HIGH COURT OF GUJARAT *(D.B.)*

TEXTILE LABOUR UNION, BHAVNAGAR
V/S
NEW JEHANGIR VAKIL MILLS COMPANY LIMITED, BHAVNAGAR

Date of Decision: 10 September 1979

Citation: 1979 LawSuit(Guj) 141

Hon'ble Judges: M P Thakkar, S L Talati

Eq. Citations: 1979 (2) GLR 216

Case Type: Special Civil Application

Case No: 1525 of 1979

Head Note:

Administrative Law - Standing under 23(2) - Standing order provides that reasons of termination must be reduced into writing and shall be communicated to the affected party - Standing order mandatory in nature - - Termination order null and void if not complied with provisions of the order - Reinstatement shall be ordered in case of illegal termination. Full back wages must be given.

It is manifest that the underlying object of Standing Order 23 is fourfold viz: (1) To ensure that the service of a permanent employee is not rendered impermanent and his service is not terminated at the pleasure whim or caprice of the emp- loyer (see Bombay Municipality v. P. 5. Mavlenkar A.I.R. 1978 Supreme Court 1380 (2) To ensure that such an employee is not dismissed without proving his guilt under the guise garb or pretext of an ostensibly innocuos order of termination simpliciter. (3) To ensure that such an employee is not victimized for his Trade Union activi- ties or for any other reason. (4) To ensure that reasons by way of alibi are not invented post facto in order to screen the action from being effectively X-rayed by the Labour Court or the Industrial Court. That is why it is

insisted upon that (a) reasons ate recorded in writing (b) reasons are so recorded before (and not after) the power is exercised and (c) that the same are supplied to the employee except when requisite satisfaction is reached. Such being the manifest purpose of the provision it is futile to canvass that the provision is not mandatory. To construe it as being directory would be to hold that the provision is calculated to deceive the workers into a false sense of safety that it is a booby trap to ensnare them Still worse it would amount to putting the social clock back by a century to bring back the dark age when the concept of security of workers was considered a heresy. (Para 4) The following three tests are evolved by the Supreme Court in order to judge the question: (i) Whether the language used is imperative; (ii) Whether the provision is enacted for a beneficent purpose; (iii) Whether it is essential for the efficient implementation of the scheme of the legislation. All these tests answer in favour of the proposition that the provision is mandatory. (Para 4) The words loss of confidence are not the modern equivalent of open sesame and that it is not sufficient to utter these words in order to refuse reinstatement. It is not even suggested much less contended that it would be hazardous to retain the workman on grounds of security. Reinstatement in the present case will not oblige the employer to pass sleepless nights in anxiety as regards the safety of his person or his property or his business secrets What then is the philosophical justifica tion for denying reinstatement ? The consequences of such denial would be (1) it will rob the workman of his human dignity and right to work (2) It will stigmatize him and result in his being branded as an undesirable person in his social and family world (3) It will denude him of his self-esteem matter his self-confidence. and visit him with an irreversible trauma; and (4) It will make him feel unwanted and make him think more of death than of life. There is. therefore no reason to deny reinstatement. Full back wages must therefore be awarded unhesitatingly since no material is produced to suggest that he was gainfully employed during the relevant period. (Para 5) Ramchandra v. Govind Bombay Municipality v. P. S. Malvenkar Punjab National Bank v. All India Punjab National Bank Employees Federation Nanjundappa v. Thimmayya Hindustan Steels Ltd. v. A K Roy. referred to.

Acts Referred:

Constitution Of India Art 226

Final Decision: Petition allowed

Advocates: N R Oza,K S Nanavati

Reference Cases:

Cases Referred in (+): **6**

Judgement Text:-

Thakkar, J

[1] An employee of a textile m111 with a blemish free record of 34 years' service, within a short time of his promotion, was served with an order dated June 30, 1976, terminating his employment, issued in purported exercise of powers under Standing Order 23 without complying with the mandatory requirement to record the reasons for such termination in writing. He thereupon approached the Labour Court by way of an application under sec. 44(4) of the Industries Relations Act, 1946, made through the Union to which he belonged, namely, Textile Labour Union. The first Labour Court at Rajkot after recording evidence on the issue of mala fides, by its judgment and order at Annexure "A" dated April 10, 1976 rejected the prayer for reinstatement of the workman concerned but directed that the m111 should pay gratuity, retrenchment compensation, and notice pay as also one month's wages. Both the sides were dissatisfied by the said order and approached the Industrial Court of Gujarat at Ahmedabad. The Textile Labour Union, Bhavnagar, challenged the order passed by the Labour Court to the extent that it was against the workman by Appeal (IC) No. 32 of 1973. The M111 Company contended that the Labour Court ought not have directed payment of gratuity, retrenchment and one year's wages. But ought to have rejected the application of the Union in toto by preferring Appeal (IC) No. 33 of 1973. The Industrial Court by its impugned judgment and order dated January 20, 1979 dismissed the appeal preferred by the Union. So far as the appeal preferred by the Company was concerned, the Industrial Court allowed the appeal and set side the order passed by the Labour Court directing payment of retrenchment compensation, gratuity amount and one year's salary etc. The Union concerned, the Textile Labour Union of Bhavnagar, has approached this Court by way of the present petition under Articles 226 of the Constitution and has challenged the legality and validity of the impugned order at Annexure "B" rendered by the Industrial Court.

[2] Learned Counsel for the petitioner has urged the following submissions in support of

this appeal :-

(1) Having recorded a clear finding to the effect that the employer Mills had not recorded reasons for the termination of the services of the employee concerned, the Industrial Court ought to have set aside the order of discharge on the ground of non-compliance with the mandatory provision contained in Standing Order 23.

(2) The Industrial Court ought to have held that the impugned order was passed in colourable exercise of powers under the guise of a discharge order as contemplated by Standing Order 23, though it was in fact a mala fide order passed in order to punish the workmen concerned.

(3) The Industrial Court has committed an error apparent on the face of record in holding that the impugned order is in accordance with law.

[3] It is not in dispute that the services of Bachubhai Bhankabhai, a permanent employee of the Mills who had put in about 34 years of service, were terminated as per an order dated September 25, 1976, issued in purported exercise of powers under Standing Order 23. It is the case of the employer Mills that it was an order of discharge simpliciter authorised by the Standing Orders as is evident from the averments made in paragraph 5 of the written statement dated March 9, 1977 filed under the signature of the General Manager of the Mills. For the sake of preciseness the relevant portion from paragraph 5 may be extracted

"It is not true that Bachubhai Bhankabhai has been discharged from service with a view to punish him as alleged or otherwise. He has been discharged simpliciter as per the Standing Orders" (Emphasis added)

The provision contained in Standing Order 23 in so far as material deserves to be quoted :-

"23. (1) The employment of a permanent employee may be terminated by one months's notice or on payment of one month's wages (including all allowances) in lieu of notice.

(2) The reasons for the termination of service of a permanent employee shall be recorded in writing and shall be communicated to him, if he so desires, at the time of discharge unless such communication, in the opinion of the Manager, is likely directly or indirectly to lay any person to civil or criminal proceedings at the instances of the employee."

It is clearly enjoined that (1) reasons must be recorded in writing before action is taken and (2) such reasons must be communicated before the discharge becomes operative, if so desired, unless the Manager forms the opinion that it is likely to expose any person to civil or original proceedings. In the present case the Industrial Court in the course of the discussion in paragraph 13 of the impugned order at Annexure "B" has recorded a firm finding that reasons were not recorded in writing as enjoined by Standing Order 23. To quote the Industrial Court "It is however true that the reasons have not been recorded in writing". The Industrial Court has also recorded a clear finding to the effect that the reasons were not communicated to the workman concerned in writing. It is in fact doubtful whether the reasons were even "orally" communicated post facto, though the Industrial Court, notwithstanding the fact that there was only word against word, came to the conclusion that the General Manager had "orally" told him later on why his services were terminated. The correctness of this finding has been challenged by the learned counsel for the petitioner, but for the purposes of the present petition it is not necessary to examine this dimension of the matter. Admittedly reasons for the termination of the services of the employee concerned were not recorded in writing. Clause (2) of Standing Orders 23 casts a mandatory obligation on the management to record the reasons for the termination of service of a permanent employee in writing and to communicate such reasons recorded in writing to the employee concerned if so desired by him unless in the opinion of the Manager the communication of such reasons is likely directly or indirectly to lay any person open to civil or criminal proceedings at the instances of the employee. It is not the case of the management that the reasons were not communicated to the concerned workman because there was any such risk of civil or criminal proceedings being initiated. On a true reading of clause (2)

it is evident that what are required to be communicated are the reasons recorded in writing. In order to comply with this provision, in the first instance, reasons for termination must be recorded in writing. In the second instance, if so desired, the same must be communicated to the workman concerned. In the present case a clear finding has been recorded that no reasons were recorded that in writing at the time of termination for the services of the workman concerned. Even now learned counsel for the employer Mills is not in a position to contend that reasons were in fact recorded in writing. Under the circumstances, this petition will have to be decided on the premise that there is a clear non-compliance with clause (2) of Standing Order 23.

[4] The next question which arises is, which its legal effect ? It was argued before the Industrial Court that the requirement embodied in Standing Order 23 in this behalf is mandatory. Reliance was placed on a decision rendered by the Industrial Court itself to this effect (Gujarat Government Gazette Part I-L dated October 6,1977 at the page 4116) wherein the President of the Industrial Court has observed as under :

"Thus in order to terminate the services or employment of a permanent employee the reasons are required to be recorded in writing. This is a mandatory part of the Standing Order 10 and also of Standing Order 23. Thus the standing order which is condition of service between the parties, contains a clear mandate that the reasons for the termination of services shall be recorded in writing. But there is no mandatory requirement that the reasons shall form part of the order of discharge although the reasons are required to be communicated to the employee if he so desires at the time of the discharge, unless the manager claims a privilege that the communication of the reasons is likely directly or indirectly to lay any person open to civil or criminal proceedings at the instance of the employee. No such protection is claimed in the instant case. The requirement of the law thus is that the reasons are to be recorded in writing and this means that they have necessarily to be recorded before the order of discharge or termination of service is issued. This is because the disciplinary authority which in the instant case is the manager has to apply his imply that the disciplinary authority has to record the reasons before he terminates the services of an employee. In the absence of any reasons recorded, the disciplinary authority

cannot apply his mind properly and come to an objective conclusion....."

Even so (why ?) the Industrial Court was not convinced and negatived the contention. In our opinion it is impossible to negative the plea that the provision is mandatory in view of the pronouncement of the Supreme Court in Ramchandra v. Govind, A.I.R. 1975 Supreme Court 915, wherein the following three tests are evolved in order to judge the question :

(1) Whether the language used is imperative.

(2) Whether the provision is enacted for a beneficient purpose.

(3) Whether it is essential for the efficient implementation of the scheme of the legislation.

And all these tests answer in favour of the proposition that the provision is mandatory as we shall presently show. That the language is imperative is self-evident. We may, therefore, turn to the object and purpose of the provision. It is manifest that the underlying object is fourfold viz :

(1) To ensure that the service of a permanent employee is not rendered impermanent and his service is not terminated at the pleasure, whim or caprice of the employer (see Bombay Municipality v. P. S. Mavlenkar, A. I. R. 1978 Supreme Court 1380)

(2) To ensure that such an employee is not dismissed without proving his guilt under the guise, garb, or pretext, of an ostensibly innocuous order of termination simpliciter.

(3) To ensure that such an employee is not victimized for his Trade Union activities or for any other reason.

(4) To ensure that reasons by way of alibi are not invented post facto in order to screen the action from being effectively X-rayed by the Labour Court or the Industrial Court. That is why it is insisted upon that (a) reasons are recorded in 'writing', (b) reasons are so recorded before (and not after) the power is exercised and (c) that the same are supplied to the employee except when requisite satisfaction is reached.

Such being the manifest purpose of the provision it is futile to canvass that the provision is not mandatory. To construe it as being directory would be to hold that the provision is calculated to deceive the workers into a false sense of safety- that it is a booby trap laid to ensnare them. St111 worse, it would amount to putting the social clock back by a century to bring back the dark age when the concept of security of workers was considered a heresy. It would result in industrial unrest and anarchy. We have, therefore, no hesitation in holding that criteria outlined by the Supreme Court in Ramchandra's Case (supra) are satisfied and that Standing Order 23 is mandatory in nature and character.

[5] And what is the sequitur of non-compliance ? Again we draw support from the doctrine enunciated in Ramchandra's Case (supra) viz.:

(1) Where power in given to do a certain thing in a certain way, the thing must be done in that way, or not at all, particularly when the object of the provision would be defeated if the common to do in the specified manner is not construed as implying a prohibition to do it in any other (Para 25)

(2) Failure to comply will vitiate the action and render it non est as held in par 25 in the context of a tenancy legislation.

Noncompliance must, therefore, result in the impugned order being vitiated and rendered 'non-est', for, to take a different view would be to rob the beneficient and just provision in the vital sphere of industrial jurisprudence of all its efficacy and purpose in a matter of 'life or death' significance for the workers. As the condition precedent for the exercise of power (recording of reasons in writing prior to discharge of workman), is not satisfied, the

impugned order is not authorised by the Standing Order concerned and is consequently null and void. The petitioner is, therefore, entitled to succeed without anything more. We, therefore, do not propose to examine the serious challenge made in the light of the charge that the impugned order is mala fide and punitive in character which challenge was repelled by the Industrial Court. We accordingly do not express out opinion in the context of the argument that the finding is contrary to record, unreasonable, and manifests errors apparent on the face of the record. So also it is not necessary for us to examine the rest of the contentions which were urged before the Labour Court and before the Industrial Court. Well-settled as it is that reinstatement in such cases is the rule, and compensation the exception, (vide Punjab National Bank v. All India Punjab National Bank Employees' Federation, A. I. R. 1960 Supreme Court 160, Nanjundappa v. Thimmayya, 1970 (1) L. L. J. 160, and Hindstan Steels Ltd. v. A. K. Roy, A. I. R. 1970 Supreme Court 1401). counsel for respondent No. 1 has not been able to contend otherwise. So also he has not been able to advance the plea that reinstatement should be refused in the light of the doctrine of "loss of confidence". Perhaps it is fully realised that the words "loss of confidence" are not the modern equivalent of "open sesame" and that it is not sufficient to utter these words in order to refuse reinstatement. It is not even suggested, much less contended, that it would be "hazardous" to retain the workman "on grounds of security" so as to invoke the exception spelled out in Hindustan Steels Ltd. v. A. K. Roy, A. I. R. 1970 Supreme Court 1401. Reinstatement in the present case will not oblige the employer to pass sleepless nights in anxiety as regards the safety of his person or his property or his business secrets. What then is the philosophical justification for denying reinstatement ? Let us consider the consequences of such denial :

(1) It will rob the workman of his human dignity and right to work.

(2) It will stigmatize him and result in his being branded as an undesirable person in his social and family world.

(3) It will denude him of his self-esteem, shatter his self-confidence, and visit him with an irreversible trauma.

(4) It will make him feel 'unwanted' and make him think more of 'death' than of 'life'. There is, therefore, no reason to deny reinstatement. In fairness it must be stated that no effort has been made to support the view expressed by the Courts below that reinstatement is not warranted which view is out of tune with the law settled by the Supreme Court in the decisions adverted to earlier. So also there is no conceivable reason for not awarding full back wages and none has been urged. Full back wages must, therefore, be awarded unhesitatingly, in view of Hindustan Tin works v. Lis employees, A. I. R. 1979 Supreme Court 75, since no material is produced to suggest that he was gainfully employed during the relevant period.

[6] No other point was argued on behalf of respondent No. 1 Mills in order to support the impugned order.

[7] In the result, this petition must be allowed. The impugned order at Annexure "B" passed by the Industrial Court must be quashed and set aside. The impugned order passed by the First Labourt Copurt at Annexure "A" to the extent that it is against the petitioner must be quashed and set aside. Since the order of termination is not a valid order and it cannot be justified under Standing Order 23, under which it purports to have been passed, it must be held that the order of termination of service of the employee concerned, namely, Bachubhai Bhankabhai is illegal and void. The said workman would be entitled to be reinstated with back wages. Respondent No. 1 Mills is directed to reinstate the workman concerned on or before October 1, 1979 and also to pay him the back wages along with all the benefits by that date. Respondent No. 1 will pay the costs of the petitioner throughout. 8. An oral request is made for grant of certificate of fitness to appeal to the Supreme Court. The matter involves no substantial question of law of general importance which this Court needs to be decided by the Supreme Court. We accordingly cannot accede to the request. Certificate is refused.

Petition allowed: Leave to appeal refused.