
(1995) 08 AHC CK 0036
In the Allahabad High Court
Case No : C.M.W.P. No. 97 of 1986

Bharat Heavy Electricals Ltd.

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 24-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (1996) 3 LLJ 782

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Advocate : Bharat Ji Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

N.L. Ganguly, J.—M/s. Bharat Heavy Electricals Ltd., petitioner (here-in-after referred to as BHEL), challenged the award dated September 23, 1985 given by the Labour Court, Meerut in Adjudication Case referred u/s 4-K of the U.P. Industrial Disputes Act.

2. The brief facts of the case show that Sri Ved Singh Panwar was employed at the petitioner's Establishment as a Tradesman (Grade IV) since October 15, 1974 in the Production Department. On February 24, 1978 when he was going out of the factory through the Main gate during the lunch, was checked by the Security Staff and found carrying five pieces of Babbits weighing about 2.5 kgs. belonging to the Company. The search was made by the Security Staff in presence of witnesses which was found in coat pockets and hidden in underwear (Langot). In the petition, it is said that he confessed the guilt at the time of search in presence of certain witnesses. The written and signed statement admitting the guilt has been annexed. The recovery memo etc. was prepared. The Senior Manager (Production) issued a charge-sheet to the respondent on February 25, 1978 for and on behalf of the Head of Department of the Production Unit. The; respondent was also placed under suspension during the enquiry.

3. During the preliminary enquiry proceedings, the respondent denied the allegations. After; consideration of the explanation of the respondent with the report of the preliminary report, the Dy. General Manager (Production), who is Head of the Production Department, nominated Enquiry Officer according to the Standing Orders. Notice was given to the respondent by the Enquiry Committee constituted. The respondent appeared before the domestic enquiry and participated in the proceedings. The enquiry report was submitted before the Head of Department who concurred with the enquiry report that the respondent workman was guilty of theft. The respondent was dismissed from the service of the Company by order dated September 9, 1978.

4. A First Information Report was also lodged against the workman respondent. Criminal Case No. 500 of 1979 was initiated against the workman before the Munsif Magistrate, Hardwar much after his dismissal. The workman respondent was acquitted by the Magistrate on April 24, 1980. After acquittal from the Criminal case, the workman moved an application with the copy of the judgment of the Magistrate for reinstatement but the petitioner declined to reinstate the respondent.

5. A conciliation proceeding started on application of the respondent and no settlement before the Conciliation Officer could be made. Hence a reference u/s 4-K of U.P. Industrial Disputes Act was made for adjudication before the Labour Court, giving rise to the impugned award.

6. The question referred for adjudication is whether the employer had terminated and dismissed the workman Ved Singh Panwar, according to law and was justified/legal. If not, what relief and remedy the workman is entitled to ?

7. The respondent workman had filed written statement and pleaded that the enquiry was not conducted in a fair manner and various evidences of the witnesses had been manipulated by the Enquiry Officer. It was also pleaded that the charge-sheet was not served nor signed by the competent person and the Enquiry proceedings were against the prescribed procedure provided under the certified standing orders of the Company. The respondent had denied the allegation of theft labelled against him. Counter and rejoinder affidavits have been exchanged.

8. Sri Tarun Agarwal, learned Counsel for the petitioner elaborately placed the case and drew the attention of the Court to the copy of the charge-sheet, Annexure 4. served against the respondent. He pointed out that the charge-sheet was signed by Sri V.K. Varman for and on behalf of the Head of Department. He submitted that there was no illegality or procedural error in serving the charge-sheet under the signature of Sri V.K. Varman who has specifically said it to be for and on behalf of the Head of the Department. It is also pointed out that the Enquiry Officer was appointed by the Head of the Department. Copy of the order appointing Enquiry Officer is annexed as Annexure 6 to the petition. Sri Tarun Agarwal submitted that since the Labour

Court in the award, arrived at a conclusion that the domestic enquiry proceedings were unfair and not in accordance with law and Standing Orders, the petitioner before the Labour Court itself in their written statement at para No. 13 specifically submitted that in any event, if the Labour Court at any stage comes to the conclusion that the domestic enquiry conducted by the employer was unfair and improper or in violation of the principle of natural justice, they may be granted an opportunity in accordance with the settled principles of law to lead evidence afresh before the Labour Court to establish and justify the action taken by the employer against the workman for proving the misconduct of the employee. The learned counsel for the petitioner placed the finding of the Labour Court that para No. 23 (1) of the standing orders were not complied with and the charge-sheet was not issued by the Head of Department instead of it was issued by Sri VK. Varman, Senior Manager (Production). It is pointed out that subsequently the Head of the Department has approved the issuance of the charge-sheet and the Head of Department himself had appointed the Enquiry Officer. Sri Agarwal submitted that the Labour Court had committed a bar of law and jurisdiction in not appreciating the case law reported in R.K. Nath v. General Manager 1977 (2) LLN 79.

9. The learned Counsel for the petitioner produced the certified copy of the Standing Orders and placed para 23 (C-1) of the Standing Orders, quoted as under :

"As soon as the report is received by the Head of Department that a certain employee has committed an act of misconduct, he shall immediately issue a charge-sheet to the employee in which the charge of misconduct must be specified precisely and clearly along with the nature of offence, date and time thereof. The employee should be given atleast 48 hours for submitting his explanation but if he requires the extension of time, may be given to avoid any hardship to him."

The learned Counsel for the petitioner submitted that the charge-sheet no doubt was issued by Sri VK. Varman but it was for and on behalf of the Head of the Department. It is also said that the issuance of the charge-sheet was rectified by the Head of the Department and the Head of the Department himself appointed the Enquiry Officer. The petitioner in his rejoinder affidavit stated that the respondent-workman never raised any objection about it in his explanation dated March 11, 1978 submitted by him in response to the charge-sheet.

10. Sri. Tarun Agarwal placed reliance on Crompton Greaves Ltd. Bombay v. Sri S. W. Shinde 1974 (28) FLR 80 where the learned single Judge of Bombay High Court submitted that the dismissal order in the case was held to be justified and legal on the ground that the charge-sheet was issued by a person who was not the person authorised under the Standing Orders of the said Company, but the same was done on the basis of the authorisation by the competent person and subsequent appointment of Enquiry Officer was done by the Manager the competent person. The authority cited is of no assistance to the petitioner. The

learned Counsel for the petitioner has not been able to show that there was any provision delegating the power of the competent person to serve the charge-sheet. Thus, the mere fact that subsequently the appointment of Enquiry Officer by the Head of Department in the present case is of no avail.

11. The learned counsel for the petitioner cited another decision in *Bata India Ltd. v. M.C. Bharadwaj and Anr.* 1986 (68) FLR 349, where the learned single Judge of Punjab & Haryana High Court was pleased to hold that where the Standing Orders provided that recruiting authority would be the Personnel Officer, authority which appoints is entitled to terminate or punish appointee. The person who issued the charge-sheet was not the appointing authority but the appointing authority when appointed the Enquiry Officer and final orders were passed by him, then there was no escape from the conclusion that there has been more than substantial compliance with the material aspect of the Standing Orders, even if for the sake of argument, it is accepted that charge-sheet which was supplied to the workman had not been signed by the competent authority, according to the Standing Orders.

12. The learned Counsel for the petitioner cited another decision of *S. Nagiah Vs. India Aluminium Co. Limited*, where also the Karnataka High Court was pleased to say that charge-memo was not issued by proper official, will not invalidate enquiry unless prejudice has been caused to the appellant, memo of charges understood by workman who offers explanation, participated in the enquiry and replied to the second show cause notice, sufficient to hold that enquiry proceedings would not be vitiated which have resulted in dismissal of the workman.

13. The learned Counsel stressed that in such domestic enquiry into the charges, it has to be seen whether any complaint was made by the workman about improper issuance of the charge-sheet by a person not competent to do so, whether it produced the case against the workman, are the relevant considerations. Further fact that without raising any objection and participation by the workman in the proceedings, would show that the workman conceded to the jurisdiction and there was no prejudice likely to be caused against him. Sri Agarwal submitted that before the Labour Court, specific request was made that in case the Labour Court was of the view that there was any violation of the Standing Orders or in service of the charge-sheet, the petitioner employer be given an opportunity to lead evidence. The said request was illegally refused by the Labour Court. The learned Counsel submitted that it was necessary for the ends of justice to have, given opportunity to the petitioner for leading evidence. *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, where the Hon'ble Supreme Court observed that : at PP. 385-386

"We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice, When there is no domestic enquiry or defective

enquiry is admitted by the employer, there will be no difficulty. But when the matters is in controversy between the parties, that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated after the final award. It will be also legitimate for the High court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

The decision cited by the learned Counsel really do not help the petitioner's case in any manner. It rather affirms the stand taken by the Labour Court.

14. Sri Tarun Agarwal placed *Sambhit Nath Goyal v. Bank of Baroda and Ors.* (1983 I LLJ 415) (SC). He placed reliance on para 12 of the Judgement. The Hon"ble Supreme Court in that case was considering two questions raised before it namely whether the domestic enquiry held and orders passed for dismissal of the workman was Disciplinary Authority competent to award the punishment and whether the learned Judge of the High Court was or was not justified in remitting the matter to the Tribunal for the management having an opportunity to adduce further evidence in support of the charges and also to consider the question whether the workman was or was not gainfully employed in the intervening period. It is not disputed that no additional statements were filed and no further evidence was let in by the parties. Thereafter, the Hon"ble Supreme Court held that the dispute is an Industrial Dispute and remanded the matter to the Tribunal for fresh disposal in accordance with law. The learned Counsel for the petitioner submitted that this authority of the Hon"ble Supreme Court squarely applies to the facts of the present case and the petitioner had made a statement before the Labour Court to provide for opportunity to lead evidence.

15. The petitioner in the written statement have pleaded that if the Labour Court at any stage comes to the conclusion that the domestic enquiry conducted by the petitioner was unfair, improper or in violation of the principle of natural justice . Then, an opportunity be given to the petitioner to lead fresh evidence before the Labour Court in order to prove their case. The petitioner had taken a dual stand in their written statement. They had said that the enquiry proceedings were according to law. witnesses were examined in the presence of the workman and the Enquiry Officer considered the statements and the punishing authority after examining the evidence decided to dismiss the petitioner. Alternatively, the other plea was that if the Labour Court arrives at a different conclusion, then permission to lead evidence be given. These allegations were denied and it was said that no proper opportunity was given to the workman, witnesses were examined, who were under pressure of the employer and the explanation of the

workman was not considered by the Enquiry Officer and punishing authority. The petitioner is said to have moved an amendment application in the written statement wherein a preliminary objection was sought to be raised before the Labour Court, which was rejected on the ground that the same was filed after much delay and suffered with laches.

16. Sri K.P. Agarwal, learned Counsel for the respondent workman submitted that the Labour Court has very wide powers under the Act. He submitted that the Industrial Disputes Act is a welfare legislation. Beneficent rule of construction should be applied by the Court and as far as reasonably possible construction furthering the policy and object of the Act and more beneficial to the employees had to be preferred. The Act intended to improve and safeguard the service conditions of an employee, it should be liberally interpreted according to its plain words without doing any addition to the language used by Legislature, he relied on a decision reported in the *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, .

17. The learned Counsel for the respondents submitted that the powers of the Labour Court are wide and have been made wider perhaps on account of Section 11A of the Industrial Disputes Act. The provisions of Section 11A are reproduced as under:

"1. A: Delegation of powers: The State Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions if any as may be specified, in the direction, be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification."

The Hon^{ble} Supreme Court in observed that:

"In the course of such adjudication, the Tribunal has to be satisfied that the order of discharge or dismissal was not justified. If it comes to such a conclusion, the Tribunal has to set aside the order and direct reinstatement of the workman on such terms as it thinks fit. The Tribunal has also power to give any other relief to the workman including the imposing of a lesser punishment having due regard to the circumstances. The proviso casts a duty on the Tribunal to rely only on the material on record and prohibits it from taking any fresh evidence. Even a mere reading of the section, in our opinion, does indicate that a change in the law as laid down, by this Court has been effected. According to the workmen the entire law has been completely altered, whereas according to the employees, a very minor change has been effected giving power to the Tribunal only to alter the punishment."

18. The learned Counsel for the respondent submitted that the powers of the Labour Court are very wide and comprehensive. The Labour Court possesses the Appellate Court powers also.

19. The learned Counsel for the respondent relied on a decision *Scooter India Ltd Lucknow v. Labour Court, Lucknow and Ors.* (1988I LLJ 71) where the Hon"ble Supreme Court was of the view that even if the disciplinary enquiry was found to be fair and loyal and its findings were not vitiated in any manner that by itself would not be ground for non-interference with the order of termination by the Labour Court. It is the discretion of the Labour Court in fact for reinstatement of employees with 75% backwages on the ground that erring workman should be given opportunity to reform himself and prove to be loyal and disciplined employee of the company. The interference by the Labour Court in the findings and decision of the domestic enquiry cannot be said to be vitiated. The Labour Court possesses discretion in the matter of punishment etc. The approach of the Labour Court is one of reformatory in nature.

20. Sri K.P. Agarwal submitted that perusal of the award shows that the Labour Court considered and appreciated the facts independently. He referred from the award that the Labour Court after appreciating evidence of Sri S.D. Sharma about the recovery of the articles stolen and the contradiction about the evidence of seizure was appreciated by him. The conclusions of the Enquiry Officer were unwarranted. He also found that the illegal admission at the time of the recovery of the stolen Babbits was contradictory and unbelievable. The objections of the Enquiry Officer were preverse.

21. In the written arguments, Sri Tarun Agarwal submitted that the Labour Court has arrived at a conclusion that the domestic enquiry proceedings were bad in law as held by the Labour Court. It was necessary and mandatory for the Labour Court to have given opportunity to the Employer for leading evidence. Sri Tarun Agarwal cited the *Cooper Engineering Ltd.* (supra).

22. Sri Tarun Agarwal in the written arguments referred *Sambhu Nalh Goyal v. Bank of Baroda and Ors.* (supra) where in para 16, the Hon"ble Court was pleased to observe: at P. 422

"When an application of management to seek permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed referred to.... the Management is made aware of the workman's contention regarding the defect in the domestic enquiry by the written statement of defence filed by him in the application filed by the management u/s 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for the purpose without any unreasonable delay."

23. In the present case, the petitioner Employer had moved a belated application for amendment in the written statement for addition of the ground for adducing further evidence before the Labour Court which was rightly refused. Thus, the learned Counsel is not justified in asking for any relief on the basis of this decision.

24. The learned Counsel for the petitioner submitted that the reference in the

present case was made by the State Government with sufficient delay and the order awarding reinstatement and payment of back wages in unwarranted. Purusal of the grounds of the writ petition shows that no such ground was mentioned in the petition. Such an argument and that also of the written argument are not permitted to be raised at the final hearing of writ petition for the first time. I am not inclined to give a decision on these submissions.

25. After hearing the learned Counsel for the parties at sufficient length and perusing the record. I am of the view that the award of the Labour Court is just and according to law and needs no interference under Article 226 of the Constitution.

The Writ petition is dismissed with costs.

The interim order dated August 18, 1987 is vacated.