

The Chairman, Brooke Bond India Private ... vs Chandranath Choudhary on 3 September, 1968

Equivalent citations: AIR1969SC992, [1969(19)FLR180], (1969)IILLJ387SC, [1969]1SCR919, AIR 1969 SUPREME COURT 992, 1969 LAB. I. C. 1389

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

JUDGMENT

J.M. Shelat, J.

1. This appeal, by special leave, is against the order by which the Labour Court, Patna, set aside the order of discharge from service passed by the Appellant-Company against the respondent and which also directed his reinstatement.

2. The respondent was appointed a salesman on August 19, 1954, by a letter of appointment, clause (9) whereof provided that either party could terminate the contract of employment by a notice of 28 days. The Appellant-Company had also appointed by an agreement M/s. Hari Bhagat Laxmi Bhagat at Kathmandu as its wholesalers. The said agreement provided that the wholesalers would have to deposit with the Company a sum of Rs. 20,000/-, that they would be paid commission at 3% on all sale proceeds in respect of sales effected by them, that out of the stock supplied to the wholesalers the Company's own salesman posted at Kathmandu would also be entitled to effect sales and that the sale proceeds in respect of sales effected by both of them should be remitted to 1969 S. C./63 XI G-6 the Company through its salesman. On August 26, 1956 the Company sent the respondent to Kathmandu for promoting sales and for assisting the said wholesalers in their sales. No difficulty appears to have been experienced by the Company by this arrangement until the middle of 1960. But it was said that thereafter the respondent became irregular in remitting the sale proceeds and that notwithstanding his assurances to regularise his work he did not do so. The result was that the Company sent one P. N. Saxena to Kathmandu and also a relief salesman, one K. B. Sinha, who on December 5, 1960, took over charge from the respondent. On December 6, 1960, the Company received a telegram from the wholesalers that there was cash shortage of Rs. 11,000/- by the respondent. On receipt of the telegram, one K. P. Sinha, the Branch Manager at Patna, went over to Kathmandu and made a preliminary enquiry in the course of which it was said that the respondent admitted that he had taken personal loans from the wholesalers and had executed two loan bonds for Rs. 6,400/- and Rs. 4,600/-. The respondent was also said to have written on 7th, 8th, 9th and 10th December, 1960, letters to the said Branch Manager admitting that he had obtained the said loans from the wholesalers. On December 9, 1960, the wholesalers wrote to the Company that they

had paid the said two amounts to the respondent for remittance to the Company and asked the Company to send them the requisite credit vouchers therefore. On December 28, 1960, the wholesalers also enclosed copies of two receipts purported to have been executed by the respondent in respect of the said two amounts. On December 27, 1960, the respondent intimated to the Company that the said receipts were extorted from him by the wholesalers, and that pending instructions from the Company he was filing a criminal complaint against them. It is clear that the wholesalers had changed their case, their case first being that the said two amounts were advanced by way of loans to the respondent and later on stating that the said two amounts were given to the respondent for remittance but the respondent had failed to remit them and that therefore there was cash shortage of Rs. 11,000/-. The respondents case, on the other hand, was that he had not taken any loans from the said wholesalers, that contrary to the said agreement With the wholesalers, the Company's officers at Patna Branch connived at credit sales effected by the wholesalers, that the wholesalers, on coming to know that on December 5, 1960 the respondent had handed over charge to a new salesman, got panicky and realising that they would not be able to recover the sale proceeds of the said credit sales, they and the said K. P. Sinha, the Branch Manager arranged between them to get the said loan bonds executed by the respondent, that the wholesalers thereafter also extorted under coercion the said two receipts, and that therefore the wholesalers' version that there was cash shortage of Rs. 11,000/- was false. The Company thereafter served a charge-sheet on the respondent alleging therein that he had abused the position of trust and responsibility as a Company's employee and brought down thereby its reputation and had committed the following acts of misconduct, namely:

"You have given room for allegations to be made against you by the wholesalers Hari Bhagat Laxmi Bhagat with respect to transactions admittedly entered into by you in your personal capacity.

The wholesaler alleges that he handed over to you Rs. 11,000/- made up of Rs. 6,400/- on 2-10-1960 and Rs. 4,600/- on 3-12-1960. You deny the receipt of this money from the wholesalers and in fact it appears that you have filed a criminal complaint against the wholesaler for alleged extortion of certain receipts from you.

By such conduct and behavior you have brought down the reputation of the Company at Kathmandu and therefore, you have committed a gross misconduct prejudicial to the interest of the Company.

Further, by such irresponsible conduct on your part you have also forfeited the confidence of the Company reposed on you."

The charge-sheet called upon the respondent to show cause why "for the aforesaid gross misconduct committed by you, you should not be dismissed from service or otherwise' suitably dealt with." It is clear that the facts of misconduct alleged against the respondent as his acts were:

1. taking personal loans from the 'wholesalers,

2. denial by him of these loans and filing a criminal complaint against the wholesalers,' and

3. abusing the position of trust and responsibility as the company's "employee and thereby bringing down its reputation. The last allegation is obviously an inference from the alleged acts (1) and (2), and not an independent act of misconduct. It may be mentioned that it was not the Company's case that the respondent had embezzled the Company's monies, its case all throughout being that the monies for which the respondent was said to have executed the said bonds and the said receipts were not the Company's monies but were for loans advanced by the wholesalers. In his reply to the said charge sheet, the respondent denied the said alleged transactions, his case, as aforesaid, being that the said bonds and the said receipts as also the said four letters written by him from the 7th to the 10th of December, 1960, were secured from him either under the influence of the Branch Manager or extorted from him under force and coercion by the wholesalers. It was admitted before us that the Appellant-Company has not framed any rules of conduct for its servants and further that there was no rule forbidding a Company's employee from entering into personal transactions such as loans. In the absence of any such rule, it is prima facie difficult to say how a loan or its denial could be said to be acts of misconduct.

3. An enquiry into the said charges was duly held thereafter wherein the respondent admittedly was given an opportunity of being heard and to lead such evidence as he desired. At the end of the enquiry the enquiry officer gave the following findings:

(1) that between August to December 1960, the respondent was guilty of irregularities in his work, (2) that stocks were sold on credit and further that the respondent had failed to remit sale proceeds thereof, (3) that in spite of assurances given by him to be regular in future the respondent failed to live up to these assurances, (4) that during the time when the respondent was at Kathmandu the Company's business was low and that was due to his failure to inform the company of the market position there and his failure to obey instructions given to him by the officers at Patna Branch.

(5) that the respondent had taken loans on his personal account from the wholesalers for which he had executed the said two bonds.

(6) that by executing the said two receipts he had made it appear as if the said monies were part of the monies given to him for remittance, thus enabling the wholesalers to allege that they had handed them over for remittance and were no longer liable to the company for them.

(7) that the letters of the 7th, 8th, 9th and 10th December, 1960, were voluntarily written by the respondent to the Branch Manager, and (8) that it was possible that the said two receipts were extorted from the respondent.

The enquiry officer concluded his report by holding that the charge that the respondent had entered into personal transactions with the wholesalers taking advantage of his position was satisfactorily proved and that he had made abuse of the trust reposed in him by the company and by systematic irregular work and disobedience of the instructions of the company he had managed to keep everybody in the dark with a view to covering his "illegal activities". The report ended by stating "that all the charges" had been satisfactorily established by cogent evidence beyond any reasonable doubt. By an order dated September 20, 1961, the respondent was discharged from the company's service "with immediate effect for the aforesaid items of misconduct committed by and proved against you".

4. It is clear from the aforesaid findings that although the charge-sheet alleged only two acts of misconduct on the part of the respondent, the enquiry officer ad allowed evidence to be led on several other matters outside the scope of the charge-sheet such as the alleged irregularities on the part of the respondent prior to December 1960, his alleged disobedience of instructions given to him by the Patna Branch, his failure to live up to the assurances given by him etc., and further the enquiry officer had given his findings on those matters which were not the subject-matter of the charges.

5. Aggrieved by the order of discharge, the respondent filed a complaint in the Labour Court, Patna under Section 26 of the Bihar Shops & Establishment Act, 1953 in which he pleaded inter alia:

- (a) that there was no reasonable cause for dispensing with his services,
- (b) that he was not guilty of any misconduct,
- (c) that he had not entered into personal transactions with the wholesalers, and
- (d) that "the officers of the company in collusion with the wholesalers, and to save their gross negligence, took statements from the petitioner under threat and undue influence".

6. In reply to the said complaint the company alleged that after a careful enquiry and on the basis of evidence adduced thereat and the findings of the enquiry officer the company had come to the conclusion that "the petitioner was guilty of the charges leveled against him", and had decided to discharge him from the service of the company instead of dismissing him "which however would have been perfectly warranted by the facts and circumstances of the case and the charges established against the petitioner". The Labour Court on these pleadings framed four questions for its consideration:

- (1) Whether the said wholesalers had advanced to the respondent the said two sums?
- (2) Whether the credit sales effected by the wholesalers were contrary to their agreement with the company?

(3) Whether they were with consent and knowledge of the company's officers at Patna, and (4) Whether the company's said officers for fear that they might be taken to task by the Head Office for permitting such credit sales got the respondent to admit in various letters that the said two sums were advanced to him as personal loans?

7. The Labour Court with the consent of the parties admitted the evidence recorded at the domestic enquiry as substantive evidence and also recorded certain other evidence led by the parties, and ultimately found:

(1) that the domestic enquiry was properly held, (2) that the company's contention that it had jurisdiction to interfere with the findings of the domestic enquiry only, if it was proved that there was want of good faith or victimisation or unfair labour practice or that the enquiry officer had committed any basic error or violated the principles of natural justice or that his findings were baseless or perverse was wrong, and that under Section 26 (2) and (5) it could record evidence and come to its own findings irrespective of the findings of the domestic enquiry, (3) that the respondents' contention that the wholesalers extorted from him on December 8, 1960, the said two receipts bearing dates October 3, 1960 and December 2, 1960 was right, (4) that the denial by the respondent of having taken any loan from the whole? sales and his filing the criminal complaint in Nepal Court 'appear to be justified'.

(5) that the company's case that the wholesalers had advanced Rs. 11,000/- as loan to the respondent was not correct, and (6) that there was force in the respondent's contention that the company's officers apprehending that action might be taken against them for conniving at credit sales made the respondent admit that he had taken personal loans the amount whereof being the price due under the said credit sales.

On these findings the Labour Court allowed the respondent's complaint, set aside the order of discharge passed by the Company and directed his reinstatement

8. Counsel for the company urged that the order passed by the company was one of discharge simpliciter and not one by way of punishment. It was urged that the true position was that the respondent was sent to Kathmandu to promote sales and that as the company's representative he was to see that the wholesalers fully remitted all the sale proceeds regularly, that in the position he was, if he were to take loans even in his personal capacity he would place himself into a situation where he would not be able to exact, proper performance from the wholesalers and consequently he placed himself into a position where there was bound to be conflict between duty and interest. In these circumstances it was not possible for the company to continue to repose in him trust and confidence and the company was justified in refusing to continue him in its service.

9. But the argument proceeds on two assumptions: (1) that the respondent had taken loans from the wholesalers, and (2) that the order of the management was one of discharge simpliciter. As to (1),

the Labour Court found that the respondent's contention, that he had not taken loans but that the bonds and the letters written by him from 7th to 10th December, 1960, were all taken from him at the instance of the Branch Manager and the said two receipts were extorted from him, was justified. That being a finding of fact in an appeal under Article 136, in accordance with the practice consistently followed by this Court, we would not be justified to go behind that finding except on well-recognised grounds such as perversity or unreasonableness of the finding. In view of the evidence before the Labour Court, Counsel for the company, could not attack the finding on that ground. As to (2), the argument that the order was of discharge simpliciter and not by way of punishment is inconsistent with the record before us and is manifestly untenable. The charge sheet contained, allegations of what the company called "acts of misconduct". The findings of the enquiry officer were that the acts of misconduct charged against the respondent were proved, the order of discharge passed by the management was in consequence of those findings and that order in clear terms stated that it was passed as a punishment. Lastly, in the written statement filed by the company before the Labour Court in answer to the averments in the complaint the company's case was that the respondent was found guilty of the charges of misconduct preferred against him, but that the company preferred to punish him by discharging him from service instead of dismissing him which the company would have been justified in doing. That being so, it can- not be legitimately argued that the order was one of discharge simpliciter and not by way of punishment.

10. The second contention urged by counsel was that Section 26 of the Act cannot apply as it gives jurisdiction to the Labour Court to entertain a complaint thereunder only in cases of misconduct defined in the rules made under the Act, Section 40 (2) empowers the State Government to frame rules on any of the matters therein set out and clause (c) empowers the Government to frame rules with regard to misconduct of an employee for which his services may be dispensed with without notice required by sub-section (1) of Section 26. Rule 20 of the Bihar Shops & Establishments Rules 1955 provides that the acts therein set out shall each be treated as misconduct for the purposes of the proviso to sub-section (1) of Section 26. It is clear that the misconducts alleged against the respondent in the said charge-sheet do not fall within the various acts set out in Rule 20. The argument was that the misconduct on which the company based its order of discharge, assuming it was one by way of punishment, is not one of the misconducts set out in Rule 20 and therefore Section 26 (2) and (5) have no application. The Labour Court, therefore, had no jurisdiction to entertain the complaint, much less try it, and consequently, the order passed by it was without jurisdiction.

11. The contention, in our view, is misconceived and is not borne out by the express language and the scheme of Section 26. Section 26, as it stands after its amendment by Bihar Act 26 of 1959, provides by sub-section (1) that no employer shall dismiss or discharge from his employment any employee who has been in such employment continuously for a period of not less than 6 months except for a reasonable cause and without giving such employee at least one month's notice or one month's wages in lieu thereof. Sub-section (1) applies thus to all cases of dismissal and discharge and requires in both cases (1) a reasonable cause without which an employer cannot dismiss or discharge his employee and (2) a month's notice or one month's wages in lieu thereof. Then there is a proviso which lays down that such a notice shall not be necessary where the services of such employee are dispensed with on a charge of such misconduct as may be prescribed by the State

Government supported by satisfactory evidence recorded at an enquiry held for the purposes. It is clear that the main part of sub-section (1) is general and applies to all cases of dismissal and discharge, while the proviso carves out from such cases, cases where the services of an employee are dispensed with for a misconduct set out in Rule 20 and where dispensing of service of such an employee is supported also by satisfactory evidence recorded at a domestic enquiry held in that regard. In such limited cases the proviso dispenses with the notice required under sub-section (1). The proviso thus applies only to those types of misconduct prescribed by the State Government and not to the rest of the misconduct not so prescribed. Sub-section (2) then provides that every employee "so dismissed or discharged" may file a complaint to the prescribed authority (in this case the Labour Court) on any of the following three grounds, namely:

(1) that there was no reasonable cause for dispensing with his services, or (2) that no notice was served on him as required by sub-section (1), or (3) that he was not guilty of any misconduct as held by the employer. Sub-section (2) thus confers a right on a employee to file a complaint before the Labour Court on any one of the three grounds set out therein. ' The words "so dismissed or discharged" must mean dismissed or discharged as stated in sub-section (1), that is to say, all cases where an employer either dismisses or discharges his employee for which sub-section (1) requires that there should be a reasonable cause for such an order and a notice or one month's wages in lieu thereof. It is, therefore, clear that an employer can not dismiss or even discharge his employee without a reasonable cause therefore, and a notice or payment of a month's wages in lieu thereof. But even when an employer alleges that he had a reasonable cause for discharging or dismissing his employee the matter does not end. An employee "so dismissed or discharged" has the right under sub-section (2) to file a complaint on any one of the said three grounds, i.e., that there was in fact no reasonable cause, or that no notice was given to him or that he was not guilty of "any misconduct". The words "any misconduct" show that Sub-section (2) is not confined only to misconducts set out in Rule 20. if Counsel's contention were right the ground that no notice was served as required by sub-section (1) would be superfluous for no such notice is necessary in cases of misconduct prescribed in Rule 20, The words "as required by sub-section (1)" in that ground in sub-section (2), on the other hand, makes it abundantly clear that sub-section (2) applies to all cases of dismissal and discharge and not merely to cases falling under the proviso. Sub-section (5) provides that the prescribed authority shall cause a notice to be served on the employer relating to the said complaint, record briefly the evidence adduced by the parties, hear them and after making such enquiry as it may consider necessary, pass orders giving reasons therefore. The section also empowers the prescribed authority to give relief to the employee by way of reinstatement or compensation or both.

12. In view of the clear language of sub-sections (1) and (2) of Section 26, Counsel cannot ask us to limit cases where a complaint can be filed only if the misconduct is one of those set out in Rule 20. In our view the only thing that the proviso to sub-section (1) does is to dispense with notice in cases where the services of an employee are dispensed with for a misconduct which the State Government

has included in Rule 20. To read anything more into that proviso, as Counsel invited us to do, would be contrary to the clear language of the proviso and of sub-sections (1) and (2). The contention has, therefore, to be rejected.

13. The next contention was that the misconduct in this case being not one of those misconducts set out in Rule 20 the jurisdiction of the Labour Court to interfere with the company's order passed after a domestic enquiry is a limited one, namely, where there is breach of the principles of natural justice or where the order is perverse or where there is victimisation or unfair labour practice. The jurisdiction in such cases of the Labour Court would, according to the argument, be the same as Under Section 83A of the Industrial Disputes Act, 1947.

14. The contention again is contrary to the express language of Section 26 (2) and (5). There is no comparison between Section 26 of the Act and Section 33A of the Industrial Disputes Act. The purposes of the two sections also are different. The language of Section 26 clearly shows that when a complaint is filed on any one of the grounds set out in Sub-section (2) the procedure laid down in sub-section (5) would apply and the competent authority is entitled to record evidence and come to its own findings on such evidence. The authority thus is required to come to its own findings on the evidence adduced by the parties and recorded by it independently of the findings given in the domestic enquiry. This is also clear from sub-section (2) whereunder an employee has a right to show that there was no reasonable cause for dispensing with his services or that he was not guilty of the misconduct for which he was charged and held guilty in a domestic enquiry. The fact that he is entitled to file a complaint and show that there was no reasonable cause or that he was not guilty of misconduct shows that the competent authority under Section 26 has to come to its own findings on the evidence led before it irrespective of the findings in the domestic enquiry. The proceedings under Section 26 are not by way of appeal against the order passed at or as a result of the domestic enquiry; they are independent and original proceedings where the competent authority (in this case the Labour Court) has to arrive at its own findings on application of evidence led before it and not on evidence adduced in the domestic enquiry. That being so, it cannot be held that the competent authority under Section 26 has a limited jurisdiction as in cases falling u/s. 33A of the Industrial Disputes Act. In this connection we were shown two decisions, one by the High Court of Patna in Jagdish Vastralaya v. State of Bihar, and the other by the High Court of Mysore in Spencer & Co. Ltd. v. Headquarters Assistant to Commissioner of Labour, (1963) 2. Lab LJ 603 (Mys). These decisions are however of no assistance. Though the Patna decision is on Section 26 of the Act, the decision contains hardly any reasoning. The second decision also cannot be brought to aid because the provisions, of the Mysore Act there dealt with are not in pari materia with Section 26 before us.

15. The last contention was that the order of the Labour Court was in any event perverse inasmuch as it was based on an assumption that under the agreement with the wholesalers the wholesalers were prohibited from selling tea on credit. We have gone through the agreement and we find that it is not possible to say that the interpretation placed by the Labour Court was wrong, and that therefore its reasoning is unreasonable or misconceived.

16. In our view none of the contentions urged by Counsel for the company can be accepted. The appeal has therefore to be dismissed which we do. In the circumstances of the case, however, we feel

that it is just that each party should bear his own costs.