

(1958) 06 BOM CK 0020

Bombay High Court

Case No: complaint (I.T.) No. 10 of 1958 in Reference (I.T.) No. 62 of 1958

Sudama Chamaroo

APPELLANT

Vs

Kapoor Silk Mills

RESPONDENT

Date of Decision: June 23, 1958

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33, 33(2), 33A

Citation: (1958) 2 LLJ 369

Hon'ble Judges: J.A. Baxi, J

Bench: Single Bench

Judgement

1. This is a complaint by Sudama Chamaroo under S. 33A of the Industrial Disputes Act, complaining that the opponent company had dismissed him for alleged misconduct without paying wages for one month and without applying for the approval of the tribunal as required by the proviso to Clause (b) of Sub-section (2) of S. 33 of the Industrial Disputes Act. The complainant is concerned in a dispute regarding bonus payable to the workmen which is the subject of the pending reference before this tribunal. His contention is that by virtue of the above proviso the company on dismissing him was bound to pay him one month's wages and apply for the approval of the tribunal and as it has done neither of these things the provisions of S. 33 had been contravened by it. The misconduct alleged against him is that he refused to repair a wooden drum in spite of the orders of the superior officer. It is not disputed that the alleged misconduct is not connected with the industrial dispute pending before this tribunal.

2. At the hearing of the complaint a preliminary objection against the jurisdiction of this tribunal to entertain the complaint was urged by Sri Jahagirdar on behalf of the respondent company. The objection is that the company has no standing orders and as it employs about 50 workmen only the Industrial Employment (Standing Orders) Act, 1946, does not apply to it and it is under no obligation to frame standing orders and have them certified under that Act, and in the absence of any standing orders

the company is not bound to obtain the approval of the tribunal of the complainant's dismissal.

3. The provisions for payment of one month's wages to the dismissed workmen and for obtaining the tribunal's approval of the company's action on dismissing him are contained in S. 33(2) of the Industrial Disputes Act which reads as under :-

"33. (2) During the pendency of any such proceedings in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, -

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, the workman :

Provided that no such workman shall be discharged or dismissed, unless he had been paid wages for one month, and an application has been made by the employer to authority before which the proceeding is pending for approval of the action taken by the employer."

4. It is admitted on behalf of the complainant that the company is not governed by the Industrial Employment (Standing Orders) Act, 1946, nor has the company framed any standing orders. In *K. T. Anthony v. Good Year Tyre and Rubber Company of India (Private), Ltd.*, Bombay 1958 I L.L.J 377 Sri M. R. Meher, the learned industrial tribunal, held after an exhaustive discussion of law that where there are no standing orders, the employer is not bound to apply under S. 33(2) for the approval of the tribunal of his action in dismissing a workman for misconduct not connected with the dispute. In an earlier decision of Sri P. D. Sawarkar, industrial tribunal [complaint (I.T.) No. 42 of 1947] the learned tribunal took the view that where a concern has no standing orders Sub-section (2) of S. 33 did not come into operation. Following these decision I hold that as there are no standing orders the company did not contravene the provisions of S. 32(2) of the Industrial Disputes Act is not paying to the complaint one month's wages or in not applying for the approval of this tribunal of its action in dismissing him for the alleged misconduct.

5. Sri Gupte for the complainant, however, argued that the company had relied on the model standing order 23(a) in the chargesheet and in the previous notices given to the complainant. He argued that as the company itself relied on the model standing orders it should be taken to have adopted them and it cannot be permitted to contend that it has no standing orders. This argument cannot be accepted. The company no doubt referred to model standing orders in the chargesheet and in its previous notices. But the model standing orders by themselves have no statutory force under the Industrial Disputes Act. They have been framed under the

Employment (Standing Orders) Rules, 1948, to serve as guide to the employers in framing their own standing orders. The standing orders which would be applicable to the employer and his workmen are standing orders framed and certified by the Certifying Authority under the Industrial Employment (Standing Orders) Act, 1946. An employer who has not framed any standing orders cannot be bound by the model standing orders merely because in dealing with his workmen he prefers to be guided by them. Moreover, under S. 33(2) of the Industrial Disputes Act the standing orders, in accordance with which action against a workman for misconduct is contemplated, are standing orders "applicable to the workmen." Obviously standing orders which are not certified and registered under the Industrial Employment (Standing Orders), Act, 1946, cannot be said to be applicable to the workmen and the reference to the model standing orders in the chargesheet and in other notices cannot have the effect of giving the model standing orders statutory force which they do not intrinsically possess. Section 33(2) of the Industrial Disputes Act has no application to such cases and the sub-section is not violated if the employer does not pay a month's wages on dismissing a workman and seek the tribunal's approval of his action.

6. The complaint is thus misconceived and I dismiss the same.