Supreme Court of India
Delhi Cloth And General Mills Co., ... vs Shri Rameshwar Dyal And Anr on 22 November, 1960
Equivalent citations: 1961 AIR 689, 1961 SCR (2) 590
Author: K Wanchoo
Bench: Wanchoo, K.N.

PETITIONER:
DELHI CLOTH AND GENERAL MILLS CO., LTD.

Vs.

RESPONDENT:
SHRI RAMESHWAR DYAL AND ANR.

DATE OF JUDGMENT:
22/11/1960

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B.
SARKAR, A.K.

CITATION:
1961 AIR 689 1961 SCR (2) 590

ACT:
Industrial Dispute--Dismissed workman--Interim reinstatement by Tribunal--If valid--The Industrial Disputes Act, 1947 (14 of 1947), s. 33A.

HEADNOTE:
One Sharda Singh, respondent, who was an employee of the appellant-mills was dismissed for disobeying the orders of the managing authority. He filed an application before the Industrial tribunal under S. 33-A of the Industrial Disputes Act, 1947, contesting his dismissal on various grounds, whereupon the tribunal passed an order to the effect that as an interim measure the respondent be permitted to work in the appellant mills and if the management failed to take him back his full wages be paid from the date he reported for duty. The appellant mills then filed a Writ Petition before the High Court contesting the interim order of the Tribunal and the High Court held that the interim relief granted to the respondent was justified. On appeal by a certificate of the High Court,
Held, that the interim order passed by the tribunal reinstating the respondent was erroneous. Such an interim relief could not be given by the Tribunal as it would amount to

prejudging the respondents' case and granting him the whole relief at the outset without deciding the legality of his dismissal after hearing the appellant employer.
The Management, Hotel Imperial and Ors. v. Hotel Workers' Union, A.I.R. 1959 S. C. 1342, and Punjab National Bank v. All India Punjab National Bank Employees' Federation, A.I.R. 1960 S. C. 160, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 353 of 1959. Appeal from the judgment and order dated April 22, 1958, of the Punjab High Court (Circuit Bench) at Delhi in Civil Writ No. 257-D of 1957.

M. C. Setalvad, Attorney-General of India, S. N. Andley, J. B. Dadachanji Rameshwar Nath and P. L. Vohra, for the Appellant.

G. S. Pathak, R. L. Anand and Janardan Sharma, for the respondent No. 2.

1960. November 22. The Judgment of the Court was delivered by WANCHOO, J.-This is an appeal on a certificate granted by the Punjab High Court. Sharda Singh (hereinafter called the respondent) was in the service of the appellant-mills. On August 28, 1956, the respondent was transferred from the night shift to the day shift in accordance with para 9 of the Standing Orders governing the workmen in the appellant- mills. At that time an industrial dispute was pending bet- ween the appellant-mills and their workmen. The transfer was to take effect from August 30, 1956; but the respondent failed to report for work in the day shift and was marked absent. On September 1, 1956, he submitted an application to the General Manager to the effect that he had reported for duty on August 30, at 10-30 p.m. and had worked during the whole night, but had not been marked present. He had again gone to the mills on the night of August 31, but was not allowed to work on the ground that he had been transferred to the day shift. He complained that he had been dealt with arbitrarily in order to harass him. Though he said that he had no objection to carrying out the orders, he requested the manager to intervene and save him from the high-handed action taken against him, adding that the mills would be responsible for his wages for the days he was not allowed to work.

On September 4, 1956, he made an application to the industrial tribunal, where the previous dispute was pending, under s. 33-A of the Industrial Disputes Act, No. XIV of 1947, (hereinafter called the Act) and complained that he had been transferred without any rhyme or reason from one shift to another and that this amounted to alteration in the conditions of his service, which was prejudicial and detrimental to his interest. As this alteration was made against the provisions of s. 33 of the Act, he prayed for necessary relief from the tribunal under s. 33-A. On September 5, 1956, the General Manager replied to the letter of September 1, and told the respondent that his transfer from. one shift to the other had been ordered on August 28, and he had been told to report for work in the day shift from August 30; but instead of obeying the order which was made in the normal course and report for work as directed he had deliberately disobeyed the order and reported for work on August

30 in the night shift. He was then ordered to leave and report for work in the day shift. He however did not even then report for work in the day shift and absented himself intentionally and thus disobeyed the order of transfer. The General Manager therefore called upon the respondent to show cause why disciplinary action should not be taken against him for wailfully refusing to obey the lawful orders of the departmental officers and he was asked to submit his explanation within 48 hours. The respondent submitted his explanation on September 7, 1956. Soon after it appears the appellant-mills received notice of the application under s. 33-A and they submitted a reply of it on October 5, 1956. Their case was that transfer from one shift to another was within the power of the management and could not be said to be an alteration in the terms and conditions of service to the prejudice of the workman and therefore the complaint under s. 33-A was not maintainable. The appellant-mills also pointed out that a domestic inquiry was being held into the subsequent conduct of the respondent and prayed that proceedings in the application under s. 33-A should be stayed till the domestic inquiry was concluded. No action seems to have been taken on this complaint under s. 33-A, for which the appellant-mills might as they had prayed for stay However, the domestic inquiry continued and on February 25, be partly responsible of those proceedings. against the respondent 1957, the inquiry officer reported that t e charge of misconduct was proved. Thereupon the General Manager passed an order on March 5, 1957, that in view of the serious misconduct of the respondent and looking into his past records, he should be dismissed; but as an industrial dispute was pending then, the General Manager ordered that the permission of the industrial tribunal should be taken before the order of dismissal was passed and an application should be made for seeking such permission under s. 33 of the Act.

In the meantime, a notification was issued on March 1, 1957, by which 10th March, 1957, was fixed for the coming into force of certain provisions of the Central Act, No. XXXVI of 1956, by which ss. 33 and 33-A were amended. The amendment made a substantial change in s. 33 and this change came into effect from March 10, 1957. The change was that the total ban on the employer against altering any condition of ser- vice to the prejudice of workmen and against any action for misconduct was modified. The amended section provided that where an employer intended to take action in regard to any matter connected with the dispute or in regard to any misconduct connected with the dispute, he could only do so with the express permission in writing of the authority before which the dispute was pending; but where the matter in regard to which the employer wanted to take action in accordance with the Standing Orders applicable to a workman was not connected with the dispute or the misconduct for which action was proposed to be taken was not connected with the dispute, the employer could take such action as he thought proper, subject only to this that in case of discharge or dismissal one month's wages should be paid and an application should be made to the tribunal before which the dispute was pending for approval of the action taken against the employee by the employer. In view of this change in the law, the appellant-mills thought that as the misconduct of the respondent in the present case was not connected with the dispute then pending adjudication, they were entitled to dismiss him after paying him one month's wages and applying for approval of the action taken by them. Consequently, no application was made to the tribunal for permission in accordance with the order of the General Manager of March 5, 1957, already referred to. Later, on April 2, 19579 an order of dismissal was passed by the General Manager after tendering one month's wages to the respondent and an application was made to the authority concerned for approval of the action taken against the respondent.

Thereupon the respondent filed another application under s. 33-A of the Act on April 9, 1957, in which he complained that the appellant-mills had terminated his services without the express permission of the tribunal and that this was a contravention of the provisions of s. 33 of the Act; he therefore prayed for necessary relief. On April 18, 1957, an interim order was passed by the tribunal on this application by which as a measure of interim relief, the appellant mills were ordered to permit the respondent to work with effect from April 19 and the respondent was directed to report for duty. It was also ordered that if the management failed to take the respondent back, the respondent would be paid his full wages with effect from April 19 after he had reported for duty. On May 6, 1957, however, the application dated April 9, 1957, was dismissed as defective and therefore the interim order of April 18 also came to an end. On the same day (namely, May 6, 1957), the respondent made another application under s. 33-A in which he removed the defects and again complained that his dismissal on April 2, 1957, without the express previous permission of the tribunal was against s. 33 and prayed for proper relief.

It is this application which is pending at present and has not been disposed of, though more than three years have gone by. It is also not clear what has happened to the first application of September 4,1956, in which the respondent complained that his conditions of service had been altered to his prejudice by his transfer from one shift to another. Applications under s. 33 and s. 33-A of the Act should be disposed of quickly and it is a matter of regret that this matter is pending for over three years, though the appellant mills must also share the blame for this state of affairs' However, the appellant-mills gave a reply on May 14,1957, to the last application under s. 33-A and objected that there was no breach of s. 33 of the Act, their case being that the amended s. 33 applied to the order of dismissal passed on April 2, 1957. Further, on the merits, the appellant-mills' case was that the dismissal was in the circumstances justified.

The matter came up before the tribunal on May 16, 1957. On this date, the tribunal again passed an interim order, which was to the effect that as a measure of interim relief, the respondent should be permitted to work from May 17 and the respondent was directed to report for duty. It was further ordered that in case the management failed to take him back, they would pay him his full wages with effect from the date he reported for duty.

Thereupon the appellant-mills filed a writ petition before the High Court. Their main contention before the High Court was two-fold. In the first place it was urged that the tribunal had no jurisdiction to entertain an application under s. 33-A of the Act in the circumstances of this case after the amended sections 33 and 33-A came into force from March 10, 1957. In the alternative it was contended that the tribunal had no jurisdiction to pass an interim order of reinstatement or in lieu thereof payment of full wages to the respondent even before considering the questions raised in the application under s. 33-A on the merits. The High Court held on the first point that in view of s. 30 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, No. XXXVI of 1956, the present case would be governed by s. 33 as it was before the amendment and therefore the tribunal would have jurisdiction to entertain the complaint dated May 6, 1957, under s. 33-A of the Act. On the second point, the High Court held that the order of the tribunal granting interim relief was within its jurisdiction and was justified. In consequence, the writ petition was dismissed. Thereupon the appellant-mills applied and was granted a certificate by the High Court to appeal to

this Court; and that is how the matter has come up before us. The same two points which were raised in the High Court have been urged before us. We are of opinion that it is not necessary in the present case to decide the first point because we have come to the conclusion that the interim order of May 16, 1957, is manifestly erroneous in law and cannot be supported. Apart from the question whether the tribunal had jurisdiction to pass an interim order like this without making an interim award, (a point which was considered and left open by this Court in The Management of Hotel Imperial v. Hotel Workers' Union (1)), we are of opinion that where the tribunal is dealing with an application under s. 33-A of the Act and the question before it is whether an order of dismissal is against the provisions of s. 33 it would be wrong in law for the tribunal to grant reinstatement or full wages in case the employer did not take the workman back in its service as an interim measure. It is clear that in case of a complaint under s. 33-A based on dismissal against the provisions of s. 33, the final order which the tribunal can pass in case it is in favour of the workman, would be for reinstatement. That final order would be passed only if the employer fails to justify the dismissal before the tribunal, either by showing that proper domestic inquiry was held which established the misconduct or in case no domestic inquiry was held by producing evidence before the tribunal to justify the dismissal: See Punjab National Bank Ltd. v. All- India Punjab National Bank Employees' Federation (2), where it was held that in an inquiry under s. 33-A, the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of s. 33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the tribunal has to consider because the complaint made by the employee is to be treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered under s. 33-A. Therefore, when a tribunal is considering a complaint under s. 33-A and it has finally to decide whether an employee should be reinstated or not, it is not open to the tribunal to order reinstatement as an interim relief, for that would be giving the workman the very relief which he could get only if on a trial of the complaint the employer failed to justify the order of dismissal. The interim relief ordered in this case was that the work (1) [1960] 1 S.C.R. 476.

(2) [1960] 1 S.C.R. 806.

man should be permitted to work: in other words he was ordered to be reinstated; in the alternative it was ordered that if the management did not take him back they should pay him his full wages. We are of opinion that such an order cannot be passed in law as an interim relief, for that would amount to giving the, respondent at the outset the relief to which he would be entitled only if the employer failed in the proceedings under s. 33-A. As was pointed out in Hotel Imperial's case (1),ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. The order therefore of the tribunal in this case allowing reinstatement as an interim relief or in lieu thereof payment of full wages is manifestly erroneous and must therefore be set aside. We therefore allow the appeal, set aside the order of the High Court as well as of the tribunal dated May 16, 1957, granting interim relief. Learned counsel for the respondent submitted to us that we should grant some interim relief in case we came to the conclusion that the order of the tribunal should be set aside. In the circumstances of this case we do not think that interim relief to the respondent is justified hereafter. As we have pointed above, applications under ss. 33 and 33-A should be dealt with expeditiously. We trust that the applications dated September 4, 1956, which appears to have

been overlooked and of May 6, 1957, will now be dealt with expeditiously and finally disposed of by the tribunal, as all applications under s. 33-A should be. In the circumstances we pass no order as to costs.

Appeal allowed.

(1) [1960] 1 S.C.R. 476.