T.K. Mitra Vs P.O., Industrial Tribunal-I and Another

Court: Allahabad High Court

Date of Decision: Aug. 25, 2010

Acts Referred: Uttar Pradesh Industrial Disputes Act, 1947 â€" Section 33(2), 33A, 6E(2)

Hon'ble Judges: Sunil Ambwani, J; Kashi Nath Pandey, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Heard Shri A.N. Tripathi, Senior Advocate appearing for the respondent-appellant.

2. In this Special Appeal under Chapter VIII Rule 5 of the Rules of the Court, the petitioner-appellant has challenged the judgment of this Court

dated 22.3.2001 in Writ Petition No. 23697 of 1992, by which the Court found that M/s. Hindalco Industries Limited-the employer had

substantially complied with the Proviso to Section 6-E(2)(b) of the U.P. Industrial Disputes Act, 1947 (in short, the Act) in terminating the services

of the petitioner-appellant during the pendency of the industrial dispute.

3. The petitioner-appellant Shri T.K. Mitra, Inspector in the Inspection and Packaging Department, was charge-sheeted on 27.3.1991. After

holding a domestic enquiry, he was dismissed from service on 17.7.1991. On that very day, when the order terminating the services was passed,

he was sent one month''s wages through money order and an application was moved before the Industrial Tribunal u/s 6E(2)(b) of the Act. The

appellant did not press and rather consented before the Tribunal that the enquiry was fair and proper. The only question required to be determined

was the fact whether the provisions of Section 6E(2)(b) of the Act was complied with.

4. Learned Single Judge found, relying upon Straw Board Manufacturing Co. Ltd. v. Govind 1962 (1) ALJ 420 that the three things, required to

be done, namely dismissal or discharge; payment of wages and making of the application, are parts of the same transaction. If that is done, there is

no occasion to fear that the employee''s right u/s 33A would be affected. Learned Single Judge further relied upon judgments in Parley products

Pvt. Ltd. v. Miss C.S. Saraswati 1981 Labour & IC 704 by Bombay High Court in finding that the sending of one month''s wages by money order

is a valid discharge. The writ petition was allowed and the order of the Tribunal dated 27.4.1992 was set aside. The matter was remanded to the

Tribunal to pass orders afresh.

5. We are informed by Shri A.N. Tripathi, that after remand the Tribunal has decided the application against the appellant Shri T.K. Mitra. He has

filed a fresh Writ Petition No. 2994 of 2002, challenging the order of the Tribunal.

6. The reliefs claimed in this Special Appeal, after the order was passed by Tribunal afresh, have virtually become infructuous.

7. On merits, it was submitted that the wages were paid to the employee through the bank account and thus the wages for one month were

required to be paid by the same mode. The money order was returned and thus it cannot be treated to be a valid payment. He has relied upon

Calcutta State Transport Corporation Vs. Md. Noor Alam,

8. We have gone through the judgment in Calcutta State Transport Corporation"s case (supra) and do not find any observations in it, in favour of

the appellant. The Supreme Court has further explained the proviso to Section 33(2)(b) of the Industrial Disputes Act, 1947 (pari materia) and has

held that three things to be done by the employer does not mean that all the three things should be done on the same day. It is the conduct of the

employer that has to be considered from the point of view to find out whether the dismissal or discharge, payment of wages and making of the

application for approval form a part of the same transaction.

9. The Tribunal in its judgment under challenge in the writ petition had failed to find out whether all the three things were part of the same

transaction. The deposit in the bank, or by tender in cash or through money order amounts to the same thing, namely the payment of wages. The

method and mode of payment is not important. As held in Calcutta State Transport Corporation (supra) the conduct of the employer has to be

seen. The protection of Section 33(2)(b) of the Act is from any arbitrary or capricious dismissal pending the industrial dispute. The employer is

liable to discharge his statutory liability before making the order of dismissal effective against the employee. We do not find any error in the

judgment of learned Single Judge.

10. The Special Appeal, which has even otherwise become infructuous, is dismissed.