Workmen Of Hindustan Steel Ltd And Anr vs Hindustan Steel Ltd. And Ors on 12 December, 1984

Equivalent citations: 1985 AIR 251, 1985 SCR (2) 428, AIR 1985 SUPREME COURT 251, 1985 LAB IC 534, (1985) 50 FACLR 147, (1985) 1 LABLJ 267, (1985) 1 LAB LN 789, 1985 SCC (L&S) 260, (1985) 1 SERVLR 735, 1985 UJ(SC) 281, 1985 LAWYER 17 27, (1985) 1 SCWR 171, (1985) 1 SERVLJ 109, 1985 BLJR 76, 1985 UJ(SC) 502, 1984 SCC (SUPP) 554, (1985) 1 CURLR 193, (1985) 65 FJR 376

Author: D.A. Desai

Bench: D.A. Desai, V. Khalid

PETITIONER:
WORKMEN OF HINDUSTAN STEEL LTD AND ANR

Vs.

RESPONDENT:
HINDUSTAN STEEL LTD. AND ORS.

DATE OF JUDGMENT12/12/1984

BENCH:
DESAI, D.A.
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DESAI, D.A.
KHALID, V. (J)

CITATION:
1985 AIR 251 1985 SCR (2) 428
1984 SCC Supl. 554 1984 SCALE (2)927
CITATOR INFO :
RF 1985 SC 722 (4)
R 1986 SC1571 (58,67)
E&F 1991 SC 101 (5,20,88,174,195,223,239,263,2

ACT:
Industrial Disputes Act 1947 Schedule 2 Item No. 3 and Schedule 2 Item 6.
Public Scctor Undertaking-Standing Order No. 32-General Manager empowered to dismiss workman without holding an enquiry if 'inexpedient or against the interests of security to continue to employ the workman-Such Standing Order whether violative of the principles of natural justice-Dismissal of employee without holding domestic

enquiry under the Standing Order Whether valid, legal and permissible.

Constitution of India 1950 Article 311(Z) provisos (b) and (c).

Power of dismiss civil servant without holding inquiry-When arises- Introduction of safeguard-That authority must specify reasons why not reasonable practicable to holding inquiry.

Practice and Procedure-Labour disputes-Adjudication of-Dismissal of employee-Decision of employer to dispense with domestic enquiry questioned- Deputy of employer to satisfy the court that holding of enquiry would be counter productive or cause irreparable and irreversible damage.

HEADNOTE:

Standing Order 31 of the 1st Respondent/Public Sector Undertaking prescribed a detailed procedure for dealing with cases of misconduct; and for imposing major penalty, the employer had to draw up a chargesheet and give an opportunity to the delinquent workman to make his representation within 7 days. If the allegations were controverted, an enquiry had to be held by an officer to be nominated by the management and in such an enquiry reasonable opportunity of explaining and defending the alleged misconduct had to be given to the workman. Suspension of the delinquent workman pending enquiry was also permitted. At the end of the enquiry, if the charges were held proved, and it was provisionally decided to impose a major penalty, tho delinquent workman bad to be afforded a further reasonable opportunity to represent why the penalty should not be imposed on him.

Standing Order 32 provided for a special procedure in case of a workman was convicted for a criminal offence in a court of law or where the General Manager was satisfied for reasons to be recorded in writing that it was inexpedient or against the interests of security to continue to employ the workmen', viz., the workman could be removed or dismissed from service without following the procedure laid down in Standing Order No. 31.

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The appellant an Assistant in the 1st Respondent-undertaking was A removed from service on the ground that it was no longer expedient to employ him. The management dispensed with the departmental enquiry, after looking into the secret report of one of their officers that the appellant had misbehaved with the wife of an employee and that a complaint in respect thereof had been lodged with the police.

In the reference to the Industrial Tribunal, the Tribunal held that as the employer dispensed with the disciplinary enquiry in exercise of the power conferred by

Standing Order 32, it could not be said that the dismissal from service was not justified, and that if there were allegations of misconduct, the employer was quite competent to pass an order of removal from service without holding any enquiry any in view of the provisions contained in Standing Order 32, and rejected the reference.

Allowing the appeal, by the employee to this Court,

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HELD: 1. The reasons for dispensing with the enquiry do not spell out what was the nature of the misconduct alleged to have been committed by the appellant and what prompted the General Manager to dispense with the enquiry. [437D]

2. As there was no justification for dispensing with the enquiry, imposition of penaly of dismissal without the disciplinary enquiry as contemplated by Standing Order 31 is illegal and invalid. [437F]

3 The respondent shall recall and cancel the order dated August 24, 1970 removing the appellant from service and reinstate him and on the same day the appellant shall tender resignation of his post which shall be accepted by the respondent. The respondent shall pay as and by way of back wages and future wages, a sum of Rs. l.5 lakhs to the appellant within 2 months which shall be spread over from year to year commencing from the date of removal from service. The appellant shall be entitled to relief under Section 89 of the Income-tax Act, 1961 for which he shall make the necessary application to the appropriate authority. who would consider granting of relief. [438C-D;F] F

4. Where an order casts a stigma or affects livelihood, before making the order, principles of natural justice in a reasonable opportunity to present one s case and controvert the adverse evidence must have full play. Even he Constitution which permits dispensing with the inquiry under Article 311 (2) a safeguard is introduced that the concerned authority must specify reasons for its decision why it was not reasonably practicable to hold the inquiry. [435 A-B]

5. (i) Standing Order 32, nowhere obligates the General Manager to record reasons for dispensing with the inquiry as prescribed by Standing Order 31. On the contrary, the language of Standing Order 32 enjoins a duty upon the General Manager to record reasons for his satisfaction why it was inexpedient ar against the interest of the security of the State to continue to employ the workman. Ressons for dispensing with the enquiry an reasons for not continuing to employ the workman stand, wholly apart from each other. [435C-D]

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(ii) A Standing Order which confers such arbitrary. uncanalised and drastic power to dismiss an employee by merely stating that it is inexpedient or against the interest of security to continue to employ the workman is

violative of the basis c requirement of natural justice, as tho General Manger can impose penalty of such a drastic nature as to affect the livelihood and put a stigma on the character of the workman without recording reasons why disciplinary enquiry is dispensed with and, what was the misconduct 13 alleged against the employee. [435D-E]

6 When the decision of the employer to dispense with the enquiry is questioned, the employer must be in a position to satisfy the Court that holding of the enquiry will be either counter-productive or may cause such irreparable and irreversible damage which in the facts and circumstances of the case need not be suffered- This minimum requirement cannot and should not be dispensed with. [436B-C]

L. Michael and Anr. v. M/s. Johnston Pumps India Ltd [1975] 3 SCR 489, referred to.

7. It is time for the 1st respondent-public sector undertaking to recast Standing Order 32, and to bring it in tune with the philosophy of the Constitution failing which the vires of the said standing Order would have to be examined in an appropriate proceeding. [438D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1 1 37 of 1981 .

From the Award dated 22nd December, 1978 of the 9th Industrial Tribunal, West Bengal in Industrial Case No. X- 7/74 (G.O. No. 8231-IR-IR-IOL-3 (K)/73.

R.K. Garg, P.K. Chakravarti and A K. Ganguli for the Appellants.

G.B. Pai, S. Chatterjee, Altaf Ahmed and A K Panda for the Respondents.

The Judgment of the Court was delivered by DESAI, J. In exercise of the power conferred by Sec. 10 of the Industrial Disputes Act, 1947, the Government of the State of West Bengal as an appropriate Government referred the following dispute to the Ninth Industrial Tribunal, West Bengal for adjudication. The reference reads as under:

> "Whether the termination of services of Shri Manas Kumar Mukherjee is justified ?
> To what relief, if any is he entitled ?"

Hindustan Steel Ltd. ('Employer' for short) dismissed Manas Kumar Mukherjee('Workman' for short) without holding any inquiry and without giving any opportunity to the workman to question or A correct the allegation of misconduct levelled against him and in violation of principles of natural justice. The employer tried to sustain its action by invoking its powers under Standing Order 32 of the certified Standing Orders of the Hindustan Steel Ltd. S.O. 32 reads as under: B "32. Special

Procedure in certain cases.

Where a workman has been convicted for a criminal offence in a Court of Law or where to General Manager is satisfied, for reasons to be recorded in writing, that it is inexpedient or against the interests of security to continue to employ the workman, the workman may be removed or dismissed from service without following the procedure laid down in Standing Order

31."

S.O. 31 prescribed detailed procedure for dealing with cases of misconduct. Briefly stated, the procedure prescribed in S.O. 31 for imposing major penalty is that the employer has to draw up a charge-sheet and give an opportunity to the delinquent workman to make his representation within seven days. If the allegations are controverted, an enquiry has to be held by an officer to be nominated by the management and in such an enquiry reasonable opportunity of explaining and defending the alleged misconduct must be given to the workman. The delinquent workman may also be given the assistance of a fellow employee. The procedure also permits suspension of the delinquent workman pending enquiry. At the end of the enquiry. if the charges are held proved, and it is provisionally decided to impose major penalty, the delinquent workman has to be afforded a further resalable opportunity to represent why the penalty should not be imposed on him. According to the employer it can dispense with such an enquiry in exercise of the power conferred by S.O. 32. The scope and ambit of S.O. 32, will be presently examined.

The Tribunal held that as the employer dispensed with the disciplinary enquiry in exercise of the power conferred by S.O. 32, it cannot be said that dismissal from service was not justified. The Tribunal observed that even if there were allegations of misconduct, the employer was quite competent to pass an order of removal from service without holding any enquiry in view of the provision con-

tained in S.O. 32- The Tribunal concluded that the employer accused the workman of committing misconduct and proceeded to pass the order of removal from service without holding any enquiry into the allegations of misconduct, it cannot be said to be a colorable exercise of power and the workman would not be entitled to any relief. The Tribunal accordingly rejected the reference. Hence this appeal by special leave.

The only question that must engage our attention is what is the scope and ambit of S.O 32. It has already been extracted. Upon its true construction the standing Order does not provide that for reasons to be recorded in writing, an enquiry into misconduct can be dispensed with. S.O. 32 clearly confers power upon the General Manager that on his being satisfied that it is inexpedient or against the interest of security to continue to employ the workman, then for reasons to be recorded in writing the workman may be removed or dismissed from service without following the procedure laid down in Standing Order 31. This archaic standing order reminiscent of the days of hire and fire is relied upon by a public sector undertaking to sustain an utterly unsustainable order and to justify an action taken in violation of the principles of natural justice, an action which has the- effect of denying livelihood and casting a stigma. One can appreciate-that in a given situation, and enquiry

into misconduct may be counter-productive. Constitution itself contemplates such a situation when it enumerates siltations in which a punishment of dismissal, removal or reduction in rank can be imposed without holding a disciplinary enquiry. Let it be extracted:

> "311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State-
>
> (1) ... ... (2) No such person as aforesaid/shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:
>
> ... ...
> ... ...
>
> Provided further that this clause shall not apply- A
>
> (a) where a person is dismissed or removed or reduced in rank on the ground ' of conduct which has led to his conviction on a criminal charge: or
>
> (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
>
> (c) where the President or the Governor as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

A bare perusal of the situations and contingencies in which a disciplinary enquiry affording a reasonable opportunity of being heard before imposing the enumerated penalty can be dispensed with will clearly show that the power is not given to dismiss remove or reduce in rank the delinquent worker but the power conferred by the afore- mentioned provision is to dispense with an enquiry before imposing major penalty. Sub-art- (3) of Art- 311 provides that 'if, in respect of any such person as aforesaid, a question arises whether- it is reasonably practicable to hold such inquiry as is referred to in clause (2). the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.' Now the three situations contemplated by the provision arc such that holding of an enquiry would be counter-productive. Where the penalty of dismissal, removal or reduction in rank is to be imposed on the ground of a conduct which has led to his conviction on a criminal charge, obviously, the enquiry will be superfluous or a repeat performance because a judicial tribunal has held the charges proved. But where the authority empowered to impose the penalty is satisfied for reasons to be recorded by it in writing to dispense with an enquiry, the reasons so recorded must ex-facie show that it was not reasonably practicable to hold a disciplinary enquiry. Similarly, where in the interest of the security of the State, the President or the Governor, as the case may be, is satisfied that it is not expedient to hold such enquiry, the same can be dispensed with. In the last mentioned situation, the highest executive of

the country, the President and the highest executive of State the Governor alone is entitled to dispense with the inquiry, if it is satisfied that in the interest of the security of the State, it is not expedient to hold such enquiry Dispensing with the enquiry in the first and third situation does not present a difficulty because in the first situation there is a conviction by a criminal court and in the third situation, the highest executive in the Centre and the State is empowered to dispense with the enquiry. It is in the second fact situation that one must evaluate the width of discretionary power to dispense with enquiry. The appointing authority is invested with power to dispense with enquiry. And in case of persons belonging to Class IV services, the appointing authority may be some-one in the lower administrative hierarchy and such an officer is invested with such draconian powers. Where such a power is conferred, on an authority entitled to impose penalty of dismissal or removal or reduction in rank, before it can dispense with the inquiry, it must be satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold such an enquiry. Power to dispense with enquiry is conferred for a purpose and to effectuate the purpose power can be exercised. But power is hedged in with a condition of setting down reasons in writing why power is exercised. Obviously therefore the reasons which would permit exercise of power must be such as would clearly spell out that the inquiry if held would be counter-productive. The duty to specify by reasons the satisfaction for holding that the inquiry was not reasonably practicable cannot be dispensed with. The reasons must be germane to the issue and would be subject to a limited-judicial review. Undoubtedly Sub-art. (3) of Art. 311 provides that the decision of the authority in this behalf is final. This only mean that the Court cannot inquire into adequacy or sufficiency of reasons. But if the reasons ex-facie are not germane to the issue namely of dispensing with enquiry the Court in a petition for a writ of certiorari can always examine reasons ex-facie and if they are not germane to the issue record a finding that the pre-requisite for exercise of power having not been satisfied, the exercise of power was bad or Without jurisdiction. If the court is satisfied that the reasons which prompted the concerned authority to record a finding that it was not reasonably practicable to hold the enquiry, obviously the satisfaction would be a veneer to dispense with the inquiry and the court may reject the same. What is obligatory is to specify the reasons for the satisfaction of the authority that it was not reasonably practicable to hold such an inquiry. Once the reasons are specified and are certainly subject to limited judicial review as in a writ for certiorari, the court would examine whether the reasons were germane to the issue or was merely a cloak, device or a pretence to dispense with the inquiry and to impose the penalty. Let it not be forgotten what is laid down A by a catena of decisions that where an order casts a stigma or affects livelihood before making the order, principles of natural justice namely a reasonable opportunity to present one's case and controvert the adverse evidence must have full play Thus even where the Constitution permits dispensing with the inquiry, a safeguard is introduced that the concerned authority must specify reasons for its decision why it was not reasonably practicable to hold the inquiry.

Turning to S.O 32, it nowhere obligates the General Manager to record reasons for dispensing with the inquiry as prescribed by S.O. 31. On the contrary, the language of S O. 32 enjoins a duty upon the General Manager to record reasons for his satisfaction why it was inexpedient or against the interest of the security of the State to continue to employ the workman. Reasons for dispensing with the inquiry and reasons for not continuing to employ the workman stand wholly apart from each other. A Standing Order which confers such arbitrary, uncanalised and drastic power to dismiss an employee by merely stating that it is inexpedient or against the interest of the security to continue to

employ the workman are violative of the basic requirement of natural justice inasmuch as that the General Manager can impose penalty of such a drastic nature as to affect the livelihood and put a stigma on the character of the workman without recording reasons why disciplinary inquiry is dispensed with and what was the misconduct alleged against the employee. It is time for such a public sector undertaking as Hindustan Steel Ltd to recast S.O. 32 and to bring it in tune with the philosophy of the Constitution failing which it being other authority and therefore a State under Art. 12 in an appropriate proceeding, the vires of S O. 32 will have to be examined. It is not necessary to do so in the present case because even on the terms of S.O. 32, the order made by the General Manager is unsustainable.

The view we are taking gets some support from a decision of this Court. In a slightly different situation, this Court in L. Michael & Anr. v. M/s Johnston Pumps India Ltd ll) observed that discharge simplicitor on the ground of loss of confidence when questioned before a court of law on the ground that it was a colorable exercise of power or it is a mala fide action, the employer must disclose that he has acted in good faith and for good and objective reasons. Mere ipse dixit of the employer in such a situation is of no significance. Where a disciplinary enquiry is dispensed with on the specious plea that it was not reasonable practicable to hold one and a penalty (1) [1975] 3 S.C.R.489.

of dismissal or removal from service is imposed, if the same is challenged on the ground that it was a colorable exercise of power or mala fide action, the same situation would emerge and the employer must satisfy the Court the good and objective reasons showing both proof of misconduct and valid and objective reasons for dispensing with the enquiry. In our opinion, when the decision of the employer to dispense with enquiry is questioned, the employer must be in a position to satisfy the Court that holding, of the enquiry will be either counter-productive or may cause such ireparable and irreversible damage which in the facts and circumstances of the case need not be suffered. This minimum requirement cannot and should not be dispensed with to control wide discretionary power and to guard against the drastic power to inflict such a heavy punishment as denial of livelihood and casting a stigma without giving the slightest opportunity to the employee to controvert the allegation and even without letting him know what is his misconduct.

Turning to the facts of the case, a bare perusal of the impugned order is both instructive and provides ample material for pointing out how the drastic power can be arbitrarily exercised without keeping in view the prerequisite to be satisfied for exercise of the power. The order reads as under:

> " HINDUSTAN STEEL LIMITED DURGAPUR STEEL PLANT Ref. No. Order/PF/MN 1215 24th August, 1970 O R D E R Having considered the matter fully, I am satisfied that it is no longer expedient to employ Shri Manas Mukharjee, Assistant, Order Department, Durgapur Steel Plant any further.
>
> It is therefore ordered that Shri Manas Mukherjee be removed from the service of the Company with effect from 24. 8. 1970.

He is allowed/three months' salary which he may collect from the cash section of the Finance Department by 26.8.1970.

Sd/ Maj. ,Gon.

Director Ineharge.

The expression 'no longer expedient' as used in the order A clearly spells out the fact that some enquiry was started. What prompted the General Manager to close the enquiry, one cannot gather from the order- But our attention was invited to Ann. R-2 which according to the respondents specifies the reasons recorded in writing for dispensing with the enquiry. Briefly, in Ann. R-2, it is stated that the authority concerned has looked into the secret . report sent to him by Shri P S- Rao Naidu, Planning & Progress Officer, Order Deptt. and the comments of DGM thereon. He has also stated that he has looked into- the report received from Sr. AO (E) and the copy of the complaint lodged by Smt. Gita Majumdar, wife of an employee in the plant with the police. These recitals have been considered sufficient to dispense with tho enquiry. If Smt. Gita Majurndat did file a report with the police making accusation against the appellant, she would have to be examined in the criminal case. She could have been more conveniently called before the enquiry officer, and the secret reports remain secret. The reason for dispensing with the enquiry do not spell out what was the nature of the misconduct alleged to have been committed by the appellant and what prompted the General Manager to dispense with tho enquiry. It is difficult to hold that the recitals of the order spell out some objective reasons and the reasons were germane to the question of dispensing with the enquiry - Frankly speaking, we are not satisfied in this case that for valid, objective and relevant reasons, the enquiry was dispensed with.

An attempt was made to urge that some annexures to the counter-affidavit would show certain complaints received against; the appellant. We decline to look into them as they were not given to the appellant in the course of enquiry to meet or explain the same. We consider them irrelevant at this stage, Once we hold that there was DO justification for dispensing with the enquiry, imposition of penalty of dismissal without disciplinary enquiry as contemplated by S- O 31 would be illegal and invalid.

Two options are thereupon open to us. One would be to permit the General Manager, if he is so minded to hold the disciplinary enquiry and come to his own decision and the second would be to remit the matter to the Labour Court to permit the respondent-employer if it is entitled in law to substantiate the charges of misconduct before the Tribunal.

The order removing the appellant from service was passed way back on August 24, 1970. More than 14 years have rolled by. H In such a situation, to start the whole thing de nevo would neither be of any help to the appellant nor would be conducive

to the maintenance of discipline in the plant. Undoubtedly, once a workman is removed from service a stigma attaches to him, and if the order is held to be not in consonance with the provisions of the relevant standing orders at any rate, the stigma has to be removed Having given the matter our anxious consideration, we dispose of the appeal as under

The respondent shall recall and cancel the order dated August 24, 1970 removing the appellant from service and reinstate him and on the same day the appellant shall tender resignation of his post which shall be accepted by the respondent. The respondent shall pay as and by way of back wages and future wages, a sum of Rs. 1,50,000 to the appellant within 2 months from today to be spread over from year to year commencing from the date of removal from service. We give one more opportunity to the respondent to recast its Standing Order 32 within a period of two weeks to be brought at best in conformity with the second proviso to sub-art. (2) of Art. 311 failing which its validity will be re-examined by this Court.

The amount of Rs. 1, 50,000 directed to be paid to the appellant by the respondent comprises backwages, and all other allowances admissible to him from year to year from 1970 upto the end of 1984. The amount shall be spread over from year to year. If because of the lump sum payment as directed herein the respondent is required to deduct Income- tax as enjoined by Sec. 192 of the y Income-tax Act, 1961, the appellant shall be entitled to relief under Sec. 89 of the Income Tax Act, 1961. For this purpose, the appellant shall make an application as required by Sec. 89 read with Rule 21A to the appropriate authority, who would consider granting of relief to the appellant under Sec. 89 of the Income-tax Act. The proceeding in this behalf shall be disposed of within a period of six months. The appeal is disposed of in these terms with no order as to cost.

N.V.K. Appeal allowed.