

**(1965) 08 KL CK 0016**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 346 of 1965**

Caltex (India) Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court, Quilon and Others

RESPONDENT

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**Date of Decision :** 17-08-1965

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 15

**Citation :** AIR 1967 Ker 109 : (1966) 2 LLJ 416

**Hon'ble Judges :** K.K. Mathew, J

**Bench :** Single Bench

**Advocate :** P.K. Kurien, V. Desikan and K. Sukumaran, for the Appellant;  
Government Pleader, T.C.N. Menon, K.R. Panicker, T.N. Hareendran, P.  
Sankarankutty and M.T. Kuriakose, for the Respondent

**Final Decision :** Allowed

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## Judgement

K.K. Mathew, J.—This is an application for a writ of certiorari or other appropriate writ quashing the award passed by the Labour Court, Quilon, in Industrial Dispute No. 48 of 1903. The dispute referred to the Court was: "Is the dismissal of the worker M. C, Antony legal and proper: If so and if not to what relief he is entitled?"

2. The dispute was between the management of Caltex (India) Ltd., Ernakulam and their workmen represented by the Petroleum Worker's Union. Ernakulam. Under the Standing Orders of the company, theft, fraud or dishonesty in connection with the employer's property is a ground for taking disciplinary action against a worker. (See 29 (e) of the Standig Orders). At the domestic enquiry, the Enquiry Officer came to the conclusion that it is proved beyond doubt that M. C. Antony has stolen a 9 litre tin from the company's empty tin godown on October 15, 19G2. and painted it himself unauthorisedly with the company's paint during lunch time on that day. He was therefore found guilty of S. O. No. 29 (e) and was dismissed from service with effect from 15th December, 1962.

The case of the Union was that what was alleged to have been stolen from the company's empty tin godown really belonged to M. C. Antony who had purchased the tin for Rs. 1.50 from a temporary worker of the Burmah-Shell Company about seven months-back, that he had been taking the tin to the company for receiving his quota of kerosene oil twice a week, that he had painted the tin in his house on 14-10-1962, that the tin was handed over to him by his father for the purpose of receiving kerosene oil when he had gone out of the company's premises for lunch, that he had taken the tin inside the company's premises at 12.20 P.M. on 15-10-1962 after lunch and that he told the foreman Sri. P. K. G. Menon at 1.30 P.M. the same day about the possession of the tin with him. The Union contended before the Labour Court that the domestic enquiry was not made in conformity with the principles of natural justice, that the alleged stock verification of tins in the store conducted by the foreman on 15-10-1962 was not correct, that the confession alleged to have been made by the accused worker to the effect that he had painted the tin with the company's paint and brush within the company's premises soon after he had got the tin was not a voluntary confession and that the conclusion arrived at by the Enquiry Officer that tin produced by Antony belonged to the company and that It was stolen by Antony from the empty tin godown on 15-10-1982 is an unreasonable and perverse one and therefore the Labour Court had jurisdiction to entertain the dispute and give appropriate relief to the dismissed workman.

3. The Labour Court after a consideration of the question came to the conclusion that the finding of the Enquiry Officer that Antony committed theft of the tin was perverse as it was not supported by sufficient evidence. The court therefore reversed that finding and held that Antony must be reinstated; but without back wages. The court also found that the contention of the management that the dispute was not an industrial dispute and therefore the Labour Court had no Jurisdiction to entertain the reference had no substance in it. This award it being questioned by the petitioner on the ground that the Labour Court,, had no jurisdiction to re-appreciate the evidence when the domestic enquiry conducted by the management was not open to objection on any of the grounds, namely, victimisation, unfair labour practice or other reasons recognized by the industrial law which would authorise the setting aside of the conclusion arrived at in the domestic enquiry.

4. Two points were argued by learned counsel for the petitioner: (1) that the conclusion of the Labour Court that the dispute in this case raised an industrial dispute is wrong and (2) that the Labour Court had no jurisdiction to reappreciate the evidence and come to a conclusion different from the one arrived at in the domestic enquiry on the question whether Antony committed theft of the tin in question.

5. On a careful consideration of the matter I am of opinion that the second contention of the petitioner is entitled to succeed. It is well settled that it is for the management to determine what constitutes a major misconduct within the

Standing Orders sufficient to merit a dismissal of a workman, and if, after a domestic enquiry, a workman is dismissed, that dismissal cannot be set aside by a Labour Court unless the Court finds that the dismissal was without good faith or with motives of victimisation or Intimidation or unfair labour practice. It is also open to the dismissed workman to question the action of the management if the procedure adopted in the domestic enquiry is against the rules of natural justice In *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, it was laid down that in cases of dismissal for misconduct the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management, but that the tribunal will interfere (1) where there is want of good faith (2) when there is victimisation or unfair labour practice (3) when the management has been guilty of a basic error or violation of the principles of natural justice, and (4) when on the materials the finding is completely baseless and perverse To the same effect is the decision reported in *Hind Construction and Engineering Co. Ltd. Vs. Their Workmen*, . It is not alleged that the domestic enquiry was vitiated on grounds Nos. 1 to 3. Therefore, unless it was found that the appreciation of the evidence in the case was perverse, the Labour Court was not entitled to interfere with to conclusion of the Management.

6. So the only question for consideration is whether the finding of the enquiry officer that M.C. Antony had committed theft of the tin was based on some legal evidence. If it is found that there was some evidence to support the finding of the Enquiry Officer the Labour Court had no authority to interfere with that finding. The standard of proof necessary in a case like (his is laid down in *Hamdard Dawakhana Wakf v. Its Workmen* 1962 II LLJ 772(SO and *Saran Motors v. Vishwanath* 1964 II LLJ 139 (SO. In 196 II LLJ 772(SC) it was observed:

"As we have pointed out on several occasions dealing with industrial disputes of this kind, an industrial tribunal would be justified in characterising the finding recorded in the domestic enquiry as perverse only if it is shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of the evidence adduced before it. In the present case such a conclusion is obviously impossible" (see page 776)."

In 1964 II LLJ 139 was said;

"Sri. Chadha (the Enquiry Officer) has believed the management's evidence and has rejected the testimony of the respondent witnesses. In such a case we do not think it was open to the Tribunal to consider the evidence for itself when it is plain that the domestic enquiry was fairly conducted, a reasonable opportunity was given to the respondents to prove their case and the conclusion recorded at the enquiry was supported by evidence which was believed by the enquiry officer", (see page 142).

7. Judged by this standard I do not think that the finding of the Enquiry Officer that Antony committed theft of the tin on 16-10-1962 was perverse. The main evidence in support of the finding of the Enquiry Officer is that of Jairam, the

Head Watchman, and Kethulal, the Watchman. Their evidence is clear that when Antony returned at 12-20 P. M. on 16-10-1962 to the premises of the company he had no tin with him. They made statements on 16-10-1962 to that effect to Nawaz Hussain, the Operating Assistant. The Labour Court says that the evidence of these witnesses does not prove beyond doubt that Antony committed theft of the tin. But it is clear from the evidence of these - witnesses that the case put forward by Antony that he brought the tin with him after lunch cannot be true. Since the Enquiry Officer has believed the evidence of these witnesses it cannot be said that the finding of the Enquiry Officer that Antony committed theft is perverse. The Labour Court was largely influenced by the fact that Antony was able to produce at the domestic enquiry a cap which would fit this tin. It may be recalled at this stage that the evidence in the case has disclosed that the empty tins kept in the godown of the company had no caps. The fact that Antony produced a cap at the stage of the domestic enquiry which would fit this tin is of no avail in this case as these are standard tins and it was possible to obtain a cap from outside.

8. The Labour Court also relied on the evidence of P. K. G. Menon, the Foreman employed in the company, to the effect that Antony had told him on 15-10-1962 at about 1.30 p.m. that he had brought a tin for receiving his share of kerosene oil from the company. This circumstance was also taken into account by the Enquiry Officer, but he thought that the circumstance was not conclusive on the ground that it must have been a premeditated attempt on the part of M. C. Antony to conceal his offence. That cannot be said to be a perverse inference. Therefore the Labour Court should not have relied on that circumstance as proving that Antony did not commit the theft.

9. The only circumstance on the basis of which it may be said that the enquiry was vitiated is that at the beginning of the domestic enquiry the enquiry officer put certain questions to Antony which smacked of cross-examination. In the decision reported in *Associated Cement Co. Ltd. Vs. The Workmen and Another*, at p 400, it is observed.

"The other infirmity in the present proceedings flows from the fact that the enquiry has commenced with a close examination of Malak Ram himself. Some of the questions put to Malak Ram clearly sound as questions in cross-examination. It is necessary to emphasise that in domestic enquiries the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of

cross-examination in the manner adopted in the present enquiry proceedings. Therefore, we are satisfied that Mr. Sule is right in contending that the present enquiry proceedings by which Malak Ram was elaborately cross-examined at the outset constitutes another infirmity in this enquiry"

The conclusion in that case was not based entirely upon this circumstance. There were also other infirmities in the domestic enquiry which induced their Lordships to come to the conclusion that there was no real enquiry at all in that case. It is stated at page 401:

"It is thus obvious that in coming to the conclusion that Malak Ram was guilty of the misconduct the enquiry officers have plainly relied upon their own knowledge, and that is reasonably calculated to create an impression in the mind of Malak Ram that the present enquiry was nothing more than a sham or an empty formality. Therefore we are satisfied that the view taken by the Tribunal that the enquiry held against Malak Ram was not conducted in accordance with the principles of natural justice, cannot be successfully challenged by the appellant"

But in this case I cannot say that the infirmity referred to above is sufficient to vitiate the domestic enquiry. As there was sufficient evidence for the enquiry officer to come to the conclusion that Antony came to the premises of the company on 15-10-1962 at 12. 20 p.m. without any tin as pleaded by him, it is difficult to say that the finding of the enquiry officer was perverse. Mr. T. C. N. Menon, said on behalf of the Union, that there is no independent proof of the theft in that there is no evidence that the particular tin was stolen from the company's godown. The domestic enquiry is not a criminal trial. If there was evidence from which a reasonable inference of theft was possible. I am not prepared to say that the inference was not warranted because there was no direct evidence of theft. As has been stated by the Supreme Court the approach in these matters must be pragmatic. In these circumstances, I cannot say that the finding of the Enquiry Officer in the domestic enquiry was perverse.

10. I therefore quash the award and allow the writ petition, but in the circumstances, make no order as to costs.