

(1969) 03 AHC CK 0008
In the Allahabad High Court

Elgin Mills Company Ltd. Mill No. 2

APPELLANT

Vs

First Labour Court and Others

RESPONDENT

Date of Decision : 11-03-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1969) 1 LLJ 805

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Satish Chandra, J.—This petition under Article 226 of the Constitution prays that the award of the labour court, Kanpur, directing the reinstatement of Vijai Bahadur Singh (respondent 3) as a clerk, with continuity of service with effect from 2 November 1965, be quashed.

2. It appears that respondent 3, Vijai Bahadur Singh, was found sleeping during duty hours in the night shift between 15 and 16 October 1965. He was charge sheeted on 18 October 1965, He filed an explanation on 22 October 1965, whereupon the management of the petitioner-company directed an enquiry into the matter. The enquiry officer reported that the charge against the workman concerned (respondent 3) was established. Thereupon, the management passed an order dismissing respondent 3 from service on 3 November 1965.

3. Aggrieved, the workman raised an industrial dispute which was referred for adjudication to the labour court. The labour court found that the enquiry officer held the enquiry perfunctorily and in violation of the principles of natural justice. It was, therefore, incumbent upon the management to prove before it that the workman was really guilty of the charge levelled against him. It then went into the merits and after considering the evidence, held that the charge was not established and the workman's services were terminated illegally and unjustifiably. Consequently, he was directed to be reinstated with full back-wages.

4. For the petitioner, it was urged that the settled position in law was that a tribunal cannot act as a Court of appeal over the finding of the management in regard to the misconduct of a workman. It could interfere with the action of the management in dismissing a workman only if it found that there was want of good faith, or that there was victimization or an unfair labour practice, or that the management had been guilty of a basic error or violation of principles of natural justice, or that the finding was completely baseless or perverse [vide Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, . In the present case, the tribunal gave no finding that there was want of good faith or that it was a case of victimization or an unfair labour practice or that the findings of the enquiry officer were perverse. It only held that the enquiry was held in violation of the principles of natural justice. This view has been challenged in the present writ petition.

5. The tribunal has relied upon the following facts for finding that the principles of natural justice were violated:

(1) The enquiry officer, Sri O.C. Agarwal, did not consider the explanation of the workman, before the direction that an enquiry will be held.

(2) The enquiry officer did not in his report give any finding that the explanation of the workman was unsatisfactory.

(3) The workman had declined to repose confidence in the enquiry officer and as such he should have declined to continue the enquiry and referred the matter to the manager for appointment of another officer to hold the enquiry.

(4) The enquiry held by Sri Agarwal could not be deemed to be valid as he was biased.

(5) The enquiry officer did not record any reasons in his report for disbelieving the witnesses produced by the workman.

(6) The enquiry officer did not probe into the past record of the workman nor gave any finding on it.

6. The enquiry officer had in cross-examination stated that he did not consider the explanation of the workman because it was considered by the management. This statement was in relation to the question whether the explanation of the workman was considered prior to the order directing that an enquiry will be held into the charge. At that stage, there was no occasion for the enquiry officer to consider the explanation. The enquiry officer came into the picture after the order that an enquiry will be held (?) had been passed. Naturally, he could not consider the explanation before he was appointed as the enquiry officer. He could consider the explanation only during the course of the enquiry at the time of considering the evidence and making the report.

7. The second fact that the enquiry officer did not give any reason for finding that the explanation of the workman was unsatisfactory is palpably wrong-. A

perusal of the report of the enquiry officer shows that the reasons were given for disbelieving the case of the workman. The report states that the statement of Pritam Lal cannot be disbelieved because the workman had not made any report to other superior officers about the complaint which he has expressed in his explanation. Therefore, the explanation seemed to the enquiry officer to be an afterthought. In the circumstance, it cannot be said that the report did not contain any reasons for disbelieving the explanation of the workman.

8. The next fact that the report did not give any reasons for disbelieving the statement of the witnesses produced by the workman is also incorrect. In the report, it has been stated that the two witnesses produced by the workman are of the spinning department and seem to have been arranged by him. That was a reason relevant on the question of the credibility of the witnesses.

9. The question of consideration of the past record is also immaterial. The enquiry was held to find the truth or otherwise of the charge. The charge was that the workman was sleeping during duty hours and that he was in the habit of so sleeping. The charge-sheet mentioned about the past record of the workman that he had been censured on four occasions, suspended on six occasions and warned on one occasion in the immediate past. The workman did not say a word in his explanation about the past record of his conduct. Consequently, there was no dispute on this score, and the enquiry officer could not be expected to give an unnecessary finding on a point on which there was no dispute. The past record was relevant on the quantum of punishment. The enquiry officer was to find the truth of the charge. It was none of the business to award punishment. That was to be done by the management. Consequently, the non-mention of anything about the past record in the enquiry report did not vitiate the enquiry, much less the report made by the enquiry officer.

10. The fact that the tribunal has grievously erred in giving its finding on the aforesaid points apart, the various facts mentioned above are not relevant to the question whether the enquiry was held consistently with the principles of natural justice. In my opinion, they are all irrelevant.

11. Natural justice ordains that enquiry should be held impartially, objectively, and after giving an opportunity of hearing. That is all that is required. Natural justice does not require that the report should be written in a particular manner or that before holding an enquiry, the enquiry officer must consider the explanation of the workman and pass a detailed order giving reasons why the explanation is unsatisfactory and why an enquiry is to be held. Even if the report, of the enquiry officer is deemed to be defective because it did not give adequate reasons for the conclusions reached therein, it could not be said that there was a violation of the principles of natural justice. It may have been bad or invalid otherwise, but not the ground that it violated the principles of natural justice. The tribunal, in my opinion, completely misunderstood the scope of the doctrine of natural justice.

12. The tribunal has also observed that the workman had declined to repose confidence in the enquiry officer, and so the enquiry officer should have sent the papers to the management for appointing another officer to conduct the enquiry. The only thing in this connection appears to be that while signing the statements of some of the witnesses examined at the enquiry, the workman had made a note that he was signing under protest. He had later on stated that the enquiry officer had not taken down the statements correctly. There is no clinching material to sustain the allegations that the statements of the witnesses were not recorded properly. The mere appending of a note that the workman was signing the statement under protests would not mean that he had taken up the attitude that the enquiry officer was biased against him and was, therefore ; incompetent to hold the enquiry. The mere making of that kind of note would be irrelevant to the question of bias in the mind of the enquiry officer. Further, the enquiry officer had in his statement stated that the workman did not tell him the reason for making that note while signing: the statements of the witnesses. On these materials, no reasonable person could come to the conclusion that the enquiry officer was biased against the workman. The finding that the enquiry was contrary to the principles of natural justice is entirely unsustainable.

13. The enquiry being valid in law, the tribunal had no Jurisdiction to sit as a Court of appeal on the merits of the findings of the enquiry officer. The finding that the charge was established could not be read judicated on the merits.

14. For the workman, it was urged by Sri K.M. Dayal that the tribunal has jurisdiction to interfere with the punishment awarded in a given case if it is of the opinion that the punishment was shockingly disproportionate, regard being had to the particular conduct and the past record or that the punishment was such as no reasonable employer could ever impose in like circumstances. In *Lakshmi-Saraswathi Motor Transport Company Vs. Labour Court and Another*, , it was stressed by the Madras High Court that the latter view point could be equated to a finding that the imposition of the punishment itself amounted to victimization or an unfair labour practice.

15. It is clear that the past record was relevant on the question of the quantum of punishment. In the present case, past record was undoubtedly taken into consideration. The past record was quite horrible. Further, the tribunal has not given any finding that the punishment was shockingly disproportionate or that it was such as no reasonable employer could ever inflict upon its employees, namely, that it amounted virtually to victimization or an unfair labour practice. In the absence of any such finding, the tribunal could not interfere even with the punishment awarded by the management. I personally do not see that the punishment was such as no reasonable employer could ever impose in like circumstances or that it was shockingly disproportionate to the particular misconduct and the past record. The workman had, between 1962 and 1965, been censured on four occasions, suspended on six occasions and warned on one occasion. It was urged that the chargesheet did not give the kind of reason for

the various punishments in the past. The chargesheet gave the details of the standing orders under which the punishments were given. If the workman had disputed it or said anything in his explanation on this score, the enquiry officer would have gone into this matter and given detailed findings. It cannot be said that the past record was mentioned in the chargesheet in a vague manner.

16. For all these reasons, the award of the tribunal cannot be sustained in law.

17. The petition succeeds and is allowed. The impugned award of the labour court, Kanpur, is quashed. The parties would, however, bear their own costs in this Court.