

(2014) 11 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1116 of 2012

Factory Manager, Birla Corporation

APPELLANT

Vs

Surendra Singh and Others

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2015) 3 CDR 1625 : (2015) 145 FLR 175 : (2015) 2 RLW 1656 :
(2015) 2 SCT 329

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : Harish Purohit, Advocates for the Appellant; P.S. Chundawat,
Advocates for the Respondent

Judgement

Nirmaljit Kaur, J.—The present petition has been filed by the petitioner-management challenging the validity and propriety of the impugned Order dated 16.09.2011 passed by the Labour Court, Bhilwara in Labour Case No. 15/2008 whereby the domestic inquiry held by the petitioner-management against the respondent-workman was declared unfair. While assailing the impugned order, learned counsel for the petitioner-management submitted that on 20.01.2007, the respondent-workman committed the misconduct and thereafter, remained absent from duty. A charge-sheet was issued to the respondent-workmen and after holding the domestic inquiry, the services of the respondent-workman were terminated vide Order dated 05.04.2007. Aggrieved by the said order, the respondent-workman raised an industrial dispute which was referred to the Labour Court, Bhilwara. The statement of claim filed by the respondent-workman shows that he has not challenged the validity of the domestic inquiry. In spite of the same, the Labour Court vide its Order dated 16.09.2011 decided the issue of inquiry at the first instance and recorded its conclusion that the said inquiry was unfair, it is further contended that it is the settled law that the Court is required to adjudicate the dispute as raised by the parties and the Court cannot supplement the pleadings of the parties. Further, the court below failed to appreciate that the services of the respondent-workman

were terminated as a consequence of the conclusion of domestic inquiry, whereas, the respondent-workman was afforded full opportunity to participate and he has admitted his fault and misconduct. The court below has decided to declare it unfair only on account of the fact that the signature of the workman may have been obtained under the influence of the management as the workman is a lowest level employee and the said findings were uncalled for.

2. Reliance is placed on the judgments rendered by the Apex Court in the case of Management of Ritz Theatre (P) Ltd. Vs. Its Workmen, and The Cooper Engineering Limited Vs. Shri P.P. Mundhe, .

3. The respondent-workman has filed his reply and raised the preliminary objection. As per the solitary preliminary objection, the order under challenge is an interim order and therefore, the present writ petition against an interim order was not maintainable.

4. Heard.

5. It is not disputed that the matter is still pending before the Labour Court. The Labour Court has not passed any award in pursuance to the said interim order. Learned counsel for the respondent-workman has also placed on record the judgment rendered by this Court in S.B. Civil Writ Petition No. 3984/1995 (Mahamantri Bhartiya Cement Mazdoor Sangh, Nimbahera v. Judge, Industrial Disputes Tribunal and Labour Court, Bhilwara and anr.) decided on 16.08.1996 wherein in similarly circumstances, the Court held as under:-

"To my mind the order holding that the inquiry was valid without making a consequential award does not supply a cause of action to the petitioner to rush to this Court. When the consequential award is passed ultimately he can challenge the same if he is aggrieved by it, and in the petition challenging the final award the point regarding the validity of the departmental inquiry can also be raised. To alleviate the apprehension of the petitioner it is clarified that the validity of the inquiry shall be open to challenge in a petition challenging the final award passed in the case by the Industrial Tribunal if it goes against the petitioner."

6. Moreover, even as per the judgment relied on by the learned counsel for the petitioner management rendered in the case of the Cooper Engineering Ltd. (supra), it is clearly held in para No. 22 of the said judgment that there was no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter can be agitated even after the final award. It would be relevant to reproduce para No. 22 of the said judgment, which reads as under:-

"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 line issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

7. Even as per the second judgment cited by the learned counsel for the petitioner i.e. The Management of Ritz Theatre (Private) Ltd. (supra), all that has been said is that if the finding on the said issue is against the employer, permission should be granted to the employer to lead the evidence and the employees are also given an opportunity to lead the evidence and that it would be open to the tribunal first to consider the preliminary issue. In view of the above, I find no ground to interfere in the impugned order at this stage.

Dismissed accordingly.