

Before S. S. Sandhawalia, C.J. and P. C. Jain, J.

METERS AND INSTRUMENTS PRIVATE LTD.,—Appellant.

versus

DEV DAYAL SHARMA and another,—Respondents.

Letters Patent Appeal No. 1102 of 1981

March 15, 1982.

*Industrial Disputes Act (XIV of 1947)—Section 33(2)(b)—Industrial Employment (Standing Orders) Act (XX of 1946)—Section 5—Workman during the pendency of an industrial dispute dismissed from service after a domestic enquiry—Approval of the Tribunal sought by the management under section 33(2)(b)—Tribunal finding the domestic enquiry to be fair and the management not guilty of any victimisation—Approval, however, declined on the ground that the order of dismissal was not passed by the competent officer as envisaged in the Standing Orders of the Company—Such a consideration—Whether relevant in declining approval—Section 33(2)(b)—Scope of—Interpretation of Standing Orders—Factory manager described as the punishing authority—Management defined to mean the managing director and some other officers—Managing director—Whether could pass the order of dismissal.*

*Held*, that the only question relevant to be considered by the Industrial Tribunal is that in taking the step which the management did, was it guilty of any unfair labour practice or victimisation. If the Tribunal does not come to a conclusion adverse to the management on these counts, it will have no jurisdiction to refuse the permission asked for by the management. The Tribunal, indeed, has little discretion, if not a virtual lack of jurisdiction, to decline approval if the statutory pre-conditions stand established.

(Paras 9 & 10).

*Held*, that a reading of the definition of 'management' would make it plain that the Standing Orders do not in any way bar the passing of order of dismissal by the managing director and, indeed, envisage it to be so. The word 'employer' has not been defined in the Standing Orders but on its plain dictionary meaning, the 'employer' would and in any case can mean the ultimate employer and not only his ministerial subordinate as such who may have been described by the Standing Orders as a punishing authority.

(Para 12).

*Letters Patent Appeal under Clause X of the Letters Patent of Punjab and Haryana High Court, against the order, dated 18th September, 1981, passed in Civil Writ Petition No. 2679 of 1970 by Hon'ble Mr. Justice M. R. Sharma dismissing the writ petition of the appellant.*

Bhagirath Dass, Advocate with Ramesh Kumar, Advocate, for the Appellant.

J. C. Verma, Advocate, for the Respondents.

## JUDGMENT

*S. S. Sandhawalia, C.J.—*

1. The true scope and ambit of clause (b) (read with the proviso thereto), of sub-section (2) of section 33 of the Industrial Disputes Act, 1947 is the somewhat meaningful question which has come to the fore in this appeal under Clause X of the Letters Patent.

2. The respondent-Dev Dayal Sharma, was engaged as a workman by the appellant-Company. For acts of grave misconduct of abusing the factory Manager, Shri H. S. Malik, in a most indecent manner and also violently threatening him on March 5, 1969, he was charge-sheeted on March, 11, 1969. His explanation, duly called, was found to be wholly unsatisfactory and a domestic enquiry was held against him. The factory manager, Shri H. S. Malik, who was the complainant in the case had appeared as a witness along with others in the said enquiry proceedings. The enquiry officer came to the firm conclusion that the aforesaid charge was conclusively established.

3. The respondent-workman was again charge-sheeted for the multiple charges of (i) assaulting Shri S. K. Bhalla; (ii) loitering in the machine shop where he had no business to go; (iii) violently threatening his supervisor, Shri F. C. Sharma; and (iv) using indecent and abusive language against Shri F. C. Sharma. His explanation in this connection was again found to be wholly unsatisfactory and another domestic enquiry was held. Shri S. K. Hiraji, who was the enquiry officer held charges (i), (iii) and (iv) as fully established. Considering the gravity of the mis-conduct evidenced from the establishment of the charges for foully abusing Shri H. S. Malik, the factory Manager and also threatening to violently assault him; and for using indecent and abusive language against the Supervisor and further physically threatening him, the Managing Director felt compelled to impose the punishment of dismissal on the respondent-workman. However, because another industrial dispute was already pending betwixt the management and the workers, the management filed an application for the approval of the action of dismissal by the employer under section 33(2) of the Act. The requirement of the payment of wages for one month thereunder had been duly complied with.

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4. On the pleadings of the parties, the Tribunal framed the following issues:—

1. Whether the application is not maintainable because of the reason stated in the preliminary objections in the reply of the respondent ?
- (2) Whether the findings of the enquiry officer against the workman are perverse and are based on no evidence and in the said enquiry no proper procedure has been followed and the rules of natural justice were violated ?
3. Whether the approval sought should be granted ?

Issue No. (1) was decided against the respondent-workman. Under issue No. (2), the Tribunal came to a firm finding after appraisal of evidence that a *prima facie* case had been established against the workman in connection with the charge of abusing and assaulting Shri H. S. Malik the factory Manager. Similarly, after adverting to and weighing the evidence on the point, it was held that a *prima facie* case against the respondent of foully abusing and threatening Shri F. C. Sharma, Supervisor, was also established. Consequently, issue No. (2) was decided against the respondent-workman.

5. Nevertheless despite firmly holding that the action of the respondent-workman came within the misconduct prescribed by the Standing Order and his services could be validly terminated therefor, the Tribunal declined the approval. This was done on the solitary ground that the order of dismissal of the respondent-workman should have been passed by the Factory Manager instead of the Managing Director. On that assumption and on the construction of the Standing Order the Tribunal was inclined to the view that the respondent-workman's right of appeal had been affected. Consequently issue No. (3) was decided against the management and the application was dismissed thus declining the solitary relief claimed for.

6. Before the learned Single Judge it was squarely urged that if a workman was found to be guilty on an enquiry and the Tribunal came to the finding that a *prima facie* case had been made out against the workman then the Tribunal should not have withheld the approval on extraneous considerations. It was further highlighted that the factory Manager being himself the complainant

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and the witness in the case could not possibly have acted as a punishing authority therein.

7. Whilst holding that so far as the principle of law was concerned the proposition could admit of no exception, the learned Single Judge adverted to the question whether some special rights of the workman under the Standing Order had been impaired or not and finding that the right of appeal of the respondent-workman had been affected he declined to interfere with the orders of the Tribunal.

8. It would be plain from the above that the core question herein is as to what are the pre-requisites for the grant of approval for the punitive action under section 33(2)(b) read with its proviso, and whether these stood fully satisfied in the present case.

9. The true legal position here does not appear to be in serious doubt. Indeed even the learned counsel for the respondent-workman was fair enough to concede that this has been settled by the final Court way back in *Patna Electric Supply Co. v. Shri Bati Rai* (1) and has not been subsequently deviated from. Therein whilst adjudicating on the identical issue of the grant of approval under section 33(2)(b), their Lordships observed in no uncertain terms as under:— z

“The only question relevant to be considered by the Industrial Tribunal would be that in taking the step which it did the appellant was not guilty of any unfair labour practice or victimization. If the Industrial Tribunal did not come to a conclusion adverse to the appellant on these counts, it would have no jurisdiction to refuse the permission asked for by the appellant.”

10. Now testing the view of the Tribunal on the anvil of the aforesaid authoritative enunciation it seems plain that the requisite criterion not only stood satisfied but in fact was thrice reiterated by the Tribunal itself in deciding issue No. 2 in favour of the appellant-management. As their Lordships have said the tribunal indeed has little discretion, if not a virtual lack of jurisdiction, to decline approval if the statutory pre-conditions stand established. The question, therefore, is whether the Tribunal could refuse to grant approval despite its own clear cut findings on issue No. 2.

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(1) AIR 1958 S.C. 204.

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11. The twin consideration which impelled the Tribunal in this context is that the Standing Order inflexibly laid down that the punishing authority in the present case could only be the factory Manager and this condition having not been observed the respondent-workman's alleged right of appeal had been prejudicially affected.

12. Adverting first to the Standing Orders I am inclined to the view that an overly literal and hypertechnical view thereof which the Tribunal seems to have taken is hardly tenable. Paras 11(d) and (f) which are relevant are in the following terms:—

**"11 PROCEDURE FOR SUSPENSION AND DISMISSAL.**

- (d) If on inquiry the workman has been found guilty of the charges and it is considered that an order of dismissal will meet the ends of justice, the employer shall pass orders accordingly. When such orders are passed the workman shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period, but the subsistence allowance already paid to him shall not be recovered.
- (f) In awarding punishment under these Standing Orders, the Factory Manager shall take into account the gravity of the misconduct, the previous records, if any, of the workman and many other extenuating or aggravating circumstances that may exist."

Now on the settled principles of construction, the Standing Orders have to be read as a whole and inevitably have to be harmoniously construed. Para 11(d) aforesaid unequivocally lays down that if a workman has been found guilty of the charges and an order of dismissal will meet the ends of justice then the employer will pass the requisite order. The word 'employer' which obviously is one of wide connotation has not been defined in the Standing Orders despite a definition clause in its earlier para 2. On its plain dictionary meaning, therefore, the 'employer' would and in any case can mean the ultimate employer and not his ministerial subordinate as such. Apart from general considerations it is manifest that the word 'employer' is to be widely construed as para 2(b) of the Standing Orders defines Management in words of wide amplitude as under:—

'Management' means the Managing Director, Director-in-charge, New Delhi Office, Factory Manager, Office Manager, or next senior Executive-in-charge at the time.

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The Manager would be the person notified under Factories Act."

A reading of para 11(d) in the background of the aforesaid definition would make it plain that the Standing Orders do not in any way bar the passing of order of dismissal by the Managing Director and indeed envisage it to be so. Construed in this larger context clause (f) obviously means that in cases in which the Factory Manager is the punishing authority, he being the Incharge of or in any case aware of the previous record of the workman would take the same into account before awarding punishment. Now the award of punishment or sentence may well have a nexus with the previous conduct and record of a workman and para 11(f) does not in any way bar the Managing Director or the ultimate employer from taking this into consideration as well. Whichever way the matter may be viewed I am unable to see how para 11(f) prescribes that the sole and the only punishing authority in each and every case has to be the Factory Manager and no one else. I fail to understand how para 11(f) would override and obliterate para 11(d) which vests the power of dismissal in the employer. Placing such a construction on Para 11(f) (as seems to have been done by the Tribunal) would render clause 11(d) totally otiose and the wide ranging definition of Management in Para 2(b) patently meaningless. There seems to be no choice except reading clauses (d) and (f) harmoniously to hold that only in those cases in which the Factory Manager has to award punishment, he shall observe the mandate prescribed therein. In this view of the matter it is plain that the Tribunal mis-construed the Standing Orders altogether in concluding that the Factory Manager was the sole punishing authority and he could alone act as such in the case and should have passed the order of dismissal.

13. I am further of the view that even if it were to be provided that the Factory Manager was to be the punishing authority in the present case, he would be plainly disqualified to act as such in view of the fact that Shri H. S. Malik, the Factory Manager herein was the prime mover and complainant in the case and had appeared as a material witness against the respondent workman in the enquiry proceedings. It is undisputed here that the whole gravamen of one of the charges of misconduct was directed against the Factory Manager himself. The case laid was the blatant abuses given to the Factory Manager in a most indecent manner by the respondent-workman and further threatening and physically assaulting him as such. The Factory Manager was thus

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the complainant and before the Inquiry Officer Shri P. N. Puri, he was the star witness against the respondent workman. It calls for notice that in the enquiry proceedings not the least grievance at any stage was made on behalf of the respondent workman that instead of the Enquiry Officer Mr. P. N. Puri, the Factory Manager Shri H. S. Malik should himself be the enquiry officer and punishing authority. Indeed, it appears to me that if Shri H. S. Malik were to be the enquiry officer and punishing authority, the respondent-workman would have been gravely prejudiced and could validly and successfully have challenged any such proceedings which would be amounting to pre-judging his case against him. On principle and more so in the light of the law, as it stands today and the development of the concepts of natural justice, it is hard to imagine that the real complainant, who is also a witness in a quasi judicial proceeding should be a judge in his own cause by becoming the punishing authority himself. Such a stand not only runs counter to principle but shocks the judicial conscience. On principle, therefore, one cannot even remotely agree that in the peculiar circumstances of this case the punishing authority necessarily would have to be the Factory Manager and on this untenable ground the approval for the termination should have been denied.

(14) Lastly one has to remind oneself that as authoritatively laid down in the *Patna Electric Supply Co. vs. Shri Bati Rai*, (supra), the paramount consideration for the tribunal is whether the Management was guilty of any unfair labour practice or victimization in passing the order of dismissal. The Tribunal having clearly come to the conclusion that this was not so and indeed more than a *prima facie* case was made out against the respondent workman well within the parameters of the Standing Orders it could hardly decline to refuse the permission asked for. Any other consideration in this context would, therefore, be extraneous and foreign to the issue before it.

(15) In the light of the aforesaid discussion and the findings recorded above, we are constrained to allow this appeal and set aside the judgment of the learned Single Judge and quash the award of the Tribunal with the direction to decide the question of grant of approval afresh in the light of the aforesaid observations. The parties are however left to bear their own costs.

P. C. Jain, J.—I agree.

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N.K.S.