

(2019) 12 CHH CK 0141
In the Chhattisgarh High Court
Case No : Writ Appeal No. 153 Of 2018

Deputy General Manager And Anr

APPELLANT

Vs

Chandrika Khare And Ors

RESPONDENT

Date of Decision : 16-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 227
Chhattisgarh Industrial Relations Act, 1960 — Section 65(3)
Industrial Disputes Act, 1947 — Section 17(B)

Citation : (2019) 12 CHH CK 0141

Hon'ble Judges : P.R. Ramachandra Menon, J; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Narendra Kumar Vyas, Vinod Deshmukh

Final Decision : Allowed

Judgement

Per P.R. Ramachandra Menon, J

1. The course pursued by the learned Single Judge in interdicting the verdict passed by the Industrial Tribunal (whereby the Award passed by the Labour Court ordering reinstatement of the employee with back-wages was set aside), holding that the instant case was a case of 'no evidence' at all, is challenged on various grounds, legal as well as factual.

2. Heard Shri Narendra Kumar Vyas, the learned counsel appearing for the Appellant/Company as well as Shri Vinod Deshmukh, the learned counsel appearing for the 1st Respondent/employee.

3. The husband of the 1st Respondent was serving as an employee of BALCO i.e. the Appellant/Company and while so, he was caught 'red handed' by the Central Industrial Security Force (for short 'the CISF') deployed in the Company, for committing theft of the Company's property (6 KGs of Aluminum). A Mahazar (Panchnama) was prepared and the matter was reported by the CISF to the Police, pursuant to which, a Crime was registered setting the criminal law in

motion. Simultaneously, the Management proceeded with disciplinary action by issuing charge sheet, followed by domestic enquiry. It is stated that the delinquent employee had admitted his guilt in the enquiry; based on which the proceedings were finalised and report was submitted to the Management. On the basis of the said finding, the Disciplinary Authority evaluated the facts and figures and found the delinquent employee guilty of the charges levelled against him. It was accordingly, that Annexure P/1 order was passed on 15.02.1995, putting an end to the service of the employee by way of dismissal. This was sought to be challenged by the employee through proceedings taken before the Labour Court. The validity of the enquiry was decided as the preliminary issue. The Labour Court arrived at a finding that the principles of natural justice were infringed and in the said circumstance, the enquiry was held as vitiated. Pursuant to the opportunity sought for by the Management to establish the merits of the case, the Deputy General Manager of the Company was examined as a witness and some documents were produced and marked. After analyzing the evidence, the Labour Court arrived at a finding that the charges were not proved and accordingly, an Award was passed setting aside the order of dismissal and ordered reinstatement of the employee with back wages and all consequential benefits. Met with the situation, the Award passed by the Labour Court was taken up in appeal before the Industrial Tribunal. When the appeal was pending, the delinquent employee passed away on 30.10.2003; pursuant to which the legal heir (1 st Respondent herein) was brought in the party array. On appreciation of the facts and figures in the light of the evidence adduced, the Tribunal arrived at a clear finding that the Labour Court had gone wrong in dealing with the issue and accordingly, the Award passed by the Labour Court was set aside and the dismissal order passed by the Management was upheld.

4. Then, it was the turn of the 1st Respondent to raise the challenge against the order passed by the Tribunal, thus moving this Court by filing Writ Petition No. 5289 of 2005. It was the contention of the 1st Respondent that there was violation of fundamental principles of natural justice, that no proper opportunity was afforded, and that evidence was not tendered to the requisite extent, adding that the Tribunal had gone wrong in accepting the evidence stated as given by the Deputy General Manager, more so when he had conceded before the Tribunal that he was having no direct information but for the information gathered by him from the employees and other corners. The non-examination of the author of the relevant letters/documents was stated as fatal. The Appellant/Management sought to sustain the verdict passed by the Tribunal pointing out that the provisions of the Evidence Act were not applicable to a disciplinary proceeding. The relevant rulings rendered by the Apex Court in *State of Haryana & Another v. Rattan Singh*; {AIR 1977 SC 1512 : (1982) 1 LLJ 46} and such other judgments were also brought to the notice of the learned Single Judge.

5. Though the relevant portions of the above judgment were extracted, the learned Single Judge held that the documents were not properly proved, as authors of the letters concerned were not examined. In the said circumstance, it

was held as a case of 'no evidence' at all. It was accordingly, that Annexure P/3 verdict passed by the Industrial Tribunal was set aside and the Award passed by the Labour Court as per Annexure P/2 was restored, ordering reinstatement with back-wages and all consequential benefits. This is put to challenge in this appeal.

6. The learned counsel for the Appellant/Company sought to reiterate its stand taken before the learned Single Judge pointing out that the rigor of the provisions of the Indian Evidence Act, is not applicable to disciplinary proceedings as held by the Apex Court on many an occasion including in Rattan Singh (supra). The learned counsel also sought to place reliance on the subsequent verdict passed by the Apex Court J.D. Jain v. The Management of State Bank of India & Another; {AIR 1982 SC 673} and a recent judgment reported in Management of Bharat Heavy Electricals Ltd. v. M. Mani; AIR 2018 SC 384. It is the submission of the learned counsel that the learned Single Judge of this Court unfortunately has acted as a court of appeal against the verdict passed by the Industrial Tribunal, which is not at all correct or sustainable, as the jurisdiction which has to be exercised by this Court is only supervisory in nature, particularly being a proceeding under Article 227 of the Constitution of India.

7. Shri Vinod Deshmukh, the learned counsel appearing for the 1st Respondent submits that the challenge raised by the Appellant is not sustainable in the eye of law, as the facts and figures have been subjected to meticulous analysis by the learned Single Judge. It was quite obligatory for the Management to have proved the merits of the case by examining the witnesses concerned. Though the Deputy General Manager was examined and some documents were produced, the authors of the relevant documents were never examined and as such, the version of the Deputy General Manager has been rightly ignored by the learned Single Judge, which does not warrant interference, submits the learned counsel. Reliance is sought to be placed on the verdict passed by a learned Single Judge of the Allahabad High Court, reported in Kapoor Chand Srivastava v. Chairman, Zila Parishad, Varanasi; {2019 (163) FLR 771}, adding that the said decision is cited as having rendered based on the law declared by the Apex Court, in M/s. Bareilly Electricity Supply Co. Ltd. v. The Workmen and Others; {AIR 1972 SC 330 : (1971) 2 SCC 617}.

8. At the very outset, we would like to point out that the settled position of law so far as disciplinary proceedings are concerned, is that the rules of evidence as per the Indian Evidence Act are not applicable, whereas 'preponderance of probability' is sufficient to arrive at the guilt of the delinquent employee. To quote the words of Justice V.R.Krishna Ayer as held in Rattan Singh (supra) which is also reiterated in the subsequent judgment in J.D.Jain (supra), there is "no allergy even to a hearsay evidence". This being the position, the degree of proof that is required to arrive at the guilt of the delinquent employee stands entirely on a different pedestal and it cannot be examined using the 'glasses' required in a criminal proceeding to punish a person/accused, where the offence has to be proved beyond any reasonable doubt. The said position has been

reiterated by the Apex Court as per the verdict passed in Kapoor Chand Srivastava (supra). This being the position, the approach itself is entirely different so far as a disciplinary proceeding is concerned.

9. Coming to the evidence on record, it is to be noted that the delinquent employee was caught 'red handed' by the CISF official deployed in the Appellant/ Company, which is a public sector undertaking. It is the safety and security of the Company, that matters for the CISF deployed in the establishment as above. There is no dispute that each and every person entering and leaving the premises of the Company will be subjected to test the identity and such other steps including 'frisking' to see whether anything is stealthily being removed from the Company. It was in the course of such exercise, that the 'CISF' came across the serious misconduct committed by the delinquent employee in stealing nearly 6 KGs of Aluminum, in turn, leading to seizure of the material object. The employee was detained and a Mahazar (Panchnama) was prepared by none other than the CISF official. It was the 'CISF' official who reported the matter to the Police as to the offence involved under the relevant provisions of law; based on which investigation was initiated by the Police after registering the Crime. That apart, the Management had also produced the relevant document submitted from the part of the employee in the course of the enquiry proceedings, virtually admitting his guilt. Obviously, the instance was covered by the documentary evidence such as Seizure Mazahar, FIR and such other incriminating circumstances coupled with the statement given by the CISF official. The delinquent employee subsequently sought to disown his signature in the letter admitting the guilt and this has been given undue weightage by the Labour Court and also by the learned Single Judge.

10. The Appellant/Company examined the Deputy General Manager who deposed in categorical terms that he got the information with regard to the facts and figures as informed by the other employees and from such other sources. This has been referred to in paragraphs 6 and 7 of Annexure P/3 order dated 17.08.2005 passed by the Tribunal. We find it appropriate to have the said paragraphs extracted herein for easy reference:

"6. अभिलेख के अवलोकन से यह तथ्य स्पष्ट होता है कि कर्मचारी पर दिनांक १८.१ है १९९४ को केंद्रीय औद्योगिक सुरक्षा बल के द्वारा जाँच के दौरान पैट में कमर के साथ बेल्ट में छिपाकर एल्युमीनियम का ६ कि.ग्रा. का पीस जो गेट पर दम रंगे हाथों पकड़ा गया था. इस प्रकार कर्मचारी पर कंपनी कि संपत्ति कि चोरी का भी आरोप एस.एस.ओ कि धारा २९(२) के अंतर्गत लगाया गया है. अधीनस्थ न्यायालय आर अप गुणदोष पर लत त हुवे विपक्षी साक्षी नारायण के कथन में आये प्रदर्श डी/१ से डी/४ के दस्तावेजों को प्रमाणित नहीं माना है और इस आधार पर कर्मचारी को चोरी का दुराचरण प्रमाणित नहीं माना है क्योंकि इस साक्षी ने कर्मचारी को चोरी करते हुवे नहीं देखा, उसके द्वारा चोरी करते पकड़ा नहीं गया और पंचनामा नहीं बनाया गया. मे अधीनस्थ न्यायालय द्वारा दी गई फाइंडिंग से कतई सहमत नहीं हूँ क्योंकि प्रदर्श डी/१ सी, सीआईएसएफ कमांडेंट के द्वारा कर्मचारी द्वारा ६ किग्रा कट पीस रंगे हाथों पकड़े जाने बाबत प्रबंधन को दी गयी सूचना है तथा प्रदर्श डी/२सी थाना प्रभारी को प्रेषित प्रथम प्रतिवेदन है. प्रदर्श डी/३सी जप्ती पत्रक है. प्रदर्श डी/४सी कर्मचारी हीरालाल खरे स्वयं का कथन है. कर्मचारी ने अपने कथन में कंपनी के सामान चोरी किये जाने बाबत स्वीकारोक्ति कि है एवं उसके हस्ताक्षर है.

7. प्रकरण में नियोक्ता द्वारा प्रस्तुत कि गई इतने अधिक विश्वसनीय एवं पुष्टिकारक साक्ष्य प्रस्तुत किये जाने के बावजूद अधीनस्थ न्यायालय के पीठासीन अधिकारी का यह कहना कि नियोक्तता द्वारा साक्ष्य का प्रस्तुत नहीं कि गयी है और उत्तम साक्षी के कथन से उसका समर्थन नहीं होता है. मेरे मत में स्वीकार किये जाने योग्य नहीं है. नियोक्ता द्वारा अधिक से अधिक विश्वसनीय पुष्टिकारक साक्ष्य प्रस्तुत कि गई है जिसके आधार पर कर्मचारी पर दुराचरण प्रमाणित है फिर भी अधीनस्थ न्यायालय के द्वारा नियोक्तता कि ओर से प्रस्तुत साक्ष्य के आधार पर दुराचरण सिद्ध नहीं होता है यह माना जाना सर्वथा अवैधानिक, अनुचित एवं परवरस फाइंडिंग पर आधारित है. जहाँ तक प्रदर्श डी/१ से डी/४ दस्तावेजों का प्रश्न है? इस सम्बन्ध में साक्ष्य के दौरान कर्मचारी कि ओर से द्वितीय साक्ष्य के रूप में इन दस्तावेजों को स्वीकार करने बाबत कोई आपत्ति नहीं ली गई है. न्याय का (२००४) ७ सुप्रीम कोर्ट केसेस १०७ में यह व्यवस्था दी गई है कि द्वितीय साक्ष्य के रूप में प्रस्तुत किये गए दस्तावेजों के सम्बन्ध में यदि साक्ष्य होने के सम्बन्ध में कोई आपत्ति अन्य पक्ष द्वारा नहीं ली जाती है तो बाद में द्वितीय साक्ष्य के सम्बन्ध में आपत्ति नहीं उठा सकता है."

11. What has been spoken by the Deputy General Manager of the Company is the factual input obtained to him. It was not the case for the Management that the Deputy General Manager had witnessed the stealing of the material object by the delinquent employee, as it was brought to light by the 'CISF official', followed by such other steps as to reporting of the matter to the Police by the CISF, leading to registration of FIR. Whether these pieces of evidence could have been simply brushed aside, and can it be called as a case of 'no evidence' at all, as held by the learned Single Judge, is the question to be considered. The answer, according to us, can only be an emphatic 'No', for the reasons noted below.

12. The observations made by the learned Single Judge in paragraph 9 are only in the following terms:

"9. Reverting to the facts of the present case, it would appear that the Industrial Court has mainly relied upon the documents Ex.D/1 to D/4 to set aside the order of the Labour Court. Ex.D/1 is the letter written by CISF to the Executive Director (Works), BALCO, Korba on 19.11.94 informing that the deceased employee was caught red handed with 6 kg. of aluminium balit. Neither author of the document nor any other person to prove the contents of this document have been examined. Likewise, Ex. D/2 is the First Information Report lodged by O.P. Pandey, CISF, Balco, however, he has not been examined. Likewise, Ex.D/3 is seizure memo, which has also not been proved and Ex.D/4 is statement of the deceased employee, who in his evidence has rebutted that it is not his signature and as such, this is a case of no evidence. The self-serving statement of Shri Virendra Narayan, who is Deputy Manager of BALCO Company who has clearly stated that he has not lodged the report and he has only got information from the other officers/employees."

13. The delinquent employee was caught 'red handed' by the 'CISF' official deployed in the Company, as mentioned already. This led to the proceedings including preparation of 'Panchnama' (Exhibit D-3) and the information given to the Police, leading to registration of FIR, as per Exhibit D-1 document. The CISF deployed in the Company was not an employee of the Management/Company and was a third person. There was no case for the delinquent employee at any point of time, that the CISF was having any ill-will against the delinquent

employee or that he was virtually trapped against the actual facts and figures. Similarly, there is no case for the delinquent employee that there was any mala fide intention on the part of the Management/Employer in booking the delinquent employee. The fact that the delinquent employee was caught 'red handed' by the CISF official who was discharging his duties and further that the registration of the criminal case was on the basis of the report submitted by the CISF official and the statement obtained from the said official are all borne out by the records, which were produced before the Labour Court and it was deposed accordingly by the Deputy General Manager of the Appellant/Company by getting himself examined before the Labour Court. Though he was stated as cross-examined by the delinquent employee, nothing could be brought out to discredit the version given by Deputy General Manager in relation to the source of the said documents and as to the sequence of events. This being the position, the evidence tendered by the Deputy General Manager before the Labour Court and the documents produced in support of the same were very much valid pieces of evidence to be taken for arriving at the guilt of the delinquent employee in respect of the disciplinary proceedings, where the Labour Court has gone wrong. This was corrected by the learned Industrial Tribunal by passing Annexure P/3 order; but when the matter came up before the learned Single Judge of this Court, the position got turned upside down, unfortunately without properly observing or appreciating the worth of a 'CISF official' who caught the delinquent employee 'red handed' and prepared the 'Panchnama' and also reported the matter to the Police, leading to registration of FIR.

14. After hearing both the sides and after going through the materials on record, we are of the view that the finding and reasoning given to have interdicted Annexure P/3 order passed by the Industrial Tribunal is not correct or sustainable. 'Misplaced sympathy is an evil'. We find support from the rulings rendered by the Apex Court in *Union of India & Others v. J. Ahmed*; {(1979) 2 SCC 286, paragraph 11} where it has been held that no 'mens rea' is necessary to hold the delinquent employee guilty; *Davalsab Hussainsab Mulla v. North West Karnataka Road Transport Corporation* {(2013) 10 SCC 185, paragraph 13} and the judgment rendered by a Division Bench of Kerala High Court in *Kerala Public Service Commission & Another v. Letha. S.* {OP (KAT) No. 94 of 2017 (Z), dated 30.06.2017} authored by one of us (P.R. Ramachandra Menon). We hold that the Appellant/Management has proved its case as correctly observed by the Industrial Tribunal while setting aside Annexure P/2 Award passed by the Labour Court. We find that the interference made by the learned Single Judge in setting aside Annexure P/3 order requires to be interdicted. It is ordered accordingly.

15. Coming to the remaining aspect, which may be having some relevance, it is with regard to the payments already effected by the Appellant/Management in the course of the proceedings. It is pointed out by the learned counsel for the Appellant/Company, that during pendency of the appeal before this Court, a total sum of Rs. 2,10,080/- has already been released to the 1st Respondent in terms of Section 65(3) of the Chhattisgarh Industrial Relations Act, 1960 (which is akin

to Section 17-B of the Industrial Disputes Act, 1947). The learned counsel submits that the Gratuity payable in respect of the service of the employee was also paid to him. We make it clear that the amounts already satisfied as above need not be recovered. The verdict passed by the learned Single Judge having been set aside and Annexure P/3 order passed by the Industrial Tribunal having been restored, we find it clear that no further amount is payable to the 1st Respondent towards the arrears of salary/back wages or under any other heads.

16. The appeal stands allowed. No costs.