

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1762 OF 2007

J.H. PATEL (D) BY LRS. AND ORS.

Appellant(s)

VERSUS

NUBOARD MANUFACTURING CO. LTD. & ORS.

Respondent(s)

J U D G E M E N T

H.L. GOKHALE, J.

This appeal seeks to challenge the common judgment and order dated 23.5.2003 rendered by the High Court of Allahabad in Writ Petition No.9498 of 1981 which was filed by the first respondent management, and Writ Petition No.10321 of 1981 which was filed by the appellants workmen. The writ petition which was filed by the management has been allowed whereas the one filed by the workmen has been dismissed. Both these writ petitions sought to challenge the award dated 31.3.1981 passed by the

Labour Court at Bareilly in Adjudication Case No. 95 of 1979. Heard Mr. R.D. Upadhyay, learned counsel in support of this appeal and Mr. Sunny Chaudhary, learned counsel appearing for the respondents.

2. The facts leading to this appeal are this wise. One Mr. J.H. Patel, was elected on 8.5.1996 as the General Secretary of the Nuboard Karmachari Sangh, a Trade Union registered under the provisions of the Trade Unions Act. The said Karmachari Sangh was affiliated to Hind Majdoor Panchayat. One Mr. Ram Kishan was the Organizing Secretary and Mr. Asha Ram was the Vice President of the said Karnachari Sangh. It is the further case of the workmen that on 20.8.1977 they wrote to the Registrar of the Trade Unions, U.P. at Kanpur to declare their office bearers, including the above three persons, as the "protected workmen", and they were so declared by the Registrar of Trade Unions by his letter dated 15.2.1978.

3. It is the case of the workmen that on 10.4.1977, after the formation of the Trade Union, when the aforesaid J.H. Patel was collecting

subscription from the members of the Union, he was called to the office of the employer, and was told to refrain from conducting the Trade Union activities, and the Receipt Book and the subscription which he had collected, was snatched away from him. The said Mr. Patel went to the Police Station to lodge a complaint, but the complaint was not recorded, and therefore he was constrained to file a criminal complaint before the concerned Magistrate. There was no dispute that in that complaint, officers of the respondent Company including A.H. Shah, Director and J.B. Dalal, Administrative Manager, were arraigned as accused. The complaint was taken up by the Magistrate but inasmuch as the evidence was found insufficient, the learned Magistrate held that the complaint was not proved, and therefore by his judgment and order dated 29.6.1978 acquitted all the four accused including the aforesaid two officers of the respondent Company.

4. Thereafter, the management of the respondent Company chose to serve a charge-sheet dated 15.7.1978 on the concerned workmen. In the said

charge-sheet, essentially the charge was that the workmen concerned had lodged a report to the Superintendent of Police, Rampur, containing false allegations against four officers of the management, and that was done with an intent that the police officer should use the lawful power against the said persons. There is no dispute that the workmen filed an explanation and that despite the explanation, no inquiry was held and an order of dismissal was passed on 17.7.1978. In fact the order dated 17.7.1978 in terms states: "In view of the self evident fact no further inquiry in the matter is called for, a copy of the judgment of the Special Judicial Magistrate, Rampur speaks for itself." Therefore, on that basis the dismissal order was passed.

5. The appellants workmen challenged their dismissal from service leading to the aforesaid Adjudication Case No.95 of 1979 before the Labour Court. In the proceeding before the Labour Court, essentially three issues were raised by the workmen. Firstly, that they were "protected workmen" and action against them was not justified. Secondly,

that another proceeding was pending before the Labour Court and in view of the provision of Section 6E(2)(b) of the Uttar Pradesh Industrial Disputes Act which is in pari passu to Section 32(2)(b) of the Industrial Disputes Act, 1947, an approval application was required to be filed and inasmuch as the said application was not filed, the termination was bad in law. Thirdly, that the misconduct as alleged was not proved, and that lodging a criminal case against the officers of the respondent Company was not a misconduct. (29)

6. In the adjudication case before the Labour Court, the workmen examined themselves and the management examined, amongst others, Mr. A.H. Shah, Director (EW-1) and Mr. J.B. Dalal, Administrative Officer (E-2). The Labour Court accepted the contention of the management with respect to the misconduct, but held that no inquiry was held at the departmental level prior to the order of dismissal. Thus, there was denial of the principles of natural justice and fairness. Hence, although it declined reinstatement, it passed the order granting 50% of the back-wages from the date of dismissal until the

date of judgment and order passed by the Labour Court i.e. 31.3.1981. Being aggrieved by that judgment and order of the Labour Court, the management filed the earlier referred writ petition to dispute the award of this compensation and the workmen filed the other writ petition to challenge that part of the order which denied them reinstatement.

7. The learned Single Judge of the High Court heard both the writ petitions together and formed an opinion that the removal was justified in view of the earlier decision of the Criminal Court and therefore, held that the award of back-wages was not contemplated. He therefore set aside that part of the order of the Labour Court by his judgment and order dated 23.5.2003. Being aggrieved by this judgment and order the appellants have filed this appeal by special leave.

8. Mr. R.D. Upadhyay, learned counsel for the appellants pointed out that although the Complaint before the Magistrate had been dismissed, the management chose to hold an independent inquiry at

their level, and it was their responsibility to prove the misconduct, firstly at the departmental level and if not there, later on in the Labour Court. Admittedly, no departmental inquiry was held. As far as the order of the Labour Court is concerned, if one peruses that order, it is clearly seen that there is no discussion with respect to the evidence by the management before the Labour Court on the basis of which it could be said that the Labour Court arrived at the conclusion that the misconduct was proved. That apart, it was also the submission on behalf of the workmen that they were "protected workmen" and that no prior approval was obtained to conduct any inquiry.

9. Mr. Sunny Chaudhary, learned counsel appearing for the respondents submitted that undoubtedly the workmen had lodged the Complaint against the senior officers of the respondent Company in the Magistrate's Court. This damaged the reputation of the Company, and this amounted to defamation and therefore the management was entitled to proceed at the departmental level. According to him, the conduct on the part of the workmen amounted

to 'disorderly behaviour' and although the management had passed the dismissal order merely on receiving the explanation from the workmen (and without holding an inquiry), evidence had been led before the Labour Court and after considering the evidence, the learned Judge had come to the conclusion that misconduct had been established. He submitted that therefore the Labour Court was wrong in awarding 50% compensation from the date of dismissal until the date of its judgment and the High Court was fully justified in passing the order that it had passed deleting the order of compensation which was awarded to the workmen.

10. We have noted the submissions of both the learned counsel. As far as the issue of the workmen being "protected workmen" is concerned, presently we are not required to go into that aspect. Similarly, as far as the issue of non obtaining prior approval is concerned, inasmuch as Section 6(E)(2)(b) of the Uttar Pradesh Industrial Disputes Act is pari passu to Section 32(2)(b) of the Industrial Disputes Act, 1947, undoubtedly the management was required to obtain the prior approval from the Labour Court



inasmuch as an earlier proceeding was pending in the Labour Court. However, the consequence thereof cannot be that the management will be disentitled to prove the misconduct in Court. This has been the view taken by this Court in Rajasthan State Road Transport Corporation & Anr. Vs. Satya Prakash, (2013) 9 SCC 232, which explains the law laid down earlier by a Constitution Bench of this Court in Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Ors., (2002) 2 SCC 244. Therefore, the management cannot be faulted merely on that ground.

11. The fact, however, remains that the opportunity to prove the misconduct was made available to the management in the Labour Court in the present case. The employer examined two of their witnesses, namely Mr. A.H. Shah, Director (EW-1) and Mr. J.B. Dalal, Administrative Officer (E-2). However, from the judgment rendered by the Labour Court what we find is that there is no discussion, whatsoever, with respect to the evidence led by these two witnesses. The judgment does not contain any reason in support of the conclusion arrived at

by the Labour Court that misconduct was proved before the Labour Court on the basis of the evidence which was led before it. The management chose to proceed departmentally against the workmen after the acquittal of its officers in the Criminal Court. It did not afford any opportunity to the workmen at the departmental level. Afterwards, when the dispute was taken to the Labour Court, it was the responsibility of the management to prove the misconduct in Court, and that ought to be done by leading evidence of the witnesses which, of course, they did. However, the evidence has to be discussed by the Labour Court. In the present case, there is no discussion whatsoever about the evidence as to why the Labour Court came to the conclusion that the misconduct is established. In the circumstances, the findings of the Labour Court cannot be sustained that the management had proved the misconduct. Inasmuch as the misconduct was not proved, the workmen were entitled to get the relief that they were seeking, namely the declaration that the termination of their services was bad in law and then the consequential relief. When the matter was carried to the High Court, the High Court also lost sight of that fact

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and, on the other hand, it deleted whatever compensation was awarded to the workmen by the Labour Court. In our view, the order of the High Court is erroneous on the very ground.

12. In the circumstances, this appeal will have to be allowed which we hereby allow, set aside the order of the High Court as well as that of the Labour Court and decide the dispute raised by the workmen in their favour, namely that the termination of their services was unjustified on merits.

13. Then we come to the aspect of relief. Out of three appellants before this Court, J.H. Patel has expired and his heirs are on record. Mr. Upadhyay does not dispute that as far as the other two workmen Mr. Asharam and Ram Kishan are concerned, they must have reached the age of superannuation. In the circumstances, we award compensation to these workmen towards back-wages quantified at 50%, with interest at 6% per annum, from the date of dismissal until the date of superannuation/death, whichever is earlier.

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14. At this stage, on instructions, Mr. Chaudhary, learned counsel appearing for the respondents states that the first respondent Company is no longer functioning, and a proceeding is pending before the BIFR. He therefore makes a request that the back-wages be reduced to 40% and no interest be awarded thereon. Mr. Upadhyay learned counsel for the appellants submits that the appellants are agreeable to this suggestion provided the said amount is paid within a period of three months hereafter. In the circumstances, we give this option to the first respondent viz to pay 40% of the back-wages from the date of dismissal until the date of superannuation/death, whichever is earlier provided the amount is so paid within three months. If the compensation is so paid, the amount of interest will stand waived. In the event, however, the amount of 40% is not paid within a period of three months hereafter, the earlier part of the order, namely that respondent No.1 should pay 50% of the back-wages with 6% interest will be operative.

15. Appeal allowed in the above terms, though  
without any order as to costs.

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.....J  
(H.L. GOKHALE)

.....J  
(KURIAN JOSEPH)

New Delhi;  
January 22, 2014.



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO.7 IN CIVIL APPEAL NO.1762/2007

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J.H.Patel (D) by Lrs. & Others

..Applicants

Versus

Nuboard Mfg. Co. Ltd. & Others

..Respondents

O R D E R

Heard learned counsel for the applicants.

For the reasons stated in the application for restoration, the application for restoration is allowed. The order dated 15<sup>th</sup> July, 2009 dismissing the appeal in default of appearance and for non-prosecution is recalled and the appeal is restored to its original number.

List the appeal for hearing in due course.

M. Katju  
.....J.  
[MARKANDEY KATJU]

NEW DELHI;  
DECEMBER 04, 2009.

R.M. Lodha  
.....J.  
[R.M. LODHA]

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1762 OF 2007

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J.H. Patel (D) by Lrs. & Ors

.... Appellants

Versus

Nuboard Mfg. Co. Ltd. & Ors.

.... Respondents

ORDER

The matter was called out twice.

No one appears for the parties.

The appeal is dismissed in default of appearance and  
for non-prosecution.

M. Katju .....J.  
(MARKANDEY KATJU)

V.S. Sirpurkar .....J.  
(V.S. SIRPURKAR)

NEW DELHI;  
JULY 15, 2009

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

I.A. NOS.9 & 10 OF 2014

IN

CIVIL APPEAL NO. 1762 OF 2007

J.H. PATEL (D) BY LRS. AND ORS.

APPELLANTS

VERSUS

NUBOARD MFG. CO. LTD. & ORS.

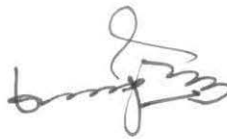
RESPONDENTS

O R D E R

The learned counsel for the respondents submits that despite two opportunities granted to the appellants, there is no response to the reply filed by the respondents.

We find no justification to keep applications pending any more.

Accordingly, I.A. Nos. 9 & 10 of 2014 stand disposed of.



.....J.  
[KURIAN JOSEPH]



.....J.  
[ROHINTON FALI NARIMAN]

NEW DELHI;  
SEPTEMBER 26, 2016