1966

May 7.

SUR ENAMEL AND STAMPING WORKS (P) LTD.

v.

THEIR WORKMEN

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, and K. C. DAS GUPTA JJ.)

Industrial Dispute—Dismissal of employee—No proper enquiry by department—Reinstatement by Industrial Tribunal—Validity—"Continuous service", Meaning of—Industrial Disputes Act, 1947 (14 of 1947), ss. 2 (eee), 25B.

D, a workman in the appellant company, was served with a notice on October 23, 1959, in which it was alleged that a number of articles had been spoiled due to his faults, and he was asked to show cause why the company should not take disciplinary action against him. In the enquiry held against him nobody except himself was examined to prove the charge. He was confronted with the reports of the superior and other persons made behind his back and simply asked why these persons would be making the reports against him falsely. On November 11, 1959, an order was made by the management dismissing him from the service of the company "for causing wilful insubordination or disobedience whether alone or in combination with another or others, for any orders of the superior of the management". The Industrial Tribunal, to which the dispute was referred, was of the view that the rules of natural justice had not been followed by the domestic tribunal; and after examining the evidence adduced before it the Tribunal came to the conclusion that there was no sufficient material to hold that D was guilty of insubordination or disobedience for which the dismissal order purported to have been made, or in respect of the alleged damage done to the company's property. The Tribunal accordingly set aside the order of the dismissal and directed D's reinstatement. The appellant challenged the validity of the order of the Tribunal on the ground, *inter alia*, that it was not open to the Tribunal to go behind the finding arrived at by the domestic tribunal.

Held that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at

the enquiry are not perverse, the industrial Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. But, where, as in the present case, there was no proper enquiry, the Tribunal was justified in ignoring the findings of the domestic tribunal.

An enquiry cannot be said to have been properly held unless (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined—ordinarily in the presence of the employee—in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report.

Two of the workmen in the service of the appellant company had been appointed on March 10, 1959, but their services were terminated on January 15, 1960. A workman who had been in continuous service for not less than one year under an employer was entitled to certain benefits under s. 25F of the Industrial Disputes Act, 1947, and under s. 25B a workman who during a period of twelve calendar months had actually worked in an industry for not less than 240 days shall be deemed to have completed one year of completed service in the industry. It was found that the two workman had during the period of employment for less than 11 calendar months worked for more than 240 days.

Held that the two workmen were not entitled to the benefits of s. 25F of the Industrial Disputes Act, 1947.

Before a workman can be considered to have completed one year of continuous service in any industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months he had worked for not less than 240 days. The requirements of s. 25B would not be satisfied by the mere fact of the number of working days being not less than 240 days.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 681 of 1962.

Appeal by special leave from the award dated March 13, 1961, of the Fifth Industrial Tribunal, West Bengal, in Case No. VIII-167 of 1960.

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Sur Enamel and Stamping Works (P) Ltd. v. Workmen

P. K. Sen Gupta and *D. N. Mukherjee,* for the appellant.

Janardan Sharma, for the respondents.

1963. May 7. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA J.—This appeal arises out of an industrial dispute between the appellant and its workmen. The dispute was with regard to the dismissal of 11 workmen and was referred to the Fifth Industrial Tribunal, West Bengal. In this appeal we are concerned with three only out of those 11, as the company was given special leave to appeal against the Tribunal's award in respect of these three. They are, Manik Chandra Das, Nagen Bora and Monoharan.

We shall deal first with the case of Manik Chandra Das. It appears that on October 23, 1959 he was served with a notice in which it was alleged that a number of articles had been spoiled due to his faults. He was asked to show cause within 48 hours of the receipt of the notice why the company should not take disciplinary measures against him. In his reply of October 25, he denied any responsibility in the matter and mentioned that he had reported to the supervisor and sardars about the defective articles beforehand and according to the advice given by them had painted borders. According to the management, an enquiry was held against Manik on October 29, 1959 and on the report of the enquiry officer, the Works Manager, he was dismissed. The order of dismissal was made on November 11, 1959. In this it was stated that he had been dismissed from the service of the company "for causing wilful insubordination or disobedience whether alone or in combination with another or others, of any orders of the superior or of the management."

It appears that some evidence was led before the Industrial Tribunal against Manik to show that he had caused some damage to the company's property. The Tribunal held that the rules of natural justice had not been followed by the domestic tribunal. It then examined the evidence adduced by the witnesses on behalf of the management and came to the conclusion that there was no sufficient material before the Tribunal to hold that Manik was guilty of insubordination or disobedience for which the dismissal order purported to have been passed. The Tribunal further pointed out that the evidence before it in respect of the alleged damage done to the company's property was not sufficient for establishing any charge which might merit dismissal. Accordingly, it set aside the order of dismissal passed by the Company and directed his reinstatement.

In support of the appeal against this order Mr. Sen Gupta has urged that it was not open to the Industrial Tribunal to go behind the finding arrived at by the domestic tribunal. He contended that the Tribunal was wrong in thinking that the rules of natural justice were not followed. It appears that a joint enquiry was held against Manik and one Birinchi. Nobody was examined at this enquiry to prove the charges. Only Manik and Birinchi were examined. They were confronted with the reports of the supervisor and other persons made behind their backs and were simply asked why these persons would be making the reports against them falsely. It is not clear whether what they said was recorded. According to the enquiring authority they were "unable to explain as to why these persons would be making the reports against them falsely." In our opinion, it would be a misuse of the words to say that this amounted to holding of proper enquiry. It has been laid down by this Court in a series of decisions that if an industrial employee's services

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are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the industrial tribunal is not entitled to consider the propriety or the correctness of the said conclusions. In a number of cases which have come to this Court in recent months, we find that some employers have misunderstood the decisions of this Court to mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by them from challenge. This attitude is wholly misconceived. An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined—ordinarily in the presence of the employee—in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross-examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity to cross-examine them, it would have been difficult to say in these circumstances that that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined it is clear that there was no enquiry worth the name and the Tribunal was justified in

entirely ignoring the conclusion reached by the domestic Tribunal.

There is again the curious circumstance that while the domestic tribunal recommended the dismissal of Manik on a charge of having deliberately caused damage to raw materials the order of dismissal passed by the management was not in respect of this misconduct. The order in terms mentions that "you are dismissed from the service of the company for causing wilful insubordination or disobedience whether alone or in combination with another or others, of any order of the superior or of the management.....". It appears that the charge-sheet which was sent to Manik on October 23, 1959, did not mention any charge of "wilful insubordination or disobedience". It is quite clear that the domestic tribunal did not find him guilty of any insubordination or disobedience. It is difficult to understand how the charge being for causing damage to property and the enquiry officer's report being in respect of the same, the dismissal order was made for something else. That itself would be a sufficient ground for setting aside the order of dismissal.

Even if we assume as Mr. Sen Gupta tried to convince us that Manik was dismissed really because he was found guilty of having caused damage to property and the statement was wrongly made in the dismissal order that the ground for dismissal was his wilful insubordination or disobedience, the appellant's case would be no better. For, there having been no proper enquiry by the domestic tribunal the employer could justify the order of dismissal only by satisfying the Industrial Tribunal of the truth of the charge. The Tribunal has not been satisfied and we are not inclined to examine the correctness of its decision in that respect because ordinarily findings of fact are not allowed to be challenged in appeals under Art. 136. In our opinion, the Tribunal

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rightly set aside the order of dismissal passed by the company and ordered reinstatement of Manik.

Coming now to the case of Nagen Bora and Monoharan, we find that they were temporary workmen. The Tribunal held that the order of termination of their services was bad only by reason of non-compliance with the provisions of s. 25F of the Industrial Disputes Act and not otherwise. The Tribunal directed certain payments to be made to these persons by way of compensation. Mr. Sen Gupta wanted to argue that as these two were temporary workmen they were not entitled to the benefit of s.25F. It is unnecessary for us to consider this question, as it appears to us that assuming that temporary workmen are also entitled to the benefit of s. 25F, neither Nagen Bora nor Monoharan comes within the terms of that section.

On the plain terms of the section only a workman who has been in continuous service for not less than one year under an employer is entitled to its benefit. "Continuous Service" is defined in s. 2(eee) as meaning uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock-out or a cessation of work which is not due to any fau lt on the part of the workman. What is meant by "ore year of continuous service" has been defined in s. 25B. Under this section a workman who during a period of twelve calendar months has actually work ed ien a industry for not less than 240 days shall be di nmed to have completed one year of completed servcee in the industry. Nagen Bora and Monoharam were both reappointed on March 10, 1959. Their services were terminated on January 15, 1960. Thusthesir total period of employment was less than 11 month. It is not disputed that period of their former employment under the company prior to their reappointment

on March 10, 1959, cannot be taken into consideration in computing the period of one year, because it is common ground that their reappointment on March 10, 1959, was a fresh appointment. The position therefore is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of s.25B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days. Where, as in the present case, the workmen have not at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more. For, in any case, the requirements of s. 25B would not be satisfied by the mere fact of the number of working days being not less than 240 days.

We have therefore come to the conclusion that the Tribunal was wrong in thinking that these two workmen were entitled to the benefit of s.25F. Accordingly, we set aside the direction that the Tribunal made for payments to Nagen Bora and Monoharan by way of compensation.

The appeal is therefore dismissed in respect of Manik Chandra Das, but allowed in respect of Nagen Bora and Monoharan.

Mr. Sen Gupta, who appeared before us on behalf on the appellant, assured us, however, that the appellant will make the payments directed by the Tribunal less what has already been paid in compliance with the Tribunal's order. We have no doubt that the appellant company will carry out this assurance given by its Counsel. No order as to costs.

Appeal allowed in part.