

(2005) 07 CAL CK 0007
In the Calcutta High Court
Case No : Writ Petition No. 559 of 2000

Braithwaite Burn and Jessop Construction Co. Ltd.	APPELLANT
Vs	
4th Industrial Tribunal W.B. and Others	RESPONDENT

Date of Decision : 13-07-2005

Acts Referred:

Citation : 108 CWN 686 : (2005) 107 FLR 622

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Pratik Prakash Banerjee, for the Appellant; Asish Sanyal and Pradip Kumar Chatterjee, for the Respondent

Judgement

Ashim Kumar Banerjee, J.—Sheo Kumar Singh was a workman under Braithwaite Burn & Jessop Construction Co. Ltd. (hereinafter referred to as the "Company"). He was caught red handed when he was stealing goods from the factory premises of the petitioner by the security staff. A criminal proceeding was initiated against him. The disciplinary proceeding was also initiated by the company by following the prescribed procedure. The workman was afforded adequate opportunity of hearing before the disciplinary authority. Ultimately he was dismissed from service by an order dated February 28, 1983. The workman accepted the order of dismissal and after about three years from the date of passing of the order of dismissal he raised an industrial dispute. The state ultimately referred the dispute to the Industrial Tribunal. The 4th Industrial Tribunal; West Bengal after a prolonged hearing published an award dated June 10, 1999 wherein the workman was directed to be reinstated without back wages. The award of the Tribunal was. challenged by the Company in W.P. No. 559 of 2000 and by the workman in W.P. No. 17993(W) of 1999. In the first writ petition the workman made a grievance that the Tribunal should have allowed back wages to be paid whereas in the second writ petition the company made a grievance with regard to his reinstatement.

On perusal of the award it appears that the Tribunal found that the "disciplinary

proceeding was conducted by the company following the prescribed procedure and there was no infirmity on the said score.

2. It was the contention of the workman that the concerned security staff demanded interest on the money lent and advanced by him to the workman when the workman refused to pay additional interest he was implicated in the case of theft although he was not involved in any theft at all. The Tribunal also observed that the guilt was confessed by the workman.

3. The Tribunal also observed that the criminal case initiated by the police was not disposed of on merit and the workman was acquitted on technical ground to the effect that the ownership of the seized articles was not established. The company did not get any opportunity to prove the ownership of the seized article as it was not called upon to do so. The Tribunal also observed that the judgment of the Criminal Court was passed long after the workman was found guilty "in a properly held domestic enquiry as per certified standing orders of the company". The Tribunal also observed in paragraph 9 of the award that the defence case that he was wrongly implicated "is an afterthought. The Tribunal also held that the workman failed to establish even the probability of motive of the Darwan.

4. The Tribunal, however, directed reinstatement by showing sympathy to the workman. Paragraphs 15 and 16 of the award being relevant herein is quoted below:

...

15. In the instant case order of reinstatement of the workman may seem to be foisting upon the un-noned employee who had been proved unfaithful in the departmental enquiry. The infliction of maximum punishment: the employer has lost his bread and butter though he has been found not guilty in the criminal trial. A question that goes around is that if an employee is found not guilty in the departmental proceeding but if found guilty in the criminal trial he will automatically lose his job because the employer will bare the judgment of the Criminal Court to terminate the service of the employee why, then, an employee cannot be reinstated when he has been found not guilty by the Criminal Court to terminate the service of the employee why, then, an employee cannot be reinstated when he has been found not guilty by the Criminal Court though he had been found guilty in the departmental proceeding?

16. Industrial Disputes Act is a benevolent Act which looks after the interest of the weaker section in the Industry i.e. workman. Keeping all aspects in view and considering that the workman has suffered much I have no hesitation to come to the conclusion that the service of the workman should be restored but he will not be entitled to any back wages except the interim relief already drawn and would be entitled to his dues upto 28.2.83. The issue is thus answered accordingly.

...

5. Before the award was passed the Criminal Court acquitted the workman by

judgment and order dated March 27, 1986 wherein the Criminal Court acquitted the workman mainly on benefit of doubt. The Criminal Court found that the defence case of implication by Darwan out of animosity could not be ruled out. The Criminal Court thought that the seized articles weighing 16 kgs. were difficult to be carried by a human being in chest or with help on his wrist or pocket. It is significant that before the Criminal Court the workman did not produce any evidence in support of his contention that he was implicated by Darwan out of animosity. Such fact also did not come out from the evidence of the prosecution. However, I am not invited to examine the Criminal Court judgment. Hence, I refrain from doing so.

6. The principal issue germane in both the writ petitions is whether the Tribunal was right in showing sympathy to the workman after holding that he was given appropriate punishment in a "proper held" disciplinary proceeding. The workman was charged with the offence by the disciplinary authority. He was proceeded with in the disciplinary proceeding after affording adequate opportunity to defend himself in the said proceeding. The Tribunal found that there was no infirmity in the said disciplinary proceeding. The workman waited for three years and thereafter raised industrial dispute. Before the Industrial Tribunal it was specifically contended by the workman that acquittal by the Criminal Court was a relevant factor to be considered by the Tribunal. Tribunal did not accept such submission as a whole, even then had shown sympathy to the workman probably because of his acquittal in the criminal case. In my humble opinion this decision is totally perverse and is contrary to the well-settled principle of law.

7. Mr. Pratik Prakash Banerjee, learned Counsel appearing for the company cited as many as eleven decisions on this issue which are as follows:

- (i) S.A. Venkataraman Vs. The Union of India (UOI) and Another,
- (ii) Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others,
- (iii) Orissa Road Transport Company Ltd. v. Lokanath Patra and Anr. 1988(1) CLR 610
- (iv) State of Rajasthan Vs. B.K. Meena and others,
- (v) Akhilesh Gupta v. Jamalpur Thana Cooperative Agricultural Marketing Society Limited and Ors. 1997 LIC 69
- (vi) M/s Durgapur Chemicals Ltd. Vs. Ninth Industrial Tribunal, West Bengal and Others,
- (vii) Gobardhn Manna v. State of West Bengal and Ors. 2002 (1) CHCN 716
- (vii) Lalit Popli Vs. Canara Bank and Others,
- (ix) Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar,

(x) Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar,

(xi) Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another,

8. Citing those decisions Mr. Banerjee contended that the decision in a criminal proceeding could not have any bearing on the disciplinary proceeding as the degree of proof in both the cases was completely different. Mr. Banerjee also contended that the Tribunal after holding that the disciplinary proceeding was properly conducted and after observing that when the employer lost faith on an employee that employee should not be foisted upon the employer by way of reinstatement in service, should not have directed reinstatement by showing sympathy impliedly relying on the Criminal Court judgment.

9. Mr. Ashish Sanyal, learned Senior Counsel appearing for the workman, drew my attention to various observations of the Criminal Court. Mr. Sanyal contended that when the Criminal Court found that the story of implication by the Darwan because of animosity could not be ruled out and it was difficult for a human being to carry material weighing 16 Kgs. through his chest or wrist the Tribunal was right in directing reinstatement. However, the Tribunal should have awarded back wages. Mr. Sanyal relied upon the decision of the Apex Court in the case of Capt. Paul Anthony v. Bharat Gold Mines 1999(82) FLR 677 . Citing the said decision Mr. Sanyal contended that although the Tribunal could not get opportunity to rely upon the decision of the Apex Court in the case of Paul Anthony (supra), the award to the extent must be held to be valid one following the said decision of the Apex Court.

10. The workman was caught red handed carrying company's goods without any authority. He was produced before the higher authority. He admitted his guilt He was proceeded with departmentally and he was inflicted with the major punishment of dismissal after finding him guilty of the charges. In the series of decisions excepting Paul Anthony (supra), the Apex Court in most unequivocal terms, held that the decision of a criminal proceeding could not have any bearing on the disciplinary authority.

11. In a theft case the state being the prosecution is obliged to prove that the accused is guilty of the charges beyond reasonable doubt. If the Criminal Court finds that the prosecution has been able to prove their case as against the accused beyond reasonable doubt and through unimpeachable evidence the Criminal Court is duty bound to award punishment as prescribed under the appropriate laws of the land. Such proceeding or the punishment in my view has no bearing on the employer relationship. For an incident of indiscipline employer is entitled to proceed as against his employee departmentally. Such incident of indiscipline may be a criminal offence under the appropriate laws of the land for which state is to initiate action as against such person irrespective of the fact whether he is under a particular employer or not. Once such proceeding is brought before a Criminal Court, it is the Criminal Procedure Code which would

govern such proceeding. The employer, however, is entitled to proceed as against his employee for the charge which the employer thinks an act of indiscipline and contrary to the service norms. Then such employee is proceeded with in a domestic proceeding under the rules prescribed therefor. In such domestic proceeding the degree of proof depends on preponderance of probability and such degree of proof is not so stringent as in a case of a criminal proceeding.

12. In the instant case when the incident occurred the concerned workman was handed over to police and a complaint was lodged with the police authority by the employer, as the offence was punishable under the Indian Penal Code and State was the appropriate authority to bring such action as against the wrong doer. This did not debar the employer to proceed independently against (he-workman in a regular domestic proceeding under the service rules applicable for the employees of that particular employer which was done in the instant case.

13. Let us now examine what was the view taken by the Apex Court in the case of Paid Anthony (*supra*).

14. After considering several earlier decisions, the Apex Court in the said case prescribed a guideline for dealing with the cases like the present one.

15. Paragraph 22 of the said decision being relevant herein is quoted below:

...

22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of, a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the

pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

...

16. I have carefully perused the guideline prescribed by the Apex Court Only departure the Apex Court made in my view, was not in fact a departure but a clarification to the effect that if the charge in the criminal case as well as the disciplinary proceeding is identical On similar set of facts and of a grave nature, involving complicated question of fact and law, it would be desirable to stay the departmental proceeding till the conclusion of the criminal case. At the same time the Apex Court also observed that such complicated question of fact and law would depend upon the nature of the offence, the nature of the case launched against the employee on the basis of the material collected against him through investigation. The Apex Court also held that if the criminal case is unduly delayed the departmental proceeding although stayed initially can be resumed so that in case he is found guilty the administration may get rid of him at the earliest. In the instant case the departmental proceeding was concluded much before the criminal proceeding. The workman accepted the order of dismissal by not challenging the same contemporaneously. The decision of the criminal case came at a much later stage. The Apex Court did not observe that order of acquittal by the Criminal Court on a technical, ground can have any bearing on the disciplinary proceeding or the industrial disputes raised thereafter. On the contrary the observation of the Apex Court as quoted (supra) in paragraph 22(v) would support the punishment inflicted on the workman by the disciplinary authority.

17. Now comes the question of quantum of punishment. Once the disciplinary authority found that the workman was guilty of the offence, the punishment inflicted upon the workman in my view was absolutely appropriate as the charge was grave in nature.

18. In my view the Tribunal should not have placed any reliance on the decision of the Criminal Court once finding the same an acquittal on technical ground.

19. The Tribunal observed that the Industrial Disputes Act is a benevolent piece of legislation. I am in full agreement with the learned Judge of the Tribunal on that score. The said enactment was made to protect the interest of the working class as well as to see that they are properly dealt with by their employer. Be it in the matter of giving service benefits to them. Be it implicating them in any disciplinary proceeding. We the judges, are tied by the ropes of laws. Being human being one has to be sympathetic to the litigants. However, such sympathy in my humble opinion cannot be shown beyond the law. If I am to do justice to the litigants, I will have to apply the law applicable therefore in its true spirit. There is no scope for showing mercy or sympathy to an erring person who does

not deserve sympathy in law. It is the duty of the Court to see that the grievance of the litigants is properly adjudicated upon strictly in accordance with law. It is also the duty of the Court to see that an accused or an erring person is dealt with properly and after giving him adequate opportunity to defend himself, so that he can come out from the charges brought against him or her. Humane approach to the problem or a practical solution to a problem is the crying need of the hour. While sitting on the judgment seat however, such exercise must be done within the four corners of law by stretching the same within its permissible limit. Sympathy shown or a solution given dehors the law is an injustice and cannot be supported. It is true that the person concerned would lose his only means of livelihood. It is also true that his family members might starve if he is not reinstated. I have full sympathy for them. However, I am constrained to say that law has not empowered me to do injustice to the other litigant being the company, who is trying to assail their decision in the properly held domestic proceeding. Hence, I am unable to support the award to the extent where it directed reinstatement.

20. Since I have held that the reinstatement was bad, there is no question of payment of back wages to the workman.

21. In the result, the first writ petition being W.P. No. 17993(W) of 1999 fails and is hereby dismissed. W.P. No. 559 of 2000 is allowed. The award dated June 10, 1999 passed by the learned judge, 4th Industrial Tribunal in Case No. VIII 387 of 1987 is quashed and set aside to the extent where it directed reinstatement of the workman. The order of the dismissal passed by the disciplinary authority is upheld.

There would be however no order as to costs.

Urgent xerox certified copy would be given to the parties, if applied for.