1962

British India Corporation Ltd. v. Collector of Central Excise

Hidayatullah J.

In our judgment the Schedule which is characterised as discriminative is based upon a reasonable classification and is validly enacted. If the law is held to be valid the attack under Arts. 19 and 31 must also fail.

In view of what we have said above the petition must fail. It will be dismissed with costs.

Petition dismissed.

1962

August 21.

THE PROVINCIAL TRANSPORT SERVICE

v.

STATE INDUSTRIAL COURT

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

Industrial Dispute— Dismissal of employee —Finding that no enquiry held by employer before dismissing — Finding perverse — Appeal Court confirming finding — Writ Pelition before High Court — Interference by High Court — C. P. & Berar Industrial Disputes Settlement Act, 1947(C. P. 23 of 1947), s. 16.

The appellant employed K as a temporary motor driver on the express condition that until such time as he was confirmed his services were liable to be terminated without notice or compensation and without assigning any reason. Sometime afterwards, the appellant served a charge sheet upon K and aftet holding an enquiry dismissed him. K made an application before the Labour Commissioner under s. 16 C. P. & Berar Industrial Disputes Settlement Act, 1947, praying for reinstatement alleging that the dismissal was illegal as it was not preceded by an enquiry. The Labour Commissioner was doubtful whether any enquiry was held by the appellant but on the basis of evidence adduced before him he held the charges proved and accordingly dismissed the application. On appeal, the Industrial Court held that the Labour Commissioner had no jurisdiction to hold the enquiry and made an order directing reinstatement of K with

back wages. Thereupon, the appellant filed a writ petition before the High Court for quashing the order of the Industrial Court but the High Court dismissed the application. The appellant contended (i) that in view of the terms of employment the appellant could dismiss K without holding an enquiry, (ii) that the Labour Commissioner had jurisdiction to hold the equiry and (iii) that the finding of the Labour Commissioner that no enquiry had been held by the appellant was perverse and the High Court should have intervened,

Held, that the finding that no enquiry had been held by the appellant before dismissing K was perverse and the appellant was entitled to a writ quashing the order of the Industrial Court and restoring that of the Labour Commissioner. The appellant had produced before the Labour Commissioner the evidence recorded at the enquiry which consisted of the statement of K himself signed by him and the statements of two conductors. The explanation of K that he had been made to sign on a blank paper was unacceptable. The finding of the Labour Commissioner amounted to a clear error of law, the industrial Court erred in thinking that it was bound by this finding and this error on its part was so apparent on the face of the record that it was proper and reasonable for the High Court to correct the error.

Semble, Inspite of the terms of employment the appellant could not dismiss K without holding an enquiry and that even if the appellant had failed to hold the enquiry it was open to the Labour Commissioner to hold one.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 504 of 1961.

Appeal by special leave from the judgment and order dated October 17, 1959, of the Bombay High Court at Nagpur in Special Civil Application No. 59 of 1959.

M. C. Setalvad, Attorney-General for India, E. J. Mohrir, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the appellant.

B. A. Masodkar, Bishambar Lal and *Ganpat Rai*, for the respondent No. 3.

1962

Provincial Transport Service v. State Industrial Court

Das Gupta J.

1962. August 21. The Judgment of the Court was delivered by

DAS GUPTA, J.—This appeal by special leave is against an order of the High Court of Bombay at Nagpur rejecting an application made by this appellant under Arts. 226 and 227 of the Constitution for quashing an order made by the State Industrial Court, Nagpur, in the matter of dismissal by the appellant of its employee, Kundlik Tulsiram Bhosle. Kundik Tulsiram Bhosle, who is the third respondent before us, was engaged as a temporary Motor driver in the service of the appellant. He was appointed on December 22, 1954, and it was expressly mentioned in the letter of appointment that until such time as he was confirmed by an order in writing his services were liable to be terminated at any time without notice or compensation and without assigning any reason. It was also stated that his case would be considered for confirmation one year after the date of appointment, provided a suitable permanent post fell vacant and his work was found satisfactory. By an order dated December 19, 1955, he was dismissed from service from December 20, 1955. It appears that before this step was taken by the managem nt, Kundlik had been served with a charge sheet that on November 14, when he was in charge of a Bus as a driver he allowed Conductor Vyankati to carry five passengers without ticket and also allowed an unauthorised driver Sheikh Akbar to drive the Bus. The charge sheet was served on Kundlik on November 9, and on November 19, he submitted an explantion. According to the management an enquiry was thereafter held by the Depot Manager and the charges were found established. Accordingly he was dismissed. Kundlik, the employee made an application under s.16 of the C. P. & Berar Industrial Disputes Settlement Act, 1947, before the Labour Commissioner, Madhya Pradesh, Nagpur, alleging that his dismissal had not

been preceded by an enquiry, that he had been illegally dismissed and praying for reinstatement.

The appellant pleaded in its written statement that an enquiry had been properly held and that the order of dismissal was legally made. The Assistant Labour Commissioner, who has the powers of the Labour Commissioner, under s.16, dealt with the application. He was of opinion that there were "sufficient grounds to doubt whether an enquiry was really made by the Non-applicant Management and if at all one was held, whether the applicant as an accused person, had the chance to put questions to the witnesses who deposed against him." On the basis of the evidence adduced before him the Assistant Labour Commissioner came to the conclusion that the employee could not be held guilty of the charge of allowing an unauthorised person to drive the vehicle as Sheikh Akbar was a fully licensed driver of the Company but that his guilt on the other charge that he carried five passengers without tickets was fully established. Accordingly he dismissed the applications.

Against this order the employee moved the State Industrial Court, Nagpur. That Court felt that it would not be justified in interfering with the findings of the Labour Commissioner that no enquiry had been held by the Management and that the Assistant Labour Commissioner had no jurisdiction to hold an enquiry. In this view the Court set aside the order of the Labour Commissioner and made an order directing reinstatement of the employee with back wages.

It was against this order that the employer moved the High Court of Bombay on the ground that the Assistant Labour Commissioner and the State Industrial Court had erred in thinking that no enquiry had been held by the management and

1962

Provincial Transport Service v. State Industrial Court

Das Gupta J.

that the said Industrial Court was also wrong in thinking that the Assistant Labour Commissioner had no jurisdiction to hold an enquiry himself.

The High Court was of opinion that it could not exercise its powers under Arts. 226 and 227 of the Constitution to interfere with the finding of the Assistant Labour Commissioner and the Revisional Court that no enquiry had been held. Proceeding on that basis the High Court also agreed with the Industrial Court that the Assistant Labour Commissioner had no jurisdiction to hold the enquiry himself. The High Court concluded that there was no error in the decision of the Industrial Court and so refused the application.

Three points have been urged on behalf of the appellant. The first is that it was not necessary in law to hold an enquiry before dismissing the employee in view of the terms of his employment and so in exercising jurisdiction under s.16 of the C. P. & Berar Industrial Disputes Settlement Act, the Industrial Court was not justified in interfering with the order of dismissal. Secondly, it was urged that in any case, if it be held that an enquiry by the management was necessary in law it should be proper to hold that the Assistant Labour Commissioner had jurisdiction to hold enquiry himself. Thirdly, it was urged that the view taken by the Assistant Labour Commissioner that no enquiry had been held was perverse and the High Court ought to have set aside that finding and given relief on the basis that an enquiry had been properly held.

For a proper understanding of the first contention raised it is necessary to remember briefly the scheme of the jurisdiction conferred by s.16. Section 16(1) authorises the State Government to make a reference to the Labour Commissioner in

disputes touching, inter alia, the dismissal of an employee. Section 16 (2) provides that if the Labour Commissioner finds "after such enquiry as may be prescribed" that the dismissal was "in contravention of any of the provisions of this Act or in contravention of the Standing orders made or sanctioned under the Act," he may give certain reliefs to the employee. According to the employee the order of dismissal was in contravention of the provisions of s.31 of the Act. That section provides inter alia that if any employer intends to effect a change in respect of any industrial matter mentioned in Schedule 2 he shall give 14 days' notice of such intention in the prescribed form to the representative of the employees. Among the industrial matters mentioned in Schedule 2 is included "dismissal of any employee except in accordence with law or as provided for in the Standing Orders settled under s.30 of this Act." Admittedly, the appellant concern had no standing order on the matter of dismissal. The question is whether the dismissal of the employee without an enquiry was "inaccordance with law". If it is not, the Labour Commissioner would have jurisdiction. If the dismissal without such an enquiry be in accordance with law the Labour Commissioner would have no jurisdiction to interfere with the order of dismissal made by the management. The learned Attorney-General argues that a dismissal made in accordance with the ordinary law of contract as between Master and Servant must be held to be "inaccordance with law" within the meaning of this Schedule, and the fact that any industrial law as evolved by the courts in industrial adjudication under the Industrial Disputes Act should not colour our consideration of the matter. As at present advised, we are unable to see why the word "law" in this phrase "in accordance with law" as used in Schedule 2 should be given a

1962

Provincial Transport Service v. State Industrial Court

Das Gupta J.

restricted connotation so as to leave out industrial law as evolved by the courts.

In dealing with industrial disputes under the Industrial Disputes Act and other similar legislation, Industrial Tribunals, Labour Courts, Appellate Tribunals and finally this Court have by a series of decisions laid down the law that even though under contract law, pure and simple, an employee may by liable to dismissal, without anything more, industrial adjudication would set aside the order of dismissal and direct reinstatement of the workman where dismissal was made without proper and fair enquiry by the management or where even if such enquiry had been held the decision on of the Enquring Officer was perverse or the action of the management was mala fide or amounted to unfair labour practice or victimisation, subject to this that even where no enquiry had been held or the enquiry had not been properly held the employer would have an opportunity of establishing its case for the dismissal of the workman by adducing evidence before an Industrial Tribunal. It seems to us reasonable to think that all this body of law was well known to those who were responsible for enacting the C. P. & Berar Industrial Disputes Settlement Act, 1947, and that when they used the word "in accordance with law" in cl.3 of Schedule 2 of the Act they did not intend to exclude the law as settled by the Industrial Courts and this Court as regards where a dismissal would be set aside and reinstatement of the dismissed workman ordered. If the word "law" in Sch.2 include not only enacted or statutory law but also common law, it is difficult to see why it would not include industrial law as it has been evolved by industrial decisions. We are therefore *prima facie* inclined to think that the first contention raised by the learned Attorney-General that it was not necessary in law to hold an enquiry before

dismissing this employee—in view of the terms of his employment, cannot be accepted. At the same time we are inclined to think that there is considerable force in the second contention that even though a proper enquiry was not held by the management the Labour Commissioner had jurisdiction to hold an enquiry himself. This would *prima facie* be sufficient ground for holding that the Industrial Court was wrong in interfering with the order made by the Assistant Labour Commissioner and the High Court ought to have issued an appropriate writ to quash the order made by the Industrial Court. We are aware of the view taken by the Bombay High Court in *Prov. Transp. Services* v. *Assist. Lab. Commr.* (1) and *Maroti* v. *Member, State Industrial Court* (2) that the "Law" in the phrase "in accordance with law" in Schedule 2 does not include Industrial law. For the reasons mentioned above, we are inclined to think, with respect, that this view is not correct. We think it unnecessary however to discuss this matter more closely or record our definite and final conclusion on these questions as for the reasons to be presently stated we are of opinion that in any case the third ground raised on behalf of the appellant should succeed.

As has already been stated the employee's case was that no enquiry had been held by the management. This was denied by the management and it was alleged that an enquiry had been held. The management produced before the Assistant Labour Commissioner papers showing the evidence that was claimed to have been recorded during such enquiry. According to this record, three persons were examined during the enquiry—the employee Kundalik himself, one Conductor Surewar and the Conductor Vyankati. At the bottom of

(1) IX Bombay Law Reporter, 72.
(2) IX Bombay Law Reporter, 1422.

1962

Provincial Transport Service v. State Industrial Court

Das Gupta J.

this paper there is Kundalik's signature and also Vyankati's signature. The employee's case was that his signature had been obtained on a blank paper and the document was then written up. In the absence of any evidence, it is impossible however for any reasonable judge of facts to persuade himself that the management would descend to this step of forgery for the purpose of getting rid of an employee in the position of Kundalik. The Assistant Labour Commissioner himself has not said that he believes the explanation of the employee that his signature had been obtained on a blank paper. He was however impressed by the fact that signature of Kandalik and Vyankati only were obtained and the Enquiring Officer's signature does not appear on the paper While it would certainly have been better if the Enquiring Officer had also put his signature on the paper containing the statements, that omission cannot possibly be a ground for thinking that he did not hold the enquiry. The conclusion of the Assistant Labour Commissioner that "there are sufficient ground to doubt whether an enquiry was really made" must therefore be held to be perverse. It has often been pointed out by eminent judges that when it appears to an appellate court that no person properly instructed in law and acting judicially could have reached the particular decision the Court may proceed on the assumption that misconception of law has been responsible for the wrong decision. The decision of the Assistant Labour Commissioner that no enquiry had been held by the management amounts therefore, in our opinion, to a clear error in law. The Industrial Court erred in thinking that it was bound by this decision of the Labour Commissioner and this error on its part was, in our opinion, an error so apparent on the face of the record that was proper and reasonable for the High Court to correct that error.

On behalf of the respondent it was sought to be argued that even if an enquiry had been held it has not been shown that the employee had an opportunity of cross-examining witnesses or adducing evidence of his own. It is not open however for the learned Counsel to raise the question in view of the fact that the employee did not ever make any such case himself. His case, as already stated, was that no enquiry had been held at all. No alternative case that the enquiry held was improper because he had not been allowed to cross-examine witnesses or to adduce evidence was made by him. It does not appear that in the present proceedings the employee stated clearly that he wanted to lead evidence and was not allowed to do so or that he wanted to cross-examine witnesses and was denied an opportunity to do so. It is not open to him therefore to raise this question for the first time before us.

We have accordingly come to the conclusion that the High Court ought to have held that there was a proper enquiry held against this employee and the management dismissed him on finding on that enquiry that the two charges against him had been fully proved, and that there was no reason to think that the management acted mala fide. The appellant was therefore entitled to an order for setting aside the order of the Industrial Court.

Accordingly, we allow the appeal, set aside the order of the High Court and order that the appellant's application under Arts. 226 and 227 of the Constitution be allowed and the order of the State Industrial Court be set aside and the order of the Assistant Labour Commissioner dismissing the employee's application be restored. There will be no order as to costs.

Appeal allowed.