PETITIONER:
WESTERN INDIA MATCH COMPANY LTD.

Vs.

RESPONDENT:
WORKMEN

DATE OF JUDGMENT20/08/1973

BENCH:
DWIVEDI, S.N.
BENCH:
DWIVEDI, S.N.
REDDY, P. JAGANMOHAN

CITATION:
1973 AIR 2650 1974 SCR (1) 434
1974 SCC (3) 330
CITATOR INFO :
R 1979 SC 65 (5)
R 1984 SC 505 (23)
R 1984 SC1064 (11,19)
R 1985 SC 504 (4)

ACT:
Industrial Dispute-Probation for a period longer than that provided by the employer's Standing Order-Validity.
Industrial Employment (Standing Orders) Act, 1946-Object and policy
U.P. Industrial Disputes Act, s. 6B-Scope of-'May' in sub. s. (2) should be read as 'shall'.
Labour Court-Power to modify Standing Orders-Power to order reinstatement.

HEADNOTE:
Under the Standing Order for the Watch and Ward staff of the appellant, a permanent workman' is one 'who has completed a probationary period of two months as such and is employed on a permanent post;' and 'a probationer' is a workman 'who is provisionally employed to fill a permanent vacancy and has not completed two months service.'
A watchman was appointed by the appellant on probation for a period of 6 months. His period of probation was extended, and during the extended period, his services were terminated. 'Mere was an industrial dispute and the questions, (1) whether the termination was legal or justified. and (2) to what relief the workman was entitled, were referred to the Labour Court. The Labour Court held that. the order of discharge was neither mala fide nor an act of victimisation; but set aside the order of discharge and directed reinstatement of the employee on the view that the term regarding 6 months probation in the employee's letter of appointment was in contravention of the Standing Order and was invalid.
Dismissing the appeal to this Court.
HELD : (1) The Labour Court has not travelled beyond the terms of reference, because, the validity or invalidity of the discharge depends on the validity of the term regarding 6 months' probation. [437D-E]
(2) Since, according to the Standing Order, a workman s all not be kept on probation for more than 2 months, the letter

of appointment (or special agreement) is inconsistent with the Standing Order to the extent of the additional 4 months' probation. [437E-G]
(3) The inconsistent part of the agreement is ineffective and unenforceable. [439F]
(a) To uphold the special agreement Would mean giving a go-by to the principle of three party participation. in the settlement of the terms of employment, incorporated in the Industrial Employment (Standing Orders) Act, 1946. The 'Act gives effect to the new thinking that Society has also an interest in the settlement of the terms of employment of industrial labour. While formerly there were two parties at the negotiating table-the employer and the workman it is now thought that there should also be present a third party, namely the State', representing society. The Certifying Officer tinder the Act, as the statutory representative of society, adjudges on the fairness or reasonableness of Standing Orders after considering and weighing the social interest in the
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Claims of the employer and, the demands of the workmen. The special agreement, in the instant case, in, so far as it provides for additional 4 months of Probation, contravenes the Standing Order. [439A-E]
(b) The terms of employment specified in the Standing Order would prevail over the corresponding terms in the contract of service in existence on the enforcement of the Standing Order. If a prior agreement inconsistent with the Standing Orders will not survive, an agreement posterior to and inconsistent with the Standing Order should also not prevail. [437-G; 438-D]
Agra Electric Supply Co. Ltd. v. Shri Alladin, [1970] 1 S.C. R. 808, Avery India Ltd. V. Second Industrial Tribunal, west Bengal A.I.R. 1972 S.C. 1626. The United Provinces Electric Supply Co. Ltd. Allahabad v. Their Working, [1972] 2 S.C.C. 54, and Salem Erode Electricity Distribution Co. Ltd v. Salem Erode Electricity Distribution Co. Ltd. Employees Union, [1966] 2 S.C.R. 498, 504, followed.
M/s J. K. Cotton Manufactures Ltd., Kanpur v. J. N. Tewari A.I.R. 1959 All. 639 and Banaras Electric Light and Power Co. Ltd. Behlupura v. Government of Uttar Pradesh and Others, [1962] 1 L.L.J. 14, overruled.
(c) Section 6B(1) of the U.P. Industrial Disputes Act deals with a settlement arrived at by agreement between the employer and workmen otherwise than in the Course of conciliation proceeding. Sub-section (2) provides that after the settlement is arrived at, the parties to the settlement or any one of them may' apply to the Conciliation Officer for registration of the settlement. In the context of sub-s. (3) the word 'may' should be read is 'shall'. Subsection (3) provides that while considering the question of the registration of a settlement, the conciliation officer shall examine whether it is inexpedient to do so on public ground affecting social justice or whether the settlement has been brought about as result of collusion, fraud or misrepresentation. In the present case, the Conciliation Officer having had no say in the making of the special agreement the consent of the employee is meaningless.[439F440A]
(4) It is true that a Labour Court may determine terms and conditions of employment which may be inconsistent with a Standing Order; but in the present case, the reference did not give any such jurisdiction to the Labour Court to determine the terms and conditions of employment of the

workman. [44OB-C]
(5) (a) The appellant did not plead in its written statement before the Labour Court that the work of the discharged employee was unsatisfactory during the probationary period, not did it lead any evidence in proof of the unsatisfactory work. The argument was also not raised in the Special leave petition. Therefore, the appellant could not be permitted to raise the contention that since the discharge was occasioned by the unsatisfactory work of the employee the Labour Court should not have ordered reinstatement. [440E-F]
(b) The Labour Court may interfere with an order of discharge not only when it was made mala fide or as a. measure of victimisation, but also when it finds that it was arbitrary or capricious or so unreasonable as to lead to the inference that it was not, made bona fide. In the present case as there was no plea and no evidence to show that the work of the employee was unsatisfactory, the conclusion is obvious that the order of discharge is arbitrary. [441A-B]
Tata Oil Mills Company, Ltd. v. its Workmen and another [1963] 2 L.L.J. 78 M/s Francis Elein and Co Private Ltd.v The Workmen and another, A I.R. 1971 S.C. 2414 and Air India Corporation, Bombay v. V. A. Robellow, and another, [1972] 1 L.L.J. 501, referred to.
The question whether a Standing Order is, law and. hence the special agreement, in contravention of it, was void, not decided. [440C-D]
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JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2375 of 1698.
Appeal by special leave from the award dated April 19, 1968 of the Labour Court II Lucknow in Adjudication Case, No. 3 of 1967 L.C. (1), Lucknow/Adjudication Case No. 184 of 1967 L.C. (11) Lucknow published in Uttar Pradesh Gazette dated August 10, 1968.
C. K. Daphtary, P. C. Bharatri and O. S. Mathur, for the appellant.
S. C. Aggarwal and V. J. Francis, for the respondents.
The Judgment of the Court was delivered by
DWIVEDI, J.-The Wesetrn India Match Company Limited, Bareilly (hereinafter called the Company) is governed by the Industrial Employment (Standing Orders) Act, 1946 (hereinafter called the Act). It appears that it has a separate Standing Order for the Watch and Ward Staff. According to the Standing Order, there are five categories of workmen : (1) Permanent, (2) Probationer, (3) Substitute, (4) Temporary and (5) Apprentice. A permanent workmen is one " who has completed a probationary period of two months as such and is employed on a permanent post." A probationer is a workman "who is provisionally employed to fill a permanent vacancy and has not completed two months service". (emphasis added)
The Company appointed one Prem Singh as a watchman on September 1, 1965. The Letter of appointment states that he would be "on probation for a period of six months." We shall hereafter refer to this contract of service as a "special agreement." The period of probation expired on March 1, 1966, but he continued to serve on his post. On April 13, 1966 the Company passed an order extending the period of his probation by two months with retrospective effect from March 1, 1966. Nine days later on April 22, 1966, the Company

passed this order : "the above watchman has been discharged with effect from 1-5-1966 for the reasons mentioned below : (1) probation period not approved, services are no longer required by the Company."

This order gave rise to an industrial dispute. The dispute was referred for adjudication by the Government of Uttar Pradesh to the Labour Court (II), Lucknow. The referring order was made on April, 9, 1968. The question referred to the Labour Court is :

> "Whether the employers have terminated the services of the workman Shri Prem Singh, son of Shri Bhartu, Watchman T. No. 247, with effect from 1-5-1966, legally and/or justifiably ? If not, to what relief is the workman concerned entitled."

Prem Singh was represented before the Labour Court by the Matches Mazdoor Sangh, Bareilly. The case of the Sangh was that the employment of Prem Singh on probation for six months was in contravention of the Standing Order. It was maintained that on the

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expiry of two months Prem Singh automatically became a permanent workman. It was also said that during the entire period of his probation Prem Singh was never told by the Company that it was not satisfied with his work. According to the Company, the term of six months' probation was valid. It was said that as his work was not found satisfactory, he was discharged.

The Labour Court has found that the discharge was neither mala fide nor an act of victimisation for trade union activities. However, the Labour Court has set aside the order of discharge and has directed his reinstatement with continuity of service and back wages. This is so, because it has taken the view that the term regarding six months' probation was in contravention of the Standing Order and was invalid. It has held that on completing two months' probation Prem Singh automatically became a permanent employee.

Shri Daphtary, counsel for, the Company, has submitted that the Labour Court has gone beyond the terms of reference. It is pointed out that the Government Order of reference does not expressly empower the Labour Court to decide whether the term regarding six months' probation was valid or invalid. In our view, the Labour Court has not travelled beyond the terms of reference. It was called upon to decide whether the order of discharge was legal and/or justified. The validity or invalidity of the discharge obviously depended on the validity or invalidity of the term regarding six months' probation. If this term was invalid the order of discharge also would obviously be invalid.

The next submission of Shri Daphtary is that the special agreement is not inconsistent with the Standing Order. According to the Standing Order, a workman shall not be kept on probation for more than two months. If he has worked during these two months to the- satisfaction of the Company,' he becomes permanent. But as a result of special agreement, even though he has worked during these two months to the satisfaction of the Company, he will not be a permanent workman. While, the Standing Order says: "Confirm him on the expiry of two months", the special agreement says : "No, wait till the expiry of six months." There is thus a conflict between them. They cannot coexist. SO we are of opinion that the special agreement is inconsistent with the Standing Order to the extent of the additional four months' probation.

The terms of employment specified in the Standing Order would prevail over the corresponding terms in the contract of service in existence on the enforcement of the Standing Order. It was in effect so held in the Agra Electric Supply Co. Ltd. v. Shri Alladin. (1) Avery India Ltd. v. Second Industrial Tribunal West Bengal.(2) and the United Provides Electric Supply Co. Ltd. Allahabad v. Their Workmen. (3). While the Standing Orders are in force, it is not permissible to the employer to seek statutory modification of them so that there may be one set of Standing Orders for some employees and another

(1) [1970] 1 S. C. R. 808
(3) [1972] 2 S. C. C 54
(2) A. I. R. 1972 S. C, 1926

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set for the rest of the employees. In Salem Erode Electricity Distribution Company Ltd. v. Salem Erode Electricity Distribution Co. Ltd. Employees Union(1), Gajendragadkar C. J. said:

> " (T) here is no scope for having two separate Standing Orders in respect to any one of them. Take the case of classification of workmen. It is inconceivable that there can be two separate Standing Orders in respect of this matter. What we have said about classification is equally true about each one of the other said clauses; and so, the conclusion appears to be irresistible that the object of the Act is to certify Standing Orders in respect of the matters covered by he Schedule; and having regard to these matters, Standing Orders so certified would be uniform and would apply to all workmen alike who are employed in any industrial establishment."

If a prior agreement, inconsistent with the Standing Orders will not survive, an agreement posterior to and inconsistent with the Standing Order should also not prevail. Again, as the employer cannot enforce two sets of Standing Orders governing the classification of workmen, it is also not open to him to enforce simultaneously the Standing Order regulating the classification of workmen and a special agreement between him an and individual workman settling his categorisation.

In view of the decisions of this Court cited earlier, the decisions in M/s.J. K. Cotton Manufacturers Ltd. Kanpur v. J. N. Tewari 2 ) and the Banaras Electric Light and Power Co. Ltd. Berhlupura v. Government of Uttar Pradesh and others(3) no longer lay, down good law. They take the view that notwithstanding the Standing Orders it is open to the employer to conclude an agreement with an individual workman which may be inconsistent with the Standing Orders. These decisions are overruled.

In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belied their faith. Later generations discovered that the workman did not possess adequate bargaining strength to secure fair terms and conditions of service. When the workmen also made this discovery, they organised themselves in trade unions and

insisted on collective bargaining with the employer. The advent of trade. union and collective bargaining created new problems of maintaining industrial peace and production for the society. It was therefore considered that the society has also an interest in the settlement of the terms of employment of industrial labour. While formerly there were two parties at the negotiating table the employer and the workman, it is now

(1) [1966] 2 S. C. R. 498 at p. 504. (2) A. 1. R. 1959 All. 639

(3) [1962] 1 L. L. J. 14.

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thought that there should also be present a third-party the State as representing, the interest of the society. The Act gives effect to this new thinking. By. s.4 the Officer certifying the Standing Order is directed to adjudicate upon "the fairness or reasonableness" of the provisions of the Standing Order. The Certifying Officer is the statutory representative of the society. It seems to us that while adjudging the fairness or reasonableness of any Standing Order, the Certifying Officer should consider and weigh the social interest in the claims of the employer and the social interest in the demands of the workmen. Section 10 provides the mode of modifying the Standing Orders- The employer or die workman may apply to the Certifying Officer in the prescribed manner for the modification of the Standing Orders. Section 13(2) provides that an employer who does any act in contravention of the Standing Order shall be punishable with fine which may extend to one hundred rupees. it also provides for: the imposition of a further fine in the case of a continuing offence. The fine may extend to twenty five rupees for every day after the first during which the offence continues.

The special agreement, in so far as it provides for additional four months of probation, is an act in contravention of the Standing Order. We have already held that. It plainly follows from sections 4, 10 and 13(2) that the inconsistent part of the special agreement cannot prevail over the Standing Order. As long as the Standing Order is in force, it is binding on the Company as well as the workmen. To uphold the special agreement would mean giving a go by to the Acts principle of three party participation in the settlement of terms of employment. So we are of opinion that the inconsistent part of the special agreement is ineffective and unenforceable.

It is pointed out on behalf of the Company that s.18 of the Industrial Disputes Act provides that any settlement between the employer and the workman is binding on them. It is said that accordingly the special agreement in the present case would be binding on Prem Singh. It is not necessary to construe s.18 in this case because it is governed by the provisions of the Uttar Pradesh Industrial Disputes Act. Section 6B(1) of this Act deals with a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings Sub-section (2) thereof provides that after the settlement is arrived at, the parties to the settlement or any one of them 'may' apply to the Conciliation Officer of the area concerned for the registration of the settlement- Sub-section (3) is important. It provides that while considering the question of the registration of a settlement, the Conciliation Officer shall examine whether it is inexpedient to do so on public ground affecting social justice or whether the settlement has been brought about as a result of colbersion, fraud or misrepresentation. We think that the word 'may' in

sub-section (2) should be read as 'shall' in the context of sub-section (3). if social justice is to be ensured and if collusion, fraud or misrepresentation is to be eliminated, it is necessary that every privately negotiated settlement should be submitted for registration to the Conciliation Office. It may be observed that the U. p. Act also insists on the three party

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participation in the settlement of terms of employment. In the result the Company cannot enforce the special agreement on the pretext that Prem Singh had voluntarily agreed to it. The conciliation officer 'having had no say in the making of this agreement, the consent of Prem Singh is meaningless.

It is then said that the Standing Order can be modified in a suitable case by the Labour Court. In this connection reliance is placed on the Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. v. The Workmen(1). It is true that the Labour Court may determine terms and conditions of employment which may be inconsistent with the Standing Order. But in the present case the reference did not give jurisdiction to the Labour Court to determine terms and conditions of employment of Prem Singh. The reference directed the Labour Court to decide whether the discharge of Prem Singh from service as legal justifiable.

Shri Agarwala has argued that the Standing Order is a law and accordingly the special agreement in contravention of it is void In support of his argument he has relied on a number of decisions of this Court. Shri Daphtary has argued to the contrary and has relied on some other decisions. In the view that we have taken earlier, it is not necessary to consider this question. Accordingly, we do not refer to the authorities cited before us.

Another contention of Shri Daphtary is that in the circumstances of this case the Labour Court should not have made an order for reinstatement of Prem Singh. Stress is laid on the assertion in the order of discharge that his work during the entire probationary period was not satisfactory. In support of his argument Shri Daphtary has relied on the Hindustan Steel Ltd. Rourkela v. Roy (A.K. and others) (2). This decision does not assist him, for in the case before us the Company did not plead in its written statement filed before the Labour Court that the work of Prem Singh was unsatisfactory during the probationary period, nor did it lead any evidence in proof of his unsatisfactory work. The argument does not appear to have been raised in the Special Leave Petition also. Accordingly, it is not possible to permit this argument to be raised now. (See Binny Ltd. v. Their Workmen, (3) and the Management of Panitole Tea Estate v. The Workmen(4).

In the end, Shri Daphtary has urged that as the Labour Court has found that the discharge of Prem Singh from service was neither mala fide nor a measure of victimisation, he should not have been reinstated to service. Reliance is placed on the Tata Oil Mills Company Ltd. v. Its Workmen and another(5), M/s Francis Elein and Co. Private Ltd. v. The Workmen and another(6) and the Air-India Corporation, Bombay v. V. A. Rebellow and another(7). It is settled law now that the

(1) [1968] 1 S. C. R. 581 [1970] 1 L. L. J. 228
(3) [1972] 1 L. L. J. 478(4) [1971] 3 S. C. R. 7 74
(5) [1963] 2 L. L. J. 78 (6) A. I. R. 1971 S.C. 2414
(7) [1972] 1 L. L. J. 501.

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Labour Court may interfere with the order of discharge where it is satisfied that it was made mala fide or was a measure

of victimisation or unfair labour practice. It has also been held by this Court that the Labour Court may interfere with the order of discharge if it finds that the order is arbitrary or capricious or so unreasonable as to lead to the inference that it is not made bona fide. As there was no plea and no. evidence to show that the work of Prem Singh was unsatisfactory, the conclusion is obvious that the order of discharge is arbitrary. Accordingly, the Labour Court could interfere and make an order of reinstatement.

There is no force in this appeal and accordingly it is dismissed with costs.

V.P.S.

Appeal dismissed..

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