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SHYAM LAL SHARMA & ORS.

v.

UNION OF INDIA

NOVEMBER 8/26, 1985

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[P.N. BHAGWATI, C.J., V.D TULZAPURKAR, R.S. PATHAK, D.P. MADON AND M.P. THAKKAR, JJ.]

Constitution of India, 1950—Articles 310(1) & 311(2)(b)—Power exercisable by President/Governor—Not on personal satisfaction but with the aid and advice of Council of Ministers—Workers have a right to C *struggle and strive for economic justice—Constitution makers did not design provisions for breaking a worker's strike.*

The petitioners, who were Railway employees, were either dismissed or removed from service without holding any enquiry for striking D **work, paralysing railway services, assualting and intimidating loyal workers and superior officers, etc. The writ petitions filed in the High Courts challenging the orders of dismissal or removal stood transferred to this Court, heard along with other writ petitions and civil appeals and by judgment dated 11th July, 1985 dismissed.**

E **The petitioners sought review of the said judgment alleging that during the course of arguments, parties had proceeded on the assumption that the Court would decide only the seven questions framed by the then Hon'ble the Chief Justice, and the individual petitions on merits would be dealt with either by the Division Benches of this Court or by the respective High Courts, that the parties addressed their arguments** F **and submissions only on those general questions, that written submissions were made only in transfer case No. 55 of 1982 amongst all the railway matters, that none of the petitioners had been given any opportunity to argue their cases on merits, that the judgment under review dismissed all the transferred cases and thus all these petitions stand decided on merits also, that this has caused serious prejudice to** G **their cases and, therefore, in the interest of justice, another opportunity should be given to argue the petitions on merits.**

Dismissing the Review Petitions,

HELD: *Per P.N. Bhagwati, C.J., V.D. Tulzapurkar, R.S.* H *Pathak and D.P. Madon, JJ.*

The Review Petitions are dismissed as there is no substance in the grounds urged. A

Per M.P. Thakkar, J. dissenting.

1. There is good ground to entertain the Review Petitions and issue notice to the other side for hearing. [904E] B

2. There is substance in the grounds because no notices have been issued on the Review Petitions and the averments have not been controverted by the other side. In the majority judgment also it has not been stated that the averments are factually untrue. [901D-E]

3. That the matter of Narpat Singh was not argued on its individual merits is correct. Unless the factual averments made in Para 9 of the Review Petition are shown to be untrue, these may be considered adequate to vitiate the impugned order on the ground that it manifests non-application of mind and is built on 'no evidence'. [902C] C D

4. In the majority judgment the proposition of law has been enunciated that the pleasure under Article 310(1) can be exercised even by an authority specified in the Act or rules made under the proviso to Article 309. [902D-E]

5. The power under Article 310(1) is exercisable even by the President or Governor, not on his personal satisfaction, but with the aid and on the advice of the Council of Ministers. Can the same power be exercised by a Divisional Mechanical Engineer or any other lower functionary acting on his own, there being no question of his acting with the aid or advice of the Council of Ministers? Can the D.M.E. who does not even act in the name of the President, surrogate for the President? It is certainly an important Constitutional issue which requires to be examined, but has not been examined from this perspective though the point was debated. [903B-D] E F

6. Will it not tantamount to speaking in two voices to hold that principles of Natural Justice need not be complied with even in regard to the quantum of punishment to be inflicted on a workman, even though the law declared so far demands that even a black marketeer cannot be black-listed without observing the principles of Natural Justice? Is a workman who 'sweats' for the Nation not entitled to the same treatment as a black-marketeer, who 'bleeds' the Nation? [903D-E] G H

7. The workers certainly have a right to struggle and strive for economic justice in a country the Constitution of which in the Preamble, proclaims it to be a "Sovereign *SOCIALIST* Secular Democratic Republic". Going on strike in the course of such a struggle cannot be characterized as holding the country to ransom and be frowned upon. Nor can they be condemned as seekers of private gain for endeavouring to remove their economic distress and plight to bring about a just society. And it cannot be said on that account that it is not "reasonably practicable" to hold the enquiry in the case of any workman if there is a country-wide general strike by workers. [904B-904D]

8. Article 311(2)(b) was surely not designed by the Founding Fathers in order to enable 'breaking' of a strike called in support of workers' demands for socio-economic justice. The issue therefore deserves to be examined in the light of this perspective. [904D]

CIVIL ORIGINAL JURISDICTION: Review Petition Nos. 571-586 & 586A of 1985.

In Transfer Cases Nos. 52 to 68 of 1982.

By Circulation.

The Order of the Court was delivered by

ORDER

We have considered the grounds urged in the Review Petition and since we find no substance in them, the Review Petition are dismissed.

PER THAKKAR, J. While it is not agreeable to disagree with the majority, my conscience commands, and my sense of duty demands, that I should disagree. Disagree with the proposed order dismissing the Review Petitions in limine with the remark that "we find no substance in them", without affording to the Petitioners any opportunity of hearing in the Court to substantiate the grounds urged by them.

2. One of the grounds urged, ground No. 8 in the Petitions, is:-

"8. That during the course of arguments the parties had proceeded on the assumption that the Hon'ble Court would

decide only the 7 questions framed by the then Hon'ble Chief Justice and the individual petitions on merits would be dealt with either by the Division Benches of this Hon-'ble Court or by the respective High Courts. It was on this assumption that the parties addressed their arguments and submissions only on those general questions. It is for this reason that written submissions were made only in T.C. No. 55 of 1982 amongst all the Railway matters. None of the Petitioners had been given any opportunity to argue their cases on merits. The judgment under review dismissed all the Transferred Cases and thus all these petitions stand decided on merits also. It is, therefore, necessary that in the interest of justice, the petitioner should be given another opportunity to argue their petitions on merits. This has caused serious prejudice to their cases is apparent from the facts of a few cases reference whereto is made herein after."

It is not possible to say that there is no substance in this ground because no notices have been issued on the Review Petitions and the averments have not been controverted by the other side. So also it is not stated in the majority judgment that the averment is factually untrue. Reference may be made to ground number 9 in Review Petitions Nos. 571 to 586A of 1985 which reads as under:-

"9. That it may be submitted that the petitioner Shri Narpat Singh had been served with the Office Order identical to the one reproduced in para 3 above and was charged with stoppage of work from 3.2.1981 and missing from his place of duty and for intimidating and pressurising the loyal employees for not joining duty.

The fact is that the petitioner, Narpat Singh is a patient of Asthama and was under the treatment of the Railway Medical Authorities between December 1980 to 1.2.1981 as outdoor patient. On 2.2.1981 while on duty as Shed-man is DSL/Shed BGKt in shift 6 hours to 14 hours, he developed breathing difficulties and was unable to perform his duties. He obtained sick memo G/92 on 2.2.1981 from GFO/DSL BGKt and while leaving duty proper charge was handed over by the petitioner. He was advised complete rest and sick certificate No. 62 of 2.2.1981 for 27 days was submitted.

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> In these circumstances the petitioner could not be treated as on un-authorised absence from work from 3.2.1981 when he had obtained G-92 on 2.2.1981 and had sent in his sick certificate and had observed all due formalities of reporting sick as required under the rules. Had the cases been argued on merits, the petitioner, Narpat Singh would have shown to the Hon'ble Court as to how he could not be treated on un-authorised absence and that the dismissal order has been malafidely issued in a mechanical manner and cannot be substained."

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That the matter of Narpat Singh was not argued on its individual merits is correct. Unless the factual averments made in para 9 are shown to be untrue, these may be considered adequate to vitiate the impugned order on the ground that it manifests non-application of mind and is built on 'no evidence'. This is a good ground to entertain the Review Petition and issue notice to the other side for hearing in the Court.

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3. In the majority judgment [1985] 3 SCC 398 (451) paragraph 59 the proposition of law has been enunciated that the pleasure under Article 310(1) can be exercised even by an authority specified in the Act or rules made under Article 309 (proviso) in the passage quoted below:-

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> "Thus, though under Article 310(1) the tenure of a government servant is at the pleasure of the President or the Governor, *the exercise of such pleasure can be either by the* President or the Governor acting with the aid and on the advice of the Council of Ministers *or by the authority specified in the Acts made under Article 309 or in rules made under such Acts or made under the proviso to Article 309 and in the case of clause (c)* of the second proviso to Article 311 (2), the inquiry is to be dispensed with not on the personal satisfaction of the President or the Governor but on his satisfaction arrived at with the aid and on the advice of the Council of Ministers . . . ."

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(Emphasis supplied)

Serious Constitutional questions, such as the following, arise in this context: When the Constitution advisedly invests powers in regard to the exercise of pleasure on the incumbents of highest executive office can these powers be exercised by any other official, say Divl. Mechani-

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cal Engineer (DME)? By a process of interpretation (and not amendment) can it be so construed that what the President by virtue of Article 310 (1) can do, the DME of the Railway can do by virtue of the same Article? It would virtually amount to amending Article 310 (1) by adding the words "or by any other authority ...". That is to say to rewrite an article in the Constitution. Is this permissible? What is more, the power under Article 310 (1) is exercisable even by the President or the Governor, not on his personal satisfaction, but with the aid and on the advice of the Council of Ministers. Can the same power be exercised by a D.M.E. or any other lower functionary acting on his own, there being no question of his acting with the aid or advice of the council of Ministers? Can the DME who does not even act in the name of the President, surrogate for the President? It is certainly an important Constitutional issue which requires to be examined, but has not been examined, from this perspective though the point was debated. This is another ground to entertain the Review Petition and to issue a notice to the other side for hearing in the Court.

4. Another ground for entertaining the Review Petition is this: Will it not be tantamount to speaking in two voices to hold that principles of Natural Justice need not be complied with even in regard to the quantum of punishment to be inflicted on a workman, even though the law declared so far demands that even a black marketeer cannot be black-listed without observing the principles of Natural Justice? Is a workman who *'sweats'* for the Nation not entitled to the same treatment as a black marketeer who *'bleeds'* the Nation?

5. An extremely serious and important ground for review also arises in the context of the doctrine enunciated in the following passages [1985] 3 SCC 398 (522, 523), paragraphs 170, 173:—

> "It may be that the railway servants went on these strikes with the object of forcing the Government to meet their demands. Their demands were for their private gain and in their private interest. In seeking to have these demands conceded they caused untold hardship to the public and prejudicially affected public good and public interest and the good and interest of the nation.
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> ..... In the context of an all-India strike where a very large, number of railway servants had struck work, the railway services paralysed, loyal workers and superior officers assaulted and intimidated, the country

held to ransom, the economy of the country and public interest and public good prejudicially affected, prompt and immediate action was called for to bring the situation to normal. In these circumstances, it cannot be said that an enquiry was reasonably practicable."

The workers certainly have a right to struggle and strive for economic justice in a country the Constitution of which, in the preamble, proclaims it to be a "Sovereign *SOCIALIST* Secular Democratic Republic". Going on strike in the course of such a struggle cannot be characterized as holding the country to ransom and be frowned upon. Nor can they be condemned as seekers of private gain for endeavouring to remove their economic distress and plight to bring about a just society. And it cannot be said on that account that it is not "reasonably practicable" to hold the inquiry in the case of any workman if there is a country wide general strike by workers. Article 311(2)(b) was surely not designed by the Founding Fathers in order to enable 'braking' a strike called in support of workers' demands for socio-economic justice. The issue therefore deserves to be examined in the light of this perspective and the Review Petitions deserve to be admitted.

6. On these grounds and in the light of the other grounds urged in the Review Petitions, the Review Petitions deserve to be heard in the Court. It is therefore directed that the Review Petitions be admitted, notices be issued to the Respondents, and the matters may be placed in the Court for further hearing.

A.P.J.