine, but on that day only two persons were allotted to work such a machine and the appellant was requested to give three persons but since he refused work was stopped. According to Mr. Sukhadwala, Dye & Bleach Superintendent of the Model Mills Ltd., the workers had asked several times that three persons should work the machine, but the management always kept only two men to work the machine. On 19th of December, 1955, he had been told by one Sharma that the workers were asking for three men to work each Calender machine and he told them that they should not stop work and at that the workers said that unless three men were given to work on each machine, they would not start work. Reference to other evidence is unnecessary. It is sufficient to state that, on the evidence already referred to, on 19th of December, 1955, there was a dispute or difference connected with an industrial matter arising between the employer and the employee. The dispute as to whether three persons or two persons should work a Calender machine was certainly a matter relating to work and was, therefore, an industrial matter with in the definition of that expression as given in the Act. There can, therefore, be no question that there was cessation of work by the respondents in consequence of an industrial dispute. It is also clear from the material, on the record, that the cessation of work was the result of a combination and was a concerted refusal because even such of the respondents as were not employed to work a Calender machine on 19th of December, 1955, ceased to work in order to show sympathy and lend support to those respondents who were deputed to work a Calender machine on that date. Indeed, there is a clear finding by the State Industrial Court that the action of those workers, who were not allotted to work a Calender machine on 13th of December, 1955, amounted to a strike. The State Industrial Court having failed to refer to the relevant provisions of the Act and the material on the record thus erred in law in holding that the cessation of work by the workers employed to work a Calender machine was not a strike as defined

in the Act. It is clear, therefore, that those who were employed to work a Calender machine and those, who were not so employed, had gone on strike within the; meaning of that word as defined in the Act. | The question which remains to be considered is whether the strike by them was an illegal strike. So far as the respondents who were not working a Calender machine are concerned, their strike was undoubtedly an illegal strike. So far as the respondents who were allotted to work a Calender machine are concerned, their strike would also be an illegal strike as stated in Section 40(1) (c) of the Act even if it were to be assumed that their employer had not carried out the provisions of any Standing Order or had made an illegal change. It had not been established, however, that the order passed by the management was contrary to the provisions of any Standing Order. It is unnecessary to decide whether in fact there had been a change in any industrial matter on the part of the employer of the respondents because, even if it be assumed that there had been a change - and an illegal change at that - the strike would be illegal if it was commenced or continued merely because the employer had made an illegal change. Section 40 (1) (c) of the Act 'makes this quite clear.

12. In our opinion, the entire approach to the principal questions arising in the case by the State Industrial Court was quite wrong and contrary to the provisions of the Act. The State Industrial Court erred in law in setting aside the orders of dismissal passed by the appellant against those respondents who were not employed to work a Calender machine when, on its own findings, they had gone on strike as also in the case of the respondents who were deputed to work a Calender machine because their act amounted to an illegal strike. Under the provisions of the Standing Orders of the Model Mills Ltd., all the respondents were guilty of misconduct. The appellant had acted within his jurisdiction, under the Standing Orders, in dismissing them. There was no justification for the respondents to go on an illegal strike.

13. In the result, we are of the opinion, that all the nine respondents, having gone on an illegal strike, were rightly dismissed by the appellant. The appeals are accordingly allowed and the orders of the State Industrial Court are set aside and that of the Assistant Labour Commissioner are restored. There will, however, be no order for costs.