

(1984) 07 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2345 of 1981

Cawnpur Sugar Works

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-07-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(c), 11A

Citation : (1984) PLJR 813

Hon'ble Judges : M.P. Varma, J;Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : K.N. Gupta, for the Appellant; J. Krishna and Shivaji Pandey, for the Respondent

Judgement

Lalit Mohan Sharma, J.—By this writ application, the Management of the Cawnpur Sugar Works has challenged the Award as contained in Annexure "4" of the Labour Court, Muzaffarpur, respondent No. 2. The respondent No. 3 was in the employment of the petitioner as a watchman. He was entrusted with the duty of guarding a godown belonging to the petitioner during the night hours and, according to the case of the Management, a theft of 19 bags of manure took place from the godown for which he was held responsible after a chargesheet was served on him and a departmental inquiry was made. Both the Management and the workman led evidence and the Enquiry Officer held the workman guilty on the basis of which the Management passed an order of dismissal as contained in Annexure 4. The workman objected to the order and after a futile attempt by the Conciliation Officer to resolve the dispute, the matter was referred u/s 10(1)(c) of the Industrial Disputes Act by the State Government. The parties led evidence and the Labour Court held that the domestic enquiry held by the Management was fair and proper. The Court further proceeded to examine the evidence led by the parties in the domestic enquiry and held that the charges levelled against the workman were not established and the conclusion of the Enquiry Officer was erroneous. The order of dismissal has been accordingly set aside and the respondent workman has been reinstated.

2. According to the management the theft of fertilizer took place during the night of the 10th and 11th November 1975, that is during the duty hours of the workman. The evidence led in the domestic enquiry indicated that the theft was detected by the officers in the afternoon of the 11th November and subsequently 10 bags were recovered from a nearby cane field.

3. If the theft is not established to have taken place before 6 A.M. the workman obviously cannot be held to be responsible. The Management examined M.W.4 Paresb Rai, Tractor driver in the domestic enquiry who stated that one Mankeshwar Mahto who was not examined by the Enquiry Officer, had told him that the respondent-workman Dubar Rai had committed the theft. A similar statement was made by another person Bijadhar Rai. The Labour Court after discussing the entire evidence led in the domestic enquiry held that there was no evidence on the record to incriminate the respondent Dubar Rai excepting the aforementioned hearsay evidence. The Court refused to rely on hearsay evidence and recorded a finding on the basis of the remaining evidence that the conclusion arrived at by the Enquiry Officer was not correct. The Management led some additional evidence before the Court on the basis of which it was suggested that the guilt of the workman was established. The Labour Court rejected the prayer of the Management to consider the same and base its findings thereon on the ground that since the domestic enquiry was found to have been fair, no additional evidence could be relied on u/s 11A of the Act.

4. Mr. Gupta contended that the petitioner was entitled to lead the rely on the additional evidence led before the Labour Court. He referred to the following observations of the Supreme Court in paragraph 44 of the judgment in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*,

The expression "materials on record" occurring in the proviso, in our opinion, cannot be confined only to the materials which were available at the domestic enquiry. On the other hand, the materials on record in the proviso must be held to refer to materials on record before the Tribunal. They take in--

(1) the evidence taken by the Management at the enquiry and the proceedings of the enquiry, or

(2) the above evidence and in addition, any further evidence led before the Tribunal, or

(3) evidence placed before the Tribunal for the first time in support of the action taken by an employer as well as evidence adduced by workman contra.

I do not agree with Mr. Gupta's reading of the Supreme Court decision. For correctly appreciating the ratio, it is necessary to go through the entire judgment. The Supreme Court comprehensively analysed the law on the subject as it stood before the introduction of section 11A by amendment in 1971 and then discussed the legal effect of the section. It was pointed out that if a proper

enquiry was shown to have been held by an employer and the finding of misconduct was plausible conclusion flowing from the evidence adduced at the said enquiry, the Labour Tribunal before the amendment had no jurisdiction to execute in judgment over the decision of the employer as an appellate body. The grounds on which interference with the finding was possible were limited, namely, unfair labour practice, mala fides, victimisation of a workmen by the Management and perverseness. In view of the said provision of section 11A the Supreme Court held that even where a dismissal of a workmen by the employer on ground of misconduct is preceded by a proper valid enquiry, the section empowers the labour court or tribunal to re-appraise the evidence and examine the correctness of the finding thereon. On the question of admission of additional evidence, the law before amendment permitted the employer to lead fresh evidence in support of the finding of misconduct of the workman only if the enquiry was held to be unfair or where no enquiry was held at all. The employer could not be allowed to rely on fresh evidence led for the first time before the labour court, if the domestic enquiry was found to be fair. While discussing the meaning and scope of the Proviso in section 11A, the Supreme Court held that this position remained unaltered, meaning thereby that the Management can give fresh evidence only if the domestic enquiry is held to be unfair or that, in fact, no enquiry was held at all. This position is clear from the observations made in paragraphs 18, 19, 25, 30, 33 and 37 of the judgment. In that background, the observations relied on by Mr. Gupta were made in paragraph 44. The position is further clarified in express terms later in the very paragraph 44. Accordingly, I hold that in view of the finding that the domestic enquiry held by the petitioner was fair, the petitioner was not entitled to rely on any evidence not led in the domestic enquiry and the labour court was perfectly justified in refusing to take into consideration new evidence.

5. Mr. Gupta next contended that the labour court was not justified in interfering with the finding arrived at, at the domestic enquiry as the same was neither perverse nor was the Management guilty of unfair labour practice or victimisation of the workman. This argument overlooks the vital change brought about in the law by section 11A of the Act and has to be rejected without much discussion

6. Alternatively, the learned counsel argued that the approach of the labour court in considering the evidence and coming to its conclusion on facts was vitiated in law on account of a wrong assumption that the strict rule of evidence as contained in the Evidence Act was applicable., He also contended that the Court was in error in applying the standard of proof as in a criminal case. It was suggested that the hearsay evidence available in the domestic enquiry should have been relied on. It is true that technical rules laid down by the Indian Evidence Act are not applicable in proceedings before the labour court and further that the standard of proof is not the same as in a criminal case, but that does not mean that even substantive rules of evidence forming part of principles of natural justice can be ignored by the domestic tribunal. In *Central Bank of India Ltd. Vs. Prakash Chand Jain*, the Supreme Court held (see page 382, first

column) that tribunal was fully justified in setting aside the finding in the domestic enquiry as the same was based on hearsay evidence. It is significant to note that this decision was given before the inclusion of section 11A in the Act. As stated earlier, in the present case, the theft was detected in the afternoon of the 11th and the duty hours of the workmen had ended at six in the morning. In absence of any cogent acceptable evidence, incriminating the workman or in absence of any material to suggest that the theft had actually been committed during the night, it was not possible to hold the workman guilty. This is the view of the labour court and I do not find any illegality in the same. Lastly, the learned counsel for the petitioner argued that the post of a watchman is one of confidence and in view of what has happened, the labour court should not have reinstated the respondent workman in his earlier post. Mr. J. Krishna appearing for the respondent stated that the respondent workman is not anxious to continue as a watchman and he may be placed in any other post. I think, the suggestion is proper. It is, therefore, made clear that the Management will be entitled to put the respondent-workman in any other equivalent post, but he shall not thereby be put to any disadvantages in the matter of his pay or other emoluments. Subject to this observation, the writ application is dismissed but without costs.