

INDIA MARINE SERVICE PRIVATE LTD.

1962

August 8.

v.

THEIR WORKMEN

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

Industrial Dispute—Dismissal of employee—Insubordination—Tribunal's power to re-instate—Lock-out due to illegal strike—Lock-out originally valid but found invalid later—Claim for wages for the period of lock-out.

B, a clerk in the appellant company, was found shouting and behaving in a rude and insolent manner with his superior officer. In consequence of this incident a charge-sheet was issued to him and he was asked to give his explanation for his behaviour; he was also asked to give explanation in respect of certain purchases made by him for the company. Eventually an enquiry was held by the Managing Director at which he found that two charges were made out, and on the basis of the findings the company dismissed B from his post. In the letter by the Managing Director dated October 29, 1958, addressed to B it was stated: "After giving your matter our very careful consideration, we have, therefore, painfully come to the decision that in the interest of discipline and business you should be forthwith dismissed from our service. . . . In taking this action against you we have also taken into consideration your past record which is very much against you." The Industrial Tribunal considered that the findings were based not merely on the charges set out in the charge-sheet but on certain other charges which B was not given an opportunity to explain, and, therefore, the enquiry was vitiated and the dismissal could not be sustained. The Tribunal proceeded to consider the evidence and held that the allegation of insubordination against B was not proved. It, accordingly, ordered his re-instatement.

Held, that the order of the Tribunal was contrary to law; that the Managing Director must be considered, in his letter; to have arrived at the conclusion that B's services should be terminated in the interest of discipline, though he had added one sentence to give additional weight to the decision already arrived at; and that the Tribunal was not competent to go behind the finding of the Managing Director and consider for itself the evidence adduced before him.

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On account of a sudden strike launched by the workmen on November 13, 1958, the company declared a lock-out. The lock-out continued till January 5, 1959, on which date the company's works were re-opened. It was found that while the strike was unjustifiable and the lock-out when it was ordered on November 13, 1958, was justified, its continuance for 53 days was 'wholly unreasonable' and, therefore, unjustified.

Held, that where a strike is unjustified and is followed by a lock-out which has, because of its long duration, become unjustified, the proper course for an industrial tribunal is to apportion the blame and direct the payment of the wages for the period of the lock-out which could be considered as unjustified.

Where a strike is unjustified and the lock-out is justified the workmen would not be entitled to any wages at all, but where the strike is justified and the lock-out is unjustified the workmen would be entitled to the entire wages for the period of strike and lock-out.

CIVIL APPELLATE JURISDICTION : Civil Appeal
No. 202 of 1962.

Appeal by special leave from the Award dated January 31, 1961, of the Third Industrial Tribunal, West Bengal, in case No. VIII-28 of 1960.

Y. Kumar, for the appellant.

B. P. Maheshwari, for the respondents.

1962. August 8. The Judgment of the Court was delivered by

Mudholkar J.

MUDHOLKAR, J.—In this appeal by special leave against an award made by the Third Industrial Tribunal, West Bengal, two questions arise for consideration. The first is whether the dismissal of Robin Bose, Purchaser, was justified and the other is whether the appellant's employees were entitled to any wages for the period between November 13, 1958, and January 4, 1959, during which there was a lock-out.

In a sense the two questions are separate and we will first mention the facts relevant to the question regarding the dismissal of Robin Bose. Bose was a clerk, designated as Purchaser by the appellant company. On September 13, 1958, at about 10-00 a. m. R. N. Chatterjee, under whose supervision Bose was working, took from the latter's table the purchase estimate book maintained by him for the purpose of checking an item of purchase made by him on August 18, 1958. Shortly afterwards Bose went up to Chatterjee and asked for the book to be returned. Chatterjee told him that the book should be left there for some time and would be returned to him after he (Chatterjee) had finished with it. Bose, however, got annoyed. He flared up and started abusing Chatterjee in an objectionable language in the presence of the entire office staff. Though reminded by Chatterjee of the need for maintaining discipline in the office he did not pay any heed to Chatterjee. Then he told him in a loud and threatening voice: "Don't teach me office discipline. I have worked in bigger offices, you shall have to bear consequence, if you don't return the book right now." Chatterjee reminded him that he was "purchase-in-charge" and had every right to see the registers maintained by the purchase department. This only infuriated Bose further and he said "I shall see you—I know how to teach you a good lesson," and left Chatterjee's table. Shortly thereafter the Managing Director came and Chatterjee reported the matter to him about Bose. Bose was then called by the Managing Director to his Chamber and asked for an explanation for shouting and behaving in a rude manner with his superior. It would appear that Bose was not repentant and after leaving the Managing Director's room again started being nasty to Chatterjee and said in a loud voice "If you don't arrange to return the book at once I will teach you a good lesson on the road."

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Thereafter the Managing Director came out of the room and with difficulty succeeded in making him quiet.

In consequence of this incident a charge-sheet was issued to Bose and he was asked to give his written explanation for his rude and insolent behaviour towards his superior officer R.N. Chatterjee. He was also asked to explain another matter, that is, not bringing to Chatterjee's notice the fact that on August 18, 1958, he had bought copper sheets at Rs. 3-1-0 per lb. from Messrs. Joydeb Nityalal Paramanick and when he was sent again to purchase the same commodity from the same firm on August 21, 1958, he bought it at the rate of Rs. 3-4-0 per lb. In his reply dated September 20, 1958, Bose stated that what was set out in the charge-sheet was distortion of facts and that at the time of enquiry he would place all the facts before the enquiry officer. He, however, denied the charges. To this the company replied saying that the statement was vague and that in his own interest and in the interest of justice he should give his precise explanation. To this Bose replied saying that he had nothing further to say. Then some further correspondence ensued between Bose and the company and as a result of something which Bose had said is one of his letters he was served with a second charge-sheet.

Eventually an enquiry was held by the Managing Director at which he found that the two charges set out in the first charge-sheet were made out. On the basis of the findings the company dismissed Bose from his post. No separate report had been drawn up by the Managing Director who held the enquiry but all material things were set out in the letter dated October 29, 1958, addressed by him to Bose.

The Tribunal observed that no enquiry was held on the second charge-sheet and, therefore, the charge-sheet should be ruled out from consideration and that as the findings were based not merely on the charges set out in the first charge-sheet but on certain other charges which Bose was not given an opportunity to explain the enquiry was vitiated and the dismissal could not be sustained. It, therefore, proceeded to consider the evidence adduced before the domestic Tribunal and held that the allegation of insubordination against Bose has not been proved by convincing evidence. It, therefore, ordered the re-instatement of Bose with full back wages and allowances from the date of his dismissal upto the date on which he will be re-instated.

It is no doubt true that no enquiry was held on the charges contained in the second charge-sheet and, therefore, that charge-sheet was rightly kept out of consideration by the Managing Director and the Tribunal. It is true that a reference is made to certain extraneous matters in the letter of the Managing Director dated October 29, 1958, addressed to Bose. But considering the letter as a whole and particularly the last paragraph it seems to us to be abundantly clear that the decision of the Managing Director to dismiss Bose was based only on the charge of insubordination. In this connection it will be useful to quote that paragraph:

“After giving your matter our very careful consideration, we have, therefore, painfully come to the decision that in the interest of discipline and business you should be forthwith dismissed from our service. Accordingly your service will no longer be required by us from today. In taking this action against you we have also taken into consideration your past record which is very much against you.”

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It is true that the last sentence suggests that the past record of Bose has also been taken into consideration. But it does not follow from this that that was the effective reason for dismissing him. The Managing Director having arrived at the conclusion that Bose's services must be terminated in the interest of discipline, he added one sentence to give additional weight to the decision already arrived at. Upon this view it would follow that the Tribunal was not competent to go behind the finding of the Managing Director and consider for itself the evidence adduced before him. The order of the Tribunal quashing the dismissal of Bose and directing his re-instatement is, therefore, set aside as being contrary to law.

Coming next to the question of the lock-out it is abundantly clear that the lock-out was ordered by the company because of a sudden strike, no doubt a token one, launched by the workmen. It would appear that the strike was only to be partial and notice of it was given on the previous day. In order to appreciate the background of the strike and lock-out it is desirable to set out certain facts. By an agreement dated November 23, 1956, the management had agreed to pay 37 days' wages to its factory employees for the year 1955-56 as bonus. It was also agreed at that time that bonus was not to be a condition of service. On September 10, 1958, the respondent union made a demand for seven days' bonus over and above the usual bonus of 37 days. In reply to this the company stated in its letter dated October 11, 1958, that it does not agree to the demand that bonus is payable as a condition of service, that although no bonus is payable, the company, as a gesture of goodwill, have offered to pay to the workmen 15 days' consolidated wages as bonus and expressed the hope that its offer would be accepted. On October

13, 1958, the company again wrote to the union pointing out that the workmen had resorted to go slow tactics which adversely affected their business which was of repairing ships and then observed:

“We should also strongly suggest that the management and the union jointly approach the Labour Directorate at once on the following issues:

1. Whether the workmen are justified in stopping overtime as and when they like.
2. Bonus.

In consideration of this we may even agree to pay the workmen certain sum of money, as may be recommended by the Conciliation Officer, on advance account pending the adjudication by the Tribunal of the issue of bonus. It should, however, be clearly understood, that if the Tribunal decides against payment of bonus or allows bonus less than the amount advanced to them, the entire advance money or the difference will be recovered from the wages of the workmen by instalments as may be directed by the Tribunal.”

This suggestion was peremptorily rejected by the respondent union by its letter dated October 15, 1958, the relevant portion of which is as follows:

“We would simply ask where had your good sense for tripartite conference before which you have adopted now we think as a measure of delaying tactics. We know better what to do when we will be asked to attend tripartite conference.”

On October 16, 1958, the company wrote to the Labour Commissioner, West Bengal, apprising him

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of the situation in the factory and requesting him to intervene. It seems that on that day a representative of the company discussed the situation with Mr. Basu, the Assistant Labour Commissioner. Next day the company wrote to Mr. Basu in which it observed that although the financial position of the company does not justify the demand of bonus the company was prepared to make *ex-gratia* payment of bonus on the same basis as in the previous year subject to three conditions:

- “(i) the Union condemns the workmen’s conduct in stopping overtime since 10th October, 1958 and putting the company to considerable loss.
- (ii) the Union undertakes to see that the workmen do not stop doing overtime in future.
- (iii) the bonus is not to be considered as a condition of service.”

On November 5, 1958, the respondent union wrote to the company a letter in which they made ten demands, the first of which was that 37 days’ wages as bonus should be paid to all workmen at the works and head office. Then they went on a partial strike on November 13, 1958. On that very day the company published a lock-out notice on its notice board and served copy thereof on the union. That notice reads thus:

“For sometime past the workmen by taking resort to organised slow down and by refusing to work overtime and by keeping a strike notice hanging on us have to a great extent crippled our ship repairing business and have made it difficult for us to accept major ship repairs or large orders. Today the workmen have resorted to a strike when

we have on our hands a ship in dry dock awaiting unlocking today and another ship is due to sail in two days' time. This strike is definitely illegal and in consequence of this illegal strike we have no choice but hereby to declare lock-out."

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The lock-out continued till January 5, 1959, on which date the company's works were re-opened. The termination of the lock-out was brought by a settlement made between the parties on January 3, 1959. In that settlement it was agreed that 1% of the sale proceeds of the ship repairing section, less sales tax, for the whole year will be paid as bonus to the workmen irrespective of profit and loss of the company and 15 days' wages will be paid as Puja bonus to the workmen every year irrespective of profit and loss of the company. It is not necessary to refer to the other terms of the agreement.

It seems to us that the attitude of the company was a reasonable one and that it even proposed to the union and through it to its workmen that work should go on, that the dispute should be taken before the Conciliation Officer for conciliation and that in the meanwhile they were prepared to grant some interim relief to the workmen. But instead of accepting this reasonable offer the union spurned it contemptuously and for coercing the company encouraged its members to strike work on November 13, 1958. It is true that the strike was intended to be a token one. But the object of that strike being to circumvent settlement in an amicable manner, even though the company was ready for such settlement, we have no doubt that strike was unjustified. It is in the light of this finding that the lock-out has to be judged. In our opinion, while the strike was unjustifiable the lock-out when it was ordered on November 13, 1958, was justified.

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It seems to us, however, that though the lock-out was justified at its commencement its continuance for 53 days was wholly unreasonable and, therefore, unjustified. In a case where a strike is unjustified and is followed by a lock-out which has, because of its long duration, become unjustified it would not be a proper course for an industrial tribunal to direct the payment of the whole of the wages for the period of the lock-out. We would like to make it clear that in a case where the strike is unjustified and the lock-out is justified the workmen would not be entitled to any wages at all. Similarly where the strike is justified and the lock-out is unjustified the workmen would be entitled to the entire wages for the period of strike and lock-out. Where, however, a strike is unjustified and is followed by a lock-out which becomes unjustified a case for apportionment of blame arises. In our opinion in the case before us the blame for the situation which resulted after the strike and the lock-out can be apportioned roughly half and half between the company and its workers. In the circumstances we, therefore, direct that the workmen should get half their wages from November 14, 1958, to January 3, 1959, (both days inclusive).

The appeal is thus allowed partly and the award modified to the extent to which the appeal has been allowed. We make no order as to cost.

Appeal allowed in part.
