A **HIND CONSTRUCTION & ENGINEERING CO. LTD.**

v.

THEIR WORKMEN

November 9, 1964

B [P. B. GAJENDRAGADKAR, C.J.; K. N. WANCHOO AND M. HIDAYATULLAH, JJ.]

Industrial Dispute—Dismissal of workman—Some ordered to rejoin but fail to do so—Reference of dispute to tribunal treating them as dismissed if valid.

C *Tribunal—powers of—When punishment amounts to victimisation or unfair labour practice—If Tribunal can interfere.*

The appellant company employed 30 workmen in its store yard of whom 11 were permanent and the remaining temporary. According to the practice of the appellant company 14 days in each year (including the 1st of January) were holidays and whenever a holiday fell on a Sunday the following day was made a holiday. The first day of January 1961, being a Sunday, the 11 permanent workmen did not attend work on the 2nd D January treating it as holiday, although they had been told that owing to pressure of work 2nd January was to be a working day and a holiday in lieu would be given on another day. Because of their absence, they were given a charge sheet and after enquiry, were ordered to be dismissed.

Upon a reference to it of the dispute, the Tribunal held that the workmen had gone on a strike (which was not illegal) but the punishment of E dismissal for such a strike for one day was too severe and unjustified and must be treated as victimisation. Reinstatement of the employees was therefore order.

It was contended on behalf of the appellant company, first, that after the enquiry, 3 of the 11 workmen were excused and ordered to rejoin duty and therefore the reference to the Tribunal was bad because it referred to 11 workmen as 'dismissed' when only 8 were so treated; secondly, F the Tribunal could not examine a finding or the quantum of punishment and was not justified in interfering with the punishment of dismissal after it had come to the conclusion that the workmen had gone on a strike, even though the strike was not illegal.

HELD: (i) All the 11 workmen were charged together and raised similar defences except that 3 of them had raised additional defences. Although these three workmen were ordered to rejoin work, they could not G have done so after their dispute was taken over by the Union and they would have been treated like the others unless they broke away from the Union by going against its wishes. The Government was therefore entitled to treat the dispute relating to all the workmen as single and undivided and refer it as such to the Tribunal. [87 H; 88 A-B]

(ii) Although it is a settled rule that the award of punishment for misconduct is a matter for the management to decide and if there is any H justification for the punishment imposed, the Tribunal should not interfere, where the punishment is so disproportionate that no reasonable employer would ever have imposed it in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. [88 F]

No reasonable employer would have imposed the punishment of dismissal on its entire permanent staff in similar circumstances. Their punishment was severe and out of proportion to the fault and therefore the interference by the Tribunal was justified. [89 E-H; 90 A-B] A

Case law reviewed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 970 of 1963. B

Appeal by special leave from the Award dated May 4, 1962, of the 2nd Industrial Tribunal, West Bengal, in Case No. VIII-146 of 1961.

M. C. Setalvad, N. C. Shah and *B. P. Maheshwari,* for the appellant. C

D. L. Sen Gupta and *Janardan Sharma,* for the respondent.

The Judgment of the Court was delivered by

Hidayatullah, J. This is an appeal by special leave against the award of the Second Industrial Tribunal, West Bengal dated May 4, 1962 by which the Tribunal set aside the dismissal of eleven workmen employed by the appellant Company and ordered their reinstatement with all back wages except wages for January 2, 1961. D

The appellant Company carries on activity as engineers and contractors in different parts of West Bengal. It had at Sukchar a store yard and at the relevant time it employed 30 workmen at Sukchar of whom 11 were permanent and the remaining temporary. We are concerned with the dismissal of the permanent workmen from January 2, 1961. According to the practice of the appellant Company fourteen days were holidays in each year. They included the 1st of January. Whenever a holiday fell on a Sunday the usual practice was to make the following day a holiday and that is how the dispute arose over the 2nd of January which followed a Sunday in 1961. The case of the Union, in short, was that the eleven workmen did not attend work on 2nd of January treating it as a holiday while the case of the appellant Company was that they had been expressly told that owing to pressure of work 2nd January was to be working day and a holiday in lieu would be given on another subsequent day. In view of their absence they were given a charge-sheet and after enquiry, were ordered to be dismissed. Before the enquiry they were placed under suspension and at the instance of the Union a reference was made to the Labour Officer for conciliation. The conciliation failed because the appellant Company did not appear. A E F G H

reference was made to the Labour Tribunal by the Government of West Bengal on April 21, 1961 of the following issue :

> "Whether the dismissal of the following workmen is justified; what relief, if any, they are entitled to, and
>
> . . . . .
>
> (here followed the 11 names)"

The Tribunal by its award held that there was no lock out or lay off by the employer as was pleaded on behalf of the Union 11 Workmen had gone on a strike but it was not illegal and that the punishment of dismissal for this strike must be treated as victimization of the employees and was quite unjustified both in severity and in relation to the strike for one day. The order setting aside their dismissal and reinstating them was passed.

It may be pointed out that the Enquiry Officer recommended the dismissal of only 8 of these workmen. In regard to the remaining 3, benefit of the doubt was given for their absence on grounds which may now be mentioned. One Quigly, who was a Christian, was excused with a warning and deprivation of wages for 2nd January on the ground that he had informed the Works Manager that he would be unable to attend to his duties on 2nd January. One J. C. Bose was excused because he had joined on the 31st December after absence and was not in a position to know that the 2nd January was not declared a holiday. He was also warned and his absence was adjusted against leave due to him. Lastly, one A. K. Sarkar who was on leave till the 31st of December was excused because he was informed by Quigly that 2nd January would be a holiday. He was also warned and his absence was to be treated as leave with or without pay depending upon leave to his credit. These three persons were ordered to join duty but they did not as the Union was of the opinion that the original dispute was still pending for conciliation and till the dispute was settled they could not join.

The appellant Company contends that the reference is bad because it refers to 11 workmen as "dismissed" when only 8 were so treated. Technically this is correct but we do not think that we should interfere with the award on this ground alone. All workmen were charged together and their defence more or less was that the day following the 1st of January was to be a holiday in accordance with the established practice, though three of them raised additional defences when asked to file separate defences. It is obvious that these three workmen could not join when their

dispute was taken over by the Union and though they were offered employment they would have been treated like the others unless they broke away from their Union or went against its wishes. In these circumstances, Government was entitled to treat the dispute as single and undivided and to refer the cases of all workmen who had absented themselves on the 2nd of January on the ground that they claimed it as a holiday. We do not, therefore, interfere with the award on this ground.

The next question is whether the Tribunal was justified in interfering with the punishment of dismissal after it had come to the conclusion that the workmen had gone on a strike even though the strike was not illegal. Reference is made to a number of cases in which the principles for the guidance of the Tribunals in such matters have been laid down by this Court. It is now settled law that the Tribunal is not to examine the finding or the quantum of punishment because the whole of the dispute is not really open before the Tribunal as it is ordinarily before a court of appeal. The Tribunal's powers have been stated by this Court in a large number of cases and it has been ruled that the Tribunal can only interfere if the conduct of the employer shows lack of *bona fides* or victimization of employee or employees or unfair labour practice. The Tribunal may in a strong case interfere with a basic error on a point of fact or a perverse finding, but it cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic enquiry though it may interfere where the principles of natural justice or fair play have not been followed or where the enquiry is so perverted in its procedure as to amount to no enquiry at all. In respect of punishment it has been ruled that the award of punishment for misconduct under the Standing Orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed the Tribunal should not interfere. The Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. These principles can be gathered from the following cases :—

Bengal Bhatdee Coal Co. Ltd. v. *Ram Probesh Singh & Ors.*(1) *Buckingham & Carnatic Co. Ltd.* v. *Workers*(2); *Tita-*

(1) [1964] 1 S.C.R. 709. (2) [1952] L.A.C. 490.

A *ghar Paper Mills Co. Ltd.* v. *Ram Naresh Kumar*(1); *Doom Dooma Tea Co. Ltd.* v. *Assam Chah Karamchari Sangh*(2); *Punjab National Bank Ltd.* v. *Workmen*(3); *Chartered Bank Bombay* v. *Chartered Bank Employees Union*(4).

In the present case the dispute was whether the punishment
B amounted to victimization or unfair labour practice. Mr. Sen Gupta referred to various parts of the record of the enquiry to show that the conduct of the workmen was regarded as collective, that it was described as a strike, that it was considered to be the result of a conspiracy and that there was a demand for over time. Mr. Sen Gupta contended that, in the circumstances, this must
C be regarded as a case of victimization because only the permanent workers were subjected to this treatment. Mr. Sen Gupta hinted that there was an ulterior motive in dismissing the permanent workers and getting the work done by temporary hands so that the Union may break down and even the re-employment of three workmen, who were probably indispensable to the employer,
D was with the same motive. On the other hand, Mr. Setalvad argued that there was nothing on the record to show that this was a case of victimization. These persons were found guilty at the enquiry and also by the Tribunal and it was merely a question of what punishment should be imposed and that was a matter entirely
E within the competence of the employer.

In our judgment, this is one of those cases in which it can plainly be said that the punishment imposed was one which no reasonable employer would have imposed in like circumstances unless it served some other purpose. There was a practice of substituting for a holiday falling on a Sunday, the day next
F following. This appears to have been done in the appellant Company for a number of years. In this year also the 2nd of January would have been a holiday but for the contrary decision of the Management. From the record it does not appear that there was anything very special requiring attention on that day. But assuming there was, the absence of the eleven workmen on the 2nd was
G not something for which no lesser punishment could have been imposed. The absence could have been treated as leave without pay; the workmen might even have been warned and fined. It is impossible to think that any other reasonable employer would have imposed the extreme punishment of dismissal on its entire
H permanent staff in this manner. Assuming for a moment, that three

(1) [1961] 1 L.L.J. 511.
(2) [1960] 2 L.L.J. 56.
(3) [1959] II L.L. J. 666.
(4) [1960] II L.L. J. 222.

workmen were warned and taken back, the employer knew very well that they could not join in view of the intervention of the Union. On the whole, therefore, though we emphasise again that a Tribunal should not interfere with the kind or severity of punishment except in very extraordinary circumstances, we think that interference was justified in this case because the punishment was not only severe and out of proportion to the fault, but one which, in our judgment, no reasonable employer would have imposed. A B

The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.