

(2012) 01 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No. 23605 of 2005 (L-TER)

B.M. Channappa

APPELLANT

Vs

Management of Warner Lambert India Pvt. Ltd.

RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Industrial Disputes (Karnataka Amendment) Act, 1988 — Section 10 (4A)
Industrial Disputes Act, 1947 — Section 11 A, 2 A

Citation : (2012) 3 LLJ 245 : (2012) LLR 374

Hon'ble Judges : Arvind Kumar, J

Bench : Single Bench

Advocate : K.S. Subrahmanya, for the Appellant; J. Pradeep Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Arvind Kumar, J.—Workmen is calling in question a portion of the award dated 15.9.2004 passed in I.D. No. 25/2002 by the Additional Labour Court, Bangalore, Annexure-H, whereunder the order of dismissal passed by disciplinary authority was modified to that of compulsory retirement. Heard Sri. K.S. Subrahmanya, learned counsel appearing for petitioner and Sri. J. Pradeep Kumar, learned counsel appearing for M/s. Kasturi Associates for respondents. Perused the records.

2. Petitioner was appointed as a trainee operator in the respondent company during 1987 and was confirmed as an operator with effect from 1.11.1998. Charge sheet came to be issued on 18.1.2000 to the petitioner by the respondent company alleging that while petitioner was working in the shift from 6.30 a.m. to 4 P.M. on 12.1.2000 at around 1.45 P.M. he along with one Mr. Kamalanathan, operator disrupted the production on the shop floor by instructing other operators to stop the work in the packing and manufacturing area resulting in loss of revenue and thereby amounting to misconduct under the Certified Standing Orders of the company. A further charge-sheet was issued on 3.2.2000

to the petitioner alleging that petitioner had threatened the Industrial Engineer on 21.4.2000 by abusing him in filthy language which constituted a grave misconduct under the certified standing orders. Said show-cause notices were replied by the petitioner on 21.2.2000 and 8.2.2000 vide Annexure B and D respectively. Respondent company not being satisfied with the explanation offered by the employee initiated disciplinary proceedings by appointing an enquiry officer, in the enquiry management examined five witnesses to prove the charges levelled against the petitioner and got marked 17 documents. Petitioner examined two independent witnesses in support of his defence. After considering the evidence, the enquiry officer held charges levelled against the petitioner as proved. Thereafter second show cause notice was issued which came to be replied by the petitioner. After considering the reply given by petitioner disciplinary authority passed an order of dismissal of petitioner from services by order dated 28.2.2002.

3. Being aggrieved by the order of dismissal, petitioner raised a dispute u/s 2A of Industrial Disputes Act, 1947 read with section 10(4A) of the Industrial Disputes (Karnataka Amendment) Act, 1988 before the Labour Court, Bangalore. On registering the dispute, notice was ordered to the respondent/management therein, who appeared and filed counter statement denying the averments made in the claim petition. On basis of the pleadings raised by the parties, Labour Court formulated following issues for adjudication:

- (i) Whether the first party proves that the order of dismissal passed against him on 28.2.2002 is illegal and invalid?
- (ii) Whether second party proves that the domestic enquiry held against first party was fair, proper and valid?
- (iii) Whether second party justifies the dismissal of the first party with reference to the proved misconduct and past records?
- (iv) Whether first party is entitled to the reliefs claimed?
- (v) What award?

4. Before the Labour Court, the enquiry officer was examined as MW-1. Petitioner/claimant was examined as WW-1. In all nine documents were produced on behalf of the management and they were got marked as Exhibit M-1 to M-9. During cross-examination of the workmen second show cause notice was confronted and it was got marked as Exhibit M-10. On behalf of the workmen, he got himself examined as WW-1. On scrutiny of pleadings and evidence, Labour Court held that management has proved the charges levelled against the workmen and order of dismissal was interfered with and same was modified to compulsory retirement. It is this order of the Labour Court dated 15.9.2004 which is impugned in the present writ petition.

5. It is the contention of Sri. Subrahmanya, learned Counsel that Labour court has disregarded the principles of preponderance and probabilities of a case and

has erroneously confirmed the order of enquiry officer. He would contend that two witnesses examined on behalf of the workmen have clearly stated that strike was not instigated by the petitioner or Mr. Kamalanathan and it was spontaneous and as such the strike conducted by the workmen is not attributable to petitioner. He would submit that on account of unreasonable and unlawful order of the management in calling upon the skilled operators to do unskilled manual work of removing the scrap from the shop floor and carrying it to the dumping yard which was resisted by the workmen was the reason for spontaneous strike by workers resorted to by them and petitioner had no role whatsoever in the same. He would contend that non-consideration of this evidence available on record has resulted in erroneously accepting the findings of the enquiry officer. He would further elaborate his submissions by contending that Labour court has not exercised its jurisdiction vested u/s 11A of the I.D. Act and the order of compulsory retirement with full back-wages and continuity of service and all other consequential benefits is of no consequence since petitioner has not been reinstated. He would further contend petitioner has been victimised by the management and as such it amounts to unfair labour practice. In support of his submissions he has relied upon the following judgments:

- (i) 1974 LAB I.C. 25 (V 7 C 5) - M/s. Aditya Mills Ltd. v. Ram Dayal and others.
- (ii) The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others,
- (iii) AIR 2008 SCW 3460 - Mavji C. Lakum v. Central Bank of India
- (iv) B.R. Singh and others Vs. Union of India and others,
- (v) The Punjab State Coop. Supply and Marketing Federation Ltd. (Management of Markfed) Vs. Ashok Kumar Mehta (Workman) and Others,
- (vi) I LLJ 101 SC - Anil Kumar v. Presiding Officer and others
- (vii) 2007 III LLJ 104: 2007 LLR 647 - Bombay Chowgule and Co. v. Chowgule Employees Union
- (viii) Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, .

6. Per contra, Sri. Pradeep Kumar, learned counsel appearing on behalf of the respondent would support the enquiry conducted and the order of the Labour Court. He would contend that admittedly no industrial dispute was raised by the trade union with regard to lifting or removing of the scrap by the employees contending it to be a change of service condition and if really such was the situation they would have raised a dispute. He would submit that in the absence of said dispute being raised by the union, the only conclusion that can be drawn is that petitioner's contention in this regard is an after thought. He would contend that admittedly Sri, Kamalanathan was also issued with identical charge sheet and he has been removed from service after the enquiry officer held that charges were proved and same has reached finality before the Labour Court in

I.D. No. 24/2002 and as such petitioner herein cannot take stand contrary to the one raised by Sri. Kamalanathan. He would submit that Labour court has given a specific finding about domestic enquiry held as fair and proper and as such this court should desist from reappreciating the evidence adduced before enquiry officer. He would also draw the attention of the court to the evidence of witnesses examined before the domestic enquiry on behalf of the workmen whereunder they have admitted that removal of scrap was done by the workmen themselves and as such he seeks for dismissal of the writ petition. In support of his submission he has relied upon the following judgments:

- (i) 2009 LLR 4491 SC West Bokaro Colliery (TISCO Ltd.) v. Ram Pravesh Singh
- (ii) 2009 LLR 1057 SC - Biecco Lawrie Ltd. & Anr. v. State of West Bengal and Anr.
- (iii) 2006 LLR 296 SC - L.K. Verma v. H.M.T. Ltd. and Anr.

7. Having heard the learned advocates appearing for parties and on perusal of the impugned award as also the records of the Labour Court it is noticed that two charge sheets came to be issued to the petitioner in respect of two incidents namely: the one which took place on 12.1.2000 at 1.45 P.M. and the second which took place on 24.1.2000 at 6.10 a.m. In the first incident it was stated that petitioner along with Mr. Kamalanathan disrupted the production in the shop floor by instructing other operators to stop working in packing and manufacturing area and inspite of Mr. Sasi Mohan - Supervisor's repeated instructions that "this was not the right way", petitioner continued to instruct other operators to stop the work. The said Mr. Sasi Mohan has been examined as witness MW-3 in the domestic enquiry and he has reiterated what has been stated in the Articles of charge. As rightly observed by the Labour Court nothing worthwhile has been elicited in the cross examination to discredit this witness. The Assistant Manager, HR, Mr. Vincent Keith Mendez has been examined as MW-1 and he has spoken to about the incident that has taken place on 12.01.2000 and his submission of report to the Manager, HR. Even the statement of this witness was not disbelieved by the Labour Court since nothing was elicited in the cross examination to do so. Even in respect of the second incident the witnesses have spoken to about the role of the petitioner which cannot be construed either as contrary to facts or record. The enquiry officer after considering entire evidence on record and after analysing the same has come to a conclusion that based on preponderance and probabilities of case, charges levelled against the petitioner has stood proved. In case of a domestic enquiry proof beyond reasonable doubt cannot be expected. The Labour Court has re-examined the evidence and on re-appreciation of said evidence it has rightly held that the domestic enquiry held was fair and proper.

8. The cause of the strike according to the workmen was spontaneous and not instigated either by the petitioner or by Mr. Kamalanathan. Though an attempt has been made to substantiate such contention, petitioner has miserably failed to prove the same since the witnesses examined on behalf of the workmen

themselves, have admitted that scrap was removed by the operators themselves. The following admission made by DW-1, Mr. Muniyappa disproves the stand taken by the petitioner.

Q. I put it to you that even today factory is working.

Then who is removing the scrap?

A. Operators are removing the scrap.

Q. I put it to you that you have removed the scrap on 21.8.2000 as part of the roster for removal by rotation without any dispute in the past. What have you got to say?

A. Yes.

9. This unequivocal admission made by the witnesses who are examined on behalf of the petitioner themselves would clearly go to show that there was no doubt or dispute with regard to removal of scrap. Even otherwise if there was a dispute on this issue which can be termed a "service condition", admittedly the trade union had not raised any dispute before the jurisdictional Labour court in this regard. Thus, in the absence of any dispute on this issue of alteration of service condition and there being admission by the petitioner's witnesses themselves that scrap was removed by the operators themselves, the plea put forward by petitioner by way of defence that removal of scrap by operators was the root cause of spontaneous strike has remained as such without being proved. Thus, Labour Court was fully justified in holding that charges levelled against the petitioner stood proved. The Labour Court taking into consideration the number of years of service petitioner has put in has interfered with the quantum of punishment in exercise of its power u/s 11A of the I.D. Act. At this juncture it would be of benefit to note the judgment of Hon'ble Supreme Court in the case of Jaswant Singh Vs. Pepsu Roadways Transport Corporation and Another, whereunder it has been held that Labour Court can grant appropriate relief and mould the relief accordingly. The Labour Court in the instant case has taken into consideration the number of years of service workman has put in while modifying the order of punishment from dismissal to compulsory retirement and it cannot be held as either arbitrary, unjustified or not based on no evidence. Infact, the Hon'ble Supreme Court has laid down the contours under which the order of compulsory retirement can be challenged namely it would be only on the ground of no evidence or having not been formed on the basis of records or being on collateral grounds or being arbitrary but cannot be challenged on merits, in the matter of K. Kandaswamy Vs. Union of India, . In that view of the matter, I do not find any good ground to interfere with the order of the Labour Court. Hence the following:

ORDER

1. Writ petition is dismissed.

2. Award passed by the Presiding Officer, Additional Labour Court, Bangalore dated 15.9.2004 in I.D. No. 25/2002 is hereby affirmed.

3. No order as to costs.

4. Rule discharged.