

PETITIONER:
HINDUSTAN GENERAL ELECTRICAL CORPORATION LTD.

Vs.

RESPONDENT:
VISWANATH PRASAD AND ANOTHER

DATE OF JUDGMENT 17/08/1971

BENCH:
REDDY, P. JAGANMOHAN
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REDDY, P. JAGANMOHAN
MITTER, G.K.
MITTER, G.K.
VAIDYIALINGAM, C.A.
VAIDYIALINGAM, C.A.

CITATION:
1971 AIR 2417 1972 SCR (1) 266
1972 SCC (2) 605

ACT:
Industrial Disputes Act (14 of 1947), ss. 33 and 33 A-
Dismissal of employee--Pendency of Conciliation proceeding-
Effect on dismissal.

HEADNOTE:

The appellant-management served on the respondent a charge sheet to show cause why disciplinary action should not be taken against him for his misconduct in lodging a false complaint to the police against some of the officers of the appellant, and, after inquiry, dismissed him. The industrial dispute regarding the dismissal of this workman and some others was referred to the Labour Court which upheld the orders of dismissal. The Labour Court also rejected the plea that the orders of dismissal were passed during the pendency of conciliation proceedings and were therefore illegal, on the ground such pendency was not established. The High Court in a writ petition, filed by the respondent, held that it was necessary for the Labour Court to first go into question whether or not there was a conciliation proceeding pending at the date of the dismissal order with a view to find out whether the impugned order of dismissal was passed in contravention of s. 33(2)(b) of the Industrial Disputes Act, 1947, and remitted the matter back to the Labour Court for deciding the question after giving an opportunity to the respondent.

Allowing the appeal to this Court,

HELD: (1) Section 33(2)(b) of the Act relates to the dismissal, discharge etc. of a workman for any misconduct not connected with an industrial dispute during the pendency of a conciliation proceeding before a conciliation officer or Board or of any proceeding before a Labour Court or Tribunal, and prohibits such- discharge or dismissal 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 was pending for approval of such action. Section 33-A enables a workman who has been punished by dismissal or discharge etc., to make a complaint in writing to a Labour Court, Tribunal, or National Tribunal

when an employer contravenes the provisions of s. 33 during the pendency of the proceedings before a Labour Court, Tribunal or National Tribunal. If such a complaint is made the Labour Court or Tribunal is to adjudicate upon the complaint as if it were a dispute referred to or pending before it and in accordance with the provisions of the Act submit its award to the appropriate Government; that is, the workman does not have to wait for a reference of an industrial dispute but can himself prefer his complaint which is

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to be treated as a dispute under s. 10, and it would be the duty of the Labour Court to examine the merits of the case in the light of the principles formulated in the Indian Iron Steel Company case, [1958] S.C.R. 667. These sections do not require that as soon as the Labour Court or Tribunal finds that there has been a violation of s. 33 it should award reinstatement. [272C-H; 273A]

(2) It has not been alleged in this case that conciliation proceedings were pending before the Labour Court, Tribunal or National Tribunal as envisaged in s. 33A. Assuming that there was a conciliation proceedings before the labour officer, s. 33A would not be attracted. [273B-C]

(3) The Tribunal rightly refused to go into the question of the pendency of any council on proceeding; because, even if there was any such proceedings, it would make no difference to the result of the case. The Labour Court would still have to consider whether the employer's action was justified and would have to be satisfied that the allegations about want of good faith or victimisation or unfair labour practice were baseless, that the inquiry was not vitiated by basic effort or violation of any principles of natural justice, and that the order of dismissal was not perverse. [274D-F]

In the present case, the Labour Court held on the material before it-the lodging of the complaint was not disputed, that the allegations were false was not denied and the humiliation to the officers was not contradicted that the respondent's action was subversive of discipline which merited dismissal. [274G-H; 275F-H]

Indian Iron and Steel Co. Ltd. v. The Workmen, [1958] S.C.R. 667, Punjab National Bank Ltd. v. Its Workmen, [1960] 1 S.C.R. 806 and Rodrick V. Karam Chand Thapar and Anr. [1963] 1 L.L.J. 248 (S.C.) referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2167 of 1966.

Appeal by special leave from the judgment and order dated October 12, 1965 of the Patna High Court in Misc. Judicial Case No. 614 of 1962.

G. B. Pai and D. N. Gupta, for the appellant.

S. K. Mehta and K. L. Mehta. for respondent No. 1

The Judgment of the Court was delivered by

Mitter, J.-This appeal by special leave arises out of an order of the Patna High Court setting aside the award dated 23rd February, 1962 made by the Presiding Officer of the Labour Court Ranchi and remitting the

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matter back to him for making a fresh award in accordance with the observations of the High Court.

The facts are as follows. The first respondent, Bishwanath Prasad, a workman of the appellant, made a complaint in

writing to the officer in charge of Nirsa Police station on September 19, 1960 stating inter alia that the members of his Union were being -harassed repeatedly by the Management of the company and that the laboratories had reported on that day that an Assistant Manager, a Labour Welfare Officer and others had broken open the lock of the room of a worker by the name of Kashi Nath Singh and thrown away his belongings when he was actually on duty. The police were requested to take proper action against the said Assistant Manager. After enquiry the officer in charge Nirsa police station submitted a final report on 19th November 1960 to the effect that the complainant Bishwanath Prasad had deliberately brought - a false complaint. The Sub-Divisional Officer of the District acting on the final report dismissed the complaint on 12th January 1961. The Management served the respondent Bishwanath Prasad with a charge sheet on 23rd January 1961 to show cause why disciplinary action should not be taken against him for his misconduct subversive of discipline in making serious defamatory allegations against the officers in general and to two of the officers in particular who had been put to great harassment and humiliation at the investigation by the police. The explanation given by Bishwanath Prasad to the charge sheet was that he had made the report to the police after receiving a complaint from kashinath Singh, a member of his Union with no intention to undermine the prestige of the officers concerned and the discipline in the factory, but simply to pacify the workers who were very much excited owing to the action of the officer. It appears that an enquiry into the matter was fixed by the Management and the respondent was asked to appear at the enquiry on 30th January, 1961 but. he failed to attend the same and sent a letter "asking for an open enquiry in which representatives of the Labour Department, Dhanbad should be present". The enquiry officer sent in his report and The Management acting thereupon dismissed the res-

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pondent from service with effect from the date of suspension, namely, 23rd January, 1961.

Quite unconnected with the above matter, there was trouble in the factory on 10th January, 1916 when one group of workers is alleged to have assaulted another group due to inter-Union rivalry. The Company dismissed 10 workmen on the ground of their assaulting two, others on 28th January, 1961.

On 28th March 1961, the Government of Bihar referred an Industrial Dispute to the Labour Court, Ranchi regarding the dismissal of the II workmen including the respondent Bishwanath Prasad. The Labour Court examined the merits of the matter and held that the orders of dismissal meted out by the management to all the workmen would have to be maintained and the workmen were not entitled to any relief. Examining the facts and circumstances in the light of the principles formulated by this Court in the case of Indian Iron and Steel Co. Ltd. v. Their Workmen (1) at page 685 that

"In case of dismissal on misconduct, the Tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere (i) when there is a want of good faith, (ii) -when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and (iv) when on

the materials the finding is completely baseless or perverse."

the Tribunal held that the finding of the Management with regard to the guilt of the 10 workmen other than Bishwanath Prasad was not in any way unwarranted or perverse and the Management was not actuated by bad faith. With regard to Bishwanath Prasad the Tribunal examined the facts and circumstances relied on by the parties and held that the order of dismissal was not vitiated on any of the well-known grounds of interference as laid down in *Indian Iron and Steel Co.'s Case*

(1) [1958] S.C.R. 667.

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The Tribunal also examined the plea put forward on behalf of the workers that the orders of dismissal should be held to be illegal inasmuch as they were all passed during the pendency of a conciliation proceeding. The Tribunal noted that no evidence had been led to sustain the plea and the Union had only placed on record, carbon copies of two letters which were alleged to have been addressed to the Labour Officer, Dhanbad. The Tribunal was not satisfied that the letters had actually been delivered to the Labour Officer and found that there was no evidence to show that the Labour Officer had applied his mind to the matter mentioned in those letters and accordingly took the view that the pendency of a conciliation proceeding at the relevant time had not been established.

The respondent, Bishwanath Prasad, filed a petition under Arts. 226 and 227 of the Constitution before the Patna High Court challenging the award inter alia on the ground that the Labour Court had failed to appreciate that the enquiry officer had acted mala fide and in violation of the principles of natural justice in holding the enquiry. A complaint was also made that the letters from the conciliation officer Dhanbad were ignored by the Labour Court. The Management filed a counter affidavit justifying its action against the workmen and submitting that the award had been correctly made.

Before the High Court one of the main pleas taken on behalf of the respondent was that the order of dismissal against him having been passed 'in contravention of S. 33 of the Act was invalid and ineffective and on that ground alone he should have been reinstated. It was also contended that in cases where an order of dismissal passed in contravention of S. 33 of the Act was the subject matter of adjudication either by virtue of a reference under S. 10 (1) or by reason of a complaint under S. 33A of the Act, the enquiry held by the employer before passing the order of dismissal was of no avail. According to the High Court all the contentions raised on behalf of the petitioner are founded on the basic fact that there was contravention of S. 33. Referring to the judgment of this Court in *The Punjab National Bank Ltd., v. Its*

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Workmen (1) the High Court took the view that it was necessary for the Labour Court to first go into the question whether or not there was a conciliation proceeding pending at the date when the dismissal order was made with a view to find out whether the plea of the workmen concerned that the impugned order of dismissal was passed in contravention of s. 33 (2) (b) was correct or not and if it accepted the petitioner's contention, that the order of dismissal contravened S. 33 (2) (b), the departmental enquiry would not avail the employer and the whole question would be open. The High Court directed that the petitioner should be

afforded an opportunity to place the letters earlier referred to, viz., annexures 1 and 1-1, and such other relevant evidence in this connection as he might choose before the Labour Court and the Labour Court should come to its own conclusion on the issue before it upon all the evidence adduced before it. Being of the view that in the absence of any determination of the basic question whether or not there was a contravention of S. 33, the High Court did not think it advisable to pronounce upon the merits of the several contentions raised on behalf of the petitioner, set aside the award and remitted the matter back to the Labour Court for making a fresh award in accordance with the court's observations.

In our view the High Court did not properly appreciate the true scope of S. 33 (2) (b) of the Industrial Disputes Act and the result of the violation thereof. It is undisputed that the order of dismissal of the respondent was made after an enquiry on the basis of a charge sheet submitted to him. In his explanation to the show cause notice the respondent admitted having lodged the complaint before the Nirsra police on 19th September, 1960 and the harassment and-humiliation of two officers at the investigation by the police. He did not deny that the report made by him was false and contented himself by submitting :

"It is for the police and the Government authority to take any action against me if my report was at all false."

(1) [1960]1 S.C.R. 806.

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He was examined before the Labour Court and the only statement relating to conciliation proceedings made by him was that conciliation proceedings were held before the Labour Officer and the Labour Commissioner. In our view, the High Court failed to observe that under the Act pendency of conciliation proceedings at the time when the respondent was discharged could not affect the merits of the question at all.

The scope of sections 33 and 33-A was examined by this Court in several cases to some of which we shall presently refer. S. 33 (1) has obviously no application to the facts of this case. S. 33 (2) relates to the dismissal, discharge etc. of a workman for any misconduct not connected with an industrial dispute during the pendency of any conciliation proceeding before a conciliation officer or a Board etc. unless he had 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.

S. 33-A enables a workman who has been punished by dismissal or discharge etc. to make a come plaint in writing to a Labour Court, Tribunal or National Tribunal when an employer contravenes the provisions of S. 33 during the pendency of proceedings before Labour Court, Tribunal or National Tribunal etc. if such a complaint is made, the Labour Court, Tribunal etc. is to adjudicate upon the complaint as if it were a dispute referred to or pending before it and in accordance with the provisions of the Act submit its award to the appropriate Government. In other words, when the conditional down in s.33-A apply a workman who is punished as mentioned therein does not have to wait for a reference of an industrial dispute by an appropriate authority under S. 10 of the Act for adjudication of the dispute but can himself prefer his complaint which is to be treated in the same-way as a dispute under S. 10. These sections do not lend themselves to the construction that as soon as the Labour.

Court, Tribunal etc. finds that there has been a violation of S. 33 it should award reinstatement. It must go through the proceedings which would have to be taken under S. 10 and it would be the duty of the Labour Court etc. to examine the merits of the case in the light of the principles formulated in the Indian Iron and Steel Co.'s case. (1)

It has not been alleged in this case that any conciliation proceedings - were pending before a Labour Court, Tribunal or National Tribunal as envisaged in S. 33-A. Assuming for a moment that there was a conciliation proceeding before a labour officer, S. 33-A would not be attracted. In any event it would be open to the complaining workman to take exception to the conduct of the management in ignoring the provisions of S. 33 (2) (b).

In The Punjab National Bank Ltd.'s case (2) referred to by the High Court for the purpose of remitting the matter back to the Labour Court this Court, examined the scope of ss., 10, 33 and 33-A of the Industrial Disputes Act and pointed out (at p. 826)

"..... even if the requisite permission is granted to the employer under S. 33 that would not be the end of the matter. It is not as if the permission granted under S. 33 validates the order of dismissal. It merely removes the ban; -and so the validity of the order of dismissal can be made, and often is, challenged by the union by raising an industrial dispute in that behalf."

The contention on behalf of the workmen that disregard of a ban imposed by S. 33 of the Act would render the employer's action of dismissal void and inoperative was rejected by this Court. The reason for enactment of S. 33-A was explained at p. 830 of the said report. In that case the impugned orders of dismissal had given rise to an industrial dispute which was referred to a tribunal by the appropriate Government under S. 10 and'. this Court observed that

"There can be no doubt that if under a complaint filed under S. 33A a tribunal has to deal not only with the question of contravention but also with the merits of the order of dismissal, the position cannot be any different when a reference is made to the tribunal like the present under S. 10. What is true about the scope of enquiry under S. 33A

(1) [1958] S.C.R. 667.

(2) [1960] 1 S.C.R. 806.

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is a fortiori true in the case of an enquiry under S. 10. What is referred to the tribunal under S. 10 is the industrial dispute between the Bank and its employees. The alleged contravention by the Bank of S. 33 is no doubt one of the points which -the tribunal has to decide; but the decision on this question does not conclude the enquiry. The tribunal would have also to consider whether the impugned orders of dismissal are otherwise justified; and whether, in the light of the relevant circumstances of the case, an order of reinstatement should or should not be passed. It is only after all these aspects have been considered by the tribunal that it can

adequately deal with the industrial dispute referred to it and make an appropriate award." The Tribunal in our view rightly refused to go into the question of the pendency of any conciliation proceeding; but, even if there was any such proceeding, it would make no difference to the result in this case. The Tribunal would still have to consider whether the employer's action was justified in the light of the decision in the Indian Iron & Steel Co.'s case. (1) In other words, the Tribunal would have to be satisfied that the allegations, if any, about want of good faith or victimisation or unfair labour practice were baseless. The Tribunal would also have to be satisfied whether any complaint was made on the score that the enquiry was vitiated by basic error or violation of any principle of natural justice and its finding on which the order of dismissal was passed was therefore perverse or without any foundation.

The Tribunal came to the conclusion that there was no justification for the respondent's complaint to the police that the company's officials were in the habit of acting high-handedly and oppressively as alleged by him and further took the view that the respondent's action in defaming two of the officers of the company could not but be pronounced as an act subversive of discipline and undermining the authority of the officers and thereby affecting the maintenance of peace and good order in that factory.

(1) [1958] S.C.R. 667.

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Reliance was placed on a judgment of this Court in *Rodrick v. Karam Chand Thapar & Bros.* (1) and the observation therein that:

"It is well settled that if an application is made by an employee under s. 33A and it is, shown that the impugned dismissal of the employee has contravened s. 33, it is open to the employer to justify the dismissal on the merits by adducing satisfactory evidence before the Tribunal."

It was contended that this course was not adopted in this case. The facts in that case as found from the report are that the appellant who was a store keeper of the respondent company had been served with a charge sheet as a result of the checking of the stock in his care; this was followed by an enquiry and an order of dismissal of the appellant. The employee made an application under s. 33-A of the Act alleging that s. 33 had been contravened and he was entitled to reinstatement. The Tribunal rejected the preliminary objection of the company that an application under s. 33-A was not competent and thereafter proceeded to examine the merits of the case. As a result thereof the Tribunal believed the evidence led by the respondent to hold that the appellant was guilty of misappropriation.

To our mind, this case does not help the respondent. The Labour Court had to adjudicate upon the dispute which was referred to it; with regard to the respondent it had to go into the question as to whether he had been properly dismissed. On the material before it came to the conclusion that the respondent's action in lodging a false complaint to the police against the conduct of the appellant's officers was subversive of discipline which merited dismissal. The Labour Court had the evidence before it; the lodging of the complaint was not disputed, that the allegations therein were false were not denied and the humiliation of the officers was not contradicted. Not one of the grounds formulated in the *Indian Iron and Steel Co.s*

case(2) which could lead the Tribunal to hold that the dismissal was improper was substantiated.

(1) [1963] 1 L.L.L 248 at 249.

(2) [1958] S.C.R. 667.

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In the result, we hold that the order of the High Court remitting the matter back to the Labour Court was -not justified. The appeal is therefore allowed and the award of the Labour Court upheld. The order for costs made at the time when special leave was granted ,in this case will stand.

V. P. S.

Appeal allowed.

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JUDIS