
(1999) 01 KL CK 0054
In the High Court Of Kerala
Case No : W.A. No. 439 of 1994

Cashew Development Corporation Ltd.	APPELLANT
Vs	
Labour Court	RESPONDENT

Date of Decision : 15-01-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1999) 2 ILR (Ker) 337 : (1999) 1 LLJ 1031

Hon'ble Judges : Om Prakash, C.J.; J.B. Koshy, J

Bench : Division Bench

Advocate : P.S. Usuph, for the Appellant; E. Subramani and P.K. Santhamma, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Koshy, J.—Appellants in the writ appeal which is a Kerala Government undertaking filed the original petition for the issuance of a writ of certiorari for quashing Ext. P6 preliminary order and Ext. P8 award passed by the first respondent Labour Court. The second respondent Union raised an industrial dispute on behalf of one of its members. The issue referred for adjudication to the Labour Court was "reversion of Sri. S. Sivasankara Pillai, Manager Grade II". Sri. S. Sivasankara Pillai, designated as II Grade Manager in the petitioner's establishment was charge sheeted for the misconduct of (1) causing wilful loss to the Corporation; 2) Habitual breach of rules; 3) Making false allegations against superior officers; 4) Gross negligence of duty. The allegations raised against him was that by order dated February 1, 1975 he was put in charge of filling and packing section of the factory. On September 8, 1975 he did not arrange work in the filling section and that occasioned considerable loss to the factory. On September 11, 1975 the filling work suffered for about 1 1/2 hours due to his indifferent attitude. On September 16, 1975 no work was done in the filling and packing sections, though the workmen were ready to work. Because of this non-co-operation and indifference, huge loss was caused to the Corporation.

Dissatisfied with the explanation submitted by the employee, a domestic enquiry was conducted in accordance with the principle of natural justice. The Assistant Personnel Manager of the petitioner establishment conducted the enquiry. The enquiry officer submitted a report holding that the charges were proved in the enquiry. After considering the findings of the enquiry officer and seriousness of the charges levelled against the employee, the Management imposed a punishment by reverting the employee as factory clerk, but his salary he was drawing was protected. According to the petitioner/Management, he was not dismissed from service by taking lenient view even though the misconducts proved in the enquiry were serious.

2. The second respondent Union filed Ext. P3 statement before the Labour Court questioning the enquiry as well as the punishment imposed. The petitioner/management in its pleadings raised three preliminary points:

- 1) Whether the order of reference is proper and valid.
- 2) Whether the enquiry held is proper and valid.
- 3) Whether the findings of the enquiry officer are based on legal evidence or whether the same are perverse?

The Labour Court at first held that the concerned employee was not a workman as defined under the Industrial Disputes Act and hence there is no valid industrial dispute. That order was set aside by this Court and remanded the matter for reconsideration, by Ext. P5 judgment. After remand the Labour Court in Ext. P6 preliminary order found that the employee is; a workman as defined under the Industrial Disputes Act and industrial dispute is validly raised. With regard to the enquiry, it was found that enquiry was fair and proper and findings are not perverse. But the Labour Court set aside the enquiry report on the ground that the enquiry officer was biased as enquiry was conducted by an employee of the Corporation and he also made certain observations against the workman, which are not necessary for considering whether he has done misconduct or not. The relevant portion of the preliminary order is as follows:

"... The workman challenges the validity of the enquiry. The findings of the enquiry officers are also challenged by him. As such first of all I shall see whether the enquiry held is proper and valid. Ext. M3 is the enquiry report. Exts. M1, M2 and M4 to M10 are connected papers. In the enquiry 4 witnesses were examined on the side of the management and 19 documents were marked. Three documents were marked on the side of the workman. A perusal of the enquiry report and connected papers shows that the workman fully participated in the enquiry. The witnesses examined by the management were cross examined in extenso by the workman. The requests made by the workman were allowed by the enquiry officer. It has therefore to be said that principles of natural justice have been complied with by the enquiry officer. In that sense it has to be said that the enquiry is proper and valid".

After holding that enquiry held was proper and valid, with regard to the findings the Labour Court held as follows:

"...The enquiry officer relied on the evidence of the 4 witnesses examined by the management. He believed them and found the workman guilty of the charges. I do not say that findings are perverse."

Therefore, after holding that natural justice was complied with, enquiry held was proper and valid and that the findings are not perverse, the Labour Court set aside the enquiry because enquiry officer was interested person and biased. With regard to that part the reasoning of the Labour Court is as follows:

"..... As stated by me earlier the enquiry was conducted by the Assistant Personnel Manager of the Corporation. This I may state was not proper. He is an employee of the Corporation. As such needless to say that he is an interested person, interested in the Corporation. He can and he will record a finding in favour of the Corporation only. The enquiry cannot therefore be said to be an impartial one. It is true that there is not legal bar in the management holding an enquiry by any of its officers. But in fairness that task could and should have been instructed with some external agency. This the management had not done. The enquiry cannot therefore be said to be a proper and valid one".

Thereafter the Labour Court also held that the enquiry officer made some observations which are unwarranted and that shows that the enquiry officer was biased towards the workman. Hence, he did not accept the report and posted the case for fresh evidence.

3. The Management challenged the preliminary order before this Court by filing O.P. No. 5185 of 1987 and by Ext. P7 judgment that original petition was dismissed holding that validity of the preliminary order can be canvassed by the petitioner if the award goes against the petitioner. Thereafter, the witnesses examined in the enquiry were again examined. No additional evidence was let in by the worker. Labour Court re-appraised the evidence and found that the charges were not proved and hence the punishment imposed was set aside by Ext.P8 award. Learned single Judge found that the findings of the Labour Court in the preliminary order that the employee is a workman as defined under the Industrial Disputes Act is based on evidence and there is valid industrial dispute. With regard to the contention that enquiry was valid, no specific finding was entered into. The contention of the Management that enquiry cannot be said to be vitiated merely because the enquiry was conducted by an officer of the Management was not considered by the learned Judge. The learned Judge merely found that the entire matter was considered by the Labour Court and Labour Court has jurisdiction to go into all aspects of the dispute. Therefore, the original petition was dismissed. The learned single Judge held as follows:

"... It was submitted that the first respondent was not justified to go into the validity of the domestic enquiry of the findings arrived at by the Enquiry Officer, which, it was submitted, were matters outside the scope of Ext. P5. I do not

agree that this submission is justified. The first respondent, in my view, has jurisdiction to go into all aspects of the dispute and to come to conclusions based on the evidence and other materials".

4. It is the contention of the appellant that specific ground raised in Ground A of the original petition that the preliminary order of the Labour Court in setting aside the enquiry report is illegal, was not considered at all by the learned Single Judge. It is submitted before us by the learned counsel for the appellant that appellant is not contesting the finding that the employee is a workman as defined under the Industrial Disputes Act and there is valid industrial dispute referred for adjudication. The only contention raised before us is that the enquiry conducted was fair and proper and if the enquiry is fair and proper, Labour Court has no jurisdiction to go into the entire aspects of the matter or reappraise the evidence or to consider the adequacy of punishment. So, the first question to be considered is whether as stated by the Labour Court the enquiry is vitiated because an officer of the management conducted the enquiry and he made some observations against the workman which are unwarranted in the case.

5. In *Delhi Cloth and General Mills Co. Ltd. v. Labour Court* (1970 I LLJ 23) the Supreme Court held that merely because the Enquiry Officer is an employee of the Management cannot lead to the assumption that he was bound to decide the case in favour of the Management. In *Saran Motors (P) Ltd. v. Vishwanath* (1964 I LLJ 139) the Supreme Court has held as follows:

"It is well-known that enquiries of this type are generally conducted by officers of the employer Companies and in the absence of any special bias attributable of a particular officer, it has never been held that the enquiry is bad just because it is conducted by an officer of the employer".

Therefore, finding of the Labour Court that enquiry is vitiated merely because it was conducted by an officer of the Management cannot be sustained. The only other ground found by the Labour Court against the enquiry officer is that he made some unnecessary observations and, therefore, he is biased. This plea that enquiry officer was biased was not raised during the enquiry or in Ext.P3 pleadings before the Labour Court or in earlier proceedings before this Court. The bias of the enquiry officer has to be specifically pleaded and proved before the adjudicator. Such a plea was specifically absent before the Labour Court. We also note that the Labour Court itself found that the enquiry officer relied on the evidence adduced in the enquiry and its findings are not perverse. After such a finding even if he has stated some unwarranted observations, it cannot be stated that report is biased. In *The Tata Engineering and Locomotive Co. Ltd. Vs. S.C. Prasad and Another*, the Supreme Court held that:

"Industrial Tribunals, while considering the findings of domestic enquiries, must bear in mind that persons appointed to hold such enquiries are not lawyers and that such enquiries are of a simple nature where technical rules as to evidence and procedure do not prevail. Such findings are not to be lightly brushed aside

merely because the enquiry officers, while writing their reports, have mentioned facts which are not strictly borne out by the evidence before them".

In this case for finding the employee guilty the enquiry officer relied on the evidence adduced in the enquiry and Labour Court itself found that the findings are not perverse. In such circumstances, the preliminary order of the Labour Court setting aside the enquiry on the ground that the enquiry was conducted by an officer of the Management and he has made some observations in the enquiry report which are not warranted in the case is not a vitiating factor and these reasons are not sufficient to set aside the enquiry.

6. The Labour Court already held that the enquiry was properly held and there is no violation of the principles of natural justice and that the findings are not perverse. We have already held that the vitiating facts found by the Labour Court against the enquiry are erroneous and are liable to be set aside. If enquiry is fair and proper in the absence of any allegations of victimisation or unfair labour practice and Labour Court has no power to interfere with the punishment imposed. Section 11A of the Industrial Disputes Act gives ample power to the Labour Court to re-appraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. Section 11A of the Industrial Disputes Act is only applicable in the case of dismissal or discharge of a workman as clearly mentioned in the section itself. Before the introduction of Section 11A, in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, the Supreme Court held that: the Tribunal does not act as a Court of appeal and substitute its own judgment for that of the Management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc. on the part of the management. There is no allegation of unfair labour practice, victimisation etc. in this case. The powers of the Labour Court in the absence of Section 11A is illustrated by the Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, . When enquiry was conducted fairly and properly, in the absence of any of the allegations of victimisation or malafides or unfair labour practice, Labour Court has no power to interfere with the punishment imposed by the management. Since Section 11A is not applicable, Labour Court has no power to re-appraise the evidence to find out whether the findings of the enquiry officer are correct or not or whether the punishment imposed is adequate or not. Of course, Labour Court can interfere with the findings if the findings are perverse. But, here there is a clear finding that the findings are not perverse and principles of natural justice were complied with while conducting enquiry. In such circumstances, in the absence of power u/s 11A the Labour Court has no power to re-adjudicate the matter.

Therefore, Ext. P6 preliminary order and Ext. P8 award of the Labour Court are set aside. Since the enquiry was held in accordance with the principles of natural justice, the findings of the enquiry officer are not perverse and there is no vitiating circumstance like victimisation, unfair labour practice etc. Labour Court

has no power to interfere with the punishment and the Labour Court went wrong in interfering with the punishment of reversion imposed by the management. The impugned judgment of the learned single Judge is also set aside, and the writ appeal is allowed.