
(2011) 04 SHI CK 0220
In the High Court Of Himachal Pradesh
Case No : CWP No. 3779 of 2010

Diljan Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33A

Citation : (2011) 04 SHI CK 0220

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Petitioner (hereinafter referred to as "workman" for convenience sake) has assailed the award dated 17.2.2010 passed by the learned Industrial Tribunal-cum-Labour Court, Shimla in reference No. 59 of 2006. The workman was dismissed from service by the Respondent-management (hereinafter referred to as "management" for convenience sake) on 22.8.2005. He served a demand notice on the management. On the failure of the conciliation proceedings, reference was made by the Government to the Labour Court to the following effect:

Whether the termination of services of Shri Diljan Singh s/o Sh. Parmatama Singh workman by the Manager M/s Birla Textile Mills Baddi, District Solan H.P. w.e.f. 16.9.2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?

2. Thereafter the workman filed the claim petition. The management filed reply to the same on 4.4.2007. The learned Labour Court framed the issues on 17.8.2007. Claim of the workman was rejected on 17.2.2010. The Labour Court has recorded the statements of workman as PW-1 and Sh. R.K. Sharma as RW-1 and RW-2 Sh. A.K. Sinha.

3. Mr. Rahul Mahajan has strenuously argued that domestic inquiry has not been held in accordance with law. According to him, there was violation of the principles of natural justice. He also contended that his client could not be proceeded ex parte on 16.5.2005. He lastly contended that the penalty of dismissal imposed upon his client is disproportionate to the alleged misconduct.

4. Mr. R.L. Sood, Senior Advocate has supported the award dated 17.2.2010.

5. Record was summoned and produced.

6. I have heard the learned Counsel for the parties and have perused the record carefully.

7. Disciplinary proceedings were initiated against the Petitioner on the basis of report filed by Raghu Nath Pandit, Supervisor and Kapil Pandit, Manager. Petitioner was served warning on 30.10.2004 and 2.2.2005. He was served with a charge-sheet on 1.4.2005 to which he filed reply on 14.4.2005. The management, being not satisfied with the reply filed by the workman, decided to appoint Sh. A.K. Sinha, as Inquiry Officer. The Inquiry Officer fixed the matter on 21.4.2005 to hold inquiry and the workman was informed on 18.4.2005. The workman did not appear on 21.4.2005. He did not inform about his absence to the Inquiry Officer. Thereafter the matter was taken up by the Inquiry Officer on 27.4.2005. The workman has admitted before the Inquiry Officer that he had received the charge-sheet. However, he did not accept the charges levelled against him before the Inquiry Officer. He was informed by the Inquiry Officer that he could be represented by coworker. The workman asked for further time. The Inquiry Officer rejected the same. The next date was fixed by the Inquiry Officer on 28.4.2005. Proceedings dated 27.4.2005 were signed by the workman. On 28.4.2005, the workman produced Sh. Diljit Singh as his legal representative. He was apprised by the Inquiry Officer that he could be represented by co-worker and Diljit Singh, being outsider, could not be appointed as Legal Assistant. On 28.4.2005, statement of Vibhore Gupta was recorded. The workman signed the proceedings dated 28.4.2005. The inquiry was adjourned to 29.4.2005. On 29.4.2005, Sh. Raghu Nath Pandit was examined. The workman was given an opportunity to cross-examine him. He sought time to cross-examine Sh. Raghu Nath Pandit. Thereafter on the request of the workman, inquiry was adjourned to 30.4.2005 to enable the workman to cross-examine Sh. Raghu Nath Pandit. On 30.4.2005, the workman cross-examined Sh. Raghu Nath Pandit. Thereafter, the proceedings were adjourned to 3.5.2005. On 3.5.2005, the inquiry was adjourned to 6.5.2005. The proceedings were signed by the workman on 6.5.2005. Sh. Kapil Pandit was examined by the management. Thereafter, the evidence of the management was closed. The inquiry was adjourned to 10.5.2010. On 10.5.2005, neither the workman was present nor he informed about his absence to the Inquiry Officer. However, in the interest of justice, the Inquiry Officer fixed the inquiry for 13.5.2005. The Inquiry Officer directed that the workman be informed about the next date of hearing, i.e. 13.5.2005. He was duly informed about the next date of hearing; however, he

refused to accept the notice. The notice was affixed on the notice board. The workman was absent on 13.5.2005. The management insisted for proceeding ex parte against the workman. However, the Inquiry Officer, in the interest of justice, again adjourned the inquiry to 16.5.2005 at 4.00 P.M. On 16.5.2005, the workman did not attend the inquiry, though he was informed by notice through Security Guard. He had refused to accept the notice. The copy of the same was affixed on the gate of the factory. On 16.5.2005, the workman was proceeded ex parte. Thereafter, inquiry was completed by the Inquiry Officer on 19.5.2005. The copy of the inquiry report was supplied to the workman alongwith notice on 30.5.2005 to enable him to file his reply within three days. The copy of the same was received by the workman on 6.6.2005. He has not filed reply to notice dated 30.5.2005. The management decided to dismiss the workman on 22.8.2005.

8. The workman has raised industrial dispute, which led to the matter being referred to the Labour Court. The Labour Court has also recorded the statements of workman PW-1, Sh. R.K. Sharma and Sh. A.K. Sinha as RW-1 and RW-2, respectively on behalf of the management. The workman while appearing as PW-1 has deposed that he was engaged as workman with the management in the year 1992. He met with an accident in the year 2003. His right hand was amputated. He rejoined the management in the year 2004. He was terminated on the ground that he could not give production or progress in work. He was served with a notice, to which he filed reply. Due to accident, he was not in a position to give production, as he used to give before the accident. According to him, he was not afforded with reasonable opportunity of hearing during the course of domestic inquiry. He took the witnesses before the Inquiry Officer, but they were not examined. He also moved an application for the change of the Inquiry Officer. In his cross-examination, he admitted that he got the treatment from E.S.I. He was getting disability pension from E.S.I. regularly. His thumb and middle finger were amputated and his disability was 60%, which was assessed by the E.S.I. He admitted that he received a charge-sheet Ex. RA on 13.4.2005. He also filed reply Ex. RB on 14.4.2005. He also admitted that Sh. A.K. Sinha was appointed as Inquiry Officer by the management and he received notice Ex.RC. He was called upon to appear before the Inquiry Officer on 18.4.2005 vide letter Ex.RD. He did not appear on that day. On 21.4.2005, he was informed by the Inquiry Officer to appear on 27.4.2005. He appeared before the Inquiry Officer and appended his signatures on the proceedings. He appeared on 27.4.2005, 28.4.2005, 29.4.2005, 30.4.2005, 3.5.2005 and 6.5.2005. He denied that he absented himself from the inquiry since 10.5.2005. He also denied the suggestion that he refused to receive notice dated 10.5.2005 to appear on 13.5.2005. He also denied the suggestion that he refused to receive the notice dated 14.5.2005 to appear before the Inquiry Officer on 16.5.2005. He admitted that statement of Vibhore Gupta was recorded in his presence. He has denied that the copy of inquiry report was given to him by the management on 30.5.2005. He also denied that the copy of inquiry report was received by him under protest on 6.6.2005. He admitted that during conciliation proceedings, he

was offered a post twice by the Presiding Judge, Labour Court but he refused to accept the same.

9. On behalf of management, Sh. R.K. Sharma, General Manager Administration and I.R. appeared as RW-1. According to him, the workman was charge-sheeted on the basis of report of Sh. Raghu Nath Pandit, Supervisor and Sh. Kapil Pandit, Manager vide letters Ex.R-1 and R-2. He was conveyed the warning vide Ex. R-3 and R-4 dated 30.10.2004 and 2.2.2005, respectively. He was served with a charge-sheet Ex. RA, to which he filed reply Ex. RB. The same was not found satisfactory. Sh. A.K. Sinha was appointed Inquiry Officer vide Ex. RC. Sh. Vibhore Gupta was appointed as Presenting Officer vide Ex. R-5. The workman made an application Ex. R-6 to the Inquiry Officer to appoint defence assistant from outside the factory. The same was rejected by the Inquiry Officer in view of the Standing Orders. Copy of the Standing Orders is Ex. R-7. The workman also made an application Ex. R-8 on 21.4.2005 before the Inquiry Officer for conducting inquiry during duty hours. The same was turned down by the Inquiry Officer. According to him, the workman did not participate in the inquiry proceedings after 6.5.2005. He was called upon by the Inquiry Officer to appear before him on 13.5.2005. He did not appear on 13.5.2005. He was again informed about the next date of hearing on 16.5.2005. The workman refused to accept the notice. In view of this, he was proceeded ex parte. The copy of the inquiry report was sent to the workman for his information and he was also called upon to show cause within three days vide Ex.R-9. He received the copy of the same on 6.6.2005. The workman did not file any reply. Accordingly, the workman was dismissed from service on 22.8.2005 vide Annexure R-10.

10. Sh. A.K. Sinha has appeared as RW-2. He has deposed that he was appointed as Inquiry Officer by the management vide Ex. RC. Sh. Vibhore Gupta was appointed as Presenting Officer. The workman made an application on 21.4.2005 Ex. R-8 to conduct inquiry during working hours, which was rejected by him on 27.4.2005. The workman requested to engage defence assistant from outside the management, which was rejected by him, being against the Standing Orders of the management. The workman attended the proceedings till 6.5.2005 and thereafter he did not appear before him on 10.5.2005 despite having knowledge of the date of hearing. A notice was sent to the workman on 10.5.2005 to appear before him on 13.5.2005. The workman did not attend the proceedings on 13.5.2005. Thereafter notice Ex. RG was sent to him to attend the proceedings on 16.5.2005. He did not attend the proceedings on 16.5.2005 and was proceeded ex parte. He prepared the ex party report Ex. R-11. He submitted the same to the management. He found the workman guilty. The management examined Sh. Vibhore Gupta, Sh. Kapil Pandit and Sh. Raghu Nath Pandit and their statements Ex. R-12, R-13 and R-14, respectively, were recorded. Sh. Vibhore Gupta was not cross-examined by the workman, though an opportunity was granted. Sh. Raghu Nath Pandit was cross-examined. Sh. Kapil Pandit was also not cross- examined by the workman. The statements made by these witnesses bear signatures of the workman. He admitted that he

conducted the inquiry as per Standing Orders of the company. He, in his cross-examination, has deposed that he had given an opportunity to the workman to engage any co- worker as his defence assistant. He sent the Security Guard with the notices to the workman on 10.5.2005 and 13.5.2005 informing him the date of inquiry. He has denied that the workman was not served with notice dated 14.5.2005. He has admitted that Security Guard, who served the Petitioner, was an employee of the company. He has denied the suggestion that the workman was not permitted to lead his evidence.

11. The Labour Court after perusing the entire evidence, as discussed hereinabove, oral as well as documentary rejected the claim of the workman. The Labour Court has discussed the statements made by the workman (PW-1), RW-1 Sh. R.K. Sharma and RW-2 Sh. A.K. Sinha and the documents placed on record by the management.

12. The management, i.e. Birla Textile Mills has framed Standing Orders. The expressions, "notice" and "notice board" have been defined in order 2. Order 20 deals with termination of employment and resignation. Order 23 deals with disciplinary action for misconduct. Slow down or pen down or tool down strike or by doing such a thing so as to cause the stoppage of production of any section or department has also been defined to be one of the misconduct in order 23. The procedure for dealing with the cases of major misconduct has been provided in the Standing Orders. It is evident from the perusal of the Standing Orders that a detailed procedure has been provided to deal with the cases of major misconduct. The workman is required to be served with a charge-sheet. He has to be permitted to file a reply to the same. The workman has to be given full and fair opportunity to defend himself or to present his case. He can also be assisted by another co- workman of his choice belonging to the establishment but not by an outsider or by a suspended workman. In case the workman fails to participate or present himself in the inquiry proceedings, the Inquiry Officer is within his right to proceed ex parte in the absence of workman. Order 29 deals with the manner in which notice is to be served. Any notice, as per order 29 of general nature or individual, once refused by the addressee pasted on the notice board will be deemed to have been personally served on the workman concerned. All notices under these Standing Orders are to be in English/Hindi and are in legible and clean condition and in case of conflict or interpretation in English and Hindi versions, the one in English shall prevail.

13. In the instant case, Petitioner has been charge-sheeted, as noticed above. He filed reply to the same. The management appointed Sh. A.K. Sinha as Inquiry Officer. He informed the workman about the each and every date of proceedings. The workman attended the proceedings on 27.4.2005, 28.4.2005, 29.4.2005, 30.4.2005, 3.5.2005 and 6.5.2005. His request for defending him by the outsider has rightly been rejected by the Inquiry Officer. According to the Standing Orders, workman can be assisted by any co-worker but not by the outsider. The workman has attended the proceedings on 29.4.2005, 30.4.2005, 3.5.2005 and

6.5.2005. He was given ample opportunity to cross-examine the witnesses produced by the management. He has, however, only examined one workman. He was informed about the next date of hearing on 6.5.2005, which was fixed for 10.5.2005. He did not attend the proceedings. Thereafter, he was informed by way of notice sent through Security Guard. The copy of the same was also fixed on the notice board. The Inquiry Officer could proceed against the workman on 10.5.2005, however, the workman was given another opportunity on 13.5.2005 to appear before him on 16.5.2005. The workman did not attend the proceedings though he was served with notice through Security Guard. Since the workman had refused to receive the notice, the same was fixed on the notice board and gate of the factory. Thereafter, Inquiry Officer was within his right to proceed ex parte against the workman. He was supplied with the copy of inquiry report dated 19.5.2005. The inquiry report is detailed and reasoned. The Inquiry Officer has discussed the statements of Sh. R.K. Sharma and Sh. Kapil Pandit while concluding that the charges levelled against the workman were duly proved. These witnesses have categorically deposed that the production given by the workman was on the lower side. He was served with warning but despite that he had not improved the production. The workman himself has not participated in the proceedings after 6.5.2005. The workman has not filed reply to letter dated 30.5.2005, which admittedly was received by him on 6.6.2005. He was dismissed on 22.8.2005. There is no illegality in the order dated 22.8.2005. The findings recorded by the Labour Court are in accordance with law. These are based on correct appreciation of oral as well as documentary evidence. The workman had been given ample opportunity, as noticed above, to defend himself during the course of domestic inquiry.

14. Their Lordships of the Hon^{ble} Supreme Court in *Sasa Musa Sugar Works (P) Ltd. Vs. Shobrati Khan and Others*, have held that "go slow" amounts to serious misconduct. Their Lordships have held as under:

The only question that remains is about the sixteen workmen about whom the Industrial Tribunal held that there was no evidence to connect them with the go-slow. The Appellate Tribunal's view in this matter was that the contention of the management that the Industrial Tribunal was wrong in holding that there was no evidence against these sixteen workmen was correct. It has been shown to us that evidence against these sixteen workmen is of exactly the same witnesses and of the same kind as the evidence against the remaining thirty-two. The finding, therefore, of the Industrial Tribunal that there was no evidence against the sixteen workmen is patently perverse, for there was the same evidence against them as against the remaining thirty-two. It follows, therefore, that all the forty-eight workmen (two of whom are since said to have died) are exactly in the same position. As held by the Appellate Tribunal, go-slow is serious misconduct which is insidious in its nature and cannot be countenanced. In these circumstances as these forty-eight workmen were taking part in the go-slow and were thus guilty of serious misconduct, the management was entitled to get permission to dismiss them. But as the management held no enquiry after

suspending the workmen and proceedings u/s 33 were practically converted into the inquiry which normally the management should have held before applying to the Industrial Tribunal, the management is bound to pay the wages of the workmen till a case for dismissal was made out in the proceedings u/s 33; (see the decision of this Court in the *The Management of Ranipur Colliery Vs. Bhuban Singh and Others*, As already pointed out, this is the view taken by the Industrial Tribunal while dealing with the application u/s 33-A which stood confirmed by the dismissal of the appeal by the workmen in that behalf. The management will therefore have to pay the wages during the period of suspension till the award of the Industrial Tribunal.

15. The Apex Court in *Bharat Sugar Mills Limited v. Jai Singh and Ors.* 1961 II 644 LLJ 644 have held that "go slow" which is a description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most pernicious practices that discontented or disgruntled workmen some time resort to. Their Lordships have further held that apart from this also, "go slow" is likely to be much more harmful than total cessation of work by strike, for while during a strike much of the machinery can be fully turned off, during the "go slow" the machinery is kept going on a reduced speed which is often extremely damaging to machinery parts. It is in these circumstances, "go slow" has also been considered as serious type of misconduct. Their Lordships have held as under:

"Go-slow" which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most pernicious practices that discontented or disgruntled workmen some time resort to. It would not be far wrong to call this dishonest. For, while thus delaying production and thereby reducing the output, the workmen claim to have remained employed and thus to be entitled to full wages. Apart from this also, "go- slow" is likely to be much more harmful than total cessation of work by strike. For, while during a strike much of the machinery can be fully turned off, during the "go-slow" the machinery is kept going on a reduced speed which is often extremely damaging to machinery parts. For all these reasons "go-slow" has always been considered a serious type of misconduct. The standing orders which have been made under the Standing Orders Act for the Appellant factory specify "go-slow" as misconduct in Sub-clause (u) of Cl. (1), Para M, under the words: "Malingering or deliberate delaying of production and carrying out of orders.

16. Similarly, the Apex Court in *Bank of India Vs. T.S. Kelawala and Others*, have held that there cannot be two opinions that "go slow" is a serious misconduct being a covert and a more damaging breach of the contract of employment. Their Lordships have held as under:

36. There cannot be two opinions that go-slow is a serious misconduct being a covert and a more damaging breach of the contract of employment. It is an insidious method of undermining discipline and at the same time a crude device

to defy the norms of work. It has been roundly condemned as an industrial action and has not been recognised as a legitimate weapon of the workmen to redress their grievances. In fact the model standing orders as well as the certified standing orders of most of the industrial establishments define it as a misconduct and provide for a disciplinary action for it. Hence, once it is proved, those guilty of it have to face the consequences which may include deduction of wages and even dismissal from service.

17. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in the petition and the same is dismissed, so also the pending application(s), if any. No costs.