1960

April 4.

# THE MANAGEMENT OF CHANDRAMALAI ESTATE, ERNAKULAM

*v.*

# ITS WORKMEN AND ANOTHER.

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

*Industrial Dispute—Failure of conciliation—Union to take proper and reasonable course before calling a strike.*

The management having refused to comply with some of the demands raised by workmen, the matter was referred for conciliation. Efforts at conciliation failed on November 30, 1955. On the very next day the union gave a strike notice and actually went on strike with effect from December 9, 1958. On January 3, 1956, the Government referred the dispute to the Industrial Tribunal and the strike was called off on January 5, 1956. The question as to whether the workmen were entitled to get wages for the period of the strike was along with some other grounds referred to the Tribunal. The Tribunal took the view that both the parties were to blame for the strike and that the workmen were entitled to get 50% of the emoluments for the period of strike:

*Held*, that on the facts of the case the strike was unjustified and that the workmen were not entitled to any wages for the period.

When conciliation attempts failed it was reasonable for the union to take the normal and reasonable course provided by law to settle the dispute by asking the Government to make a reference to the Industrial Tribunal before it decided to strike. A strike which is a legitimate weapon in the hands of the workmen would not be ordinarily justified if hastily resorted to without exhausting reasonable avenues for peaceful achievement of the object.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 347/1959.

Appeal by special leave from the Award dated October 17, 1957, of the Industrial Tribunal No. II, Ernakulam, in Industrial Dispute No. 63 of 1956.

*S. Govind Swaminadhan* and *P. Ram Reddy*, for the appellant.

*Jacob A. Chakramakal* and *K. Sundararajan*, for respondent No. 1.

*K. R. Choudhry*, for respondent No. 2.

1960. April 4. The Judgment of the Court was delivered by

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*Das Gupta J.*

DAS GUPTA, J.—On August 9, 1955, the Union of the workmen of the Chandramalai Estate submitted to the Manager of the Estate a memorandum containing fifteen demands. Though the management agreed to fulfil some of the demands the principal demands remained unsatisfied. On August 29, 1955, the Labour Officer, Trichur, who had in the meantime been apprised of the position by both the management of the Estate as well as the Labour Union advised mutual negotiations between the representatives of the management and workers. Ultimately the matter was recommended by the Labour Officer to the Conciliation Officer, Trichur, for conciliation. The Conciliation Officer's efforts proved in vain. The last meeting for Conciliation appears to have been held on November 30, 1955. On the following day the Union gave a strike notice and the workmen went on a strike with effect from December 9, 1955. The strike ended on January 5, 1956. Prior to this, on January 5, the Government had referred the dispute as regards five of the demands for adjudication to the Industrial Tribunal, Trivandrum. Thereafter by an order dated June 11, 1956, the dispute was withdrawn from the Trivandrum Tribunal and referred to the Industrial Tribunal, Ernakulam. By its award dated October 17, 1957, the Tribunal granted the workmen's demands on all these issues. The present appeal has been preferred by the management of the Chandramalai Estate against the Tribunal's award on three of these issues. These three issues are stated in the reference thus:

"1. Was the price realised by the management for the rice sold to the workers after decontrol excessive; and if so, are the workers entitled to get refund of the excessive value so collected?

2. Are the workers entitled to get cumbly allowance with retrospective effect from the date it was stopped and what should be the rate of such allowance?

3. Are the workers entitled to get wages for the period of the strike?"

On the first issue the workmen's case was that after the control on rice was lifted by the Travancore-Cochin Government in April, 1954, the management

which continued to sell rice to the workmen, charged at the excessive rate of 12 annas per measure for rice bought in excess of a quota for $1\frac{1}{2}$ measure per head. This according to the workmen was improper and unjustified and they claimed refund of the excess which they have been made to pay. The management's case was that the workmen were not bound to buy rice from the Estate's management and secondly, that only the actual cost price and not any excess had been charged. The tribunal held on a consideration of oral and documentary evidence that the management had charged more than the cost price and held that they were bound to refund the same.

The second issue was in respect of a claim for cumbly allowance. Chandramalai Tea Estate is situated at a high altitude. It is not disputed that it had been customary for the Estates in this region to pay blanket allowance to workmen to enable them to furnish themselves with blankets to meet the rigours of the weather and that it had really become a part of the terms and conditions of service. But in spite of it the management of this Estate stopped payment of the allowance from 1949 onwards and resumed payment only in 1954. The management's defence was that any dispute not having been raised about this till August 9, 1955, there was no reason for raising it at this late stage. The Tribunal rejected this contention and awarded cumbly allowance of Rs. 39 per workman—made up of Rs. 7 per year for the years 1949, 1950 and 1951 and Rs. 9 per year for the years 1952 and 1953.

On the third issue while the workmen pleaded that the strike was justified the management contended that it was illegal and unjustified. The Tribunal held that both parties were to blame for the strike and ordered the management to pay workers 50% of their total emoluments for the strike period.

On the question of excess price of rice having been collected the appellant's contention before us is limited to the question of fact, whether the Tribunal was right in its conclusion that more than cost price was realised. The Tribunal has based its conclusion as regards the price realised by the management on entries made in

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the management's own documents. As regards what such rice cost the management it held that for the months of April, July and August and September the price was shown by the management's documents while for May and June these documents did not disclose the price. For these two months the Tribunal held the market price of rice as proved by the workers' witness No. 6 to have been the price at which the Estate's management procured their rice. We are unable to see anything that would justify us in interfering with these conclusions of facts. Indeed the documents on which the Tribunal has based its conclusions were not even made part of the Paper-Book so that even if we had wanted to consider this question ourselves it would be impossible for us to do so. We are satisfied that the Tribunal was right in its conclusions as regards the cost price of rice to the management and the price actually realised by the management from workmen. The management's case that the workmen were charged only the cost price of rice has rightly been rejected by the Tribunal. The fact that workmen were not compelled to purchase rice from the management is hardly material; the management had opened the shop to help the workmen and if it is found that it charged excess rates, in fairness, the workmen must be reimbursed. The award in so far as it directed refund of the excess amount collected on the basis of the figures found by the Tribunal cannot therefore be successfully challenged.

On the question of the cumbly allowance it is important to note that the only defence raised was that the demand had been made too late. The admitted fact that it had been regularly paid year after year for many years till it was stopped in 1949 is sufficient to establish the workmen's case that payment of a proper cumbly allowance had become a part of their conditions of service. We do not think that the mere fact that the workmen did not raise any dispute on the management's refusal to implement this condition of service till August 9, 1955, would be a sufficient reason to refuse them such payment. The management had acted arbitrarily and illegally in stopping payment of these allowances from 1949 to 1954. They

cannot now be heard to say that they should not be asked to pay it merely because the years have already gone by. It is reasonable to think that even though the management did not pay the allowance the workmen had to provide blankets for themselves at their own expense. The Tribunal has acted justly in directing payment of the allowances to the workmen for the years 1949 to 1953. The correctness of the rates awarded by the Tribunal is not challenged before us. The Tribunal's award on this issue also is therefore maintained.

This brings us to the question whether the tribunal was right in awarding 50% of emoluments to the workmen for the strike period. It is clear that on November 30, 1955, the Union knew that conciliation attempts had failed. The next step would be a report by the Conciliation Officer, of such failure to the Government and it would have been proper and reasonable for the Union to address the Government at the same time and request that a reference should be made to the Industrial Tribunal. The Union however did not choose to wait and after giving notice on December 1, 1955, to the management that it had decided to strike from December 9, 1955, actually started the strike from that day. It has been urged on behalf of the appellant that there was nothing in the nature of the demands to justify such hasty action and in fairness the Union should have taken the normal and reasonable course provided by law by asking the Government to make a reference under the Industrial Disputes Act before it decided to strike. The main demands of the Union were about the cumbly allowance and the price of rice. As regards the cumbly allowance they had said nothing since 1949 when it was first stopped till the Union raised it on August 9, 1955. The grievance for collection of excess price of rice was more recent but even so it was not of such an urgent nature that the interests of labour would have suffered irreparably if the procedure prescribed by law for settlement of such disputes through industrial tribunals was resorted to. After all it is not the employer only who suffers if production is stopped by strikes. While on the one

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hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, strike even before such a request has been made may well be justified. The present is not however one of such cases. In our opinion the workmen might well have waited for some time after conciliation efforts failed before starting a strike and in the meantime to have asked the Government to make the reference. They did not wait at all. The conciliation efforts failed on November 30, 1955, and on the very next day the Union made its decision on strike and sent the notice of the intended strike from the 9th December, 1955, and on the 9th December, 1955, the workmen actually struck work. The Government appear to have acted quickly and referred the dispute on January 3, 1956. It was after this that the strike was called off. We are unable to see how the strike in such circumstances could be held to be justified.

The Tribunal itself appears to have been in two minds on the question. Its conclusion appears to be that the strike though not fully justified, was half justified and half unjustified; we find it difficult to appreciate this curious concept of half justification. In any case, the circumstances of the present case do not support the conclusion that the strike was justified at all. We are bound to hold in view of the circumstances mentioned above that the Tribunal erred in holding that the strike was at least partially justified. The error is so serious that we are bound in the interests of justice to set aside the decision. There is, in our view, no escape from the conclusion that the strike was unjustified and so the workmen are not entitled to any wages for the strike period.

We therefore allow the appeal in part and set aside the award in so far as it directed the payment of 50% of the total emoluments for the strike period but maintain the rest of the award. There will be no order as to costs.

*Appeal allowed.*

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## ASSAM OIL COMPANY
*v.*
## ITS WORKMEN



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

*Industrial Dispute—Termination of service in accordance with contract—If can be questioned before industrial tribunal—Termination on basis of misconduct of workman—If amounts to dismissal—No enquiry—Reinstatement if appropriate relief.*

One S was employed by the appellant as a secretary and one of the terms of employment was that the appointment may be terminated on one month's notice on either side. The appellant was thoroughly dissatisfied with the work of S and disapproved of her conduct in joining the union. Purporting to act under the contract, the appellant terminated the services of S and gave her one month's pay in lieu of notice. No enquiry was held by the appellant before terminating the services of S. The industrial tribunal held that the termination of services amounted to a dismissal for misconduct and since no enquiry was held it was illegal and unjustified and it passed an order for the reinstatement of S. The appellant contended that as the termination was strictly in accordance with the terms of the contract it could not be challenged before an industrial tribunal, that even if no enquiry was held the order of discharge was justified as the evidence led before the tribunal established the misconduct of S and that at the highest it was a case for awarding compensation and not for reinstatement:

*Held*, that the discharge amounted to punishment for alleged misconduct and was unjustified in the absence of a proper enquiry. Even where the discharge was in exercise of the power under the contract it was competent for the tribunal to enquire whether the discharge had been effected in the *bona fide* exercise of that power. If the tribunal found that the purported exercise of the power was in fact the result of the misconduct alleged then it would be justified in dealing with the dispute on the basis that the order of discharge was in effect an order of dismissal.

*Western India Automobile Association* v. *Industrial Tribunal, Bombay*, [1949] F.C.R. 321, followed.