

(1993) 03 KL CK 0066
In the High Court Of Kerala
Case No : O.P. No. 8860 of 1988

Chela Beedi Workers Industrial Co-op. Society Ltd.	APPELLANT
Vs	
K.K. Bharathan and Another	RESPONDENT

Date of Decision : 22-03-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1994) 68 FLR 1231 : (1994) 2 LLJ 396

Hon'ble Judges : P.K. Shamsuddin, J

Bench : Single Bench

Advocate : U.K. Ramakrishnan, for the Appellant; V.V. Surendran and Govt. Pleader, for the Respondent

Judgement

P.K. Shamsuddin, J.—In this original petition the petitioner challenges Exhibit P-9 award passed by the Labour Court, Calicut

2. The petitioner is a co-operative society registered under the Co- operative Societies Act. The members of the society are workmen and the society is administered by an elected managing committee as provided under the bye-laws and provisions of the Co-operative Societies Act.

3. The petitioner is engaged in manufacturing beedies which are marketed through the central society under the trade mark "Dinesh Beedi". The central society is also a cooperative society registered under the Co-operative Societies Act under the name and style "Kerala Dinesh Beedi Workers Central Co-operative Society". The members of the Dinesh Beedi Society are primary co-operative societies like the petitioner-society. The first respondent was a beedi roller engaged in the Chala Branch of the society. On October 12, 1983, the first respondent submitted Exhibit P-2 application for leave on medical ground for the period from October 1, 1983, to October 27, 1983. Thereafter, he sent another Heave application, Exhibit P-4, on November 18, 1983 seeking leave for one month from October 27, 1983, on the ground that he was suffering from peptic ulcer. It is the petitioner's case that even after one month, the first respondent

did not join the work. In the meanwhile the petitioner came to know that during the period of leave, the first respondent was working in the Government L.P. School, Sivapuram, as a part-time contingent menial employee. The petitioner gave notice to the first respondent informing about his conduct and directing him to show cause why his service should not be terminated. According to the petitioner, the first respondent was not actually suffering from illness and he was absent from duty on false ground and he was working as a part-time contingent employee in the Government L.P. School, Sivapuram, and, therefore, the petitioner issued a memo of charges, Exhibit P-6 to the first respondent. The first respondent submitted Exhibit P-7 explanation to the charge memo. The petitioner has produced Exhibit P-8 certificate issued by the Assistant Educational Officer, Mattannur, which would show the employment of the first respondent in the Government L.P. School, Sivapuram. Since the explanation submitted by the first respondent was found unsatisfactory, a domestic enquiry was conducted into the charges levelled against him by Smt. Sathi Devi, an advocate appointed as Enquiry Officer by the petitioner. The Enquiry Officer found the first respondent guilty of the misconduct. Accepting the findings, the first respondent was dismissed from service by the petitioner as per order dated August 23, 1984.

4. Thereupon, the first respondent raised an industrial dispute against the dismissal and the Government of Kerala referred the dispute for adjudication to the second respondent u/s 10(1)(c) of the Industrial Disputes Act. Finally, the second respondent passed Exhibit P-9 award directing the petitioner to reinstate the first respondent in service with full back-wages, continuity of service and all other benefits.

5. The main contentions raised by the petitioner in this original petition are : (1) Though request was made in the written statement filed by the petitioner before the second respondent that he should be given an opportunity to adduce evidence, if it was found that the enquiry was invalid, no such opportunity was given, (2) The finding of the Tribunal suffers from errors apparent on the face of the record, and (3) There is evidence to show that the petitioner was employed during the period and grave illegality was committed by the Tribunal in awarding back-wages.

6. Elaborating the first point, Learned Counsel for the petitioner submitted that the validity of domestic enquiry was raised as a preliminary point. The Labour Court found that the Enquiry Officer has complied with all legal formalities and opportunities were given to the first respondent to contest the matter and, therefore, the enquiry was valid. The Tribunal, however, held that the findings of the Enquiry Officer on merits are perverse. In that view of the matter, he passed the impugned award without giving any opportunity to adduce evidence. Learned Counsel submitted that since a request was made in the written statement of the petitioner that a further opportunity should be given to him if it is found that the enquiry was invalid, the award passed without providing such an opportunity is illegal. Learned Counsel invited my attention to paragraph 3 of the award

where the averments contained in the statement filed by the management are stated. He particularly invited my attention to the following averments: "In case it is found that the enquiry is invalid the management craves leave for an opportunity to adduce evidence to prove the charge". It is not disputed that such an opportunity was not given to the petitioner.

7. Learned Counsel for the first respondent, however, submitted that what was asked for by the petitioner is an opportunity to adduce evidence if the enquiry is invalid and since the Labour Court found that the enquiry was valid, no question of giving an opportunity to adduce evidence arises. He also invited my attention to the finding of the Labour Court that the Enquiry Officer conducted the enquiry properly giving the workman ample opportunity and that the enquiry is valid and proper.

8. This leads me to the question whether the request made by the petitioner for an opportunity if it is found that the enquiry was invalid would cover only the procedural validity and whether it will take also the validity of the findings entered by the Enquiry Officer who conducted the domestic enquiry. As indicated above, the Labour Court found that the findings are unreasonable and perverse and unwarranted by law.

9. The Supreme Court had occasion to consider the scope and ambit of the provisions contained in Section 11A of the Industrial Disputes Act in a number of decisions. The following principles emerge from those decisions (1) When no enquiry has been held by the employer or the enquiry held has been found to be defective, the employer has got a right to adduce evidence before the Tribunal justifying its action. (2) When a proper enquiry has been held by an employer on the charge of misconduct and the finding of misconduct is a plausible conclusion emerging from the evidence adduced at the said enquiry and punishment was awarded on the basis of the finding of the Enquiry Officer, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body and interference with the decision of the employer will be justified only when the finding arrived at by the Enquiry Officer is perverse or management is guilty of victimisation, unfair labour practice or mala fides. (3) A defective enquiry stands in the same footing as no enquiry. The Tribunal gets jurisdiction to consider evidence placed before it for the first time in justification of action taken only if no enquiry has been held or the enquiry conducted by the employer is found to be defective. (4) When the management relied on the enquiry it is open to them to request the Tribunal to try the validity of the enquiry as a preliminary issue and also ask for an opportunity to adduce evidence in case the preliminary issue is decided against them. (5) An employer, who wants to adduce evidence for the first time before the Tribunal to justify the action, should ask for it. If such an opportunity is asked for, the Tribunal has no power to refuse it. (6) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before the Tribunal for the first time, punishment imposed cannot be interfered with except in cases where the punishment is so

harsh as to suggest victimisation. (See The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, ; State Bank of India Vs. R.K. Jain and Others, and Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh,

10. As indicated above, in answer to the contention of Learned Counsel for the petitioner that in spite of the request made by the management such an opportunity was not given by the Industrial Tribunal, the stand taken by Learned Counsel for the first respondent is that the petitioner has asked for an opportunity only if the Tribunal found that the enquiry is invalid and since the Tribunal found that all the procedural requirements have been complied with, no occasion arose for giving the petitioner the opportunity asked for by the petitioner. In other words, according to counsel, the request made by the petitioner does not cover the invalidity of the finding for the reason that the finding is perverse or the conclusion arrived at is so unreasonable that no reasonable man can possibly come to such conclusion. I am unable to accept this contention. In my view, the expression "validity of the enquiry" is not confined to the validity based on the procedural requirements, but also the validity of the finding based on the evidence adduced as well. If the findings are perverse or arbitrary the enquiry is defective and it can also be said that there is no valid enquiry. What the Tribunal has held in this case is that the finding of the Enquiry Officer is perverse. That being the position, in my view, the petitioner ought to have been given an opportunity to adduce evidence in view of the specific request made by him in his written statement. In Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, the Supreme Court held that if the employer did not seek opportunity or there is no pleading for such an opportunity no duty is cast upon the Tribunal suo motu to call upon the employer to adduce evidence to substantiate the charge. The Supreme Court clearly laid down that if such an opportunity is asked for, the Tribunal has no power to refuse it.

11. A Division Bench of this Court had occasion to consider the scope of Section 11A in Raveendra Kamath Vs. V.A. Dholakia and Another, According to the Division Bench, the Labour Court can grant permission to the employer to sustain the action even on an oral request made before the application comes to a close even though such a plea was not taken in the pleadings. In the instant case, such a request was made in the written statement itself and, in the circumstances, I am of the view that the Labour Court went wrong in not giving an opportunity to the petitioner to adduce evidence before it justifying the action taken by the management. In the circumstances, I am unable to sustain the award passed by the Labour Court and in my view the matter requires to be remitted back to the Labour Court for giving such an opportunity.

12. Learned counsel for the petitioner also submitted that the direction in the award to pay back-wages is illegal as the first respondent was in gainful employment. He heavily relied on the decisions in Cochin Shipyard Ltd. v. Labour Court (1989) Lab IC 2220, and Employers of Firestone Tyre and Rubber Co. (P)

Ltd. v. Their Workmen 1967 II LLJ 715). It is also contended that the Labour Court has exceeded its jurisdiction in interfering with the findings of the Enquiry Officer. As I am remitting back the matter to the Tribunal I do not think that I should express any opinion on these aspects. I set aside Exhibit P-9 award and direct the Labour Court to consider the entire aspects and pass an award in accordance with law. As the matter was pending for quite a long time I direct the Labour Court to dispose of the matter within a period of three months from the date of receipt of a copy of this judgment.

13. Original Petition is disposed of as above.