Bhavnagar Municipality vs Alibhai Karimbhai & Others on 8 February, 1977

Equivalent citations: 1977 AIR 1229, 1977 SCR (2) 932, AIR 1977 SUPREME COURT 1229, 1977 2 SCC 350, 1977 LAB. I. C. 834, 1977 2 SCR 932, 34 FACLR 229, 1977 MCC 28, 1977 ICR 213, 1977 (1) SCWR 585, 1977 2 LABLN 1, 1977 U J (SC) 208, 1977 (1) LABLJ 407, 51 FJR 328

Author: P.K. Goswami

Bench: P.K. Goswami, P.N. Shingal

PETITIONER:
BHAVNAGAR MUNICIPALITY

Vs.

RESPONDENT:
ALIBHAI KARIMBHAI & OTHERS

DATE OF JUDGMENT08/02/1977

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
SHINGAL, P.N.

CITATION:
1977 AIR 1229 1977 SCR (2) 932
1977 SCC (2) 350

ACT:
Industrial Dispute Act, S. 33(1)(a), whether contravened by retrenchment of workers directly involved in dispute pending before Tribunal--Contravention of s. 33, whether automatically leads to reinstatement of retrenched workers.

HEADNOTE:
An industrial dispute between the appellant and its workmen including the respondents, was pending before the Industrial Tribunal. The dispute, inter alia, related to the demand for permanent status of the respondents who were rated workers of the water works section of the Municipality. Meanwhile, without obtaining the Tribunal's prior permission, the appellant retrenched the respondents. On a

complaint by the respondents u/s 33A of the Industrial Disputes Act. The Tribunal made an award holding that the appellant had contravened s. 33(1)(a) of the Act, and directed reinstatement of the respondents. The complaint was not adjudicated on merits. The appellant filed a writ petition which was dismissed in limine by the High Court.

Allowing the appeal, but agreeing that the appellant had contravened s. 33 (I) (a) and that the respondents' complaint u/s 33 (1) (a) was maintainable, the Court restored the respondents' complaint for disposal on merits by the Tribunal.

HELD: (1) The character of the temporary employment of the respondents being a direct issue before the Tribunal, that condition must subsist and cannot be altered to their prejudice by putting an end to that temporary condition. This could be done only with the express permission of the Tribunal.

[933-G-H]

The Court further observed:

To permit rupture in employment, in this case, without the prior sanction of the Tribunal will be to. set at naught the avowed objection of s. 33 which is principally directed to preserve the status quo under specified circumstances in the interest of industrial peace during the adjudication. [936 A-B]

(2) In a complaint under s. 33-A, even if the employer is found to have Contravened the provisions of s. 33, the Tribunal has to pronounce upon the merits of the dispute between the parties. For the purposes of the Act, the complaint under s. 33A takes the form of a reference of an industrial dispute by the appropriate authority and the same has to be disposed of in a like manner. [936 C-D]

(3) The Tribunal has committed an error of jurisdiction in ordering-reinstatement of the respondents and declining to adjudicate the matter and to make its award on the merits as required under the law. [936 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 900 of 1976. Appeal by Special Leave from the Judgment and Order dated 8-3-1976 of the Gujarat High Court in Spl. Civil Appln. No. 263 of 1976.

P.H. Parekh and (Miss) Manju jetley for the Appellant. S.C. Agarwal, V.J. Francis and A.P. Gupta for the Respond- ents.

The Judgment of the Court was delivered by GOSWAMI, J. This appeal by special leave at the instance of the Bhavnagar Municipality is directed against the order of the Gujarat High Court dismissing in limine its writ application challenging the award of the Industrial Tribunal, Gujarat,

made under section 33A of the Industrial Disputes Act (briefly the Act).

There was an industrial dispute pending between the Bhavnagar Municipality (briefly the appellant) and its workmen before the Industrial Tribunal 'in Reference No. 37 of 1974 referred to it under section 10(1) (d) of the Act on March 5, 1974. The said industrial dispute related to several demands including the demand for permanent status of the daily rated workers of the Water Works Section of the Municipality who had completed 90 days' service. While the aforesaid industrial dispute was pending before the Tribu- nal, the appellant, on September 30, 1974, passed orders retrenching 22 daily rated workmen (briefly the respondents) attached to the Water Works Section of the Municipality. It is not disputed that the appellant had complied with sec- tion 25F of the Act and due retrenchment compensation had been paid to those workers. On June 20, 1975, the respond- ents filed a complaint to the Tribunal under section 33A of the Act for contravention of section 33 of the Act by the appellant.

Neither party adduced any oral evidence before the Tribunal but relied only upon documents produced before it. On October 30, 1975, the Tribunal made its award holding that the appellant contravened section 33(1)(a) of the Act and, therefore, directed reinstatement of the respondents. The appellant preferred a writ application before the High Court which was dismissed in limine, as stated above. Hence this appeal by special leave.

Two questions arise for decision in this appeal. First, whether the appellant contravened section 33 (1)(e) of the Act by ordering retrenchment of the respondents who, along with other workers, were directly involved in the industrial dispute pending before the Tribunal. Second, whether contra- vention of section 33 will automatically lead to an order of reinstatement of the respondents, as has been held by the, Tribunal.

It is common ground that the appellant did not obtain prior permission of the Tribunal before retrenching the respondents.

It is well settled that a complaint under section 33A is maintainable only if the employer contravenes section 33 of the Act. It is submitted by Mr. Agarwal, on behalf of the respondents, that the object of section 33 should be borne in mind in considering the question about alteration of conditions of service under section 33(1)(a) of the Act. He submits that since the respondents were directly in- volved in the dispute and the question of their permanent status from a casual or temporary status formed the subject matter of the dispute, the reference. has been made nuga- tory by the action of the appellant in retrenching them. 'Mr. Parekh, on the other hand, submits that retrenchment of the respondents does not' involve alteration of conditions of service and hence there is no contravention of section 33 of the Act.

There is no complaint by Mr. Agarwal that there is any noncompliance by the appellant with section 28F of the .Act. Mr. Agarwal further rightly concedes that he cannot bring his case under section 33(1) (b) or under section 33(2)(b) since it is not a case of discharge or dismissal for miscon- duct. His entire submission is based on section 33(1)(a) of the Act.

Section 33 of the Act so far as material for us may be set out:

> "33(1) During the pendency of any ....
>
> proceeding before a .....
>
> Tribunal .... in respect of an industrial dispute, no employer shall--
>
> (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the condi-

tions of service applicable to them immediate- ly before the commencement of such proceeding;

X X X save with the express permission in writing of the authority before which the proceeding is pending".

There is a clear prohibition in section 33(1)(a) against altering conditions of service by the employer under the circumstances specified except with the written permission of the Tribunal or other authority therein de- scribed.

In order to attract section 33(1)(a), the following features must be present:

> (1) There is a proceeding in respect of an industrial dispute pending before the Tribunal. (2) Conditions of service of the workmen applicable immedi-

ately before the commencement of the Tribunal proceeding are altered.

(3) The alteration of the conditions of service is in regard to a matter connected with the pending industrial dispute.

(4) The workmen whose conditions of service are altered are concerned in the pending industrial dispute. (5) The alteration of the conditions of service is to the prejudice of the workmen.

The first feature is admittedly present in this case since action has been taken by the appellant in retrenching the respondents during the pendency of the proceeding before the Tribunal. The point that requires consideration is whether the other features are also present in the instant case.

Before we proceed further we should direct our attention to the subject matter of the industrial dispute pending before the Tribunal. It is sufficient to take note of the principal item of the dispute, namely, the demand of the respondents for conversion of the temporary status of their employment into permanent. To recapitulate briefly the appellant employed daily rated workers to do the work of boring and hand pumps in its Water Works Section. These workers have been in employment for over a year. They claimed permanency in their employment on their putting in more than 90 days' service. They also demanded two pairs of uniform every year, cycle allowance at the rate of Rs. 10/-

per month, Provident Fund benefit and National Holidays and other holidays allowed to the other workers. While this particular dispute was pending before the Tribunal, the appellant decided to entrust the work, which had till then been performed by these workers in the Water Works Section, to a contractor. On the employment of the contractor by the Municipality for the self-same work, the services of the respondents became unnecessary and the appellant passed the orders of retrenchment. It is, therefore, clear that by retrenchment of the respondents even the temporary employ- ment of the workers ceased while their dispute before the Tribunal was pending in order to improve that temporary and insecure status.

Retrenchment may not, ordinarily, under all circum- stances, amount to alteration of the conditions of service. For instance, when a wage dispute is pending before a Tribu- nal and on account of the abolition of a particular depart- ment the workers therein have to be retrenched by the em- ployer, such a retrenchment cannot amount to alteration of the conditions of service. In this particular case, howev- er, the subject matter: being directly connected with the conversion of the temporary employment into permanent, tampering with the status quo ante of these workers is a clear alteration of the conditions of their service. They were entitled during the pendency of the proceeding before the Tribunal to continue as temporary employees hoping for a better dispensation in the pending adjudication. And if the appellant wanted to effect a change of their system in getting the work done through a contractor instead of by these temporary workers, it was incumbent upon the appellant to obtain prior permission of the Tribunal to change the conditions of their employment leading to retrenchment of their services. The alteration of the method of work culmi- nating in termination of the services by way of retrenchment in this ease has a direct impact on the adjudication pro- ceeding. The alteration effected in the temporary employ- ment of the respondents which was their condition of service immediately before the commencement of the proceeding before the Tribunal, is in regard to a matter connected with the pending industrial dispute.

The character of the temporary employment of the re- spondents being a direct issue before the Tribunal, that condition of employment, however insecure, must subsist during the pendency of the dispute before the Tribunal and cannot be altered to their prejudice by putting an end to that temporary condition. This could have been done only with the express permission of the Tribunal. It goes with- out saying that the respondents were directly concerned in the pending industri- al dispute. No one also deny that snapping of the temporary employment of the respondents is not to their prejudice. All the five features adverted to above are present in the instant case. To permit rupture in employment, in this case, without the prior sanction of the Tribunal will be to set at naught the avowed object of section 33 which is principally directed to preserve the status quo under speci- fied circumstances in the, interest of industrial peace during the adjudication. We are, therefore, clearly of opinion that the appellant has contravened the provisions of section 33(1)(a) of the Act and the complaint under section 33A, at the instance of the respondents, is maintainable. The submission of Mr. Parekh to the contrary cannot be accepted.

That, however, does not conclude the matter. The Tribu- nal was clearly in error in not adjudicating the complaint on the merits. It is well settled that in a complaint under section 32A, event if the employer is found to have contra- vened the provisions of section 33, the Tribunal has to pronounce upon the merits of the dispute between the par- ties.' The order passed in an application under

section 33A is an award similar to one passed in a reference under section 10 of the Act. The award passed has to be submitted to the Government and the same has to be published under section 17 of the Act. For the purposes of the Act the complaint under section 33A takes, as it were, the form of a reference of an industrial dispute by the appropriate au- thority and the same has to be disposed of in a like manner. The Tribunal has committed an error of jurisdiction in declining to adjudicate the matter and to make its award on the merits as required under the law. The High Court was, therefore, not right in dismissing the writ application of the appellant in limine. We should also. observe that, in the absence of adjudication on the merits by the Tribunal, the High Court was not right in holding that the retrench- ment by the appellant was "a gross act of victimisation". In the result the order of the High Court is set aside. It follows that the award of the Tribunal ordering rein- statement of the respondents fails and is set aside. We should also add that the. observations of the Tribunal with regard to the question of prosecution of the appellant under sections 31 and 32 of the Act were not at all perti- nent in an enquiry under section 33A and ought not to have been made. The writ application in the High Court stands allowed to the extent indicated. The appeal is allowed as directed in this order. The complaint under section 33A stands restored to the file of the Tribunal for disposal on the merits in accordance with law and in the light of this judgment. The appellant, however, shall pay the costs of the respondents as ordered at the time of granting of the Special Leave.

M.R. Appeal allowed.