

(1979) 01 KL CK 0013
In the High Court Of Kerala
Case No : O.P. 175/77

Cherpu Service Co-operative Bank Ltd.

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 10-01-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (1979) 01 KL CK 0013

Hon'ble Judges : Kochu Thommen, J

Bench : Single Bench

Advocate : K. Mohammed and K.R.B. Kaimal, for the Appellant; Government Pleader for 1st Respondent, M.V. Joseph and E.M. Thomas for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Kochu Thommen, J.—The Petitioner is a Co-operative Society. The 2nd Respondent was an employee of the society. A domestic enquiry was conducted against him on certain charges. On the basis of the finding of the enquiry officer, the employee was dismissed from the service of the society with effect from 12th August 1972. A dispute which soon arose as a result of the dismissal was referred u/s 10 of the Industrial Disputes Act, 1947, to the Industrial Tribunal, Calicut. The Tribunal by its award (Ext. P-3) dated 28th September 1976, set aside the order of dismissal and directed reinstatement of the employee. The Tribunal found that the domestic enquiry was defective and invalid as no notice of the enquiry had been duly served on the employee. The Tribunal further found that the charges against the employee were not proved.

2. The award is challenged by the society on three grounds. It is contended that the Tribunal failed to observe the principle laid down by the Supreme Court in The Cooper Engineering Limited Vs. Shri P.P. Mundhe, , in so far as it did not give an opportunity to the management to adduce evidence after the Tribunal came to

a finding that the enquiry was not valid and proper. Secondly it is contended that the finding of the Tribunal as to the validity of the enquiry was perverse. Thirdly it is contended that the finding of the Tribunal on merits was also perverse.

3. Before the Tribunal it was contended by the employee that the enquiry conducted by the management was invalid and improper. The main ground of attack against the validity of the enquiry was that no notice of the enquiry was served on the employee and the cardinal principles of natural justice were therefore not observed. The employee testified as M.W.1 to substantiate that contention. He further testified in support of his challenge against the merits of the order of the management. Nine documents were produced by him specifically in support of his contentions regarding the merits of the case. The employee further called upon the management to produce the minutes-book and the day-book; but they were not produced. It may be stated at this stage that the management did not raise any objection to the employee lending evidence on the merits of the case. On the contrary the management themselves chose to let in evidence on the merits. The Secretary of the Society as M.W.1 testified at length on the merits of the case, apart from his testimony on the question of notice. The management produced twelve documents solely on the merits of their case against the employee. Certain other documents were also produced in support of their contention that due notice had been given to the employee. The Tribunal considered at length both the aspects of the case. It came to the conclusion that notice of the enquiry was not duly served on the employee. It further held that the management failed to substantiate the charges of misconduct against the employee.

4. Counsel for the Petitioner, Shri K.R.B. Kaimal submits that the Tribunal ought to have come to a preliminary finding as to the validity of the enquiry before proceeding to consider the merits of the case. He says that, the Tribunal having come to a finding against the management on the question of validity of the enquiry, it ought to have given the management an opportunity to adduce evidence in support of the merits of their case against the employee. This, counsel says, is the principle adopted by the Supreme Court in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, . This contention is strongly refuted by Shri M.V. Joseph who appears for the employee. He points out that the principle stated by the Supreme Court has no application to the facts of the present case, as sufficient opportunity had already been afforded to the management to adduce evidence in support of their case on merits.

5. In *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, the question considered by the Supreme Court was whether "after the Labour Court comes to a decision about the enquiry being defective, it has any duty to announce its decision in that behalf to enable the employer an opportunity to adduce evidence before it to justify the order on the charge levelled against a workman?". In considering this question the Court referred to the principles of law laid down in *Delhi Cloth and General Mills Co. Ltd. v. Ludh Budh Singh* 1972 1 L.L.J. 180 , and

The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, The principles adopted by the Supreme Court in those two cases were, with certain exceptions, approved and followed in The Cooper Engineering Limited Vs. Shri P.P. Mundhe, . But in so far as the Supreme Court had earlier stated in those two cases that the employer had a duty to ask the Tribunal for an opportunity to adduce evidence, the Supreme Court expressed disapproval. The Supreme Court in Cooper Engineering Ltd. referred to the following proposition No. 8 which it had laid down in the The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, .

An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct. (emphasis supplied).

Referring to that proposition, the Court stated as follows:

Is it, however, fair and in accordance with the principles of natural justice for the Labour Court to withhold its decision on a jurisdictional point at the appropriate stage and visit a party with evil consequences of a default on its part in not asking the Court to give an opportunity to adduce additional evidence at the commencement of the proceedings or, at any rate, in advance of the pronouncement of the order in that behalf? In our considered opinion it will be most unnatural and unpractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be reached by the Labour Court prior to embarking upon an enquiry to decide the dispute on its merits....

The court concluded:

We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue.

6. The principle thus laid down by the Supreme Court is that the management is entitled to have an effective opportunity to adduce evidence before the Tribunal on the merits of the case, in the event of it being found that the enquiry was defective. The management has a right to substantiate its case before the

Tribunal. There is no obligation on the part of the management to request the Tribunal for such opportunity. In fact it would be difficult for the management to decide whether or not to give evidence on merits until the Tribunal has pronounced its decision upon the preliminary issue. In the Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, and The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, the Supreme Court had earlier expressed the view that it was incumbent upon the management to ask for an opportunity to adduce evidence on merits and that the Tribunal had no obligation to suo motu invite the management to do so. That is no longer the procedure to be followed by the Tribunal. Where the management did not have an opportunity to let in evidence on the merits of the case before the Tribunal and the Tribunal came to a finding that there was no proper enquiry, it is incumbent upon the Tribunal not to come to a finding on the merits until both sides were given full opportunity to let in evidence on the merits.

7. Shri Kaimal submits that the principle in The Cooper Engineering Limited Vs. Shri P.P. Mundhe, makes it incumbent upon the Tribunal not to proceed with the merits of the case until the preliminary issue as to the validity of the enquiry has been decided by the Tribunal. He says it is the duty of the Tribunal to deal with the preliminary issue first and in the event of that issue being found against the management, to call upon them to adduce evidence on merits.

8. The principle laid down by the Supreme Court in the cases considered by it on this question, as far as I can see, is that an effective opportunity must be given to all parties to adduce evidence in support of their respective contentions. This is based on the well-known principles of natural justice. These principles vary from case to case, depending upon the circumstances of each case. They are not hard and fast or cut and dried rules. As long as the parties have had an effective opportunity to present their case and adduce evidence in support of their respective contentions, a mere technical error in the procedure adopted by the Tribunal cannot be regarded as a violation of the rules of natural justice. The question in all these cases is whether injustice has been done to the parties. In the absence of any injustice, a mere technical error will not vitiate the finding of a Tribunal.

9. The merits of the case were fully dealt with before the Tribunal. The employee let in evidence and argued his case on the merits. The management had no objection to the merits being dealt with at that stage. The management let in evidence before the Tribunal at length on the merits. They had full opportunity to argue their case on the merits. Even so, can it be legitimately contended that the Tribunal ought not to have proceeded to consider the merits of the case without calling upon the management to lead further evidence? Is such a contention justified in the light of what is stated by the Supreme Court in The Cooper Engineering Limited Vs. Shri P.P. Mundhe, I do not think so. What the Supreme Court stated in that case was that there was no duty on the part of the

management at the commencement of proceedings before the Tribunal to lead evidence on the merits, for it was not easy for a party to decide at that stage whether evidence was to be let in on the merits, and it could not visualise what the decision of the Tribunal would be on the preliminary question. The Tribunal had an obligation to call upon the management to adduce evidence on the merits if the preliminary question was decided against the management. The Supreme Court did not, however, say that even in cases where the management had full opportunity to lead evidence on the merits before the Tribunal came to a finding on the preliminary issue, they could still insist upon a further opportunity to adduce evidence on the merits. Any such contention was not raised before the Supreme Court; and I have no doubt that any such interpretation is not warranted by the rule in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, .

10. I am of the view that the Society which had full opportunity to lead evidence on the merits during the enquiry before the Tribunal cannot now be heard to contend that the Tribunal failed to follow the principle laid down by the Supreme Court. If, as in the present case, an effective opportunity was in fact given to the management to let in evidence and argue their case, on the preliminary issue as well as on the other issues, it would be quite unnecessary for the tribunal to first decide the preliminary issue, and, in the event of it being found that there was no proper enquiry, to call upon the management to lead further evidence on the merits. Any such interpretation is not warranted by the principles stated by the Supreme Court or the rules of natural justice.

11. As regards the Petitioner's contention that the finding of the Tribunal that the employee was not given due notice of the enquiry was perverse, it has to be stated that the Tribunal found on the basis of evidence that the contention of the management that notice could not be served on the employee personally and a substituted service was in fact effected by affixture was not supported by any evidence. In the circumstances I see no merits in the Petitioner's contention on that point either.

12. Likewise the Petitioner's contention that the finding of the Tribunal on the merits was perverse because it was not supported by any evidence has only to be stated to be rejected. The Tribunal had before it the testimony of the witnesses for the management as well as that of the employee himself. Twelve documents were produced by the management and nine by the employee, on the merits. Such documentary and oral evidence was considered in great detail by the Tribunal, and it came to the conclusion that the management failed to substantiate the charges against the employee. In the circumstances I see no merits in that contention.

13. It may be stated in this connection that there is no averment in the petition that any injustice has been done to the Petitioner on account of the fact that the Tribunal considered all the issues together. In proceedings under Article 226 of the Constitution, this Court does not upset the finding of a Tribunal except where substantial injustice has been done.

For the reasons stated above, the Original Petition fails. It is dismissed. The parties will bear their respective costs.