A **HINDUSTAN STEELS LTD., ROURKELA**

v.

A. K. ROY & ORS.

December 18, 1969

B [J. M. SHELAT AND C. A. VAIDIALINGAM, JJ.]

Industrial Tribunal—Discretion—Termination of service for reasons of security—Tribunal ordering reinstatement—Duty of Tribunal to exercise discretion properly—Constitution of India Article 226*—High Court's duty to interfere in cases of improper exercise of discretion.*

C The first respondent was appointed in 1958 as a skilled workman by the appellant Company. He had executed a bond to serve the Company for five years in consideration of the Company having borne the expenses of his training. In accordance with the practice of the Company a verification report about him was called for as was done in the case of other workmen also. On a report from the Police the Security Officer recommended that it was not desirable to retain the respondent in the company's service any longer. The respondent at the time was working as D a fitter in the blast furnace of the works. In December 1960 he was served with an order by which his service was terminated. The Industrial Tribunal, on a reference of the dispute, rejected the Union's allegation as to victimisation or unfair labour practice. Nevertheless it held that it was improper on the part of the Company not to have disclosed the report to the respondent, that the order of termination was in fact punitive in nature and considering the action taken as disproportionate the order was illegal and unjustified. The Tribunal therefore directed reinstatement with E full back wages. On a petition for a Writ of *Certiorari* the High Court upheld the Tribunal's order. It also held that the case was not one of those exceptions to the general rule of reinstatement and the Tribunal having exercised its discretion it could not interfere with the Tribunal's order. The appeal to this Court was limited only to the question whether the relief to the first respondent should have been reinstatement or compensation.

F HELD : (1) In the circumstances of the case the Tribunal was not justified in directing reinstatement and the High Court erred in refusing to interfere with the order of the Tribunal merely on the ground that it could not do so as it was a case where the Tribunal had exercised its discretion.

The Tribunal has the discretion to award compensation instead of G reinstatement if the circumstances of a particular case are unusual or exceptional so as to make reinstatement inexpedient or improper. The Tribunal has to exercise its discretion judicially and in accordance with the well recognised principles in that regard and has to examine carefully the circumstances of each case and decide whether such a case is one of those exceptions to the general rule. If the Tribunal were to exercise its discretion in disregard of such circumstances or the principles laid down by this Court it would be a case either of no exercise of discretion H or of one not legally exercised. In either case the High Court in exercise of its jurisdiction can interfere and cannot be content by simply saying that since the Tribunal has exercised its discretion, it will not examine the circumstances of the case to ascertain whether or not such exercise

was properly and in accordance with settled principles made. If the High Court were to do so, it would be a refusal on its part to exercise jurisdiction. [351 B-E] A

In the present case the termination of service was not on account of victimisation or unfair labour practice. It is clear that the Company terminated the service of the workman only because it felt that it was not desirable for reason of security to continue the workman in its service. Therefore what was relevant at the stage when the Tribunal came to decide what relief the workman was entitled to was the question whether the management genuinely apprehended as a result of the report that it would be risky to retain the workman in the company's service. If, on an examination, of the circumstances of the case the Tribunal came to the conclusion that the apprehensions of the employer were genuine and the employer truly felt that it was hazardous or prejudicial to the interests of the industry to retain the workman in his service on grounds of security the case would be properly one where compensation would meet the ends of justice. The present case is one such. The Tribunal exercised its discretion mechanically without weighing the circumstances of the case and the refusal by the High Court to interfere was equally mechanical and amounted to refusal to exercise jurisdiction. [351 F; 352 A-G] B C

Western India Automobile Association v. *Industrial Tribunal* [1949] F.C.R. 321, 348; *United Commercial Bank Ltd.* v. *U.P. Bank Employees Union*, [1952] 2 L.L.J. 577; *Punjab National Bank Ltd.* v. *Workmen*, [1959] 2 L.L.J. 669; *Assam Oil Co. Ltd.* v. *Workmen*, [1960] 3 S.C.R. 457; *Working of Charottar Gramodhar Sahakari Mandali Ltd.* v. *Charottar Gramodhar Sahakari Mandali Ltd.*, C.A. 382 of 1966, dec. on August 14, 1967; *Deomur Dulung Tea Estate* v. *Workmen*, C.A. 516 of 1966, dec. on October 26, 1967; and *Ruby General Insurance Co. Ltd.* v. *P. P. Chopra*, C.A. 1735 of 1969, dec. on September 12, 1969, referred to. D

(ii) In the circumstances of the case it would be proper for this Court to determine the amount of compensation. Compensation for a period of two years at the rate of Rs. 160 per month, that being the last salary drawn by the concerned workman would meet the ends of justice. [353 D] E

Assam Oil Co. Ltd. v. *Workmen*, [1960] 3 S.C.R. 457 and *Utkal Machinery Ltd.* v. *Workmen*, [1966] 2 S.C.R. 434, referred to. F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2127 of 1969.

Appeal by special leave from the judgment and order dated January 27, 1969 of the Orissa High Court in O.J.C. No. 280 of 1965. G

H. R. Gokhale, Govind Das and *G. S. Chatterjee*, for the appellant.

R. K. Garg, S. C. Agarwala, and *Sumitra Chakravarty* for respondent No. 1.

The Judgment of the Court was delivered by H

Shelat, J. Respondent 1 was, in 1955, admitted as a trade apprentice by the appellant-company in its works, the company

A agreeing to bear the cost of his training as such apprentice, which it did for a period of 3 years. On completion of his training, he was appointed in September 1958 as a skilled workman, *i.e.*, as a fitter. The letter of appointment under which he was engaged contained a clause which required him to execute a bond to serve the company for five years at least. The object of that clause B evidently was to ensure that he served the company at least for five years in consideration of the company having borne the expenses of his training.

The evidence produced before the Industrial Tribunal shows that the practice of the company, set up at the instance of the C Government of India and the Company's Board of Directors, was to have a confidential inquiry made to verify the antecedents of its employees. Such verification not being practicable at the time of the appointment of each employee, it used to be done after a workman was appointed. The object of such verification was to ascertain whether it was desirable or not in the interests of the D company to continue the service of the employee in respect of whom such verification was made. The inquiry was made through the police. On receipt of a verification report from the police, the Senior Security Officer of the company would make his recommendation and the company would terminate the service of an employee where it was considered desirable in the company's interests not to continue such an employee in service after giving 3 months' E notice or salary for that period in lieu thereof.

Throughout the period of his service commencing from September 1958 no action was ever taken against respondent 1 although he had at one time joined a strike in the company's works and although he was an active member and the secretary of the F workmen's union. A criminal case in relation to the said strike was filed against him but had been subsequently withdrawn. *Prima facie*, the fact that no action was taken against him indicated that the company did not consider his active participation in the union activities objectionable so as to warrant any interference on its part.

G

In accordance with the practice of the company, however, a verification report about him was called for as was done in the case of other workmen also. On such a report from the police, the Senior Security Officer recommended that it was not desirable to retain him in the company's service any longer. Respondent H 1 at the time was working as a fitter in the blast furnace of the works. On December 9, 1960 he was served with an order by which his service was terminated and was informed that he would be entitled to 3 months' pay in lieu of a notice for that period.

On the union of which, as aforesaid, he was the secretary, having raised a dispute, alleging that the termination of his service was the result of victimisation and unfair labour practice, the dispute was referred by the Government of Orissa to the Industrial Tribunal. After inquiry, the Tribunal rejected the union's allegation as to victimisation or unfair labour practice on account of any union activities carried on by respondent 1. Nevertheless, the Tribunal held that it was improper on the part of the company not to have disclosed the said report to respondent 1 and not to have given him an opportunity to contest its contents and vindicate himself. The Tribunal held that though the said order was in form one of termination of service, it was in fact punitive in nature and considering the action taken against respondent 1 as disproportionate further held that it was a case of victimisation, that consequently the order was illegal and unjustified and directed reinstatement with full back wages.

The company filed a writ petition in the High Court for quashing the said order. Before the High Court the company urged : (a) that the termination of the service of respondent 1 was in *bona fide* exercise of the employer's right to do so, (b) that it did so only because of the said adverse report and (c) that even if it was held that the said order was not legal or justified, the proper relief to be granted to the respondent in the circumstances of the case was compensation and not reinstatement, which meant imposition of a workman against whom there was an adverse report and whom the company did not consider it desirable to retain in its service. The High Court rejected these contentions and held that the Tribunal was right in holding that the termination of service of respondent 1 was not in *bona fide* exercise of the power of the employer to terminate an employee's service, that it was punitive in character and was, therefore, not legal or justified. The High Court also held that ordinarily the relief against an illegal termination of service was reinstatement though in some cases it may be considered inexpedient to do so, in which event a suitable compensation would be the proper relief. Lastly, it held that the present case was not one of those exceptions to the general rule of reinstatement and the Tribunal having exercised its discretion it could not interfere with the Tribunal's order.

The company thereupon applied for special leave from this Court. Though it was granted, it was limited only to the question whether the relief to respondent 1 should have been reinstatement or compensation. It is, therefore, not possible for us to go into the question whether the Tribunal and the High Court were right in their conclusion that the termination of the service of respondent 1 was not in *bona fide* exercise of the company's right to order discharge *simpliciter* or whether the order was punitive in

A nature and therefore was not legal in the absence of any domestic inquiry having been held. Besides, this appeal is one against the High Court's order refusing *certiorari* under its writ jurisdiction and not a direct appeal under Art. 136 of the Constitution against the Tribunal's order. These considerations will have to be kept in mind while we are considering this appeal.

B

Counsel for the appellant-company argued that even though he could not challenge, in view of the limited special leave granted to the company, the finding that the impugned order was not termination *simpliciter* in *bona fide* exercise of the employer's right to terminate the service of an employee, he was entitled to C agitate the question whether or not the High Court, on the facts of this case, should have interfered and ordered compensation in place of reinstatement, particularly because : (a) the concerned employee was posted in the blast furnace, a crucial part of the company's works, in respect of which the company could not hazard any risk, (b) the Tribunal had given a clear and firm D finding against the case that the workman had been victimised on account of his union activities, and (c) the Tribunal and the High Court had both set aside the company's order only because of their finding that it was punitive in nature and that the punishment was so disproportionate, that it amounted to victimisation. The proper order, counsel submitted, was to award compensation instead of imposing the service of an employee whom the company considered E risky to retain in its service. Mr. Garg, on the other hand, argued that the company's action involved an important principle, in that, an employer cannot be allowed to terminate the services of his employees on police reports which are not disclosed to the workmen or before the Tribunal, and therefore, are not open to the workmen to challenge. Such a course, he argued, would enable F an employer to put an end to the service of a workman not because he is in fact a danger to the establishment but is merely a member of a party or an association whose views and policies such an employer does not like. In such a case, he submitted, the termination of service would be in violation of the constitutional right of association of an individual and would be clearly unjustified, and therefore, it would not be a case for departure from the ordinary G consequence flowing from an illegal order of termination of service.

There can be no doubt that the right of an employer to discharge or dismiss an employee is no longer absolute as it is subjected to severe restrictions. In cases of both termination H of service and dismissal, industrial adjudication is competent to grant relief, in the former case on the ground that the exercise of power was *mala fide* or colourable and in the latter case if it amounts to victimisation or unfair labour practice or is in violation

of the principles of natural justice or is otherwise not legal or justified. In such cases, a tribunal can award by way of relief to the concerned employee either reinstatement or compensation. In the earlier stages the question whether one or the other of the two reliefs should be granted was held to be a matter of discretion for the tribunal. (see *Western India Automobile Association* v. *Industrial Tribunal*(1), *United Commercial Bank Ltd.* v. *U.P. Bank Employees Union*(2). The view then was that to lay down a general rule of reinstatement being the remedy in such cases would itself fetter the discretion of the tribunal which has to act in the interests of industrial harmony and peace and that it might well be that in some cases imposition of the service of a workman on an unwilling employer might not be conducive to such harmony and peace. Later on, however, the earlier flexibility appears to have been abandoned and it was ruled that although no hard and fast rule could be laid down and the Tribunal would have to consider each case on its own merits and attempt to reconcile the conflicting interests of the employer and the employee, the employee being entitled to security of service and protection against wrongful dismissal, the normal rule in such cases should be reinstatement. (see *Punjab National Bank Ltd.* v. *Workmen*(3). This conclusion was adhered to in some of the subsequent decisions. But in the case of *Punjab National Bank Ltd.*(3) itself, as also in other subsequent cases, the rule was qualified to mean that in unusual or exceptional cases where it is not expedient to grant the normal relief of reinstatement, the proper relief would be compensation and that that would meet the ends of justice. The problem confronting industrial adjudication is to promote its two objectives, the security of employment and protection against wrongful discharge or dismissal on the one hand and industrial peace and harmony on the other, both leading ultimately to the goal of maximum possible production.

As exceptions to the general rule of reinstatement, there have been cases where reinstatement has not been considered as either desirable or expedient. These were the cases where there had been strained relations between the employer and the employee, where the post held by the aggrieved employee had been one of trust and confidence or where though dismissal or discharge was unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive of prejudicial to the interests of the industry. These cases are to be found in *Assam Oil Co. Ltd.* v. *Workmen*(4), *Workmen of Charottar Gramodhar Sahakari Mandali Ltd.* v. *Charottar Gramo-*

(1) [1949] F.C.R. 321, 348.
(2) [1952] 2 L.L.J. 577.
(3) [1959] 2 L.L.J. 669.
(4) [1960] 3 S.C.R. 457.

A *dhar Sahakari Mandali Ltd.*(1), *Doomur Dulung Tea Estate* v. *Workmen*(2) and *Ruby General Insurance Co. Ltd.* v. *P. P. Chopra*(3). These are, however, illustrative cases where an exception was made to the general rule. No hard and fast rule as to which circumstances would in a given case constitute an exception to the general rule can possibly be laid down as the B Tribunal in each case, keeping the objectives of industrial adjudication in mind, must in a spirit of fairness and justice confront the question whether the circumstances of the case require that an exception should be made and compensation would meet the ends of justice.

C In the present case the facts are fairly clear. As aforesaid, the concerned workman was trained for a period of 3 years at the cost of the company. On completion of his training the company engaged him as a skilled worker. He worked as such from September 1958 to December 1960. At the time of the termination of his service, he was working as a fitter in the blast furnace, a vital part of the company's works, where both efficiency and trust D would matter. Even though he was said to have joined an illegal strike and a criminal case had been filed against him, no steps, even departmentally, were taken against him. *Prima facie,* therefore, this was not a case where the employer could be said to be anxious to wantonly or unreasonably terminate his service. Even though he was an active member and the secretary of the E union, the Tribunal found that the termination of his service was not due to victimisation or any unfair labour practice. There can also be no dispute that the company ordered the termination of his service only because of the adverse report of the police against him. The report was called for by the company in accordance with its practice of verifying the workman's antecedents. The evidence was that such verification was made in the F case of all workmen after they were engaged and that such verification was not made before appointing them as it was not practicable to do so. The practice was adopted at the instance of the Government and in accordance with the directions to that effect of the Board of Directors. The letter of the Deputy Inspector General of Police communicating the report made on the investi- G gation by the police was produced but neither the report nor the source of information on which it was based nor the name of the person who conducted the investigation was disclosed either to the workman or the Tribunal. The ground urged for such non-disclosure was that the report was confidential and if disclosed it would not be possible for the company to have such investigations H in future. The reason appears to be that if the person conduct-

(1) C.A. 382 of 1966, dec. on August 14, 1967.
(2) C.A. 516 of 1966, dec. on October 26, 1967.
(3) C.A. 1735 of 1969, dec. on September 12, 1969.

ing such investigation were produced for cross-examination by the workman or if his report were to be disclosed, the name or names of the informants would come out with the result that no informant in future would readily come forward to give information about other workmen. Even in criminal cases an investigating officer is not compelled to disclose the name of his informant. A

But the Tribunal appears to have been impressed by the company's refusal to disclose the report although it was clearly a confidential report. The Tribunal thought that such a report might have been made by a person who was not a responsible police officer or that it might be based on mere rumour or hearsay evidence and might not be of a very convincing nature. The High Court went one step further and observed that it might be "as contended by opposite—party No. 1 that the report is based entirely on the trade union activities of the opposite-party in which case the discharge would itself be improper." This observation was not warranted in view of the Tribunal's clear finding that this was not a case of victimisation or unfair labour practice on account of the union activities of the workman. The High Court further was of the view that "even if the Management terminated the services of Sri A. K. Ray, simply on the ground that it received an adverse report against him, the order of such termination of services in the circumstances cannot be treated as legal or justified." It also observed that "it was not admitted by the opposite party that there was any adverse police report against him." But the management had examined P. B. Kanungo, the Senior Personnel Officer, who had categorically testified that the management had received such an adverse report and on the basis of that report the company's Security Officer had recommended the termination of service of the workman. There was no cross-examination on this part of his evidence. The High Court, therefore, was not entitled to proceed on the basis as if the fact of such adverse report was any longer in doubt. Indeed, the grievance was not relating to the factum of such report, but its non-disclosure and the Tribunal in consequence not being able to weigh its veracity. The fact of the management having received the police report which was adverse was no more in dispute; nor the fact that the company's Security Officer on the strength of that report had recommended that it was not desirable to retain the workman in service. The termination of his service was by no means singular in any way, for, the evidence was that verification of antecedents of all workmen used to be similarly made and whenever the report was adverse an order of discharge used to be made. B C D E F G

Since the special leave granted to the company is limited only to the question of the kind of relief that the Tribunal ought to have given, we are not in a position to go into the question whether the termination of service was legal or justified. We have, therefore, H

A to proceed on the footing that the Tribunal's conclusion that it was not legal was right.

The question, however, still is whether the Tribunal was, in the circumstances of the case, justified in directing reinstatement. It is true that some of the decisions of this Court have laid down
B that where the discharge or dismissal of a workman is not legal or justified, the relief which would ordinarily follow would be reinstatement. The Tribunal, however, has the discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make reinstatement inexpedient or improper. The Tribunal has, therefore, to exercise its discretion judicially and in accordance with well recog-
C nised principles in that regard and has to examine carefully the circumstances of each case and decide whether such a case is one of those exceptions to the general rule. If the Tribunal were to exercise its discretion in disregard of such circumstances or the principles laid down by this Court it would be a case either of no exercise of discretion or of one not legally exercised. In either
D case the High Court in exercise of its writ jurisdiction can interfere and cannot be content by simply saying that since the Tribunal has exercised its discretion it will not examine the circumstances of the case to ascertain whether or not such exercise was properly and in accordance with the well-settled principles made. If the High Court were to do so, it would be a refusal on its part to exercise
E jurisdiction.

In the present case, there could be no dispute that the company, in accordance with its practice, called for a verification report about the concerned workman. The report was made by the police after investigation and on that being adverse, the company's security officer recommended to the company that it was not in the
F interests of the company to retain the workman's services. There can be no doubt that the company terminated the service of the workman only because it felt that it was not desirable for reasons of security to continue the workman in its service. This is clear from the fact that it was otherwise not interested in terminating the workman's service and had in fact insisted that the workman
G should bind himself to serve it at least for five years. The termination of service was not on account of victimisation or unfair labour practice as was clearly found by the Tribunal. It is, therefore, abundantly clear that the company passed the impugned order of termination of service on account of the said adverse report, the recommendation of its own security officer and on being satisfied that it would not be in the company's interests to continue
H him in its service.

The Tribunal no doubt felt that it was not established whether the investigation and the report following it were properly done

and made, that the company ought to have disclosed it to the workman and given him an opportunity to vindicate himself and that the non-disclosure of the report made the termination illegal and unjustified. That may or may not be right. But what was relevant, at the stage when the Tribunal came to decide what relief the workman was entitled to, was the question whether the management genuinely apprehended as a result of the report that it would be risky to retain the workman in the company's service. They may have gone wrong in the manner of terminating the workman's service as held by the Tribunal. But, if the management truly believed that it was not possible to retain the workman in the company's service on grounds of security and consequently could not place confidence in him any longer, that present case would be one of those exceptional cases where the general rule as to reinstatement could not properly be applied. Thus of courie does not mean that in every case where the employer says that he has lost confidence in the workman, and therefore, has terminated his service that reinstatement cannot be granted and the Tribunal has to award compensation. On the other hand, if on an examination of all the circumstances of the case, the Tribunal comes to the conclusion that the apprehensions of the employer were genuine and the employer truly felt that it was hazardous or prejudicial to the interests of the industry to retain the workman in his service on grounds of security, the case would be properly one where compensation would meet the ends of justice.

On a consideration of all the circumstances, the present case, in our view, was one such case. The Tribunal exercised its discretion mechanically without weighing the circumstances of the case. That was no exercise of discretion at all. There is ample authority to the effect that if a statutory tribunal exercises its discretion on the basis of irrelevant considerations or without regard to relevant considerations, *certiorari* may properly issue to quash its order. [See S.A. de Smith, *Judicial Review of Administrative Action*, (2nd ed.) 324-325]. One such relevant consideration, the disregard of which would render its order amenable to interference, would be the well-settled principles laid down in decisions binding on the tribunal to whom the discretion is entrusted. The refusal by the High Court to interfere was equally mechanical and amounted to refusal to exercise its jurisdiction. Its order, therefore, becomes liable to interference.

There is, therefore, no difficulty in holding that the order of reinstatement passed by the Tribunal was liable to be quashed and that the High Court erred in refusing to interfere with it merely on the ground that it could not do so as it was a case where the Tribunal had exercised its discretion. The question next is, having held that the order of reinstatement was not a proper order, in that,

A it was not in consonance with the decided cases, do we simply quash the order of the Tribunal and that of the High Court and leave the concerned workman to pursue his further remedy ? The other alternative would be to remand the case to the Tribunal to pass a suitable order. In either case, in view of this judgment, no other order except that of compensation can be obtained by B him. If the case is remanded and the Tribunal on such remand passes an order of compensation and fixes the amount, such a course would mean further proceedings and a possible appeal. That would mean prolonging the dispute, which would hardly be fair to or conducive to the interests of the parties. In these circumstances we decided that it would be more proper that we ourselves C should determine the amount of compensation which would meet the ends of justice. Having come to that conclusion, we heard counsel for both the parties. After doing so and taking into consideration all the facts and circumstances of the present case we have come to the conclusion in the light also of the decisions of this Court such as *Assam Oil Co.* v. *Its Workmen*(1), *Utkal Machinery Ltd.* v. *Workmen*(2) and the recent case of *Ruby* D *General Insurance Co. Ltd.* v. *P. P. Chopra*(3) that compensation for a period of two years at the rate of Rs. 160/- per month, that being the last salary drawn by the concerned workman, would meet the ends of justice.

We accordingly allow the appeal, quash the order of the E Tribunal and the High Court and instead direct the appellant-company to pay to the 1st respondent Rs. 3840 as and by way of compensation. There will be no order of costs.

R.K.P.S. *Appeal allowed.*

(1) [1969] 3 S.C.R. 457. (2) [1966] 2 S.C.R. 434.
(3) C.A. 1735 of 1969 decided on September 12, 1969.