1962

January 29.

THE MANAGEMENT OF U.B. DUTT & CO.

v.

WORKMEN OF U.B. DUTT & CO.

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

Industrial Dispute—Termination of service of employee in terms of contract—Dropping of proposed departmental enquiry —If colourable exercise of power—If can be questioned before industrial—tribunal—Principle terminating Government Service —If applies to industrial employees.

S, employed by the appellant as a cross cutter in the saw mill was asked to show cause why his services should not be terminated on account of grave indiscipline and misconduct and he denied the allegations of fact. He was thereafter informed about a department enquiry to be held against him and was suspended pending enquiry. Purporting to act under r. 18(a) of the Standing Orders, the appellant terminated the services of S, without holding any departmental enquiry. The industrial tribunal to which the dispute was referred held, that action taken, after dropping the proposed departmental proceedings was not *bonafide* and was a colourable exercise of the power conferred under r. 18(a) of the Standing Order and since no attempt was made before it to defend such action by proving the alleged misconduct, it passed an order for reinstatement of S. The appellant contended that as the termination was strictly in accordance with the terms of contract under r. 18(a) of the Standing Orders, it was entitled to dispense

with the service of an employee at any time by first giving 14 days notice or, paying 12 days wages.

Held, that the employer's decision to discharge the employee under r. 18(a) of the Standing Orders after dropping the enquiry intended to be held for misconduct, was clearly a colourable exercise of the power, and an employer could not press his right purely on contract and say that under the contract he has unfettered right "to hire and fire" his employees, right was subject to industrial adjudication and even a power like that granted by r. 18(a) of the Standing Orders in this case, was subject to the scrutiny of industrial courts. Even in a case of this kind the requirement of bona-fides was essential and if the termination of service was a colourable exercise of power, or was a result of victimisation or unfair labour practice, the tribunal had jurisdiction to intervene and set aside such termination.

Buckingham and Carnatic Co. Ltd. v. *Workers of the Company*, [1952] L.A.C. 490, referred to.

The Chartered Bank Bombay v. *The Chartered Bank Employees Union*. [1960] 3 S.C.R. 441 and *Assam Oil Company* v. *Its Workmen*, [1960] 3 S.C.R. 457, followed.

Held, further, that the principle relating to termination of Government service stands on an entirely different footing as compared to industrial employees and the same principle could not be applied to industrial adjudication.

Parshotam Lal Dhingra v. *Union of India*, [1958] S.C.R. 828, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 50 of 1961.

Appeal by special leave from the Award dated March 10, 1959, of the Industrial Tribunal, Kozhikode, in I.D. No. 89 of 1958.

A. V. Viswanatha Sastri and *T. V. R. Tatachari*, for the appellant.

Janardan Sharma, for the respondents.

1962. January 29. The Judgment of the Court was delivered by

WANCHOO. J.—This is an appeal by special leave in an industrial matter. The brief facts necessary for present purposes are these. The appellant in a saw-mill carrying on business in Kozihkode in

Wanchoo J.

1962

The Management of U. B. Dutt & Co. v. Workmen of U. B. Dutt & Co.

Wanchoo J.

the State of Kerala. One Sankaran was in the employ of the appellant as a crosscutter. It is said that on June 21, 1958, Sankaran came drunk to the mill and abused the Engineer, the Secretary and others and threatened them with physical violence. He was caught hold of by other workmen and taken outside. It is said that he came again a short time later at 4-30 p.m. and abused the same persons again. Thereupon the appellant served a charge-sheet on Sankaran on June 24, 1958 acting out the above facts and asked him to show cause why his services should not be terminated on account of his grave indiscipline and misconduct. Sankaran gave an explanation the same day denying the allegations of fact made against him, though he admitted that he had come to the mill at the relevant time for taking his wages for that week. On June 25, 1958 Sankaran was informed that in view of his denial, a departmental inquiry would be held and he was also placed under suspension pending inquiry. The same day Sankaran protested against his suspension and requested that in any case the departmental inquiry should be expedited. As no inquiry was held till July 2, 1958, Sankaran again wrote to the appellant to hold the inquiry as early as possible. On July 8, 1958, the appellant terminated the services of Sankaran under r. 18 (a) of the Standing Orders without holding any departmental inquiry and the order was communicated to Sankaran the same day. In that order the appellant informed Sankaran that the proposed inquiry, if conducted, would lead to further friction and deterioration in the rank and file of the employees in general and also that maintenance of discipline in the undertaking would be prejudiced if he was retained in the service of the appellant, and therefore it considered that no inquiry should be held. A dispute was then raised by the union which was referred to the industrial tribunal for adjudication by the Government of Kerala in October 1958. The tribunal held that

something seemed to have happened on the afternoon of June 21, 1958 but there was no evidence to prove what had actually happened. It further held that the appellant had intended to take disciplinary action against the workman but subsequently departmental proceedings were dropped and action was taken under r. 18(a) of the Standing Orders. The tribunal was of the view that this was a colourable exercise of the power given under r. 18(a) to the appellant and therefore its action could not be upheld as a *bona fide* exercise of the power conferred. The tribunal also pointed out that no attempt was made before it to defend the action taken under r. 18 (a) by proving the alleged misconduct. Two witnesses were produced before the tribunal in connection with the alleged misconduct, but the tribunal did not rely on them on the ground that the important witnesses, namely, the Engineer, the Secretary and other members of the staff whose evidence would have been of more value had not been produced and no explanation had been given why they were not produced. The tribunal therefore held that on the facts it could not come to the conclusion that Sankaran had come drunk to the mill and abused or attempted to assault either the Engineer or the Secretary or other officers. In the result the order of discharge was set aside and Sankaran was ordered to be reinstated. The appellant thereupon applied for special leave which was granted; and that is how the matter has come up before us.

The main contention of the appellant is that it is entitled under r. 18 (a) of the Standing Orders to dispense with the service of any employee after complying with its terms. Rule 18 (a) is in these terms :—

> "When the management desires to determine the services of any permanent workmen

1962

The Management of U. B. Dutt & Co. v. Workmen of U. B. Dutt & Co.

Wanchoo J.

receiving 12 as. or more as daily wages, otherwise than under rule 21, he shall be given 14 days notice or be paid 12 days wages."

It may be mentioned that r. 21 deals with cases of misconduct and provides for dismissal or suspension for misconduct and in such a case the workman so suspended is not entitled to any wages during the period of suspension. The claim thus put forward on behalf of the appellant is that it is entitled under r. 18(a) of the Standing Orders which is a term of contract between the appellant and its employees to dispense with the service of any employee at any time by just giving 14 days notice or paying 12 days wages.

We are of opinion that this claim of the appellant cannot be accepted, and it is too late in the day for an employer to raise such a claim for it amounts to a claim "to hire and fire" an employee as the employer pleases and thus completely negatives security of service which has been secured to industrial employees through industrial adjudication for over a long period of time now. As far back as 1952, the Labour Appellate Tribunal had occasion to consider this matter relating to discharge by notice or in lieu thereof by payment of wages for a certain period without assigning any reason: (*see Buckingham and Carnatic Co. Ltd. Etc.* v. *Workers of the Company. etc.*) (1). It was of opinion that even in a case of this kind the requirement of *bona fides* is essential and if the termination of service is a colourable exercise of the power or as a result of victimisation or unfair labour practice the industrial tribunal would have the jurisdiction to intervene and set aside such termination. Further it held that where the termination of service is capricious, arbitrary or unnecessarily harsh on the part of the employer judged by normal standards of a reasonable man that may be cogent evidence of victimisation or unfair labour practice. These observations

1. (1952) L.A.C. 490.

of the Labour Appellate Tribunal were approved by this Court in *The Chartered Bank, Bombay* v. *The Chartered Bank Employees' Union* (1). and *Assam Oil Company* v. *Its Workmen* (2). Therefore if as in this case the employer wanted to take action for misconduct and then suddenly dropped the departmental proceedings which were intended to be held and decided to discharge the employee under r. 18 (a) of the Standing Orders, it was clearly a colourable exercise of the power under that rule in as much as that rule was used to get rid of an employee instead of following the course of holding an inquiry for misconduct, notice for which had been given to the employee and for which a departmental inquiry was intended to be held. The reason given by the appellant in the order terminating the services of Sankaran of July 8, 1958, namely, that the proposed inquiry, if conducted, would lead to further friction and deterioration in the rank and file of the employees in general and also that maintenance of discipline in the undertaking would be prejudiced if Sankaran were retained in service, cannot be accepted at its face value; so that the necessity for an inquiry intended to be held for misconduct actually charged might be done away with. In any case even if the inquiry was not held by the appellant and action was taken under r. 18 (a) it is now well-settled, in view of the decisions cited above, that the employer could defend the action under r. 18(a) by leading evidence before the tribunal to show that there was in fact misconduct and therefore the action taken under r. 18(a) was *bona fide* and was not colourable exercise of the power under that rule. But the tribunal has pointed out that the employer did not attempt to do so before it. It satisfied itself by producing two witnesses but withholding the important witnesses on this question. In the circumstances, if the tribunal did not accept the evidence of the two witnesses

(1) [1960] 3 S.C.R. 441. (2) [1960] 3 S.C.R. 457.

1962

The Management of U. B. Dutt & Co. v. Workmen of U. B. Dutt & Co.

Wanchoo J.

who were produced it cannot be said to have gone wrong.

Learned counsel for the appellant however urges that the employer was empowered to take action under r. 18 (a) of the Standing Orders and having taken action under that rule, there was nothing for it to justify before the tribunal. We have already said that this position cannot be accepted in industrial adjudication relating to termination of service of an employee and has not been accepted by industrial tribunals over a long course of years now and the view taken by industrial tribunals has been upheld by this Court in the two cases referred to above. Learned counsel for the appellant, however, relies on the decision of this Court in *Parshotam Lal Dhingra* v. *Union of India*. (1) That was however a case of a public servant and the considerations that apply to such a case are in our opinion entirely different. Stress was laid by the learned counsel on the observations at p. 862 where it was observed as follows :—

> "It is true that the misconduct, negligence inefficiency or other disqualification may be the motive or inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service, the motive operating on the mind of the Government is, as Chagla C. J. has said in *Srinivas Ganesh* v. *Union of India* (2) (supra), wholly irrelevant.

It is urged that the same principle should be applied to industrial adjudication. It is enough to say that the position of government servants stands on an entirely different footing as compared to industrial employees. Articles 310 and 311 of the Constitution apply to government servants and it is in the

(1) [1958] S.C.R. 828. (2) A.I.R. (1956) Bom. 455.

light of those Articles read with the Rules framed under Art. 309 that questions relating to termination of service of government servants have to be considered. No such constitutional provisions have to be considered when one is dealing with industrial employees. Further an employer cannot nowpress his right purely on contract and say that under the contract he has unfettered right "to hire and fire" his employees. That right is now subject to industrial adjudication and even a power like that granted by r. 18 (a) of the Standing Orders in this case, is subject to the scrutiny of industrial courts in the manner indicated above. The appellant therefore cannot rest its case merely on r. 18 (a) and say that having acted under that rule there is nothing more to be said and that the industrial court cannot inquire into the causes that led to the termination of service under r. 18 (a). The industrial court in our opinion has the right to inquire into the causes that might have led to termination of service even under a rule like 18(a) and if it is satisfied that the action taken under such a rule was a colourable exercise of power and was not *bona fide* or was a result of victimisation or unfair labour practice it would have jurisdiction to intervene and set aside such termination. In this case the tribunal held that the exercise of power was colourable and it cannot be said that that view is incorrect. The appellant failed to satisfy the tribunal when the matter came before it for adjudication that the exercise of the power in this case was *bona fide* and was not colourable. It could have easily done so by producing satisfactory evidence ; but it seems to have rested upon its right that no such justification was required and therefore having failed to justify its action must suffer the consequences.

Learned counsel for the appellant also drew our attention to another decision of this Court in

1962

The Management of U. B. Dutt & Co. v. Workmen of U. B. Dutt & Co.

Wanchoo J.

The Patna Electric Supply Co. Ltd. Patna v. *Bali Rai* (1). That case in our opinion has no application to the facts of this case because that case dealt with an application under s. 33 of the Industrial Disputes Act while the present proceedings are under s. 10 of the Act and the considerations which apply under s. 33 are different in many respects from those which apply to an adjudication under s. 10.

The appeal therefore fails and is hereby dismissed with costs.

Appeal dismissed.