
(2007) 02 GAU CK 0065
In the Gauhati High Court

Borpathar Tea Estate

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 26-02-2007

Acts Referred:

Citation : (2007) 2 GLT 653

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.H. Saikia, J.—Heard learned Counsel for the parties.

2. This writ petition has been pending since 1999.

3. The correctness and validity of the award dated 31.12.98 passed by the Presiding Officer, Labour Court, Guwahati in Reference case No. 4/98 is the subject matter of challenge in this writ petition.

4. The basic facts relevant for the purpose of proper adjudication of the issue raised herein is that initially the workman was dismissed on 21.9.85 from service while working as a clerk in Borpathar Tea Estate on the sole ground of disobedience with the allegation that he refused to obey the order of the Management to go to Thengalbari Tea Estate (for short, "the Tea Estate"). On 1.7.85 as per verbal order of the Management of Borpathar Tea Estate the workman went to the Tea Estate to join there on his deployment but on the same day he had to come back due to non-availability of the accommodation and the said fact was reported by him to the Management of Borpathar Tea by handing over a letter from the Manager of the Tea Estate to this effect. Thereafter, on 9.7.87 a written order was issued by the Management of the Borpathar Tea Estate deputing the workman to the Tea Estate. On 11.7.85 he requested to the Management for consideration of his case of deputation to the Tea Estate due to the ill health of his wife and to this effect he placed a medical certificate showing the wife's illness. But on 22.7.85 the workman was put under suspension and

eventually by order dated 21.9.85 after holding the domestic enquiry the workman was dismissed from service.

5. Being aggrieved by such dismissal order, the workman moved the learned Labour Court which in turn quashed the dismissal order and directed the management to reinstate the workman forthwith.

6. Being dissatisfied with such reinstatement order, the Management of the Borpathar Tea Estate moved this High Court through C.R. No. 1242/90 and this Court by judgment and order dated 22.9.94 quashed the award dated 13.3.90 of the learned Labour Court remanding back the matter to the Labour Court to decide the matter afresh with a clear direction to it to issue notices to both the parties fixing a date of argument and hearing and thereafter to pass a fresh order in accordance with law.

7. In compliance of the aforesaid High Court's order, the learned Labour Court issued notice to the parties. On receipt of such notice, both the parties entered appearance and in the presence of both the parties it was decided that the case would be heard at Jorhat Circuit House on 26.10.98. However, on that date so fixed, the management remained absent without any steps and the workman appeared and finally the matter was heard and reserved for judgment. The award was passed on 31.12.98 by the Labour Court holding on appreciation of the material evidence on record-both oral and documentary that considering the allegations so narrated, the punishment for dismissal for such disobedience in the circumstances of the case was not justified. Accordingly the same was quashed and the management was directed to re-instate the workman with full back wages and other service benefits. Hence, this writ petition filed by the management assailing the impugned award.

8. Impugning the award, the learned Counsel representing the management has placed three basic grounds namely: (i) the impugned award was passed ex-parte without affording any reasonable opportunity of hearing to the petitioner management and the impugned order is, therefore, hit by the fundamental principle of natural justice; (ii) the dismissal on the ground of allegation of disobedience cannot be said to be the harsh punishment under the facts and circumstances of the case and (iii) the impugned judgment and award suffers from perversity as the Labour Court mis-appreciated and misconstrued the evidence on record basically the deposition of M.W.2 and M.W.3.

9. Arguing on the point of non-availability of the opportunity of hearing, it is contended that although the management received the notice of appearance, they appeared on the date of hearing so fixed i.e., 26.10.98 by mistake or inadvertently before the Labour Court at Dibrugarh instead of appearing at Jorhat and as such they failed to take any steps. However, in this regard, they filed a review petition and that was also not considered. Under such circumstances, it is a fit case to be interfered with on the ground of gross violation of principle of natural justice.

10. To bolster up the submission on the point of violation of natural justice, the learned Counsel appearing for the management has relied on a decision of Apex Court reported in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, wherein in paragraph 10 the Supreme Court held that where a party was prevented from appearing at the time of hearing due to a sufficient cause and was faced with an ex-parte award, it was as if the party was visited with an award without a notice of the proceedings. It was also observed that it was needless to stress that where the Tribunal proceeded to make an award without a notice to a party, the award was nothing but a nullity.

11. At this stage, applying the ratio of *Grindlays Bank* (supra), it is contended that even the management has the right to file a review application after passing of the award and the Tribunal is also duty bound to consider such application. Nonetheless it was not done in the instant case.

12. Coming to the second point of dismissal on the ground of disobedience, strong reliance has been placed on the decision of this Court reported in 7975 LAB. I.C. 194 (*Lomdhar Tanti v. The Manager, Murmuria T.E. and Anr.*) wherein in paragraph 6 the Court underlined the guidelines to determine as to when an act would be said to be misconduct and set out as many as four guidelines namely when the act (1) was inconsistent with the fulfillment of the express or implied conditions of service or (2) was directly linked with the general relationship of employer and employee or (3) had a direct connection with the contentment or comfort of the men at work or (4) had a material bearing on the smooth and efficient working of the concern.

13. In so far as the question of perversity is concerned, it has been strongly argued on behalf of the petitioner that the Labour Court misconstrued the evidence of MW 2 and MW 3. It was clear on the evidence that the accommodation was provided and the workman refused to stay there and on that ground of disobedience of the order issued by the Management, he was dismissed from service after holding a due enquiry in the nature of domestic inquiry.

14. Supporting the impugned order, the learned Counsel representing the workman, has forcefully argued that there is no error apparent on the face of the impugned award for interference with the same. Even the question of violation of principle of natural justice does not arise in the context of the present factual position. Moreso, the impugned award cannot be said to be an order loaded with perversity. Rejecting the point of violation of the natural justice, it is contended that it is admitted that due notice was served upon the parties including the management, and they were also aware of the date so fixed on 26.10.98. As such, the reason put forward on behalf of the management that by mistake they went to Dibrugarh, though they were directed to appear at Jorhat, cannot be accepted as sufficient cause. That being the position, no illegality has been committed by the learned Labour Court in deciding the matter afresh on merit as per direction of this Hon''ble Court holding categorically that the management

failed to appear and to take steps on the date of hearing though it was duly intimated to them fixing the date on 26.10.98 for hearing.

15. As regards the question of perversity, it is stated that there is no evidence at all to show to the effect that the workman was given accommodation in the Tea Estate. It is also contended that at no point of time, the workman violated or disobeyed the order of management. Even on the verbal request of the management, the workman immediately proceeded to the place of deputation. However, the workman had to return due to non availability of accommodation and the same was duly reported by producing the letter issued by the management of the Tea Estate. Only on 9.7.85, the management issued a written order deploying the workman in the Tea Estate. But as his wife was suffering from illness, he made a request to the management for consideration of his case against such deployment and without consideration of such application, the workman was put under suspension on the allegation of disobedience and eventually he was dismissed from service on 21.9.85.

16. In view of the above, it is strongly argued that there was no question of disobedience on the part of workman and the Labour Court was absolutely correct in holding that dismissal on the ground of disobedience was not justified.

17. Having given my thoughtful consideration to the extensive arguments so advanced by the rival parties and also upon due consideration of the materials available on record including the impugned award, it appears that the submission of not affording a reasonable opportunity of hearing to the management on 26.10.98 is not tenable in law and on facts. It is on the record and also admitted position that the Labour Court issued due notices to the parties including the management and on receipt of such notice they appeared before the learned Labour Court and the management was well aware of the date of hearing so fixed. In view of the same, there cannot be any element of doubt that the petitioner was not aware that the matter would be heard at Jorhat. As regards the submission of review petition being filed before the Labour Court, this Court does not find any such petition on record nor has the same been annexed in this writ petition. However, applying the ratio of *Grindlays Bank (supra)*, and also as submitted by the learned Counsel for the petitioner, the management could have filed review application even after the award was passed but that was not done in the instant case. That being so, this Court is of the clear view that this award was not passed ex-parte.

18. So far as the question of disobedience is concerned, on close analysis of the factual premises of the case at hand, this Court is constrained to hold that the workman did not wilfully disobey the order. It is on record that initially as and when the workman was verbally deployed, immediately he rushed to the place of deployment but having found no accommodation therein, he had to come back and that matter was duly reported to the management. In absence of any accommodation having been provided as required, he was again deputed to the Tea Estate. This Court is, therefore, in full agreement with the view expressed by

the Labour Court in this regard.

19. Since, the question of perversity has been alleged, it is necessary for the court to lay its hand on the evidence of MW 2 and MW 3. The testimony of these witnesses convincingly reflects that accommodation was not actually provided. That apart, there is no clear evidence to show that the workman deliberately refused to take the accommodation so provided by the MW 3 and that being the position, this Court does not find any mis-appreciation of the evidence so put on record to make the award perverse.

20. In view of what has been stated, discussed and observed, this Court is of the view that the impugned award deserves no interference.

In the result, this writ petition fails and stands dismissed. No costs.