

Rajasthan High Court

Aditya Mills Ltd. vs The Judge, Industrial Tribunal ... on 23 November, 1993

Equivalent citations: 1994 (68) FLR 553, (1996) III LLJ 1163 Raj, 1994 (3) WLC 548, 1993 WLN UC 406

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Bench: K Agrawal

ORDER K.C. Agrawal, C.J.

1. This writ petition, under Article 226 of the Constitution of India, challenges the order of the Industrial Tribunal, Rajasthan, Jaipur dated November 20, 1982 passed under Section 33(2)(b) of the Industrial Disputes Act, 1947.

2. An application under section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter to be referred to as 'the Act') was filed by the petitioner for approval of the dismissal of Abdul Jabbar from the service of M/s. Aditya Mills Ltd., Kishangarh. A domestic enquiry for mis-conduct under Rule 24(b) Of the Industrial Employment (Standing Orders) Act, 1946 was held against Abdul Jabbar. The misconduct alleged against Abdul Jabbar was that a charge-sheet in respect of his absence from duty was given to him on February 8, 1982 at about 4.00 p.m. After the receipt of the charge-sheet, Abdul Jabbar incited the workers of the Winding Department to close their work. The work was closed at 4.00 p.m. The workers went on strike on the call given by Abdul Jabbar.

3. Sh. H.R. Calla was appointed as Enquiry Officer. He examined the witnesses produced on behalf of the Management and also by Abdul Jabbar. Thereafter, he submitted his report to the Management declaring that all the charges levelled against Abdul Jabbar had been proved. The relevant portion of the Enquiry Report is being reproduced below :-

4. The President agreed with the report of the Enquiry Officer and dismissed Abdul Jabbar from service and since certain references were pending in the Tribunal, an application under section 33(2)(b) of the Act was filed by the Management for approval.

5. Both the sides adduced evidence oral and documentary in support of their respective cases.

6. Abdul Jabbar contested the fairness of the domestic enquiry. Pleading that he was not guilty' of misconduct and had never incited the workers to proceed on strike, he said that his termination was unjustified and that it was an act of victimization on behalf of the Management and an unfair labour practice.

7. The Tribunal did not agree with the report of the Enquiry Officer. Holding that the demonstrations were peaceful and there being no allegations that Abdul Jabbar became violent in the course of administration, the Tribunal rejected the application filed under Section 33(2)(b) of the Act, Against the said order, the present writ petition has been filed.

8. The contention of the learned counsel for the petitioner was that the charge levelled against the respondent-Abdul Jabbar was of a serious nature and due to unjustified and illegal strike, the

petitioner company suffered a huge loss.

9. Before the Tribunal, as well as, this Court, the question is as to whether the approval sought for dismissal of Abdul Jabbar should have been given or not.

10. The Tribunal considered the evidence of both the parties and all aspects of the matter. Finding that the Management was wrong and unjustified in terminating the service of Abdul Jabbar, rejected the application moved under section 33(2)(b) of the Act.

11. The point that was argued by the respondent's counsel was that as the Domestic Tribunal had not followed that mandatory provisions of the Act, the mis-conduct of Abdul Jabbar had not been established.

12. The question whether the evidence brought by the two sides established mis-conduct of Abdul Jabbar was one of fact. The Tribunal considered the facts and after disagreeing with the report of the Enquiry Officer, rejected the application moved under section 33(2)(b) of the Act. Whether the misconduct was established or not was essentially and fundamentally a question of fact. From the facts, the finding of misconduct was to be arrived at. The Domestic Tribunal found that the conduct of Abdul Jabbar was that of violent nature and that he unjustifiably incited the co-workers to close the work assigned to them. The Tribunal took the evidence of both the sides in respect of the alleged misconduct of Abdul Jabbar and holding that no proper enquiry was made by the Management, rejected the application for approval.

13. Counsel for the petitioner urged that the Tribunal while dealing with an application under section 33(2)(b) of the Act was not acting as a court of appeal over the judgment of the Domestic Tribunal. It had a limited jurisdiction to see whether substantially the principles of natural justice had been complied with in the enquiry. In this case, the Tribunal differed with the report of the Enquiry Officer on questions of fact which power it did not have. This proposition advanced by the petitioner's counsel could not be subverted.' Under Section 33(2)(b) of the Act, the Tribunal had to find whether the domestic enquiry was made by keeping the principles of natural justice and that there has not been a flagrant abuse. In Lord Krishna Textile Mills v. Workmen (1), the procedure which had to be adopted has been laid down. According to that procedure, employer can make an application under section 33(2)(b) of the Act for approval of the proposed action before the actual action was taken.

14. In the instant case, the Tribunal has dealt with the concept of the misconduct under section 33(2)(b) of the Act. The Tribunal found:-

"I have only discussed the evidence which was recorded in the domestic enquiry in order to show that there is absolutely no evidence that the cessation of work was unlawful or to going on strike was illegal."

15. The finding of the Tribunal further was that the workers did not go on illegal strike on the day when Abdul Jabbar was charge-sheeted. Its view further was that the charge of mis-conduct under

rule 24(b) of the Industrial Employment (Standing Orders) Act, 1946 was not made out. On these findings, the Tribunal held that the approval could not be accorded.

16. Since the Tribunal held that there was no evidence to justify giving of a finding of misconduct to Abdul Jabbar, it could justifiably refuse to grant permission.

17. In the result, the writ petition fails and is dismissed with costs.