

1973

Present : Rajaratnam, J.

K. B. D. SOMAWATHIE, Appellant,

and

BAKSONS TEXTILE INDUSTRIES LTD., Respondent

S. C. 217/71—Labour Tribunal Case No. B/1330/69

Labour Tribunal—Justifiable termination of a workman's services—Tribunal may nevertheless, in making a just and equitable order, award compensation in a deserving case—Power of Tribunal to consider fresh matter not raised at the commencement of the proceedings—Scope—Industrial Disputes Act (Cap. 131), ss. 33 (1) (d), 36 (5).

The services of the applicant, who was admittedly a good worker, were terminated by her employer mainly because she indulged in false gossip about a man under whose supervision she worked. When the applicant sought relief from a Labour Tribunal, the President found on the facts that the employer was entitled to discontinue the services of the applicant on the ground of indiscipline and misconduct, but he did not direct his mind to the question whether the applicant was undeserving of some compensation.

Held : That even where the termination of the services of a workman is justified he may in some cases be entitled to relief or redress when a just and equitable order is made under the Industrial Disputes Act. In the present case the applicant deserved to be paid some compensation because the cause of the termination of her services was not a serious act of misconduct.

Held further : That section 36 (5) of the Industrial Disputes Act does not prohibit a Labour Tribunal from entertaining another circumstance to explain the termination of services, not strictly raised at the commencement of the proceedings. The term fresh matter relating to a dispute does not include a further detail that led to the termination of services, nor does the term "may permit" exclude making inquiries into all matters necessary for a just and equitable order.

Case referred to :

United Engineering Workers' Union v. Devanayagam, 69 N.L.R. 289.

A P P E A L from an order of a Labour Tribunal:

N. Satyendra, with Justin Perera, for the applicant-appellant.

H. D. Tambiah, for the employer-respondent.

Cur. adv. vult.

January 15, 1973. RAJARATNAM, J.—

In this appeal, the applicant's services were terminated by her employer with a month's salary in lieu of notice on the ground of indiscipline and misconduct. At the inquiry the main issue was whether the applicant carried on a malicious gossip campaign against one Shah, a weaving master in the employer company. The applicant was also alleged to have disobeyed the orders of the said Shah under whose supervision she worked. The applicant denied these charges but maintained that Shah paid undue attention to her which she resented. The President found it difficult to accept this complaint of the applicant, and the applicant failed on the facts to convince the President as to the truth of her version. It is not possible for this Court to reverse a finding of fact and I do not propose to do so.

On the findings of the President, however, any just and equitable order had to be based on the following facts.

- (1) The applicant's complaint regarding Shah's undue attention towards her was unconvincing.
- (2) Applicant was a good worker but quarrelsome.
- (3) The amorous and romantic tendencies of Shah have not been proved.

The findings of the President, however, broadly covered the allegation that the applicant was falsely gossiping about Shah or rather that the applicant gossiped about Shah and did not convince the President that the stories she circulated were true. On the other hand there was no finding that she disobeyed Shah, although in the accepted circumstances, the relationship between Shah and the applicant were not such that there could have been disciplined work on the part of the applicant as far as the work concerned the supervision of Shah.

The President made this observation however "whatever may be said of Shah's evidence, I have hardly any reason to reject Bakshani's evidence in this case I think he had no choice but to terminate the services of the applicant for the

reasons stated by him he was faced with the alternative of retaining the services of the weaving master or the supervisor” The President’s finding was that in the circumstances the employer had acted prudently in discontinuing the services of the applicant.

At the worst, the applicant indulged in the delightful and perfectly feminine pastime of gossiping and in the totality of the evidence at the inquiry having regard also to the findings, I do not think it can be held that Shah was altogether undeserving of all the stories that were getting built round him. Anyhow the President has not directed his mind to whether the applicant was undeserving of some compensation. On the findings, certainly it would have been embarrassing for the employer to have had the services of both the applicant and Shah. But if he chose to retain Shah and terminate the services of the applicant under the circumstances, were the facts that were disclosed and proved such that the applicant was undeserving of any relief or redress? This was the question the President had to answer as required by the law and this was the question the President did not answer either way. In the circumstances of the case, I hold that the applicant deserved some relief or redress. This was essentially a case where the failure of the President to answer this question has led to a legally defective order.

Under the Industrial Disputes Act—

- (a) the applicant is allowed to go to the Tribunal for redress or relief on the termination of her services by the employer,
- (b) the President is required to make the necessary inquiries, and
- (c) make a just and equitable order. Of course the inquiries and the subsequent just and equitable orders are matters for the President. But the just and equitable order can be made only after the President questions himself after the necessary inquiries (a) whether the applicant deserves redress or relief and (b) if so, what should be the relief or redress.

The mere inquiry into an allegation of misconduct and inefficiency and the finding whether this allegation is true or not is not a complete finding as required by the Industrial Disputes Act. It is my considered view that Labour Tribunals were never intended to perform the functions of Courts of Law, and make an order whether the applicant is guilty or not of the allegations made against him by the employer. It is not a verdict that the Law requires from the President but a just and equitable

order — an order that is just and equitable in relation to the employer and employee and the employer-employee relationship, due consideration being given to discipline and the resources of the employer and even the interests of the public may have to be given thought to. It is for this reason that the Labour Tribunals are not confined by rules of evidence. They can adopt their own procedure, they can act on confessions and the testimony of accomplices so that they can have a free hand to make a fair order which may be an order of—

- a. re-instatement with back wages,
- b. re-instatement without back wages,
- c. compensation in lieu of re-instatement,
- d. compensation,
- e. arrears of salary,
- f. an alternative order of re-instatement or compensation,
- g. a refusal of any relief or redress whatsoever.

The relief or redress enumerated above, before it is ordered or denied must raise the question whether the applicant deserves or not any such relief or redress. In some cases, the failure of the President to direct his mind specifically to this question may not lead to a legally defective order but in other cases and in my view the present case is one, such a failure has led to a legally defective order. In the case of *United Engineering Workers' Union v. Devanayagam*, 69 N. L. R. 289 at p. 300, the Privy Council has in effect held that even where the termination of the services was justified the workman in some cases will be entitled to relief or redress.

Learned Counsel for the appellant submitted that the main allegation against the applicant was made belatedly and referred me to s. 36 (5) of the Industrial Disputes Act which permits the Tribunal to entertain any fresh matters which could not have been raised at the commencement of the proceedings.

I do not think that this provision prohibits a Tribunal which by law is directed to make all necessary inquiries before it makes a just and equitable order, to entertain another circumstance to explain the termination not strictly raised at the commencement of the proceedings. The term commencement of the proceedings does not necessarily mean at the stage of the pleadings.

The term fresh matter relating to a dispute does not include a further detail that led to the termination nor does the term "may permit" exclude making inquiries into all matters necessary for a just and equitable order. Therefore this submission on behalf of the appellant fails.

In the present case where the applicant's services were terminated mainly due to her conduct of indulging in gossip when admittedly she was a good worker, the President may have given her some relief if he had directed his mind to this question. In any case she will not be entitled to any back wages as on the finding of the President it cannot be said that the applicant was altogether not responsible for the situation that brought the parties to the Tribunal. I do not think in the circumstances, she should be forced upon the employer. *There is nothing to prevent the employer however to take her back on his own terms.* This is a matter entirely left to the absolute discretion of the employer.

If the applicant however does not succeed in getting back her employment I think it will be just and equitable for her to be paid some compensation.

I entirely agree with learned Counsel for the respondent employer that compensation awarded either in lieu of reinstatement or under s 33 (1) (d) should be compensation for some loss suffered by the employee at the hands of the employer. Mr. Advocate Tambiah, however, placed his argument very high and submitted that it should be a loss as a result of some wrong done to the workman and in this case as there was no wrong done by the employer, there could be no order for compensation. In my view an order for compensation could be made even where the workman loses her job because the employer *in the interests of his business* quite rightly had to discontinue her services, but the cause for termination was not such a serious act of misconduct, in this case being mere female gossip on the part of the applicant and an occupational hazard at its worst as far as Shah was concerned, in a workplace where there were females.

Having regard to the short period she has been in employment, in my view compensation in a sum of Rs. 1,500 will be reasonable.

I have fixed the compensation at Rs. 1,500 on the basis that the employer when he was acting in the interests of his business could have asked the applicant to leave his services on the ground that she was a source of embarrassment for him at the workplace by circulating stories which she later was unable to substantiate at the Tribunal. Her salary was nearly Rs. 200 per mensem (all inclusive) and the compensation I order is a little over half a year's salary, i.e. Rs. 1,500. She will be entitled to the costs of the inquiry and a sum of Rs. 105 as the costs of the appeal.

*Order varied and
appellant awarded compensation.*