

A PALGHAT BPL AND PSP THOZHILALI UNION
v.
BPL INDIA LTD. AND ANR.

SEPTEMBER 7, 1995

B [K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Industrial Law :

C *Company—Standing order—Clause 39(h)—Interpretation of Mis-
conduct—What amounts to—Held assault on officers of Management outside
factory is misconduct.*

Industrial Disputes Act, 1947: Section 11-A.

D *Punishment—Quantum of—Power of court to modify—Dismissal
order—Setting aside of by Labour Court—Directions to reinstate with only
25% of back wages—Held on facts justified.*

E During strike by the workmen of the appellant-Union, three of its
workmen threw stones and assaulted officers of the respondent-Company
at a bus-stop outside the premises of the company. They were issued
charge-sheets for their mis-conduct under clause 39(h) of the Standing
Orders of the Company. On the basis of the report of the Enquiry Officer,
which was submitted ex-parte, the workmen were dismissed from services.
F The Labour Court ordered reinstatement of the workmen with only 25%
of back wages. A single Judge of the High Court set aside the award of the
Labour Court and a Division Bench affirmed the order of the single Judge.
G In the meanwhile after the judgment of the single Judge, the appellants
were dismissed from service on November 3, 1989. In appeal to this Court
it was contended that the alleged acts of the appellants were not miscon-
duct within the meaning of Clause 39(h) of the certified Standing Orders
of the Company and that the findings of the High Court are illegal.

Allowing the appeal, this Court

H HELD : 1. A reading of clause 39(h) of the Standing Orders of
Company indicates that drunkenness, riotous or disorderly behaviour during
working hours within the premises of the Company is misconduct. The

second part thereof indicates that any act subversive of discipline committed either within or outside the premises of the Company is also misconduct. Any act unrelatable to the service committed outside the factory would not amount to misconduct. But when a misconduct vis-a-vis the officers of the management is committed outside the factory, certainly the same would be an act subversive of discipline. The object appears to be that workmen need to maintain discipline vis-a-vis its management. What amounts to misconduct is a question of fact. It would be decided with reference to the facts, the situation in which the act was alleged to have been committed and the attending circumstances leading thereto. [409-B-D]

2. The Labour Court had discretion under Section 11-A of the Industrial Disputes Act to consider the quantum of misconduct and the punishment. In view of the surging circumstances, viz. the workmen were agitating by their collective bargain for acceptance of their demands and when the strike was on, the settlement during conciliation proceedings, though initially agreed to, was resiled later on. They appear to have attacked the officers when they were going to the factory. Further, the appellants alone were not members of the assembly of the workmen standing at the bus stop. Under these circumstances, the Labour Court was well justified in taking lenient view and setting aside the order of dismissal and giving direction to reinstate the workmen with a cut of 75% of the back wages upto the date of the award. The management is directed to reinstate the appellants into service forthwith. However, if the appellants were gainfully employed from November 3, 1989 till date, the management would be entitled not to pay full back wages. That would be a matter to be decided by the Labour Court. [409-E-H, 410-A]

It is directed to decide that question.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8384 of 1995.

From the Judgment and Order dated 22.8.90 of the Kerala High Court in W.P. No. 475 of 1990.

L.J. Vadakara for the Appellant.

N.B. Shetye, O.C. Mathur and D.N. Mishra for the Respondents.

The following Order of the Court was delivered :

A Leave granted.

B The appellant is a trade union espousing the cause of three workmen, viz., V. Rajamanicham, N. Raghavan and M. Prabhakaran. The undisputed facts are that while the workmen were on strike, the management suddenly backed out from the settlement in reconciliation proceedings. As a consequence, the workmen started strike. On March 14, 1983, while the said workmen were standing at BPL Bus Stop on Pollachi Road, National Highway Diversion, they sighted the officers passing through the way and assaulted N.V. Subramaniam and others. It is the case of the management that Rajamanickam, Raghvan and others threw stones and one of the stones hit Subramaniam on the head and on the upper part of the right hand causing grievous injuries. It is also their case that Prabhakaran hit Subramaniam with a stick. Thereafter, the management issued show cause notice to the said workmen on March 21, 1983 alleging that the appellants had committed misconduct. The appellants denied the allegations and submitted their reply on March 25, 1983. On consideration of the reply, a charge-sheet was issued to the appellants on April 12, 1983 and an enquiry officer was appointed who submitted ex-parte report on April 19, 1983. In consequence, the management dismissed them from service.

E The appellants challenged the same in a reference under Section 10 of the Industrial Disputes Act, 1947. The Labour Court in I.D.4/86, by its order dated 13.4.1987 set aside the punishment and directed reinstatement with 25% of back-wages. In other words, it ordered deduction of 75% of back-wages. The management filed a writ petition in the High Court. The learned Single Judge in his order dated October 31, 1989 in O.P. Nos. 4034/88 and 3841/89-EG set aside the award of the Labour Court. On appeal, the Division Bench in Writ Appeal No. 475/90 dated 22nd August 8, 1990 confirmed the same. In the meanwhile, after the learned Single Judge had delivered the judgment, the appellants were dismissed on November 3, 1989. Thus, this appeal by special leave.

G The learned counsel for the appellants contended that the alleged acts of the appellants are not misconduct within the meaning of Clause 39(h) of the certified Standing Orders of the company and that the findings of the High Court are, thus, illegal. We find no force in the contention. Clause 39 (h) of the Standing Orders of the Company reads :

H "39(h) : Drunkenness, riotous or disorderly behaviour during work-

ing hours within the premises of the company or any act subversive of discipline either within or outside the premises of the Company." A

A reading of Clause 39(h) indicates that drunkenness, riotous or disorderly behaviour during working hours within the premises of the Company is misconduct. The second part thereof indicates that any act subversive of discipline committed either within or outside the premises of the Company is also misconduct. Though the learned counsel seeks to contend that it is not a misconduct, it is difficult to accept the contention. Any act subversive of discipline committed outside the premises is also misconduct. Any act unrelatable to the service committed outside the factory would not amount to misconduct. But when a misconduct vis-a-vis the officers of the management is committed outside the factory, certainly the same would be an act subversive of discipline. The object appears to be that workmen need to maintain discipline vis-a-vis its management. What amounts to misconduct is a question of fact. It would be decided with reference to the facts, the situation in which the act was alleged to have been committed, and the attending circumstances leading thereto. B C D

In this case, the finding recorded by the High Court and the Labour Court is that stones were thrown and the officers were attacked which resulted in grievous injuries to the officers. But it is seen that the appellants alone were not members of the assembly of the workmen standing at the BPL Bus stop. The Labour Court had discretion under Section 11-A of the Industrial Disputes Act to consider the quantum of misconduct and the punishment. In view of the surging circumstances, viz., the workmen were agitating by their collective bargain for acceptance of their demands and when the strike was on, the settlement during conciliation proceedings, though initially agreed to, was resiled later on. They appear to have attacked the officers when they were going to the factory. Under these circumstances, the Labour Court was well justified in taking lenient view and in setting aside the order of dismissal and giving direction to reinstate the workmen with a cut of 75% of the back-wages upto the date of the award. In our considered view, the discretion exercised by the Labour Court is proper and justified in the above facts and circumstances. The High Court had not adverted to these aspects of the Matter. It merely had gone into the question whether the act complained of is a misconduct. E F G

May it be stated that if the appellants were gainfully employed from H

- A November 3, 1989 till date, the management would be entitled not to pay full back-wages. That would be a matter to be decided by the Labour Court. It is directed to decide that question. However, the management is directed to reinstate the appellants into service forthwith. Labour court is directed to conduct the enquiry into the question of gainful employment, if any. The appellants should place their case and the management is also entitled to adduce its evidence in rebuttal thereof. Labour Court would decide the matter and the decision of the Labour Court should not be appealed thereunder by either party. The appellants are directed to report for duty on 1st October, 1995 and the respondent would take them into service.

C

The appeal is allowed accordingly. No costs.

T.N.A.

Appeal allowed.