
(1996) 02 KL CK 0042
In the High Court Of Kerala
Case No : O.P. No. 6108 of 1986

C.I. Poulose

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 19-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11(A)

Citation : (1996) 2 LLJ 487

Hon'ble Judges : K. Sreedharan, J;J.B. Koshy, J

Bench : Division Bench

Advocate : P.F. Thomas, for the Appellant; M.V. Joseph and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Koshy, J.—Award of the Labour Court in I.D.No. 41 of 1983 is challenged in this original petition. Petitioner while working as a clerk in the first respondent Co-operative Bank was suspended on September 9, 1974. He was dismissed on January 24, 1975 without any enquiry. Later the dismissal was withdrawn and he was reinstated and again he was suspended on March 29, 1975 pending enquiry. Three counts of allegations were raised against him. (1) He received amounts from two members and credited the amount in S.T.Loan Ledger of the Bank in his own hand and closed the Short Term Loans. But this was not entered in the Cash Book and he misappropriated the same. (2) He issued 11 fabricated receipts and received an amount of Rs. 9.980.45. By not entering the same in the Cash Book, he misappropriated the amount. (3)The records were cooked up to the effect that a chitty security bond has been fabricated with the name of a prized subscriber without his knowledge and forged his signature and misappropriated Rs. 475/-in connivance with another clerk of the Bank. He gave an explanation denying the charges and also submitted that he did not misappropriate the amounts. It is submitted that he has acted honestly and in good faith. He was working under the orders of the Secretary and he had not kept separate receipt

books knowing them to be false or fabricated. He did not misappropriate the money of the members. As soon as he received the money, he entrusted the same to the Secretary. If the Secretary has not credited the Cash Book, it is not his responsibility. The Loan Ledger and other books were written by him at the instruction of the Secretary. Then with regard to the third charge he stated that the chitty bond was written as instructed by the Secretary and he signed it only as a witness. As the explanations were not found satisfactory, an enquiry was conducted by an out-sider, a retired Munsiff who was practising as an advocate. In the enquiry he was found guilty and on the basis of the enquiry findings he was dismissed from service by order dated September 15, 1975 with effect from September 9, 1974 the date of his original suspension.

2. Even though the petitioner was dismissed by order dated September 15, 1975, the industrial dispute was referred for adjudication only in 1983. It was also averred that the then Secretary resigned from the service and he was also punished in criminal proceedings. Another junior clerk involved in the incident was also dismissed and no industrial dispute was raised by him. Before the Labour Court, no separate claim statement was filed. But his complaint filed before the District Labour Officer was treated as his claim. The Labour Court found that enquiry was fair and misconducts were proved in the enquiry and that the petitioner's dismissal was correct. Aggrieved by the above award this writ petition is filed. The major contentions raised by him are: (1) The enquiry proceedings are violative of the principles of natural justice because in the beginning of the enquiry he was cross-examined by the enquiry officer. In other words, the enquiry was started with cross-examination of the charged employee and cross-examination by the enquiry officer violates the principles of natural justice. (2) While confirming the findings of the enquiry officer the Labour Court did not exercise the jurisdiction u/s 11(A) of the Industrial Disputes Act in reappraising the evidence of the witnesses in the enquiry. (3) He was not paid any subsistence allowance during the period of suspension pending enquiry and therefore, action of the Society was arbitrary and oppressive rendering the entire proceedings invalid.

3. It is true that if the principles of natural justice are violated, the enquiry should be set aside. It is the duty of the employer to give a fair opportunity to the charge-sheeted worker to defend himself. It is contended that cross-examination of the charge-sheeted worker in the beginning of the enquiry, by the enquiry officer is violative of the principles of natural justice. Instead of proving the case by examining the witnesses, the enquiry officer cross-examined the charge-sheeted employee to prove the case of the management. It was contended that the enquiry officer should not cross-examine the charge-sheeted employee and cross-examination by the enquiry officer will make him a prosecutor and judge; thereby the enquiry was conducted violating the principles of natural justice. In support of the above contention learned counsel for the petitioner cited the following decision: Associated Cement Co. Ltd. Vs. The Workmen and Another, . In the above case Supreme Court held that enquiry is

invalid when charge sheeted workman was cross examined at the beginning of the domestic enquiry and only thereafter the witnesses against him were examined. He also cited the decision of the Supreme Court in *Meenglas Tea Estate Vs. Its Workmen*, in support of his contention.

4. The Labour Court held that by the procedure adopted in the enquiry no prejudice was caused to the workman and therefore there is no violation of the principles of natural justice. This particular contention was dealt with by the Labour Court in paragraphs 3 and 4 of the award. According to the Labour Court, the charge-sheeted workman was a clerk in the society and the fact that he had entered necessary entries in the account books and accepted money and also gave 11 receipts in question and bond was written by him etc, are admitted. According to the petitioner all these were done under the instructions of the Secretary and Cash Book was kept by the Secretary. After going through the explanation Labour Court found as follows:

"The questions put by the enquiry officer are all to find out whether Sri. Poulouse was involved in those transactions and if so to what extent and all the questions are in the nature of eliciting information and not by way of cross-examination in the commonly understood sense of that word. The enquiry officer had perused all the documents, namely, the registers, account books, receipt books etc., in order to find out whether there was any substance in the allegations and the questions were put to Sri Poulouse with reference to the cash book, receipt book etc. It therefore seems to me that the procedure adopted by the enquiry officer in questioning the delinquent clerk before examining the management witnesses has not caused any prejudice to the employee and the enquiry officer had only relied upon the facts admitted by him".

We are of the opinion that no error was conducted by the Labour Court, In the first decision relied on by the petitioner ie. *Associated Cement Companies v. Their Workmen* (supra) without prior intimation about the holding of the enquiry, the concerned workman was called upon to participate in the domestic enquiry and enquiry was conducted by the officer having personal knowledge of the incident. The finding was also based on personal knowledge. Therefore, apart from the fact that concerned workman was cross- examined at the beginning of the domestic enquiry, Supreme Court noticed all the other circumstances also and held that the domestic enquiry concerned was conducted against the principles of natural justice. Facts of the case are entirely different. After going through the facts of that case Supreme Court found that the award of the Industrial Tribunal holding that enquiry was vitiated for violation of principles of natural justice was correct. In *Meenglas Tea Estate's* case (supra) certain workmen were charge sheeted for unruly behaviour and for assaulting some superior officers. They submitted their explanation denying the allegations. The domestic enquiries were held by the officers who were alleged to have been assaulted. No evidence was let in at the domestic enquiries. The concerned workmen were cross -examined by the enquiry officers. Apart from that there

was no evidence. In the above circumstances, the Tribunal held that the procedure adopted in the domestic enquiry was invalid and the above award was upheld by the Supreme Court.

5. In *Firestone Tyre and Rubber Company Ltd v. Their Workmen* 1967 II LLJ 715 Industrial Tribunal held that the domestic enquiry was not proper because the workman was cross examined even before the evidence against him was recorded. The Supreme Court after analysing all the facts found that no prejudice has been caused by the procedure adopted by the enquiry officer and therefore enquiry was valid. The Supreme Court held as follows: P.718

"This leaves over the contention that before examining the witnesses Subramaniam was subjected to cross-examination. This was said to offend the principles of natural justice and reliance was placed on *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, These cases no doubt lay down that before a delinquent is asked anything, all the evidence against him must be led. This cannot be an invariable rule in all cases. The situation is different where the accusation is based on a matter of record or the facts are admitted. In such a case it may be permissible to draw the attention of the delinquent to the evidence on the record which goes against him and which if he cannot satisfactorily explain must lead to a conclusion of guilt. In certain cases it may even be fair to the delinquent to take his version first so that the enquiry may cover the point of difference and the witnesses may be questioned properly on the aspect of the case suggested by him. It is all a question of justice and fair play."

Here also according to the Labour Court, questions were asked with respect to the admitted facts and to find out whether there is any satisfactory explanation from the charge-sheeted employee and therefore, no prejudice has been caused. After the examination management also examined two witnesses to prove the allegations. Thereafter the workman was asked to submit his defence if any, and he submitted that he has no further evidence. In the circumstances Labour Court is right in holding that there is no violation of the principles of natural justice merely because on the facts of the case workman was asked questions by the enquiry officer. The same view was taken by the Supreme Court in the decision reported in *Central Bank of India Ltd. Vs. Karunamoy Banerjee*, In the above case the Supreme Court held that examination of the accused in the first instance as such will not vitiate the enquiry as no prejudice has been caused. The decision reported in 1967 II LLJ 715 was followed by the Kerala High Court in *Perumal Goundan (R) Vs. Divisional Personnel Officer, Southern Railway and Another*, This Court held that where the accusation is based on a matter of record or where the basic facts are admitted, it is permissible to draw the attention of the delinquent to the evidence on record in the first instance and if it is not satisfactorily explained by him it would lead to the conclusions of guilt The facts of that case is similar to the one covered in the present award.

6. In *Ananda Bazar Patrika (P) Ltd. Vs. Its Workmen*, the Court held that unless

prejudice is caused by the procedure adopted, it cannot be held that natural justice has been violated so long as full opportunity was given to the workman to prove his defence. In the above case the workman produced only one witness in support of his case. The enquiry officer disallowed to examine him as he considered that the evidence would be irrelevant. The Supreme Court held that non-examination of that witness did not cause any prejudice to the workman and therefore, merely because the only witness produced by him was not examined it cannot be held that the enquiry was held in violation of the principles of natural justice.

7. In *Tripathi K.L. v. State Bank of India and Ors.* 1984 1 LLJ 2 the Supreme Court held that whether a particular principle of natural justice has been violated or not, has to be judged in the background of the nature of charges, the nature of the investigation conducted, in the background of relevant rules governing enquiries, if any. The basic concept of fair play in action must depend upon the particular facts, if there be any, between the parties. In the above case Supreme Court held that if no prejudice is caused on the facts of the case even absence of opportunity to cross-examine will not vitiate the enquiry. The principles of natural justice will depend upon the facts and circumstances of each particular case and there is no set of abstract principles. To set aside an enquiry on the ground of violation of natural justice it should be proved that real prejudice was caused to the complainant by the procedure adopted in the enquiry. There is no well segregated rules regarding the principles of natural justice. The principles of natural justice provides a duty to act in a just, fair and reasonable manner. Therefore, after complying with the provisions of the rules if any, enquiry is conducted without causing any prejudice to the charge-sheeted employee, there is fair play and if reasonable opportunity is given to the workman, it cannot be stated that enquiry was conducted in violation of the principles of natural justice. The Supreme Court in *Laxmi Shankar Pandey Vs. Union of India and others*, held that what particular rule of natural justice should apply to a given case depends to a great extent on the facts and circumstances of the case. On the facts and circumstances of this case we are of the opinion that because the workman was asked question in the beginning with respect to the documents no prejudice has been caused. In fact workman has got an opportunity to explain the documents which he has signed or he has written in his own handwriting. The enquiry officer acted fairly and properly. There is no rule that enquiry officer cannot question the charge-sheeted employee, as held by the Supreme Court in *Workmen in The Workmen Employed in B and C Mills, Madras Vs. The Management of B and C Mills, Madras*, in that case the company was not represented by an officer for presenting their case. The enquiry officer put questions to the witnesses and elicited answers from them. Thereafter allowed the witnesses to be cross-examined by the workman. According to their Lordships, there was no violation of the principles of natural justice. In the instant case the Labour Court has analysed the nature of the questions and found that no prejudice has been caused. In the above circumstances, we are unable to accept the contention that

enquiry was conducted in violation of the principles of natural justice on account of the enquiry officer questioning the charge-sheeted workman at the beginning of the enquiry.

8. With regard to the next point that the Labour Court did not exercise the jurisdiction u/s 11(A) as he has not re-examined the depositions of the witnesses separately, is also devoid of any merit. The Labour Court found that the procedure adopted in the domestic enquiry was fair and proper. Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, held that u/s 11A of the Industrial Disputes Act, even if the procedure adopted in the enquiry is fair, the Labour Court has got power to differ from the findings of the enquiry officer in appropriate cases. However at paragraph "50 of the above judgment it has been held that if the enquiry was held properly, to differ from the conclusions arrived at by the enquiry officer, the Labour Court has to give cogent reasons. Here the finding was that enquiry was conducted in accordance with the principles of natural justice. Labour Court accepted the findings of the enquiry officer. When he accepted the findings of the enquiry officer he need not necessarily repeat the above findings again. Apart from the above, the award of the Labour Court shows that he has considered the evidence adduced in the case very elaborately. He also found that the charge-sheeted workman was given opportunity to examine his witnesses but he did not want to examine anyone. He cross-examined the first witness and he did not want to cross-examine the other witnesses. Labour Court analysed the report of the enquiry officer and found that "he has considered the evidence in detail and fully given the reasons for his conclusions".

Therefore, after going through the evidence the Labour Court agreed with the conclusions arrived at by the enquiry officer. Hence we are of the opinion that Labour Court has correctly exercised the jurisdiction vested in him. Labour Court also found that it is in evidence that the records were tampered with and corrections have been made in the account books and that it is not a case of an occasional lapse on the part of the employee. It was also found by the Labour Court that without the charge-sheeted workman's help the Secretary could not have manipulated the records and therefore, even if the explanation of the charge-sheeted workman is accepted, it is clear that he had at least helped the Secretary in the misappropriation of money and if he was honest and innocent at least he would have certainly informed the Board of Directors about the activities of the Secretary. Labour Court also has given sufficient reasons for agreeing with the punishment imposed by the management. Therefore, we see no reason to interfere with the award on the ground that Labour Court did not exercise the jurisdiction vested with him u/s 11(A) of the Industrial Disputes Act, 1947.

9. The last attack against the dismissal is based on the observation of the Supreme Court in *Fakirbhai Fulabhai Solanki Vs. Presiding Officer and Another*, There the Supreme Court was considering the case of a protected workman

(being a Union official). Before imposing punishment on protected workers, pending an industrial dispute, permission from the Industrial Tribunal is necessary in view of Section 33(3) of the Industrial Disputes Act. The workman was suspended pending an application u/s 33(3) of the Act. Supreme Court held that if a workman is suspended pending an application u/s 33(3), the workman has got a right to receive some reasonable amount which may be fixed either by the standing orders or in the absence of any standing order by the authority before which the application is pending or he should be paid wages. Suspension cannot be continued pending proceedings u/s 33(1) or 33(3) of the Industrial Disputes Act without payment of some amount as subsistence allowance as the workman will not be able to successfully challenge the action. In the above case the workman was under suspension pending application u/s 33(3) from 1979 onwards for years together. In the above circumstances, the Supreme Court held that non-payment of the subsistence allowance will go to the root of the matter. Non-payment of the subsistence allowance during the pendency of a proceeding u/s 33(1) or Section 33(3) will violate the proceedings. The Supreme Court was considering payment of the subsistence allowance or salary or amount fixed by the Labour Court/Tribunal during the pendency of a proceeding u/s 33(1) or 33(3) and Supreme Court was not considering the case of suspension pending enquiry. Apart from the above, in the claim raised before the District Labour Officer which was treated as claim statement in the Labour Court (as no separate claim statement was filed before the Labour Court) there was no claim by the workman to the effect that his dismissal is invalid because he was not paid subsistence allowance. There was no allegation in the claim statement that he was not paid any subsistence allowance at all. Such a claim was put forth in the replication filed before the Labour Court for which there was no opportunity to file a counter by the management. Workman was also not examined to prove his allegations. In fact dispute itself was referred for adjudication after many years of dismissal. Since this was not a point proved before the authorities we cannot accept the contention that dismissal was invalid merely because subsistence allowance was not paid during the period of suspension pending enquiry. It was also not proved before the Labour Court, what was the rate of subsistence allowance payable and whether it was paid at all. There was no such contention or pleading in the original claim filed before the Labour Court. No evidence was also adduced with respect to the same. In these circumstances, we are not inclined to accept the third contention of the petitioner also.

10. The Labour Court has given valid reasons for the award. Labour Court found that enquiry was conducted in accordance with the principles of natural justice and misconduct was proved in the enquiry and that proved misconduct warrants punishment of dismissal. No valid grounds are urged by the petitioner to attract the jurisdiction under Article 226 of the Constitution of India for the issuance of a writ of certiorari to quash the award.

11. Before parting with the case we may observe that in industrial law, it is well settled that unless the standing orders or rules otherwise provide, punishment of

dismissal cannot be imposed retrospectively but can be effective only prospectively, ie. from the date of dismissal order. In other words, a workman cannot be dismissed retrospectively. However, such dismissal will not be invalid, but it will be effective only from the date of dismissal. That is, if the dismissal order is otherwise valid the mere retrospective-ness could not make the order invalid in its entirety. Dismissal will be effective from the date of the order. In this case, petitioner was suspended on September 9, 1974 and he was dismissed without conducting enquiry on January 24, 1975. Thereafter dismissal was withdrawn and he was again suspended pending enquiry on March 29, 1975 and dismissed by order dated September 15, 1975 effectively from September 9, 1974, the date of first suspension. Since a person cannot be dismissed retrospectively, petitioner's dismissal is only valid from September 15, 1975, the effective date of dismissal. His first dismissal on February 24, 1975 was set aside by the management itself and he was reinstated. He was again suspended pending enquiry on March 29, 1975. Therefore, he is entitled to full salary for the period from September 9, 1974 to March 29, 1975. He was suspended pending enquiry on March 29, 1975 and he was dismissed by order dated September 15, 1975. Therefore, he is entitled to the applicable subsistence allowance during the above period. Therefore, we direct that full salary for the period from September 9, 1974 to March 29, 1975 and subsistence allowance for the period from March 29, 1975 to September 15, 1975 may be paid to the petitioner after deducting any salary or subsistence allowance paid during that period. We also direct that the above amount should be paid within three months from the date of receipt of a copy of this judgment and it will carry interest at the rate of 10% from the date of dismissal i.e. September 15, 1975 till date of payment.

The original petition is dismissed but with a direction to the first respondent to pay full wages to the petitioner for the period from September 9, 1974 to March 29, 1975 and subsistence allowance for the period from March 29, 1975 to September 15, 1975, after deducting any salary or subsistence allowance paid for the above period, with interest at the rate of 10% from September 15, 1975 till date of payment.