

R. THIRUVIRKOLAM
v.
PRESIDING OFFICER AND ANR.

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NOVEMBER 18, 1996

[J.S. VERMA AND B.N. KIRPAL, JJ.]

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Labour Law :

Industrial Disputes Act, 1947 :

Dismissal—Defective domestic enquiry—Date of taking effect of order—Employee dismissed after domestic enquiry on proof of misconduct—Labour Court found domestic enquiry defective but on evidence adduced by employer it held misconduct as duly proved and punishment justified—On appeals held: Even in such a case, order of dismissal operative from date of dismissal order and not from date of Labour Court's award.

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The appellant was employed as a technician with respondent No.2 and was dismissed from service after a domestic inquiry on proof of misconduct. The appellant challenged his dismissal before the Labour Court. The Labour Court found the domestic inquiry to be defective and permitted the management to prove the misconduct. On the basis of the evidence adduced before the Labour Court, it came to the conclusion that the punishment imposed was justified as the misconduct was duly proved. The appellant filed a writ petition before the High Court which was dismissed. Being aggrieved the appellant preferred the present appeal.

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The question before this Court was whether the dismissal would take effect from the date of order of the Labour Court or it would relate to the date of the order of dismissal passed by the employer.

Dismissing the appeal, this Court

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HELD : 1.1. The only point involved for decision in the appeal is concluded against the appellant by the Constitution Bench decision of this Court in Kalyani and the observations to the contrary in *Gujarat Steel* are, therefore, per incurium and not binding. The order of

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A **punishment in the present case operated from the date when it was made by the employer and not from the date of Labour Court's award.**
[689 DE & 694 AB]

P.H. Kalyani v. M/s. Air France, Calcutta, [1964] 2 SCR 104; D.C. Roy v. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Ors., [1976] 3 SCR 801 and Rambahu Vyankuji Kheragade v. Maharashtra Road Transport Corporation, [1995] Supp. 4 SCC 157, followed.

Gujarat Steel Tubes Ltd, v. Gujarat Steel Tubes Mazdoor Sabha, [1980] 2 SCR 146 and Desh Raj Gupta v. Industrial Tribunal IV, U.P. Lucknow and Anr. [1990] Supp. 1 SCR 411, held per incuriam.

Wade: "Administrative Law," pp. 339 to 344 7th. Edn., referred to.

D **1.2. The operation of the order of punishment made by the employer does not depend on its confirmation by the Labour Court to make it operative. Unless set aside by a competent authority, the order of punishment made by the employer continues to be effective.**
[692 AB]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 54 of 1993.

From the Judgment and Order dated 22.4.91 of the Madras High Court in W.A. No. 590 of 1991.

F Jitendra Sharma, Ms. Gunwant Lara and P. Gaur for the Appellant.

N.B. Shetye and Ambrish Kumar for the Respondents.

G The Judgment of the Court was delivered by

H **J.S. VERMA, J.** The appellant was employed as a technician with M/s Madras Fertilizers Ltd.-Respondent No.2. He was dismissed from service after a domestic inquiry on November 18, 1981 on proof of misconduct. The appellant challenged his dismissal before the Labour Court.

The Labour Court found the domestic inquiry to be defective and permitted the management to prove the misconduct before it. On the basis of the evidence adduced before the Labour Court, it came to the conclusion that the punishment imposed was justified as the misconduct was duly proved. The Labour Court's order is dated December 11, 1985. Appellant then filed a writ petition before the High Court which was dismissed by a Single Bench. The writ appeal filed by the appellant was also dismissed by a Division Bench of the High Court. Hence this appeal by special leave.

The leave granted in this appeal is confined only to the question: whether the dismissal will take effect from the date of the order of the Labour Court, namely, December 11, 1985 or it would relate to the date of the order of dismissal passed by the employer, namely, November 18, 1981.

The only point involved for decision is apparently concluded by the decision of the Constitution Bench in *P.H. Kalyani v. M/s Air France, Calcutta*, [1964] 2 SCR 104. However, this point appears to have been raised on behalf of the appellant on the basis of certain observations made in *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha*, [1980] 2 SCR 146, which appear to be contrary.

Reference may be made first to the decision in *Kalyani*. This point arose directly before the Constitution Bench and such a contention was rejected, making a distinction between a case where no domestic inquiry had been held and another in which the inquiry is defective for any reason and the Labour Court on its own appraisal of evidence adduced before it reaches the conclusion that the dismissal was justified. It was held that in a case where the inquiry was found to be defective by the Labour Court and it then came to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified, the order of dismissal made by the employer in a defective inquiry would still relate to the date when that order was made. In that decision it was stated thus:

“...If the inquiry is defective for any reason, the Labour Court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However, on coming to the conclusion on its own appraisal of evidence

A adduced before it that the dismissal was justified its approval
of the order of dismissal made by the employer in a defective
inquiry would still relate back to the date when the order
was made...In the present case an inquiry has been held which
is said to be defective in one respect and dismissal has been
ordered. The respondent had however to justify the order of
dismissal before the Labour Court in view of the defect in
the inquiry. It has succeeded in doing so and therefore the
approval of the Labour Court will relate back to the date on
which the respondent passed the order of dismissal. The
contention of the appellant therefore that dismissal in this
case should take effect from the date from which the Labour
Court's award came into operation must fail."

(Pages 113 & 114)

D In our opinion, the authoritative pronouncement by the Constitution
Bench in *Kalyani* puts the matter beyond doubt.

We may now refer to the decision by a three-judge Bench in *Gujarat
Steel*. Krishna Iyer, J. speaking for the three-Judge Bench observed at
page 215 (S.C.R.) as under:

E "Kalyani (1963) 1 LLJ 679 was cited to support the view of
relation back of the Award to the date of the employer's
termination orders. We do not agree that the ratio of Kalyani
corroborates the proposition propounded. Jurisprudentially,
approval is not creative but confirmatory and therefore relates
back. *A void dismissal is just void and does not exist.* If the
F Tribunal, for the first time, passes an order recording a finding
of misconduct and thus breathes life into the dead shel of the
Management's order, predating of the nativity does not arise.
The reference to Sasa Musa in Kalyani enlightens this position.
The latter case of *D.C. Roy v. The Presiding Officer, Madhya
G Pradesh Industrial Court, Indore and Ors.* (supra) specifically
refers to Kalyani's case and Sasa Musa's case and holds that
where the Management discharges a workmen by an order
which is void for want of an enquiry or for blatant violation
of rules of natural justice, the relation-back doctrine cannot
be invoked. The jurisprudential difference between a void
H order, which by a subsequent judicial resuscitation comes

into being de novo, and an order, which may suffer from some defects but is not still born or void and all that is needed in the law to make it good is a subsequent approval by a tribunal which is granted, cannot be obfuscated. A

We agree that the law stated in D.C. Roy (supra) is correct but now that the termination orders are being set aside, the problem does not present itself directly..." B

(Page 215)
[Emphasis supplied]

Apparently these observations appear to strike a discordant note, even though Kalyani is referred therein. The basis of the observations is that "A void dismissal is just dismissal and does not exist." In other words, the reason for making these observations is that a void order does not come into existence until by a subsequent judicial resuscitation it comes into being inasmuch as a void order is still born. Is this assumption jurisprudentially correct? C D

It is significant that the Constitution Bench decision in *Kalyani*, by which the three-judges Bench was bound, is referred in *Gujarat Steel* and attempt made to indicate that there is no different in the view taken therein. It is also significant that agreement is expressed with the decision in *D.C. Roy v. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Ors.*, [1976] 3 SCR 801, to which Krishna Iyer, J. was a party and in which *Kalyani* has been expressly followed. It has now to be seen whether the above observations in *Gujarat Steel* are in consonance with *Kalyani* and *D.C. Roy* and also conform to the juristic basis indicated therein. E F

The above extract from *Kalyani* which contains the ratio of the decision clearly indicates that the above observations in *Gujarat Steel* are not in conformity with *Kalyani*. In *Kalyani* it was held that the defect found in the domestic inquiry is nullified by proof of misconduct on the basis of evidence adduced before the Labour Court so that there is no ground available for the Labour Court to set aside order of punishment. The question before the Labour Court is whether the order of punishment should be set aside on any ground and when the Labour Court ultimately reaches the conclusion that even though the inquiry was defective, there is material to justify in the punishment awarded, it rejects the challenge to the order of punishment which continues to operate. It is not as if the H

A order of punishment becomes effectively only on rejection of the challenge to its validity. Unless set aside by a competent court on a valid ground, the order of punishment made by the employer continues to operate. The operation of the order of punishment made by the employer does not depend on its confirmation by the Labour Court to make it operative. Unless set aside by a competent authority, the order of punishment made
 B by the employer continues to be effective. Obviously this is the ratio of the decision in *Kalyani*.

The decision in *D.C. Roy* is by a two-judge Bench to which Krishna Iyer, J. is a party. Therein also it was held that the award of the Labour Court relates back to the date when the order of dismissal was passed by
 C the employer when it found the inquiry to be defective but reaches the conclusion on the evidence adduced before it that the dismissal was justified. After referring to *Kalyani* it was held in *D.C. Roy* as under:

D “These observations directly cover the case before us because though the Labour Court, in the instant case, found that the inquiry was defective as it infringed the principles of natural justice, it came to the conclusion after considering the evidence adduced before it, that the dismissal was justified. The award of the Labour Court must therefore relate back to the date when the order of dismissal was passed on the termination of the Domestic Inquiry.”
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(Page 805)

We may now refer to the juristic principle on which the above quoted observations in *Gujarat Steel* appears to be based. There is a very useful
 F discussion of the topic under the heading “Void and Voidable” at pages 339 to 344 in *Administrative Law by Wade*, Seventh Edition. The gist of the discussion in *Wade* is as under:

G “..Here also there is a logical difficulty, since unless an order of the court is obtained, there is no means of establishing the nullity of the list. It enjoys a presumption of validity, and will have to be obeyed unless a court invalidates it. In this sense every unlawful administrative act, however, invalid is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well-known passage Lord Radcliffe
 H said:

“An order, even if not made in good faith, is still an act capable of legal consequence. It bears no brand of invalidity upon its forehead. *Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.*”

(Pages 341 & 342)

“‘Void’ is therefore meaningless in any absolute sense. The meaning is relative, depending upon the Court’s willingness to grant relief in any particular situation. If this principle of legal relativity is borne in mind, confusion over ‘void or voidable’ can be avoided.”

(Pages 343 & 344)
(emphasis supplied)

With great respect, we must say that the above quoted observations in *Gujarat Steel* at page 215 are not in line with the decision in *Kalyani* which was binding or with *D.C. Roy* to which the learned Judge, Krishna Iyer, J. was a party. It also does not match with the underlying juristic principle discussed in *Wade*. For these reasons, we are bound to follow the Constitution Bench decision in *Kalyani* which is the binding authority on the point.

We may now refer to later decisions of this Court in *Desh Raj Gupta v. Industrial Tribunal IV, U.P. Lucknow and Anr.*, [1990] Supp. 1 SCR 411, and *Rambahu Vyankuji Kheragade v. Maharashtra Road Transport Corporation*, [1995] Supp. 4 SCC 157. In *Rambahu, Kalyani* and *D.C. Roy* were followed by a two-judge Bench and similar view was taken that the order of dismissal takes effect from the date on which it was originally passed and not from the date of the Labour Court’s award when the Labour Court, after holding the domestic inquiry to be defective reaches the conclusion on the evidence adduced before it that the punishment awarded was justified. However, in *Desh Raj Gupta* the observations in *Gujarat Steel* were relied on for taking a different view without any reference to either *Kalyani* or *D.C. Roy* which appear to have been overlooked. In these circumstances the decision in *Desh Raj Gupta* cannot be treated as an authority on the point. Both these decisions were by two-judges Bench.

- A As a result of the aforesaid decision it must be held that the only point involved for decision in the appeal is concluded against the appellant by the Constitution Bench decision of this Court in *Kalyani* and the observations to the contrary in *Gujarat Steel* are, therefore, per incurium and not binding. The order of punishment in the present case operated from November 18, 1981 when it was made by the employer and not
- B from December 11, 1985, the date of Labour Court's award. The appellant is, therefore, not entitled to any relief.

The appeal is, accordingly, dismissed. No costs.

V.S.S.

Appeal dismissed.