MANAGEMENT OF DELHI TRANSPORT UNDERTAKING

v.

INDUSTRIAL TRIBUNAL, DELHI AND ANOTHER

October 30, 1964

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO AND M. HIDAYATULLAH JJ.)

Industrial Disputes Act, 1947 (14 *of* 1947), *s.* 33(2)(*b*)—*Whether actual payment of wages necessary—Tender if sufficient—Executive instruction not made part of Standing Orders—Breach of such instruction whether punishable—Charge not specifying standing orders etc., whether defective.*

H, a conductor in the employ of the appellant undertaking was found in possession of some used tickets which was forbidden by Instruction No. 12 issued under Standing Order 2. After enquiry into his conduct the charge was held proved and on the recommendation of the Enquiry Officer the Traffic Manager proposed to dismiss him. As this occurred during the pendency of an industrial dispute the undertaking by an application sought the approval of the Tribunal to the proposed order of dismissal under s. 33(2)(b) of the Industrial Disputes Act, 1947. The Tribunal after hearing both the parties declined to accord its approval. It held that under Executive Instruction 12 no action could be taken because this Instruction was not made a part of the Standing Order and in the Standing Orders governing the conduct of employees there was no provision that the possession of used tickets amounted to misconduct meriting dismissal. The Tribunal also held that there was no satisfactory proof that one month's wages were actually paid or could be treated as having been tendered prior to the coming into operation of the order of dismissal on October 31, 1961, as required by the proviso to s. 33(2)(b) of the Act.

HELD : (i) The Tribunal took too narrow a view of the Standing Orders. By virtue of Standing Order 2 the Executive Instructions were issued and they are a code of principles and practice which every conductor has to follow rightly and invariably, and there is a warning that a breach of any Instruction would expose the conductor to disciplinary action as laid down in para 15(2) of the Regulations. Clause (m) of Standing Order 19 is sufficiently wide to cover a breach of Instructions issued under Standing Order 2. H was charged for breach of Executive Instruction 12 and this brought in the application of Standing Order 19(m) read with Standing Order 2 and paragraph 15(2) of the Regulation [1004 A-F]

(ii) The particulars in the charge were sufficient for H to understand what he was charged with. The omission to mention the appropriate Standing Order or Regulations or sections of the Act did not vitiate the charge and the Tribunal was in error in holding it to be defective. [1004 G-H]

Laxmi Devi Sugar Mills v. *Nand Kishore*, [1956] S.C.R. 916 and *Lord Krishna Sugar Mills Ltd.* v. *Union of India*, [1961] 1 S.C.R. 39 held inapplicable.

(iii) The Tribunal was wrong in holding that there was no tender of wages. The proviso does not mean that the wages for one month should have been actually paid because in many cases the employer can only tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective. In the present case tender having been made within time there was no failure to comply with s. 33(2)(b) in this respect. [1003 D-E]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 790 of 1963.

Appeal by special leave from the Award dated April 20, 1962, of the Industrial Tribunal Delhi in O.P. No. 97 of 1961 and Complaint I.D. No. 305 of 1961, published in the Delhi Gazette B dated May 31, 1962.

T. R. Bhasin, for the appellant.

Gopal Singh, for respondent No. 2.

The Judgment of the Court was delivered by

C **Hidayatullah J.** This appeal by special leave arises from a dispute between the Delhi Transport Undertaking and its employee Shri Hari Chand, a former conductor of one of its omnibuses, now Assistant Traffic Inspector. By this appeal the Delhi Transport Undertaking impugns an award of the Industrial Tribunal, Delhi dated April 20, 1962. The facts of the case are as follows: Hari D Chand was a conductor on omnibus No. 484 of route No. 21 on March 28, 1960. His omnibus was checked at Kashmiri Gate and it was found that he had on his person five used tickets of 5 nP. and six used tickets of 10 nP. denominations. This was prohibited by cl. (12) of the Executive Instructions dealing with the duties of Conductors, and exposed a guilty conductor to the E penalty of dismissal. After enquiry into this conduct the charge was held proved and on the recommendation of the Enquiry Officer the Traffic Manager proposed to dismiss him from October 31, 1961. As this occurred during the pendency of an industrial dispute the Undertaking by an application dated October 28, 1961 F sought the approval of the Tribunal to the proposed order of dismissal under s. 33(2)(b) of the Industrial Disputes Act, 1947. It appears that a memorandum was issued on October 30, 1961 informing Hari Chand of the order of dismissal and intimating him that he was to be paid one month's wages as required by s. 33(2)(b) of the Act and that he should report immediately to the G Accounts Officer at the Head Office to receive the payment and to surrender his uniform, badge, identity card etc. Hari Chand either did not appear to receive payment or when he appeared he was not paid the amount. There is some dispute on this fact to which we shall refer presently. In his turn he filed a complaint under s. 33(A) of the Act on November 3, 1961 complaining *inter alia* H that his wages for one month had not been paid. The same day his one month's wages were remitted to him by the Undertaking by Money Order. The complaint of Hari Chand was dismissed by

the Tribunal and as there is no appeal against that order we need not refer to it. The Tribunal after hearing the parties declined to accord its approval and dismissed the application. The Tribunal held that action under Executive Instruction No. 12 could not be taken because this Executive Instruction was not made a part of the Standing Order and in the Standing Orders governing the conduct of employees in this Undertaking there was no provision that the possession of used tickets amounted to misconduct or an offence on the part of the conductor. The Tribunal also held that there was no satisfactory proof that one month's wages were actually paid or could be treated as having been tendered prior to the coming into operation of the order of dismissal on October 31, 1961, as required by s. 33(2)(b) of the Act. The Delhi Transport Undertaking questions both these conclusions and the appeal involves only these points.

To understand the true legal position it is necessary to refer to some provisions of law under which the Delhi Transport Authority, which was the same as the present Delhi Transport Undertaking, was established and under which the Undertaking now functions. The Delhi Road Transport Authority Act, 1950 came into operation from March 27, 1950. By that Act a statutory Corporation under the name of the Delhi Road Transport Authority was constituted. By s. 39 of the Act it is provided that the Central Government may, after consultation with the Authority give general instructions, including directions relating to the conditions of service and training of the employees, their wages and the reserves which the Authority must maintain etc. Under s. 53, power to make regulations is conferred on the Authority for the administration of the affairs of the Authority and for carrying out its functions under the Act and in particular for providing for the conditions of appointment and service of the servants of the Authority other than some Officers specially named. The Authority made the D.R.T.A. (Conditions of Appointment and Service) Regulations, 1952, under the power conferred. Part III of the Regulations lays down that all employees of the Authority shall perform such duties and carry out such functions and exercise such powers as may be entrusted to them by the Authority or the General Manager or an Officer authorised in this behalf subject to the provisions of the Factories Act, the Motor Vehicles Act or any other Act or law that may be applicable. Paragraph 15 of these Regulations *inter alia* provides as follows :—

A "15. Conduct Discipline and Appeal—

(1) *Conduct.*—The Delhi Road Transport Authority may from time to time issue standing orders governing the conduct of its employees. A breach of these orders will amount to misconduct.

B (2) *Discipline.*—(a) The following penalties may, for misconduct or for a good and sufficient reason be imposed upon an employee of the Delhi Road Transport Authority :—

. . . . . .

C . . . . . .

(vii) Dismissal from the service of the Delhi Road Transport Authority.

. . . . . ."

D Under the powers conferred by paragraph 15(1) Standing Orders were framed. Standing Order 2 provides as follows :—

"2. Duties of the Employee :—

(i) All the employees of the Authority shall perform such duties and carry out such functions as may be F entrusted to them by the Authority or the General Manager or any other authorised officer of the Authority.

(ii)

. . . . . ."

F

It is by virtue of this power that the Executive Instructions were issued and one set of instructions compiled in a little booklet is entitled Duties of a Conductor. Instruction No. 4 provides that each conductor shall be given Rs. 10 in small change as bag money every day and that the conductor is prohibited from carry- G ing any private cash with him on duty and that if he is required for some reason to carry some cash he should report this cash on his way bill and get it countersigned by an official authorised to do so. The instruction goes on to say that any cash found on his person during the hours of duty which is not declared on his way bill would be considered as belonging to the Authority. H This is obviously a step to prevent dishonesty in issuing tickets, Instruction No. 12, under which Hari Chand was charged, then provides as follows :—

"12. No ticket once issued is ever to be used again, no conductor shall pick up or have in his possession any used ticket. Any conductor found in possession of, or guilty of issuing, used ticket will be liable to dismissal and even criminal proceedings against him." A

The charge framed against Hari Chand contained three counts: the first was that he had wrongly punched a ticket given to a passenger; the second that he possessed a sum of 15 nP. which was not declared by him and which he had earned dishonestly; and lastly that on his person were used tickets as already mentioned, in contravention of the provisions of Executive Instruction No. 12 quoted here. Hari Chand admitted the first count and denied the other two or that he was in possession of the used tickets. The other two charges were dropped and he was found guilty of contravening the 12th instruction quoted above. We need not refer to the evidence which was led to establish that charge because we have only to see whether the order refusing approval of his dismissal was legal and proper. For this purpose we must assume that the fact of possession of used tickets was established. B C D

The first question is whether the application for approval should have been rejected because wages for one month were not actually paid before the order of dismissal as required by the proviso to s. 33(2)(b) of the Act. It appears to us that Hari Chand did not purposely receive the wages offered to him by the memorandum informing him of his dismissal from service because he intended to make a complaint against the Undertaking. He filed his complaint and it was dismissed. The amount was offered to him on October 30, 1961. The Tribunal found some discrepancies in the registers which created a doubt whether the memorandum was at all issued on the 30th. There is, however, no reason to think that it was issued on the 31st. Hari Chand himself admitted that he was present in the office on the 30th to receive payment but no one paid any attention to him. His contention was that he received the order on the 30th at 5 P.M. after office hours. His signature with date is on the duplicate copy of the memorandum kept in the office as receipt. The Tribunal was, therefore, wrong in holding that there was no tender of wages as required by s. 33 of the Industrial Disputes Act. The fact is clearly proved because the receipt to which we have referred is there to establish it. The tender was thus made on the 30th before the order of dismissal came into force and the wages would have been paid either on the 30th or the 31st had Hari Chand cared to receive E F G H

A them. In any event, the amount was sent to him by money order immediately afterwards and the application for the approval made three days prior to the date of dismissal mentioned the fact that the amount was being paid to him. The proviso to s. 33(2) (b) on which reliance is placed reads :

B "33. . . . . .
(1) . . . . . .
(2) . . . . . .
(a) . . . . . .
(b) . . . . . .

C Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

D The proviso does not mean that the wages for one month should have been actually paid, because in many cases the employer can only tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective. In this case the tender was definitely made before the order of dismissal became effective and the wages would certainly have E been paid if Hari Chand had asked for them. There was no failure to comply with the provision in this respect.

The Tribunal found the charge defective for various reasons. It pointed out that Hari Chand was not tried for the commission of any act of dishonesty or fraud as he had not issued used tickets F to any passenger but for possession of used tickets and this charge was not sufficient to make out an act of misconduct for which the punishment of dismissal could be imposed. The Tribunal seems to be affected by one central fact, namely, that Executive Instruction No. 12 was not made a part of the Standing Orders. In its opinion under paragraph 15 of the Regulations Standing Orders G governing the conduct of the employees must first be issued, before a breach of any instruction could amount to misconduct. Standing Orders were issued under para 15(1) of the Regulations and they stated that a breach would amount to misconduct and would make an employee liable to disciplinary action as stated in para 15(2) of the Regulations but they did not lay H down the duties of the conductor and they did not prohibit the possession of used tickets. The Tribunal, therefore, held that the charge of possession of used tickets was not punishable under

the Standing Orders and the punishment of dismissal could not be approved. A

In our opinion, the Tribunal has taken too narrow a view of the Standing Orders. Standing Order No. 19 provides:

"19. *General Provisions* :—Without prejudice to the provisions of the foregoing Standing Orders, the following B acts of commission and omission shall be treated as misconduct :—

. . . . . .

(m) Any other activity not specifically covered above, C but which is *prima facie* detrimental, to the interests of the organisation."

Standing Order 2, which was quoted earlier, also provides that all employees of the Authority shall perform such duties and carry out such functions as may be entrusted to them by the Authority D or the General Manager or any other authorised officer of the Authority. By virtue of Standing Order 2, the Executive Instructions were issued and they are a code of principles and practice which every conductor has to follow rigidly and invariably and there is a warning that a breach of any Instruction would expose the conductor to disciplinary action as laid down in para 15(2) E of the Regulations. Clause (m) of Standing Order 19, which has been quoted above, is sufficiently wide to cover a breach of Instructions issued under Standing Order 2. Hari Chand was charged for breach of Executive Instruction No. 12 and this brought in the application of Standing Order 19(m) read with Standing Order 2 and paragraph 15(2) of the Regulations. F

Mr. Gopal Singh contended on the authority of *Laxmi Devi Sugar Mills* v. *Nand Kishore Singh*(1) and *Lord Krishna Sugar Mills Ltd., and Anr.* v. *The Union of India and Another*(2) that the charge could not be amplified by the inclusion of a reference to the Standing Orders 2 and 19 and Regulation 15. These G rulings have no application because here the facts were quite sufficient to put Hari Chand on defence and the omission to mention the appropriate Standing Order, Regulations and the sections of the Act did not amount to such a flaw in the charge as would make room for the application of these rulings. No additional fact was necessary to be stated and the particulars were sufficient H for Hari Chand to understand what he was charged with. In our

(1) [1956] S.C.R. 916.

(2) [1961] 1 S.C.R. 39.

A judgment, the Tribunal was in error in holding that the charge was defective. As a result it must be held that the Tribunal was also wrong in refusing to accord approval to the dismissal under s. 33(2) (b).

Mr. Gopal Singh contended that Hari Chand has now been B promoted and is working as Assistant Traffic Inspector and this shows that the Undertaking has confidence in his work and that he has turned a new leaf. Mr. Bhasin on behalf of the Undertaking, however, stated that in view of the order of the Tribunal the order of dismissal was not given effect to and Hari Chand earned these promotions in due course. We do not propose to C enter into this controversy at all. It is not a matter which we can take into account in deciding whether the approval asked for as far back as October 28, 1961 was rightly refused. The appeal is, therefore, allowed and setting aside the order of the Tribunal we grant approval to the dismissal order which was to operate from October 31, 1961. In the circumstances of the case we make no D order as to costs.

Appeal allowed.

L2Sup./65—2,500 —18-11-65—GIPF.