Jai Bhagwan vs The Management Of The Ambala Central ... on 29 September, 1983

Equivalent citations: 1984 AIR 286, 1984 SCR (1) 158, AIR 1984 SUPREME COURT 286, 1983 LAB. I. C. 1694, 1983 UJ (SC) 1012, 1983 ICR 459, (1983) 47 FACLR 532, (1984) 1 LABLJ 52, (1983) 2 LAB LN 951, 1983 (4) SCC 611, (1984) 1 SERVLJ 245, 1984 SCC (L&S) 21, (1983) 63 FJR 257

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, D.A. Desai, A. Varadarajan

PETITIONER:
JAI BHAGWAN

Vs.

RESPONDENT:
THE MANAGEMENT OF THE AMBALA CENTRAL COOPERATIVE BANKLIMITED

DATE OF JUDGMENT29/09/1983

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
DESAI, D.A.
VARADARAJAN, A. (J)

CITATION:
1984 AIR 286 1984 SCR (1) 158
1983 SCC (4) 611 1983 SCALE (2)528

ACT:
Industrial Disputes Act, 1947 -Domestic enquiry-No charge sheet or show cause notice for termination of services issued-No indication of guilt of employee in the report-Services terminated-Enquiry-Whether violates principles of natural justice-Failure to appeal to higher authority, whether bars tribunal's jurisdiction.

HEADNOTE:
There was a complaint from an account holder of the respondent bank that his account was wrongly debited with a big sum of money even though he had never issued a cheque for that sum. The appellant, a clerk-cum-cashier, was

apparently suspected to be responsible for the presentation of the cheque. The bank lodged a complaint with the police but the appellant was eventually, discharged. In the meanwhile, the bank placed him under suspension. An enquiry as to the genuineness of the customer's complaint was ordered. The appellant was advised to be present at the enquiry but no charge-sheet was ever served on him. In his report, the enquiry officer stated that "there lies the possibility that the complaint of the applicant may be genuine." But there was no indication in the report that the appellant had anything to do with the presentation of the cheque. Yet, on basis of this report the appellant's services were terminated. Thereafter the appellant raised an industrial dispute. The Industrial Tribunal, rejecting the appellant's contention that principles of natural justice had not been observed upheld the order of termination of his services.

In the workman's appeal to this Court it was contended on behalf of the respondent that the appellant ought to have pursued the remedy of appealing to the Board of Management against the order of termination and his failure to do so disentitled him from raising any industrial dispute.

Allowing the appeal,

HELD: The order terminating the services of the appellant was wholly unsustainable. The appellant is entitled to be reinstated with continuity of service from the date of termination of his services. There was total non application of the mind by the Tribunal. [161 G; 164 D; 162 H]

There was a total breach of the principles of natural justice: the appellant was never asked to answer any charge; there was no enquiry against him; no

159

notice was issued to him to show cause why his services should not be terminated and even the order terminating his services failed to mention any reason. The Bank should have led necessary evidence to prove the charge against the appellant. None of the three witnesses examined by the Bank could either prove that the cheque was a forgery or that it had been presented by the appellant. The enquiry was not directed against the appellant but was held with a view to find out whether there was any truth in the customer's complaint. The enquiry officer did not say that the appellant was guilty or had anything to do with the presentation of the bogus cheque. The complainant, who would have been the most crucial witness, was not examined. [161 F; H; 162 A; C-E]

Notwithstanding all this, by a curious process of reasoning the Industrial Tribunal upheld the order of termination, dismissing the appellant's contention that principles of natural justice had not been observed. The Tribunal's observation that strict rules of evidence were not applicable to domestic enquiries and that "not too much

legalism was expected in such matters from the enquiry officer" was far from correct. In short, the Tribunal, without applying its mind to the facts of the case and without bothering to peruse the records, gave a findings that the termination of his services was justified. The Tribunal's findings and conclusion were therefore worthless. [162 B-C; H; 163 B-C]

Raising an industrial dispute is a well-recognised and legitimate mode of redress available to a workman, which has achieved statutory recognition under the Act and there is no reason why a statute-recognised mode of redress should be denied to a workman because of the existence or availability of another remedy. Nor has an industrial tribunal, to which a dispute had been referred for adjudication, the power to refuse to adjudicate upon it and surrender its jurisdiction to some other authority. While the Government may exercise its discretion to refer or not to refer a dispute for adjudication, once a dispute is referred to it, the Tribunal has no discretion to decide whether to adjudicate or not. The Tribunal has to resolve the dispute. The Tribunal cannot avoid it on the ground that the workman had failed to pursue some other remedy. [163 G-H; 164 A-B]

The attempt to connect the order terminating the appellant's services with his absence from the bank on two days was an attempt made for the first time before this Court. It cannot be allowed to be raised now. The letter dated 17th September, 1974 addressed to the appellant had nothing to do with the presentation of the cheque or withdrawal of money, but related to his absence from duty on two days in August 1974 and his signature said to have been found in the attendance register on those days. [164 B-C;163 A-B]

The workman has awarded half back wages from the date of termination of service to the date of judgment and full wages thereafter to the date of reinstatement on the ground that he raised the dispute after a considerable delay without doing anything in the meanwhile. [164 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5274 (NL) of 1983.

Appeal by Special leave from the Judgment and Order dated the 4th March, 1982 of the Industrial Tribunal Haryana at Faridabad in Reference No. 79/80 published in Haryana Govt. Gazette dated the 6th June, 1982.

AND Appeal by Special leave from the Judgment and Order dated the 16th day of August, 1982 of the Punjab and Haryana High Court in Writ Petition No. 3475 of 1983.

Ms. Chander Malhotra & Mrs. Indra Sawhney for the Appellant in both the Appeals.

K.B. Rohtagi for the Respondent in both the appeals. The Judgment of the Court was delivered by CHINNAPPA REDDY, J. Shri Phulel Singh had a savings account with the Naraingarh branch of the Ambala Central Co- operative Bank Limited. A cheque for Rs. 4200 purporting to have been signed by Shri Phulel Singh, drawn on the Ambala Central Co-operative Bank was presented through the Punjab & Sind Bank Limited, Dhulkot and the proceeds were duly remitted to the latter bank. The account of Shri Phulel Singh was debited with that amount. Later when Shri Phulel Singh presented his pass book, appropriate entries were made. Shri Phulel Singh objected to the entry relating to the debit of Rs. 4200. He alleged that he had never issued the cheque for Rs. 4200 said to have been issued by him. A complaint was also lodged with the police. The present appellant, who was clerk-cum-cashier of the Naraingarh Branch of the bank, and who was apparently suspected in connection with the presentation of the bogus cheque, was interrogated by the police and his statement was also recorded. A First Information Report was registered against him, but the case ended in discharge. In the meanwhile, the Managing Committee of the bank placed the appellant under suspension. Shri Hans Raj, an Assistant Manager was appointed to enquire into the matter in order to ascertain the genuineness of the complaint made by the customer. The appellant was advised to be present at the Naraingarh branch of the bank on July 29, 1974 in connection with the enquiry. No chargesheet was ever issued to the appellant. The statement of the appellant was however recorded by the enquiry officer on July 29, 1974 along with the statements of several other persons. The enquiry officer submitted his report on August 21, 1974. The finding of the enquiry officer may be extracted here. It was as follows:-

> "As a result of enquiry and on the basis of the points given in the report, there lies the possibility that the complaint of the applicant may be genuine."

The enquiry officer thus indicated that there might be truth in the complaint of the customer that a bogus cheque was presented and his account debited with the amount. There was, however, no indication in the report that the appellant, Jai Bhagwan was guilty or had anything to do with the presentation of the bogus cheque. Thereafter, on January 31, 1975, the appellant was informed that his services had been terminated with immediate effect. No reason was mentioned in the order terminating the services of the appellant. We have no information nor was his learned counsel in a position to tell us as to any immediate steps taken by the appellant to question the order of termination of his services. But he did ultimately raise an industrial dispute and by an order dated December 15, 1980 the Governor of Haryana referred the following dispute for adjudication to the Industrial Tribunal, Haryana at Faridabad:

> "Whether the termination of services of Shri Jai Bhagwan was justified and in order ?
> If not, to what relief is he entitled ?"

Even from the brief narration of facts, it is obvious that there was a total breach of the principles of natural justice. The appellant was never asked to answer any charges, there was no enquiry against him, no notice was issued to him to show cause why his services should not be terminated and even the order terminating his services failed to mention any reason. The order terminating the services

of the appellant was wholly unsustainable. If, therefore, the bank wanted to sustain the order terminating the services of the appellant, it was up to the bank to lead necessary evidence to prove such charges as it desired to establish against the appellant. The bank made an effort by adducing the evidence of three witness MW-I, the Establishment Officer, MW-II, Assistant Manager, Karnal and MW-III, the Enquiry Officer, none of whom could either prove that the cheque was a forgery or that it had been presented by the appellant. Shri Phulel Singh, who would have been the most crucial witness, was not examined. In the absence of the evidence of Shri Phulel Singh, no case could possibly be said to have been made out against the appellant. Yet by a very curious process of reasoning, the Industrial Tribunal upheld the order of termination of the appellant's services. He dismissed the contention that principles of natural justice had not been observed with the observation that strict rules of evidence were not applicable to domestic enquiries and "not too much legalism was expected in such matters from the enquiry Officer." We are unable to understand what the Industrial Tribunal meant. There was not the slightest semblance of observance of the principles of natural justice. The enquiry made by the enquiry officer was not directed against the appellant, but was held with a view to find out whether there was any truth in the complaint of the customer that somebody had presented a bogus cheque and drawn Rs. 4200 from his account. The report of the enquiry officer also contained no finding against the appellant. At no time was the appellant informed of any charges against him or his explanation sought. Commenting on the report of the enquiry officer, the Industrial Tribunal stated:

> "I have gone through the documents produced by the management and found that the enquiry officer took great pain in finding out the facts of the case as was evident from his report Ex. M-8 which was dated 21st August, 1974. The report gives minute details and is logical. The enquiry officer reached the conclusion by going through the records of the bank and also of the drawee branch of Punjab & Sind Bank, Dhulkot and ascertaining the person in whose account the sum of Rs. 4200 was deposited and also the connection of Shri Jai Bhagwan concerned workman with that person. I am convinced by reading the enquiry report that the concerned workman was involved into withdrawal and, therefore, he was found guilty by the Enquiry Officer."

This shows a total non-application of the mind by the Industrial Tribunal since the appellant was never found guilty by the enquiry officer. The Industrial Tribunal also stated that a final show cause notice had been issued to the workman on September 17, 1974 in which the findings of the enquiry officer were briefly given. This is another indication that the Industrial Tribunal never applied his mind to the issues before him. The letter dated September 17, 1974 had nothing whatever to do with the presentation of the cheque or the withdrawal of the money. It was concerned with the absence of the appellant from duty on August 13 and 14, 1974 and the signatures said to have been found in the attendance register against the dates August 13 and 14, 1974. Thus, the Industrial Tribunal, apparently without applying his mind to the facts of the case and without bothering even to peruse the records, gave a finding that the termination of the services of the workman were justified and in order. We are constrained to reject the findings and the conclusion of the Industrial Tribunal as entirely worthless. The appellant filed a writ petition in the High Court of Punjab & Haryana, but the writ petition was unfortunately summarily rejected. The workman has filed these two appeals under Art. 136 of the Constitution, one against the decision of the Industrial Tribunal and the other against

the summary dismissal of the writ petition by the High Court. Both the appeals have to be allowed in the circumstances mentioned by us.

Shri Rohatgi, learned counsel for the Respondent-Bank, was unable to contend that there was even a remote compliance with the principles of natural justice. He was also unable to urge that the Industrial Tribunal had truly applied his mind to the case. He, however, argued that the appellant had a remedy against the order of termination of services by way of an appeal to the Board of Management and that his failure to pursue that remedy barred him from raising any Industrial dispute. He also attempted to connect the order of termination of services with the absence of the workman from the bank on August 13 and 14, 1974, on days when his signature was found in the attendance register. We see no substance in either of the submissions. Raising an industrial dispute is a well recognised and legitimate mode of redress available to a workman, which has achieved statutory recognition under the Industrial Disputes Act and we fail to see why the statute-recognised mode of redress should be denied to a workman because of the existence or availability of another remedy. Nor are we able to understand how an Industrial Tribunal to whom a dispute has been referred for adjudication can refuse to adjudicate upon it and surrender jurisdiction which it undoubtedly has to some other authority. While the Government may exercise their discretion in deciding whether to refer or not to refer a dispute for adjudication, the Tribunal to whom the dispute has been referred has no discretion to decide whether to adjudicate or not. Once a reference has been properly made to an Industrial Tribunal, the dispute has to be duly resolved by the Industrial Tribunal. Resolution of the dispute cannot be avoided by the Tribunal on the ground that the workman had failed to pursue some other remedy. The attempt of Shri Rohatgi to connect the order terminating the appellant's services with his absence from the bank on August 13 and 14, 1974 is an attempt made before us for the first time. At no earlier stage was the order of termination of services sought to be sustained on the basis of the absence of the workman from the bank on August 13 and 14, 1974. It cannot be done now.

The appellant is, therefore, entitled to be reinstated in service with continuity of service from the date on which his services were terminated. Having regard to the circumstance that the workman raised an Industrial dispute after considerable delay without doing anything in the meanwhile to question the termination of his services, we do not think that we will be justified in awarding full back wages. We think that award of half the back wages from the date of termination of service until to day and full wages from this day until reinstatement will meet the ends of justice. The appellant will be entitled to his costs which we quantified at Rs. 5,000.

P.B.R. Appeal allowed.