

CALCUTTA STATE TRANSPORT CORPORATION

v.

MD. NOOR ALAM

April 27, 1973

[A. N. GROVER AND C. A. VAIDIALINGAM, JJ.]

Industrial Disputes Act, 1947, S. 33(2)(b)—Proviso object of—Application for approval filed before Tribunal after dismissal of employee and payment of wages—Whether part of same transaction—Conduct of employer—Relevancy of.

The respondent was an employee of the appellant. Certain disciplinary proceedings were taken against the respondent. These charges were enquired into by the Disciplinary Officer of the appellant. That Officer found that the charges were proved against the respondent and submitted his report to the competent authority. On May 18, 1967, the competent authority, after considering the report of the Enquiry Officer recorded a note on the file expressing agreement with the report of the Enquiry Officer that the respondent be removed from service after giving him one month's wages and directing that simultaneous application be filed before the Tribunal (where several disputes between the appellant and its workmen, were pending), seeking approval of the action taken against the respondent, as required u/s. 32(2) of the Act. A note dated June 22, 1967 was sent to the respondent in which he was informed that he was being removed from service with effect from July 1, 1967. This note reached him on June 26, 1967. One month's wages were remitted to him on June 28, 1967 by money order which he received on July 1, 1967. An application u/s. 32(2)(b) of the Act was made on July 3, 1967. The Labour Court while finding that the enquiry report and the punishment awarded on the basis of the enquiry was justified, held that the filing of the application u/s. 32(2)(b) of the Act on July 3, 1967 did not satisfy the requirement of the proviso thereto.

On appeal by special leave,

Allowing the appeal,

HELD : (i) The proviso to S. 32(2)(b) contemplates three things : (1) dismissal or discharge; (2) payment of wages; and (3) making of an application for approval to be simultaneous and to be part of the same transaction. The object is that when the employer takes action under s. 32(2)(b) by dismissing or discharging an employee he should immediately make payment to him or offer payment of wages for one month and also make an application to the Tribunal or to the Labour Court, as the case may be, for approval. The employer's conduct should show that the three things contemplated under the proviso are parts of the same transaction. Simultaneous action has to be taken in these matters but that does not mean that all the three things mentioned before should be done on the same day. [115 B]

Strawboard Manufacturing Co. v. Govind, [1962] Suppl. 3 S.C.R. 618 and *P. H. Kulvani v. M/s. Air France, Calcutta* [1964] 2 S.C.R. 104, relied on.

(ii) No hard and fast rule can be laid down in these matters. Each case must be decided on its own facts. In the present case all the three things which were done were a part of the same transaction.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2458 of 1968.

Appeal by special leave from the judgment and order dated June 29, 1968 of the Second Labour Court, West Bengal, Calcutta, in Case No. 229/33/67.

B. Sen, D. N. Mukherjee, Soman Bose and G. S. Chatterjee, for the appellant.

9—L94:Sup.CI/73

The Judgment of the Court was delivered by

GROVER, J.—This is an appeal by special leave from an order of the Second Labour Court, West Bengal, rejecting an application under s. 33(2)(b) of the Industrial Disputes Act 1947, hereinafter called the 'Act', filed by the appellant seeking approval of an order of removal from service passed against the respondent.

The facts may be shortly stated. The respondent was an employee of the appellant. Certain disciplinary proceedings were taken against the respondent who was working as conductor on charges which it is not necessary to mention. These charges were inquired into by the Disciplinary Officer of the appellant. That officer found the charges proved against the respondent and submitted his report to the competent authority *i.e.* Special Officer (Discipline). On May 18, 1967 the competent authority, after considering the report of the Inquiry Officer, recorded a note on the file expressing agreement with the report of the Inquiry Officer that the respondent be removed from service after giving him one month's wages. The last part of his order is reproduced below :—

"The delinquent is removed from the service of the Corporation. He will be given one month's wages and simultaneously an application may be filed in the Tribunal, seeking approval of the action taken, as required under Section 33(2) of the I.D. Act".

It may be mentioned that such an approval was necessary because proceedings were pending before the 5th Industrial Tribunal, West Bengal, on account of a reference made under s. 10 of the Act with regard to several disputes between the appellant and its workmen. A note dated June 22, 1967 was sent to the respondent in which he was informed that he was being removed from service with effect from July 1, 1967. This note reached him on June 26, 1967. One month's wages were remitted to him on June 28, 1967 by Money Order which he received on July 1, 1967. An application under s. 33 (2)(b) of the Act was made on July 3, 1967 which was a Monday.

The Labour Court, while finding that the report of the domestic enquiry and the finding therein as also the punishment awarded on the basis of that enquiry was justified did not call for any interference. But it was of the view that the filing of the application under s. 33(2)(b) of the Act on July 3, 1967 did not satisfy the requirements of the proviso thereto. In other words the passing of the order of removal on May 18, 1967, the tendering of one month's wages and the filing of the application before the Tribunal on July 3, 1967 did not constitute part and parcel of the same transaction.

It has been argued before us and rightly that the Labour Court wholly misunderstood the true position both on facts and in law. Firstly the order of removal was merely recorded on the official file on May 18, 1967 and it was to be effective only from July 1, 1967. Before that period it was open to the competent authority to withdraw the order. Therefore the date of dismissal of the workman could only be July 1, 1967 and not any prior date on which the order was recorded

- A on the file. The wages were also received by the workman *i.e.* the respondent on the same date which was a Saturday. It was wholly immaterial when the Money Order was sent. The application was filed for approval on July 3, 1967 which was a Monday. It is obvious that no application could have been filed on a Sunday which was a holiday. The proviso to s. 33(2)(b) contemplates three things; (i) dismissal or discharge; (ii) payment of wages and (iii) making of an application for approval to be simultaneous and to be part of the same transaction. The object is that when the employer takes action under s. 33(2)(b) by dismissing or discharging an employee he should immediately make payment to him or offer payment of wages for one month and also make an application to the Tribunal or the Labour Court, as the case may be, for approval. The employer's conduct should show that the three things contemplated under the proviso are parts of the same transaction. [See *Strawboard Manufacturing Co. v. Govind*⁽¹⁾]. In *P. H. Kalyani v. M/s. Air France, Calcutta*⁽²⁾, the order of dismissal was passed on May 28, 1960 and was communicated to the employee on May 30, 1960. The wages were offered to him at the same time when the order was communicated. An application was made under s. 33(2)(b) on the same day. It was held that the application was in accordance with the proviso to s. 33(2)(b). This decision shows that similar action has to be taken in these matters but that does not mean that all the three things mentioned before should be done on the same day. It is the conduct of the employer that has to be considered from the point of view of finding out whether the dismissal or discharge, payment of wages and making of the application for approval form a part of the same transaction. A difference of a day in doing one thing or the other may not be of material consequence so long as it is clear that the employer meant to do all the three things as part of one and the same transaction. No hard and fast rule can be laid down in these matters. Each case must be decided on its own facts.
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- F We are satisfied in the present case that all the three things which were done were a part of the same transaction. The appeal is allowed and the order of the Second Labour Court is hereby set aside. There will be no order as to costs.

S.B.W.

Appeal allowed.

1. [1962] Suppl. 3, 618.

2. [1964] 2 S.C.R. 104.