

# MANAGEMENT OF PANITOLE TEA ESTATE

v.

## THE WORKMEN

February 18, 1971

[J. M. SHELAT AND I. D. DUA, JJ.]

*Industrial Dispute—Dismissal of workmen—Order of reinstatement by Labour Court—Reinstatement of compensation—Circumstances justifying reinstatement—Constitution of Indic, Art. 136—Interference by Supreme Court.*

In the course of a domestic enquiry on a charge of pilferage against B a part time clerk who was in charge of a godown of the appellant a chit was produced suggesting collusion with him of H another workman. The appellant instituted a domestic enquiry against the workman and he was dismissed. On a reference of the Industrial Dispute the Labour Court held that the contents of the chit were too vague and were procured only to harass the workman for no fault of his, that the domestic enquiry was violative of the principle of natural justice, and its findings perverse and without any evidence to support them. Consequently it ordered the reinstatement of the workman. The management appealed to his Court contending that instead of reinstatement the workman should be paid compensation. It also raised the plea that it had lost confidence in the workman.

HELD : The present case is not one in which this Court would be justified in interfering, on appeal under Art. 136 of the Constitution, with the order of the Tribunal. The question whether on setting aside the wrongful dismissal of a workman he should be reinstated or directed to be paid compensation is a matter within the judicial discretion of the Labour Court or the Tribunal, dealing with the industrial dispute, the general rule in the absence of any special circumstances being of reinstatement. In exercising this discretion, fairplay towards the employee on the one hand and interest of the employer, including considerations of discipline in the establishment, on the other, require to be duly safeguarded. This is necessary in the interest both of security of tenure of the employee and of smooth and harmonious working of the establishment. Legitimate interests of both of them have to be kept in view if the order is expected to promote the desired objective of industrial peace and maximum possible production. The past record of the employee, the nature of the alleged conduction which the order of the employer is set aside, the nature of the duties performed by the employee concerned and the nature of the industrial establishment are some of the broad relevant factors which require to be taken into consideration. These factors are merely illustrative. Each case has to be decided on its own facts and no hard and fast rule can laid down to cover generally all conceivable contingencies. Proper balance has to be maintained between the conflicting claims of the employer and the employee without jeopardising the larger interests of industrial peace and progress. [780 D]

There was no evidence to conclude that the management lost confidence in the workman. If the workman is entitled as a general rule to be reinstated after his wrongful dismissal is set aside and on the facts it is not possible to find cogent material on which the establishment can genuinely be considered to have lost confidence in the integrity of the workman, he

A is entitled to be reinstated. The suggestion that having regard to the nature of the proceedings against the workman the management has lost confidence was acceptable. [782 F]

B If the workman's dismissal was wrongful then merely because proceedings for adjudication of the industrial dispute have taken a long time (10 years) was by itself no reason for not directing his reinstatement if it was otherwise justified being in accordance with the normal rule. [782 G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1137 of 1970.

C Appeal by special leave from the award dated October 30, 1969 of the Labour Court of Assam and Dibrugarh in Reference No. 20 of 1964.

*M. C. Chagla* and *R. Gopalakrishnan*, for the appellant.

*K. P. Gupta*, for the respondents.

D The Judgment of the Court was delivered by

*Dua, J.* In this appeal special leave was limited to the question whether relief by way of payment of compensation should not be substituted for the relief by way of reinstatement granted by the Labour Court to the workman, H. P. Bhagavati, Store Clerk.

E The Panitole Tea Estate belongs to the Jokai (Assam) Tea Co., Ltd., Panitole. Depot Line was one of the Out Gardens under this Tea Estate and it had a separate godown. One B. K. Borgohain, a part-time clerk, was in charge of this godown. Ammonia sulphate fertiliser was stored in this godown, 970 bags

F having been received there between December 12, 1960 and January 5, 1961. Pursuant to receipt of an anonymous letter that there was pilferage of these bags the stock was checked and 89 bags were found missing. In the course of the domestic enquiry against Borgohain a chit (Ex. 12) was produced by him which suggested H. P. Bhagavati's collusion with Borgohain in this affair.

G Bhagavati was accordingly also chargesheeted and after domestic enquiry he was dismissed with effect from March 23, 1961. This order of dismissal of Bhagavati gave rise to an industrial dispute which was duly referred to the Labour Court of Assam at Dibrugarh. The Labour Court by its award dated October 30, 1969 held that the contents of Ex. 12 were too vague to connect Bhagavati with the offence charged. According

H to the Labour Court the management had procured this exhibit only to harass Bhagavati for no fault of his. The domestic enquiry was also found to be violative of the principle of natural

justice and its conclusions perverse, there being no evidence to support them. Bhagavati was accordingly held entitled to reinstatement with all the back wages and benefits. The present appeal is directed against this order and, as observed earlier, the only question we have to decide is whether Bhagavati should be reinstated or he should be paid compensation instead of reinstatement. The dismissal of Borgohain, it may be pointed out, was not challenged by him and that order became final. In this appeal we are not concerned with his dismissal.

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On appeal in this Court Shri Chagla has submitted that the management has lost confidence in Bhagavati and it would be unjust and improper to force his reinstatement as a store clerk on the management after a lapse of ten years. The learned counsel offered to pay to the workman any reasonable compensation as may be ordered by this Court. Reliance in support of this submission against the order of reinstatement was placed on two recent decisions of this Court *Ruby General Insurance Co. Ltd. v. Chopra*<sup>(1)</sup> and *Hindustan Steel Ltd. v. A. K. Roy*<sup>(2)</sup>. In the first case special leave granted by this Court was also limited only to the question whether the relief granted to the workman concerned should have been reinstatement or compensation. On a consideration of the facts and circumstances of that case this Court had set aside the order of reinstatement and directed the company to pay compensation to the workman concerned. Our attention has been drawn to some of the observations made in that case. This Court said there :

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“In the present case we are of the view that reinstatement directed by the tribunal was inexpedient. The respondent had served the company in all for a period of twelve months. It was not as if he had been induced to give up any employment he was engaged in for joining the service of the appellant-company. The company's establishment in Delhi was comparatively a small establishment. There can be no doubt that the position of a stenographer in such an establishment would be one of confidence and trust as he would be taking down dictation and typing out all kinds of matters including sometimes confidential and even secret matters. For example, a report of the working of this branch to the company's headquarters by the branch manager, or a report as regards the working of other rival insurance companies in Delhi area, or a report regarding promotion and even demotion of some of the members of the staff of the branch office, and such other matters would be of a highly confidential

(1) [1970] 1 L.L.J. 63.

(2) [1970] 1 L.L.J. 228.

A nature. If the branch manager were, for one reason or  
the other to lose confidence and trust in stenographer  
working under him, it would obviously be impossible  
for him to give dictation on such matters to such a  
stenographer. On the assumption that the respon-  
B dent was made to take dictation and type out letters in  
connexion with other concerns in which the appellant-  
company was interested and the respondent was not  
paid any extra remuneration for such work, the respon-  
dent was, on his admission retaining with him surrepti-  
tiously copies of those communications. As the tribu-  
C nal has remarked, the respondent did so in order to  
preserve evidence that he was made to take down letters  
relating to concerns other than the appellant-company.  
Whether in terms of his employment as a stenographer  
the regional manager could take such work or not is a  
matter in which we need not go, but he did admittedly  
retain with him copies of as many as 32 such communi-  
D cations which he exhibited as Exs. W. 10 to W. 42.  
These copies were clearly the property of the company  
which the respondent in no event could retain in his  
possession without the consent of his employers. If the  
regional manager were to entertain a feeling that, if  
reinstated, the respondent would in future also retain  
with him copies of documents of a confidential nature  
E whenever the respondent felt that such retention would  
be of use or advantage to him, such a feeling on the  
part of the regional manager that he can no longer trust  
the respondent with any confidential matter cannot be  
regarded as altogether unjustified. The regional mana-  
ger might well feel that if the respondent was capable  
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future collect perhaps evidence of a more dangerous  
and harmful nature. Obviously, if he cannot repose  
confidence in the respondent, if reinstated, he cannot  
make any use of his services, as a stenographer. In  
the circumstances, we think that the tribunal ought not  
G to have directed his reinstatement despite its conclusion  
that the termination of his services was wrongly made,  
but ought to have awarded suitable compensation  
instead."

In the second case this Court observed :

H "The question, however, still is whether the tribunal  
was, in the circumstances of the case, justified in  
directing reinstatement. It is true that some of the  
decisions of this Court have laid down that where the  
discharge or dismissal of a workman is not legal or

justified, the relief which would ordinarily follow would be reinstatement. The Tribunal, however, has the discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make reinstatement inexpedient or improper. The Tribunal has, therefore, to exercise its discretion judicially and in accordance with well recognised principles in that regard and has to examine carefully the circumstances of each case and decide whether such a case is one of those exceptions to the general rule. If the Tribunal were to exercise its discretion in disregard of such circumstances or the principles laid down by this Court it would be a case either of no exercise of discretion or of one not legally exercised. In either case the High Court in exercise of its writ jurisdiction can interfere and cannot be content by simply saying that since the Tribunal has exercised its discretion it will not examine the circumstances of the case to ascertain whether or not such exercise was properly and in accordance with the well-settled principles made. If the High Court were to do so, it would be a refusal on its part to exercise jurisdiction."

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And again :

"The Tribunal no doubt felt that it was not established whether the investigation and the report following it were properly done and made, that the company ought to have disclosed it to the workman and given him an opportunity to vindicate himself and that the non-disclosure of the report made the termination illegal and unjustified. That may or may not be right. But what was relevant, at the stage when the Tribunal came to decide what relief the workman was entitled to, was the question whether the management genuinely apprehended as a result of the report that, it would be risky to retain the workman in the company's service. They may have gone wrong in the manner of terminating the workman's service as held by the Tribunal. But, if the management truly believed that it was not possible to retain the workman in the company's service on grounds of security and consequently could not place confidence in him any longer, the present case would be one of those exceptional cases where the general rule as to reinstatement could not properly be applied. This of course does not mean that in every case where the employer says that he has lost confidence in the workman, and, therefore, has terminated his service that reinstatement cannot be granted and the

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A Tribunal has to award compensation. On the other hand, if on an examination of all the circumstances of the case, the Tribunal comes to the conclusion that the apprehensions of the employer were genuine and the employer truly felt that it was hazardous or prejudicial to the interests of the industry to retain the workman in his service on grounds of security, the case would be properly one where compensation would meet the ends of justice.

On a consideration of all the circumstances, the present case, in our view, was one such case. The Tribunal exercised its discretion mechanically without weighing the circumstances of the case. That was no exercise of discretion at all. There is ample authority to the effect that if a statutory tribunal exercises its discretion on the basis of irrelevant considerations or without regard to relevant considerations, *certiorari* may properly issue to quash its order. (See *S. A. de Smith, Judicial Review of Administrative Action* (2nd ed) pp. 324-325. One such relevant consideration, the disregard of which would render its order amenable to interference, would be the well-settled principles laid down in decisions binding on the Tribunal to whom the discretion is entrusted. The refusal by the High Court to interfere was equally mechanical and amounted to refusal to exercise its jurisdiction. Its order, therefore, becomes liable to interference."

Shri Chagla has argued that in the present case there was no exercise of judicial discretion by the Labour Court and the impugned order was made mechanically without considering the relevant circumstances and applying its mind to the question as to which of the two reliefs was more appropriate.

On behalf of the respondents it is submitted that Bhagavati, the workman concerned in this case, is innocent and the management was found by the Labour Court on evidence to have resorted to unfair labour practice. The chit, Ex. 12, was also held not to be in the handwriting of Bhagavati. It is further emphasised that criminal proceedings were also started against Bhagavati but he was discharged in the criminal case for want of evidence implicating him. The respondent's learned counsel has, in support of his submission, drawn our attention to *The Punjab National Bank Ltd. v. Its Workmen*<sup>(1)</sup>, *M. L. Bose & Co. (P) Ltd. v. Its Employees*<sup>(2)</sup> and *Workmen of United Bleachers (P) Ltd., v. United Bleachers (P) Ltd.*<sup>(3)</sup>, (a decision by a single Judge of the Madras High Court). In the *Punjab*

[1960] 1 S.C.R. 806

(2) [1961] 11 L.L.J. 107 (S.C.)

(3) [1968] 1 L.L.J. 529

*National Bank* case<sup>(1)</sup> it was observed that the propriety of reinstatement in a case of wrongful or illegal dismissal is normally a question of fact and where the industrial tribunal on a proper consideration of the relevant factors refuses to pass such an order the Supreme Court would be reluctant in the absence of any general or substantial question of law to interfere under Art. 136 of the Constitution. According to the counsel where reinstatement has been ordered by the court or tribunal in an industrial dispute arising out of dismissal of a workman this Court should, in the absence of special circumstances, decline to interfere with that order on special leave appeal. Support from the case of *M. L. Bose & Co. (P) Ltd.*<sup>(2)</sup> is sought for the contention that reinstatement is the normal rule when dismissal is held to be wrongful and it is immaterial that the employer has since employed other workmen. The case of *United Bleachers*<sup>(3)</sup> follows the observations of this Court in the case of *Punjab National Bank Ltd.*<sup>(1)</sup>, *M. L. Bose & Co. (P) Ltd.*<sup>(2)</sup> and *Swadesamitran Ltd. v. Their Workmen*<sup>(4)</sup>.

In our opinion the present case is not one in which we would be justified in interfering on appeal under Art. 136 of the Constitution with the order of the Tribunal. The question whether on setting aside the wrongful dismissal of a workman he should be reinstated or directed to be paid compensation is a matter within the Judicial discretion of the Labour Court or the Tribunal, dealing with the industrial dispute, the general rule in the absence of any special circumstances being of reinstatement. In exercising this discretion, fairplay towards the employee on the one hand and interest of the employer, including considerations of discipline in the establishment, on the other, require to be duly safeguarded. This is necessary in the interest both of security of tenure of the employee and of smooth and harmonious working of the establishment. Legitimate interests of both of them have to be kept in view if the order is expected to promote the desired objective of industrial peace and maximum possible production. The past record of the employee, the nature of the alleged conduct for which action was taken against him, the grounds on which the order of the employer is set aside, the nature of the duties performed by the employee concerned and the nature of the industrial establishment are some of the broad relevant factors which require to be taken into consideration. The factors just stated are merely illustrative and it is not possible to exhaustively enumerate them. Each case has to be decided on its own facts and no hard and fast rule can be laid down to cover generally all conceivable contingencies. Proper balance has to be maintained between the conflicting claims of the employer and the employee

(1) [(1960) 1 S.C.R. 806.

(3) 1968] 1 L.L.J. 529.

(2) [1961] 2 L.L.J. 107 (S.C.).

(4) [1960] 1 L.L.J. 504.

A without jeopardising the larger interests of industrial peace and progress. In *Hindustan Steel Ltd.'s* case<sup>(1)</sup> this Court substituted the order of reinstatement by an order of payment of compensation on the ground that the police report and the security officer's recommendation to the Company showed that it was not desirable for reasons of security to reinstate the employee. In that case it was observed :

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"As exceptions to the general rule of reinstatement, there have been cases where reinstatement has not been considered as either desirable or expedient. These were the cases where there had been strained relations between the employer and the employee, where the post held by the aggrieved employee had been one of trust and confidence or where, though dismissal or discharge was unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive of or prejudicial to the interests of the industry. These cases are to be found in *Assam Oil Co. Ltd. v. Workmen*<sup>(2)</sup>; *Workmen of Charottar Gramodhar Sahakari Mandali Ltd. v. Charottar Gramodhar Sahakari Mandali Ltd.*<sup>(3)</sup>; *Doomur Dulung Tea Estate v. Workmen*<sup>(4)</sup> and *Ruby General Insurance Co. Ltd. v. P. P. Chopra*<sup>(5)</sup>. These are however, illustrative cases where an exception was made to the general rule. No hard and fast rule as to which circumstances would in a given case constitute an exception to the general rule can possibly be laid down as the Tribunal in each case keeping the objectives of industrial adjudication in mind, must in a spirit of fairness and justice confront the question whether the circumstances of the case require that an exception should be made and compensation would meet the ends of justice."

The general rule of reinstatement in the absence of special circumstances was also recognised in the case of *Workmen of Assam Match Co. Ltd. v. The Presiding Officer, Labour Court Assam & ors.*<sup>(6)</sup> and has again been affirmed recently in *M/s. Tulsidas Paul v. The Second Labour Court, W.B. & ors.*<sup>(7)</sup>. In *Messrs Tulsidas Paul*<sup>(7)</sup> it has been emphasised that no hard and fast rule as to which circumstances would establish an exception to the general rule could be laid down and the Tribunal must in each case decide the question in a spirit of fairness and justice in keeping with the objectives of industrial adjudication.

H (1) [1970] I.L.L.J. 288.

(3) C.A. 382/66 d/14.-8-1967.

(5) [1970] I.L.L.J.63.

(2) (1969) 3 S.C.R. 457.

(4) C.A. 516/1966 d/26-10-1967

(6) C.As. 1070-1071/1963 d/27-10-64.

(7) C.A. 1607/1966 d/3-2-1971.

In the present case Shri Chagla has laid main stress on the submission that the management has lost confidence in Bhagavati's integrity and it would be wholly improper to force his reinstatement on the management. The store of which this workman was in charge, according to the learned counsel, contains goods worth lakhs of rupees and in the absence of the requisite confidence in his integrity the order of reinstatement is likely to harm the cause of industrial peace in the appellants concern. The appellant has expressed willingness to pay any reasonable amount by way of compensation. We have in support of the plea of want of confidence been taken through the correspondence between the management and Bhagavati. From that correspondence we are unable to conclude that the management lost confidence in Bhagavati because of the lapses mentioned therein. It appears that it was only when the management suspected Bhagavati's collusion with Borgohain that the management felt that his integrity was questionable. That chit having been found not to be in Bhagavati's handwriting and Bhagavati's dismissal having been held to be wrongful we are unable to sustain the plea of want of confidence raised by Shri Chagla. It is significant that no such plea was sought to be substantiated before the Labour Court. It is undoubtedly true that the store of the Tea Estate would contain goods of substantial value and a person really suspected of being untrustworthy may not justifiably be forced on the unwilling employer, but that aspect requires determination on facts which should have been properly placed before the Labour Court and a finding secured after appropriate trial. The suggestion that having regard to the nature of the proceedings against Bhagavati, the management has lost confidence is unacceptable. A similar argument was repelled in the case of *Assam Match Co.*(<sup>1</sup>). If the workman is entitled as a general rule to be reinstated after his wrongful dismissal is set aside and on the facts it is not possible to find cogent material on which the establishment can genuinely be considered to have lost confidence in the integrity of the workman he is entitled to be reinstated. The next argument that Bhagavati should not be forced on the management after a lapse of ten years is equally unacceptable because if his dismissal was wrongful then merely because proceedings for adjudication of the industrial dispute have taken a long time is by itself no reason for not directing his reinstatement if it is otherwise justified being in accordance with normal rule. A similar contention was also repelled in the case of *Assam Match Co.*(<sup>1</sup>).

In *Swadesamitran's* case(<sup>2</sup>) also this Court observed that in the case of wrongful dismissal, discharge or retrenchment a claim for reinstatement cannot be defeated merely because time has elapsed or that the employer has engaged fresh hands. We are, therefore, unable on the existing record to sustain the appellants sub-

(1) C.As. 1070-1071/1963d/27-10-64.

(2) [1960] I.L.L.J. 504

- A mission that the order of reinstatement made by the Labour Court suffers from any legal infirmity justifying its substitution by an order of payment of compensation to the workman. A suggestion has been thrown by Shri Chagla that in all probability the employee must have secured employment elsewhere as he could not have remained idle all these years an payment of compensation in place of reinstatement would, therefore, cause him no prejudice. On behalf of the employee it is denied that he had been employed anywhere else during this period. In our opinion, this matter being controversial should have been raised before the Labour Court and we are not in a position to express any opinion on it in the present proceedings.
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- C The appeal accordingly fails and is dismissed. In the circumstances of the case there will be no order as to costs in this Court.

Y.P.

*Appeal dismissed.*