

MANAGEMENT UTKAL MACHINERY LTD.

A

v.

WORKMEN, MISS SHANTI PATNAIK

October 27, 1965

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO,
M. HIDAYATULLAH, V. RAMASWAMI AND
P. SATYANARAYANA RAJU, JJ.]

B

Industrial Dispute—Termination of Employee's services—Power of Tribunal to enquire into—Necessity of enquiry before discharge on ground of unsatisfactory work—Amount of compensation.

The respondent entered into the service of the appellants on December 9, 1961 at a monthly salary of Rs. 400. On April 30, 1962 she was given notice of termination of her services. She thereupon raised an industrial dispute which was referred by the Government of Orissa to an Industrial Tribunal. The respondent alleged before the Tribunal that the termination of her services was improper, *mala fide* and an act of victimisation. The case of the appellant was that the respondent had been appointed on probation for six months, and her work having been found unsatisfactory she had been discharged in terms of the contract. The Tribunal held that the termination of the respondent's services was *mala fide* and awarded her two years salary, namely Rs. 9,600 as compensation. In appeal to this Court on behalf of the management by special leave.

C

HELD : (i) If the discharge of an employee has been ordered by the management in *bona fide* exercise of its power, the Industrial Tribunal will not interfere with it, but it is open to the Industrial Tribunal to consider whether the order of termination is *mala fide* or whether it amounts to victimisation of the employee or an unfair labour practice or is so capricious or unreasonable as could lead to the inference that it had been passed for ulterior motives and not in *bona fide* exercise of the power arising out of the contract. In such a case it is open to the Tribunal to interfere with the order of the management and to afford proper relief to the employee. [437 C-E]

E

(ii) The respondent could not be said to have been discharged in the terms of the contract. There was no Standing Order of the company with regard to punishment for misconduct. In the absence of any Standing Order the unsatisfactory work of an employee may be treated as misconduct. When the management discharged the respondent for alleged unsatisfactory work it should be taken that the discharge was tantamount to punishment for alleged misconduct. If this was so, the management was not justified in discharging the respondent without holding proper enquiry. Even before the Labour Court no evidence was adduced by the management to show that the work of the respondent was unsatisfactory. In these circumstances the discharge of the respondent was *mala fide* and she was entitled to compensation. [437 F-H]

F

(iii) There were no special circumstances in the case to justify the award of two years' salary as compensation. It was sufficient to award Rs. 4,800. [439 A]

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 581 of 1964.

H

A Appeal by special leave from the award dated May 24, 1963 of the Labour Court, Orissa in Industrial Dispute No. 5 of 1962.

I. N. Shroff, for the appellant.

The respondent did not appear.

E The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought, by special leave, against the award of the Labour Court, Orissa dated May 24, 1963 in Industrial Dispute No. 5 of 1962 published in the Orissa Gazette dated June 14, 1963.

C The respondent—Miss Shanti Patnaik—took her degree in Master of Arts (Political Science) in 1961. At that time, Major General Pratap Narain was the General Manager of Utkal Machinery Ltd. (hereinafter referred to as the 'Management'). On

D December 9, 1961 Major General Pratap Narain appointed the respondent as his Secretary on a monthly salary of Rs. 400. She was thereafter transferred to the Personnel Department of the Company as an Assistant. It appears that Shri A. L. Sarin joined as Personnel Officer on January 2, 1962. The respondent alleges that on April 30, 1962 she was given notice for termination of her service. On her representation she was informed on May 30, 1962 that the decision of the management to dispense with her service was final.

E The allegation of the respondent is that taking advantage of her subordinate official position Mr. Sarin misbehaved with her to which she offered resistance. The respondent asserted that the termination of her service was improper, *mala fide* and an act of victimisation.

F The respondent prayed that the order of termination should be set aside and she should be reinstated with full arrears of pay. The case of the respondent was taken up by the Utkal Machinery Mazdoor Sangha and on December 18, 1962 the Government of Orissa referred the following dispute for adjudication to the Labour Court :

G

"Whether the termination of services of Miss. S. Patnaik by the management of Messrs Utkal Machinery Limited, Kansabahal is legal and justified ? If not, what relief she is entitled to ?"

H

The case of the management before the Labour Court was that Miss Patnaik was appointed on probation for a period of 6 months on a salary of Rs. 400 p.m. on the recommendation of

the then Chief Minister of Orissa, Shri B. Patnaik who suggested to the management that the respondent may be put "in the staff with a start of Rs. 350 or Rs. 400 with living accommodation". The management alleged that the service of the respondent was terminated during the probation period because of her unsatisfactory work and there was no question of victimisation or *mala fide* motive in the termination of the respondent's service. The management contended that it had absolute discretion to assess the work of the respondent during the period of probation and to terminate her services on the ground of unsatisfactory work. The Labour Court did not accept the contention of the management and held that there was no probationary period fixed for the respondent and the termination of her services by the management was *mala fide*, illegal and unjustified and the management should pay to the respondent a sum of Rs. 9,600 as compensation in lieu of her reinstatement.

The first question pressed on behalf of the appellant is that the Labour Court was wrong in rejecting the contention of the management that the respondent was appointed to serve for a period of 6 months on probation upto June 9, 1962. Learned Counsel on behalf of the appellant pointed out that there was an endorsement at the bottom of the application by the respondent dated January 9, 1962 to the effect that she was appointed on a salary of Rs. 400 p.m. on probation for 6 months. The endorsement is in the handwriting of Major General Pratap Narain and both he and Vogel—another General Manager—have signed it. The Labour Court has examined the evidence on this point and found that no communication was sent to the respondent on the basis of the endorsement—Ex. A-1. The management relied on a letter—Ex. G—dated January 17, 1962 alleged to have been sent to the respondent. This letter states that the appointment was on probation for 6 months which may be extended at the discretion of the management and "during probationary period the services of the respondent may be terminated without any notice and without the management being bound to assign any reasons therefor". The respondent, however, denied that she received any such letter from the management. The Labour Court has accepted her case and has reached the conclusion that there is no proof that the respondent was employed by the management on probation for a period of 6 months with effect from December 9, 1961. We are unable to accept the argument on behalf of the appellant that the finding of the Labour Court on this point is not supported by proper evidence or that the finding is vitiated by any error of law.

- A We shall, however, assume in favour of the appellant that the respondent was appointed on December 9, 1961 on probation for a period of 6 months and it was stipulated in the contract that during the probationary period the services of the respondent could be terminated without notice and without assigning any reason. In other words, the management had the contractual right to terminate the services of the respondent without assigning any reason therefor.
- B But if the validity of the termination is challenged in an industrial adjudication, it would be competent to the Industrial Tribunal to enquire whether the order of termination has been effected in the *bona fide* exercise of its power conferred by the contract.
- C If the discharge of the employee has been ordered by the management in *bona fide* exercise of its power, the Industrial Tribunal will not interfere with it, but it is open to the Industrial Tribunal to consider whether the order of termination is *mala fide* or whether it amounts to victimisation of the employee or an unfair labour practice or is so capricious or unreasonable as would lead to the inference that it has been passed for ulterior motives and not in *bona fide* exercise of the power arising out of the contract.
- D In such a case it is open to the Industrial Tribunal to interfere with the order of the management and to afford proper relief to the employee. This view is borne out by the decision of this Court in *Assam Oil Co. Ltd. v. Its workmen*⁽¹⁾.
- E The argument was stressed on behalf of the appellant that there was no dismissal of the respondent for misconduct but she was only discharged in terms of the contract and the order of the management cannot be treated as an order of dismissal of the respondent for misconduct. The Labour Court has examined the evidence on this aspect of the case and has reached the finding that the order of the management discharging the respondent dated April 30, 1962 was punitive in character and it should be taken as a punishment for the alleged misconduct of the respondent.
- F The Labour Court has referred to the fact that there is no Standing Order of Utkal Machinery Ltd. with regard to punishment for misconduct.
- G In the absence of any Standing Order the unsatisfactory work of an employee may be treated as misconduct and when the respondent was discharged according to the management for unsatisfactory work it should be taken that her discharge was tantamount to punishment for an alleged misconduct.
- H If this conclusion is correct the management was not justified in discharging the respondent from service without holding a proper enquiry. Even before the Labour Court there was no evidence

adduced on behalf of the management to show that the work of the respondent was unsatisfactory. Two witnesses were examined on behalf of the management but neither uttered a word about it. Neither the Deputy General Manager nor the Joint General Manager was examined in support of the allegation. There was also no document produced on behalf of the management to illustrate the unsatisfactory work of the respondent. In her statement before the Labour Court the respondent said that she was not told in writing till April 30, 1962 that her work was not satisfactory. Mr. Sarin was her superior officer but he never expressed any disapprobation of her work or told her that her work was not satisfactory. The Labour Court accordingly found that there was no proof of the alleged misconduct on the part of the respondent and there was no justification for terminating her services and in the face of complete absence of evidence in regard to unsatisfactory work of the respondent the discharge of the respondent from service was *mala fide*. We hold that the view taken by the Labour Court is correct.

It was next submitted on behalf of the appellant that the amount of compensation awarded to the respondent was exorbitant. It was pointed out that the respondent had worked for an actual period of less than 5 months but she had been awarded compensation of two years' salary. We think there is some substance in this criticism. The Labour Court has relied upon the decision of this Court in *Assam Oil Co. Ltd. v. Its workmen*⁽¹⁾ but the material facts of that case were different from those in the present case. In that case the aggrieved employee, Miss Scott was in the employment of the Assam Oil Co. Ltd. for about two years before the termination of her services. It also appears that Miss Scott was in the service of Burmah-Shell as a lady Secretary before she entered the service of Assam Oil Co. in October, 1954. It is also important to notice that the amount of compensation in that case was fixed on a concession of the Solicitor-General who appeared on behalf of the Assam Oil Co. In the present case, the respondent did not give up any previous job in order to take service under the appellant. She had worked for a period of about 5 months with the appellant. Her appointment with the appellant also was somewhat unusual because it was made on the recommendation of Sri B. Patnaik, the then Chief Minister of Orissa. There are no special circumstances for awarding compensation equal to two years' salary. Having regard to these considerations we are of opinion that the amount of compensation awarded by

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

A the Labour Court to the respondent should be reduced and the respondent should be granted a sum of Rs. 4,800 as compensation. She should also be paid 6% interest from the date of order of the Labour Court till the date of payment.

We accordingly modify the award of the Labour Court dated
B May 24, 1963 and allow the appeal to this extent. There will be no order as to costs.

Appeal allowed in part.