Tulsidas Paul vs The Second Labour Court, W.B. And Ors. on 3 February, 1971

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Bench: C.A. Vaidialingam, J.M. Shelat, V. Bhargava

JUDGMENT

J.M. Shelat, J.

1. This appeal, by special leave, arises out of an industrial dispute between the appellant from and eight of its workmen represented by the All India Chhata Karkhana Muzdoor Union referred for adjudication to the Second Labour Court, Calcutta. The dispute was whether the dismissal of the said eight workmen by the appellant firm was justified ?

The dispute arose from the following facts :

2. Prior to February 4, 1960, most of the workmen in the appellants' factory were members of the All India Chhata Karkhanna Muzdoor Union. Sometime prior to February 1960 they became members of the rival union, the Calcutta Chhata Karkhana Muzdoor Union The said eight workmen and two others, however, refused to join the rival union and that resulted in bad feelings between the two unions. On February 4, 1960, there was trouble in the factory when a procession of workers entered into the factory and began to throw brickbats and other missiles The appellants did not then take any action presumably because the trouble was amongst the workmen themselves owing to the said union rivalry. However, when the said eight workmen together with the said two others (with whom we are not concerned in this case) arrived at the factory, the rest of the workmen requested the appellant firm not to give work to them. It would seem that the appellants thereupon declined to give work to those workmen. According to the appellants, the workmen had passed a resolution asking the appellants not to give work to those workmen and had handed over that resolution to them. The workmen raised a dispute on the ground that the refusal to give them work amounted to dismissal which was sponsored by the All India Chhata Karkhana Muzdoor Union.

3. The Labour Court found, on the evidence before it, that the appellants had refused to give work to these workmen out of difference to the wishes of the rest of the workers. It held, however, that the action of the appellants in refusing work to those workmen amounted to their dismissal and since the dismissal was not for any misconduct and was made without holding any enquiry it was unjustified. In that view the labour Court ordered reinstatement and directed payment of all back

wages from February 5, 1960 till the date when they would be taken back in employment.

4. The appellants thereupon invited the High Court at Calcutta through a petition under Article 226 of the Constitution to quash the said order. A learned Single Judge of that High Court, who tried the petition, agreed, for the reasons given by him in his judgment, with the labour Court that the appellants' action in refusing work amounted to dismissal. He held that the decision of the Labour Court that it was not justified could not in the circumstances of the case be said to be wrong. But on the question as to what relief the workmen were entitled, he relied on the Punjab National Bank v. All India Punjab National Bank Employees Federation where it was held that though the general rule in cases of unjustified dismissal was reinstatement, "nevertheless, in unusual or exceptional cases the tribunal may have to consider whether, in the interest of the industry itself, it would be desirable or expedient not to direct reinstatement". The petition, according to the learned Judge, was that the appellants dismissed the eight workmen owing to the attitude taken by the majority of the workmen. He posed the question as to what was the remedy of the workmen dispute the fact of their dismissal being wrongful. He observed that reinstatement of these eight workmen might be taken by the other workers "with ill grace and may start fresh industrial hostilities", that such an eventuality had to be avoided, and therefore the Labour Court, in such exceptional circumstances shoud have considered the unusual circumstances and instead of reinstatement ought to have compensated the workmen with adequate monetary consideration. In addition, he held that the employment of the workmen was seasonal, that they did not establish any lien on their posts during the off season and since they were dismissed almost at the beginning of the 1960 season the compensation they would be entitled to what they would have earned during the 1960 season. In this view, he quashed the order of the Labour Court which had, as aforesaid, directed reinstatement.

5. The workmen took the matter further & filed a letters patent appeal. The only question which was canvassed in that appeal was whether the learned Single Judge was entitled to interfere with the order of the Labour Court and quash the relief of reinstatement granted by it. In dealing with this question the letters Patent Bench relied on the very same observations in the Punjab National Bank's case AIR 1960 S.C. 160 at 173 which were relied on by the learned Single Judge. But the Bench emphasised that before the Labour Court the appellants had not put the question of reinstatement in issue, nor raised any specific objection against the normal rule of reinstatement The Bench held that in the absence of any such specific contention, the Labour Court appeared to have thought that the dispute among the workers was a passing phase which would in course of time subside No plea was made before it that reinstatement might result in disturbance of industrial peace, a plea if satisfactorily proved, might have induced the Labour Court not to grant reinstatement.

6. The Division Bench also noted that the Labour Court was not unconscious of that the work in the factory was seasonal and also of the contention of the appellants that the workmen had no lien on the employment for the next season, and that therefore, there was no question of their being reinstated But there was the evidence of one of the partners of the appellant-firm that though there was no lien in the technical sense, the firm used to employ all those workmen who desired to continue and presented themselves for work at the commencement of the next season. The evidence was that the practice in the factory was to continue the workmen from season to season. It was,

therefore, not as if the Labour Court had disregarded or ignored any material circumstances or that its finding on that account was vitiated or suffered from any patent error justifying interference in the exercise of writ jurisdiction The Bench finally held that the question whether a wrongfully dismissed workman should be reinstated or not being a matter of discretion of the Labour Court, if that Court had ordered reinstatement after considering all the material aspects placed before it there would be no reason for interference with such exercise of discretion by the High Court. It, therefore, held that the Single Judge was not justified in quashing the order passed by the Labour Court.

7. The question raised by Counsel for the appellant firm before us was the same as was raised before the High Court, namely, whether the High Court could interfere with the direction of reinstatement passed in exercise of discretion by the Labour Court. Counsel did not raise the question whether in the circumstances of the case, refusal by the appellant firm to give work to the concerned workmen amounted to a wrongful dismissal. Such a question could not have raised at this stage because it was not raised before the Letters Patent Bench. We, therefore, refrain from going into that question.

8. It is well established that in exercise of its jurisdiction under Article 226, the High Court does not sit in appeal over the orders of industrial tribunals. Its jurisdiction is supervisory, and therefore, it interferes if the jurisdiction conferred on such tribunals is improperly, or in noncompliance of well established principles, exercised or for any such other person.

9. In Hindustan Steel Ltd. v. Roy we rencently, held after considering the previous case, law, that though the normal rule, in cases where dismissal or removal from service is found to be unjustified, is reinstatement, industrial tribunals have the discretion to award compensation unusual or exceptional circumstances where the tribunal considers, on consideration of the conflicting claims of the employer on the one had and of the workmen on the other, reinstatement inexpedient or nor desirable. We also held that no hard and fast rule as to which circumstances would constitute an exception to the general rule can be laid down as the tribunal in each case must, in a spirit of fairness and justice and in keeping with the objectives of industrial adjudication, decide whether it should, in the interest of justice, depart from the general rule.

10. It appears from the judgment of the learned single Judge that he was moved to interfere with the order of reinstatement, firately, on the ground that it would be received by the other workmen with ill grace and might result in fresh hostilities between the two groups of workmen, and secondly, that employment of workmen in this case being seasonal the employers were not bound to engage the same workmen in the next season.We find it difficult to sustain this reasoning. As observed by the Division Bench, the employers did not at any stage before the Tribunal place the question of reinstatement in issue. Nor did they establish that reinstatement would result in fresh industrial hostilities. In he absence of any proof that that would be the consequence of reinstatement, the conclus,on of the learned Single Judge that it would so result was only an assumption. It is true that the workmen could not have lien on the posts to which they were employed in tne technical sense of that term but, as aforesaid, there was evidence of the firm following the practice of engaging the same workmen when they presented themselves for work at the commencement of the next season. The appellant having failed to lead evidence as to a reasonable possibility of recurrence of trouble if the concerned workmen were to be reinstated or of their not being entitled to be employed at the

beginning of the next season, it was impossible to say that the case of an exception to the general rule of reinstatement was made out. The case before the High Court thus was not one where there was any error of law on the record, nor was it a case where the Labour Court had acted in excess of its jurisdiction or failed to exercise its jurisdiction.

11. In the circumstances there was no occasion for interference by the High Court and the Division Bench must, therefore, be held not to have erred in reversing the interference by the learned Single Judge. The appeal fails and is dismissed with costs.