
(2005) 09 CAL CK 0050

In the Calcutta High Court

Case No : F.M.A. No. 546 of 2005 and W.P. No. 5228 (W) of 2004

Biecco Lawrie Ltd. and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Citation : (2006) 108 FLR 255 : (2006) 2 LLJ 353

Hon'ble Judges : Soumitra Pal, J;D.K. Seth, J

Bench : Division Bench

Advocate : P.K. Dutta and C.K. Dutta, for the Appellant;Arup Das and T.K. Majumdar, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Biecco Lawrie Ltd. and Another Vs. State of West Bengal and Another, AIR 2010 SC 142 : (2010) 124 FLR 108 : (2009) 10 JT 340 : (2009) 4 LLJ 644 : (2009) 10 SCALE 334 : (2009) 10 SCC 32 : (2009) 2 SCC(L&S) 729 : (2009) 11 SCR 972 : (2010) 1 SLR 649

D.K. Seth, J.—In this appeal the order dated October 4, 2004 passed by the learned single Judge in W.P. No. 5228(W) of 2004 has since been assailed. The learned single Judge by the said order was pleased to dismiss the writ petition on the ground that there was no patent illegality (sic) or perversity in the award passed by the learned Industrial Tribunal. The High Court is not a Court of appeal and the writ jurisdiction does not permit re-appreciation of the evidence and as such the finding of the learned Tribunal could not be interfered with,

2. The main ground on which the learned Counsel for the appellant Mr. P.K. Dutta challenged the order is only on the ground of perversity. The workman appeared in person. The State was represented by Mr. Arup Das and Mr. T.K. Majumdar. In order to bring home his contention, Mr. Dutta took us to the charge sheet at page 46 of the application, which reads thus:

It has been reported against you as under:

On July 27, 1984 at about 1 A.M. while you were on duty, you were asked by your shop foreman to fix up "Top Plates" on the Breaker Stand, which is part and parcel of the duties to be performed by you, but you wilfully and deliberately adopted delaying tactics in carrying out the instruction of the shop foreman for more than half an hour, as a result lever fittings jobs could not be taken up in time by the concerned workman thereby production suffered.

You also used slang, objectionable and filthy languages on July 18, 1984 to Shri Niahit Guha at about 3.30 P.M. on July 20, 1984 to Shri Thomas Gomes at about 10.30 A.M. on July 26, 1984 on July 27, 1984 to Shri I. Chowdhury, the shop foreman, at 3.00 P.M. and again on July 27, 1984 to the shop clerk Shri Ashok Majumdar at about 8.30 A.M. as and when you were asked to do some jobs relating to the departmental work by them.

You also incited and instigated other workmen of the department to disobey the instructions of the superiors and not to do any work properly.

The facts as alleged above, if proved, will constitute major misdemeanour under the following heads of charges in terms of Section "I" Appendix "D" of the Appendix "D" Clause (2) major misdemeanour.

Sub-Clause (1) wilful insubordination or disobedience of any lawful and reasonable order of a superior. "

(4) Wilful slowing down in performance of work.

(11) Commission of any act subversive of good behaviour or of the disciplines of the company.

(29) Instigation, incitement, abetment or furtherance of the foregoing-Punishable as a major misdemeanour.

3. In his reply at page 47, the workman emphatically denied the charges. He pointed out that it is recorded in the records that on July 27, 1984, five Top Plates were placed on the Stand and there was no reason of delay and he was not responsible for any delay and that the company did not suffer any loss. He denied all the other charges. There was an enquiry pursuant to which he was dismissed. In a letter dated November 22, 1985 after having received the letter of dismissal, the workman pointed out that he was mentally ill and this was the reason for his conduct and he submitted prescription of the medical tests.

4. Thereafter reference was made. The learned Tribunal held the enquiry vitiated. The company had adduced certain evidences and examined four witnesses before the learned Tribunal to prove the charges. The workman had examined himself. The learned Tribunal then was pleased to hold in favour of the workman after scanning the materials.

5. In this case, reliance was placed by Mr. Dutta mainly on the letter dated November 22, 1985 at page 50 of the application. He pointed out that the workman had admitted his guilt. Therefore, the finding of the learned Tribunal

was perverse. The proposition that has been I sought to be propounded by Mr. Dutta appears to be fallacious. Admittedly, this letter was addressed by the workman after his dismissal. Therefore, even if there was an admission that admission was not part of the record on the basis of which the guilt was found and the order of dismissal was issued. Therefore, this letter cannot be looked into at all.

6. The second contention that was raised by Mr. Dutta is with regard to the use of abusive languages. He points out that the languages, which he had used, have since been noted in the enquiry proceeding. Our attention was drawn at page 19 of the original deposition to point out the abusive languages used by the workman. But the fact remains that these abusive languages were not included in the charge sheet. The domestic enquiry that was held against the workman was found to be illegal and violative of the principles of natural justice by the learned Tribunal in its Order No. 45 dated October 9, 1990, after which the company had examined the four Witnesses before the learned Tribunal to prove the charges. Even if specific abusive languages were mentioned before the learned Tribunal in course of deposition of the respective witnesses, the non-mentioning of the alleged abusive language in the charge sheet would not make the finding perverse simply because the learned Tribunal had held that from the face of the charges, it appears that the same lacked material particulars in relation to the specific abusive languages. The learned Tribunal had found that there was no reliable evidence on record so as to bring home the alleged charges that he had developed the habit of using abusive languages. At the same time, it does not appear that the company was able to establish the charges with regard to the failure to perform his duties. After having gone through the entire evidence and the materials on record, we do not find that the little discrepancies here and there would be sufficient to make the award of the learned Tribunal perverse if read in the context of the entire situation as a whole.

7. From the order of the learned single Judge, we find that the learned single Judge was pleased to scan the evidence and gone into it in detail and was unable to find out any perversity for the reasons stated in the said judgment.

8. We also are unable to discover any perversity to the extent as was urged by Mr. Dutta relying upon various pieces of evidence and materials available on record as discussed above. No reliance could be placed on the alleged admission at page 50 of the Paper Book even if it was used before the learned Tribunal for the simple reason that he might have written it with the hope that if he does so, he might get back his job and it was an expression vented by and exasperated helpless workman since dismissed from his job with a hope of catching the last straw. This cannot weigh with the Court to bind him.

9. In these circumstances, the appeal fails and is dismissed. The order of learned single Judge and that of the learned Tribunal are hereby affirmed to the extent as is indicated in the order passed by the learned single Judge against which the present appeal has been filed.

10. There will, however, be no order as to costs.

11. Urgent Xerox certified copy of this judgment, if applied for, the same be supplied within 7 (seven) days on usual terms.