THE MANAGEMENT OF RANIPUR COLLIERY

v.

BHUBAN SINGH AND OTHERS

1959

April 21.

(B. P. SINHA, P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Standing Orders — Interpretation of—Enquiry—Whether includes proceedings before Industrial Tribunal —Industrial Disputes Act, 1947 (14 of 1947), ss. 3, 33A.

The Company after regular enquiry and pending permission of the Industrial Tribunal under s. 33 of the Industrial Disputes Act, 1947, suspended some workmen without pay, whereupon the workmen filed applications under s. 33A of the Act before the Industrial Tribunal on the ground that their suspension without pay beyond ten days was against the provisions of the Standing Orders governing their conditions of service to the effect that an employee might be suspended provided the suspension without pay, whether as punishment or pending enquiry, did not exceed ten days. The Tribunal dismissed the workmen's applications under s. 33A and granted permission to the Company to dismiss the workmen concerned. The workmen appealed. The Appellate Tribunal upheld the order granting permission to dismiss the workmen but came to the conclusion that the words "pending enquiry" in cl. 27 of the Standing Orders included proceedings before the Industrial Tribunal and that there was breach of the Standing Orders.

Held, that the employer could apply under s. 33 of the Industrial Disputes Act, 1947, for permission to dismiss an employee when after a regular enquiry he had come to the finding that the case against the employee was proved and that the punishment of dismissal was the proper punishment. The Industrial Tribunal had not to enquire into the conduct of the employee or the merits of dismissal but see whether a *prima facie* case had been made out and a fair enquiry made by the employer. The time taken before the Tribunal in such proceedings was beyond the control of the employer.

Standing Orders were concerned with employers and employees and not with Tribunals. In the instant case, the words "pending enquiry" in cl. 27 of the Standing Orders, referred only to the enquiry by the employer and not to the proceedings before the Tribunal.

The principle laid down in *Lakshmi Devi Sugar Mill's* case that workmen would not be entitled to payment of wages during the whole period of suspension if the Tribunal gave permission to dismiss them, would apply only to cases where there was a ban under s. 33 and the employer had to apply under that section for lifting the ban after completing the enquiry.

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Rampalat Chamar v. *The Assam Oil Co. Ltd.*, (1954) L.A.C. 78, dissented from.

The Automobile Products of India Ltd. v. *Rukamji Bala*, [1955] 1 S.C.R. 1241, referred to.

Lakshmi Devi Sugar Mills Ltd. v. *Pt. Ram Sarup*, [1956] S.C.R. 916, followed and explained.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 768 of 1957.

Appeal by special leave from the judgment and order dated September 21, 1956, of the Labour Appellate Tribunal of India at Calcutta in Appeal No. Cal. 101 of 1956.

M. C. Setalvad, Attorney-General for India, S. N. Mukherjee and *B. N. Ghosh*, for the appellants.

Dipak Dutta Choudhri, for the respondents.

1959. April 21. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—This is an appeal by special leave against the decision of the Labour Appellate Tribunal of India in an industrial matter. The appellant is the Ranipur Colliery (hereinafter called the company) which carries on the business of coal mining in Dishergarh (West Bengal). The respondents are six workmen employed by the company. They along with another person were working as tub-checkers. It was found that they were making false reports both as to quality and quantity of coal, which it was their duty to check, with the result that the company suffered loss. Consequently, the company served charge-sheets on them and a regular enquiry was held on April 13, 1955, at which they were present and had full opportunity to give their explanation, cross-examine witnesses and generally contest the charge. The company came to the conclusion after the enquiry that the workmen were guilty of the misconduct with which they were charged and should be dismissed. As, however, an industrial dispute between the company and its workmen was pending before the Industrial Tribunal, the company applied under s. 33 of the Industrial Disputes Act (hereinafter called the Act) for permission to dismiss the workmen. It appears that five out

of seven workmen filed two applications under s. 33-A of the Act before the Industrial Tribunal on the ground that they had been suspended without pay from May 4, 1955, and that this was against the provision of the Standing Orders governing their conditions of service. These three applications were heard together by the Industrial Tribunal, which came to the conclusion that the permission should be granted to the company to dismiss the seven workmen and accordingly did so. Having granted this permission, the Industrial Tribunal, in consequence, dismissed the applications under s. 33-A.

Six of the workmen then went up in appeal to the Labour Appellate Tribunal against the grant of permission to dismiss and the dismissal of their applications under s. 33-A. Their case was (i) that no permission to dismiss should have been granted, and (ii) that five of them had been placed under suspension without wages for an indefinite period in violation of the express provision of the Standing Orders and therefore they were entitled to relief. The Appellate Tribunal dismissed the appeal with respect to the grant of permission to dismiss. It, however, came to the conclusion that there was a breach of cl. 27 of the Standing Orders, and therefore allowed the appeal of five workmen (other than Akhey Roy), who had applied under s. 33-A and ordered that they should be paid their wages from the date of suspension without pay to the date of the Industrial Tribunal's order, less ten days as provided in cl. 27 of the Standing Orders. Thereupon the company applied to this Court for special leave which was granted; and that is how the matter has come before us.

It appears that Akhey Roy has been unnecessarily joined as a respondent, for the order of the Appellate Tribunal does not show that any relief was granted to him and his appeal to the Appellate Tribunal must therefore be taken to have been dismissed.

Thus the only point that falls for consideration is whether suspension without pay pending permission of the Industrial Tribunal under s. 33 of the Act is a

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breach of cl. 27 of the Standing Orders. The brief facts necessary in this connection are these: Seven workmen were served with charge-sheets on April 1, 1955. After their replies had been received, an enquiry was held on April 13, 1955, and they were found guilty of misconduct. It was decided thereupon to apply for permission for their dismissal under s. 33 of the Act. The application was made to the Tribunal on April 29, 1955. Thereafter the workmen were suspended on May 4, 1955, without pay pending orders of the Industrial Tribunal.

Clause 27 of the Standing Orders, on which reliance has been placed, reads thus—

"An employee may be suspended, fined or dismissed without notice or any compensation in lieu of notice if he is found to be guilty of misconduct, provided suspension without pay, whether as a punishment or pending enquiry, shall not exceed ten days".

The contention on behalf of the workmen is that the words "pending enquiry" appearing in cl. 27 include enquiry under s. 33 of the Act before the Industrial Tribunal also. Therefore, if the Industrial Tribunal takes longer than ten days to decide the application under s. 33 and the workman is suspended without pay, there would be a breach of cl. 27 of the Standing Orders after ten days are over. On the other hand, it is contended on behalf of the company that the words "pending enquiry" in cl. 27 refer only to the enquiry by the employer and not to the proceedings before the Industrial Tribunal under s. 33. The Appellate Tribunal has come to the conclusion that the words "pending enquiry" in cl. 27 include proceedings before the Industrial Tribunal under s. 33 and therefore if suspension without pay is for more than ten days, even though it may be pending orders of the Industrial Tribunal under s. 33, there is a breach of cl. 27 of the Standing Orders. In this connection it has relied on an earlier decision of its own in *Rampalat Chamar* v. *The Assam Oil Co., Ltd.* (1), where the words were "pending full enquiry". It was of opinion that there was no difference between "pending

(1) [1954] L.A.C. 78.

enquiry" and "pending full enquiry" and that the proceedings before the Industrial Tribunal under s. 33 are also included in these words.

We agree that there is no real difference between "pending enquiry" which appears in cl. 27 of the Standing Orders and "pending full enquiry" which appeared in the Standing Orders in *The Assam Oil Company case* (1). But we are of opinion that the view taken by the Labour Appellate Tribunal both in *The Assam Oil Company case* (1), and in this case is incorrect. This Court has held in *The Automobile Products of India Ltd.* v. *Rukamji Bala* (2) that s. 33 imposes a ban on the employer to dismiss a workman and it gives power to the Industrial Tribunal, on an application made to it, to grant or withhold the permission to dismiss, i.e., to lift or maintain the ban. So far, however, as the employer is concerned, his enquiry is (or, at any rate, should be) over when he comes to the finding that the case against the employee is proved and that the punishment of dismissal is the proper punishment. It is only then that the employer applies under s. 33 for permission to dismiss the employee. Further, the proceedings under s. 33 are not an enquiry by the Industrial Tribunal into the rights or wrongs of the dismissal; all that it has to see is whether a *prima facie* case has been made out or not for lifting the ban imposed by the section and whether a fair enquiry has been made by the employer in which he came to the *bona fide* conclusion that the employee was guilty of misconduct. Once it found these conditions in favour of the employer, it was bound to grant the permission sought for by him. It is thus clear that proceedings under s. 33 are not in the nature of an enquiry into the conduct of the employee by the Industrial Tribunal: (see *Lakshmi Devi Sugar Mills Ltd.* v. *Pt. Ram Sarup* (3)). The proceedings therefore before the Industrial Tribunal cannot be called an enquiry into the conduct of the employee. On the other hand, the enquiry which is contemplated by cl. 27 is an enquiry into the conduct of the employee. That enquiry could

(1) [1954] L.A.C. 78.

(2) [1955] 1 S.C.R. 1241.

(3) [1956] S.C.R. 916.

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only be by the employer. Therefore, when cl. 27 uses the words "pending enquiry", these words can only refer to the enquiry by the employer into the conduct of the employee. It is, in our opinion, entirely unnecessary that the words "pending enquiry" should have been qualified by the words "by the employer", before they can be interpreted as referring to the enquiry by the employer. Standing Orders are concerned with employers and employees and not with tribunals. Therefore, when an enquiry is mentioned in cl. 27 it can in the context only refer to the enquiry by the employer and not to a proceeding under s. 33 before the tribunal. We are therefore of opinion that in the context in which these words have been used in cl. 27 they mean an enquiry by the employer and are not referable to the proceedings under s. 33 of the Act before the Tribunal.

The scheme and object of s. 33 also show that this conclusion is reasonable. Section 33 of the Act, as already stated, imposes a ban on the employer, thus preventing him from dismissing an employee till the permission of the tribunal is obtained. But for this ban the employer would have been entitled to dismiss the employee immediately after the completion of his enquiry on coming to the conclusion that the employee was guilty of misconduct. Thus if s. 33 had not been there, the contract of service with the employee would have come to an end by the dismissal immediately after the conclusion of the enquiry and the employee would not have been entitled to any further wages. But s. 33 steps in and stops the employer from dismissing the employee immediately on the conclusion of his enquiry and compels him to seek permission of the Tribunal, in case some industrial dispute is pending between the employer and his employees. It stands to reason therefore that so far as the employer is concerned he has done all that he could do in order to bring the contract of service to an end. To expect him to continue paying the employee after he had come to the conclusion that the employee was guilty of misconduct and should be dismissed, is, in our opinion, unfair, simply because of the accidental

circumstance that an industrial dispute being pending he has to apply to the tribunal for permission. It seems to us therefore that in such a case the employer would be justified in suspending the employee without pay after he has made up his mind on a proper enquiry to dismiss him and to apply to the tribunal for that purpose. If this were not so, he would have to go on paying the employee for not doing any work, and the period for which this will go on will depend upon an accidental circumstance, viz., how long the tribunal takes in concluding the proceedings under s. 33. In the present case the application for permission was made on April 29, 1955, and the Tribunal's award was given on March 10, 1956, more than ten months later. So if the view taken by the Appellate Tribunal is correct, the employer has to pay the employee for this period of more than ten months, even though the employer had completed his enquiry and made up his mind to dismiss the employee long before and would have done so but for the ban imposed by s. 33. The purpose of providing ten days as the maximum period of suspension without pay pending enquiry in cl. 27 obviously is that the employer should not abuse the provision of suspension pending enquiry and delay the enquiry inordinately, thus keeping the employee hanging about without pay for a long period. The object further seems to be to see that the employer finishes his enquiry promptly within ten days if the suspension of the employee is without pay. But it could not have been intended that the Industrial Tribunal should also conclude the proceedings under s. 33 within ten days, and if that was not done there would be a breach of cl. 27. In any case the time taken by the proceedings before the tribunal under s. 33 is beyond the control of the employer and as the provisions of cl. 27 would be inappropriate and inapplicable to the said proceedings. We are therefore of opinion that the words "pending enquiry" in cl. 27 both in the context and in justice and reason refer only to the enquiry by the employer and not to the proceedings before the tribunal under s. 33.

This interpretation would not cause any serious

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hardship to the employee, for if the tribunal grants permission to the employer to dismiss the employee he will not get anything from the date of his suspension without pay; on the other hand, if the tribunal refuses to grant the permission sought for, he would be entitled to his back wages from the date of his suspension without pay. We may in this connection refer to the case of *Lakshmi Devi Sugar Mills Ltd.* (1) where a similar point arose for decision. In that case the Standing Orders provided suspension without pay only for four days. It was there held that suspension without pay pending enquiry as also pending permission of the tribunal could not be considered a punishment, as such suspension without pay would only be an interim measure and would last only till the application for permission to punish the workman was made and the tribunal had passed orders thereon. It was also held that if the permission was accorded the workman would not be entitled to payment during the period of suspension but if the permission was refused he would have to be paid for the whole period of suspension. The principle laid down in that case applies to this case also. We would only like to add that that principle will apply only to those cases where there is a ban under s. 33 and the employer has to apply under that section for lifting the ban after completing the enquiry. The matter will be different if there is no question of applying under s. 33 and under the relevant Standing Orders the employer is competent to dismiss the employee immediately after his enquiry is complete. In such a case if the Standing Orders provide that suspension without pay will not be for more than a certain number of days, the enquiry must either be completed within that period or if it goes beyond that period and suspension for any reason is considered necessary, pay cannot be withheld for more than the period prescribed under the Standing Orders. In the present case, the suspension without pay took place even after the application under s. 33 had been made and was pending permission under that section. As the Industrial Tribunal has accorded permission to dismiss the employees in this case and

(1) [1956] S.C.R. 916.

as that part of the award has been upheld by the Appellate Tribunal, there is no question of the employees being paid during the period of suspension without pay. We, therefore, allow the appeal, set aside the order of the Labour Appellate Tribunal and restore the order of the Industrial Tribunal dismissing the two applications under s. 33-A. In the circumstances, we pass no order as to costs.

Appeal allowed.

RANJIT SINGH

v.

THE STATE OF PUNJAB

1959

April 21.

(JAFER IMAM and J. L. KAPUR, JJ.)

Criminal Trial—Perjury—False statement in affidavit—Affidavit affirmed to the best of knowledge and belief—No obligation to file affidavit—Offence, if made out—Indian Penal Code, 1860 (XLV of 1860), ss. 191 and 193.

A habeas corpus application was made to the High Court alleging that one S had been illegally arrested and kept in unlawful custody without any charge being made against him and without obtaining remand from a Magistrate. By way of a return the appellant, a sub-Inspector of Police, filed a false affidavit controverting the allegations made in the application. He was prosecuted and convicted under s. 193, Indian Penal Code. The appellant challenged his conviction on the grounds that: (i) as he was not bound under the law to file an affidavit, the case did not fall under s. 191 of the Indian Penal Code and he could not be convicted under s. 193; and (ii) the affidavit having been affirmed as true to the best of the knowledge and belief of the appellant it could not be said which part was true to his knowledge and which to his belief.

Held that, the appellant was rightly convicted. It was not necessary for the application of s. 191 of the Indian Penal Code that the accused should be bound under the law to make an affidavit. If he chose to make one and bound himself on oath to state the truth he was liable under s. 193 of the Code if he made a false statement and it was no defence to say that he was not bound to enter the witness-box or make an affidavit. In the present case it was necessary for the appellant to file an affidavit as he was bound to place the facts and circumstances justifying