

(2013) 06 KL CK 0056

In the High Court Of Kerala

Case No : W.A. No. 732 of 2013 in Writ Petition (C) 30534 of 2007

Fertilizers and Chemicals Travancore Ltd.

APPELLANT

Vs

P.S. Giri

RESPONDENT

Date of Decision : 05-06-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2013) 3 LLJ 568 : (2013) LLR 1026

Hon'ble Judges : Manjula Chellur, Acting C.J.;K. Vinod Chandran, J

Bench : Division Bench

Advocate : K. Anand and Ms. Latha Krishnan, for the Appellant; B. Ashok Shenoy and Ms. Girija Gopal, SGP, for the Respondent

Judgement

K. Vinod Chandran, J.—The appellant-Company is aggrieved by the impugned judgment, which interfered with the award of the Industrial Tribunal, Alappuzha, so as to modify the punishment from one of dismissal to discharge. The 1st respondent was a workman of the appellant-Company, working as Depot Attender at the Company's Gulbarga Depot. On 27.10.1995, a chargesheet was issued against the workman and being unsatisfied with the explanation offered, a domestic enquiry was initiated into the misconducts alleged. The Enquiry Officer, on the failure of the delinquent employee to participate in the enquiry, declared him ex parte and proceeded with the enquiry, concluding the same, finding the workman guilty of all the charges leveled against him. The 1st respondent/workman sought a reference of the dispute regarding the justifiability of his dismissal, which resulted in Exhibit P1 award upholding the enquiry as also the punishment of dismissal. The 1st respondent challenged the actions of the management on grounds of the allegations being false and vague, violation of principles of natural justice as also on grounds of the punishment being disproportionate to the charges leveled. The Labour Court found the enquiry to be proper by a preliminary order and refused to interfere, with the punishment of dismissal imposed, u/s 11A of the Industrial Disputes Act, 1947.

2. The learned Single Judge, finding that the long service of the workman from 1971 onwards was neither considered by the Enquiry Officer nor by the Industrial Tribunal, converted the order of dismissal to one of discharge finding that the remittance of the matter for adjudication on the ground of lack of notice would be a futile exercise.

3. The lack of notice alleged by the workman and found by the learned Single Judge was seriously challenged by the learned Senior Counsel appearing for the appellant-Company.

4. We have gone through the preliminary order extracted in the award and which forms part of the award. It is evident that the Enquiry Officer posted the enquiry first on 14.10.1996, for which notice was issued by registered post on 28.9.1996. Since the notice returned with the endorsement "unclaimed", again a further notice was issued in the last known address as also the permanent address of the workman. In addition to this, a copy of the notice was also issued in the address given by the workman in his explanation submitted to the chargesheet. Even after that, the Enquiry Officer issued further notice on the last known addresses of the workman and later published a notice of enquiry in the Malayala Manorama Daily. On 12.3.1997, it is revealed that a communication was received from the workman requesting to change the venue of the enquiry from Gulbarga to Kerala. This request was rejected and the workman intimated of such rejection as also the next date of posting.

5. Here, it is relevant to notice that the workman who was employed at the Gulbarga Depot was not suspended pending enquiry and had unauthorizedly absented himself after the initiation of the proceedings. The request for change of venue by the workman was not justified, since even during the pendency of the enquiry he was supposed to have been reporting for duty at Gulbarga. Further it is also to be noticed that the charges leveled are with respect to the workman's activities in the Gulbarga Depot and the witnesses would be from the said locality. In such circumstance, it cannot be gainsaid that the enquiry was proceeded with in violation of the principles of natural justice. We are fortified in holding so by the decision of the Supreme Court in *State Bank of India and Others Vs. Narendra Kumar Pandey*, . Their Lordships in the said judgment held that non-compliance with mandatory rules for supply of list of documents and witnesses and illegality in relying upon documents not disclosed to the delinquent employee are not defences available to a delinquent employee who purposefully, deliberately and with full knowledge refrains from participating in an enquiry. The facts disclosed with respect to the issuance of notice in the instant case does not commend us to hold in favour of the respondent in the aspect of procedural irregularity. We are of the definite opinion that there is absolutely no violation of the principles of natural justice and the workman/1st respondent had deliberately, with full knowledge, kept away from the enquiry.

6. The further challenge is regarding vagueness and falsity of charges, the latter of which the workman had an opportunity to substantiate before the Enquiry

Officer, which he failed to avail of. Looking at the charges of insubordination, misappropriation, damage to the Company's goods or properties, negligence of work, acting against the interest of the Company, unsatisfactory workmanship and habitual breach of rules and instructions, we cannot hold it to be in any manner vague. We do not attempt an enumeration of each and every charge, but a reading of the award would eminently demonstrate that specific instances of tampering with the stock, negligence and outright disobedience as also acting against the interest of the company is very evident. Suffice it to say that the charges are with respect to specific instances as disclosed from the discussion of the same in the award and the 1st respondent's claim that they are vague does not hold good.

7. The charges being found to be with respect to specific instances and the same having been proved in a valid enquiry conducted against the employee, the contours of the jurisdiction does not permit us to interfere at all with the said findings in the award. We notice that the learned Single Judge while observing on the futility of a remittance has contemplated such remittance only on the question of lack of notice. We have already found that there is absolutely no lack of notice and the workman alone is responsible for not having participated in the enquiry conducted.

8. What remains is the order of the learned Single Judge converting the punishment of dismissal to one of discharge. We are of the opinion that the long years of service rendered by the 1st respondent is not a circumstance which could have been taken into consideration for interference in the punishment u/s 11A of the Act, especially in the context of such service being disclosed to be not totally unblemished. The Industrial Tribunal has, while considering the scope of interference u/s 11A, referred to various prior instances of misconduct alleged against the 1st respondent. We, however, would confine ourselves to the charges leveled against the workman to consider whether they are grave in nature to warrant a punishment of dismissal. As noticed above, the workman had meddled with the stock in the depot of the Company and had refused to co-operate with the stock verification attempted, by refusing to sign on such stock verification statement prepared by a superior officer. The workman was also negligent in the supply of the products of the Company to its dealers and was further negligent in submitting the cheques in lieu of payments made by the purchasers. The insistence for additional payment from dealers and the allegation of threats leveled against the dealers definitely are acts which would tarnish the image of the Company. Considering the nature of the charges, which stood uncontroverted and hence proved at the enquiry, we are of the opinion that there is no good ground or eminent reason to interfere with the punishment of dismissal. On the reasoning above, we allow this appeal, set aside the judgment of the learned Single Judge and confirm the punishment of dismissal imposed by the disciplinary authority and affirmed by the Industrial Tribunal. The parties are directed to suffer their respective costs.