

(2000) 10 MAD CK 0055

In the Madras High Court

Case No : W.A. No. 510 of 1998 and C.M.P. No. 5580 of 1998

Guruswamy M.

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 12-10-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2001) 1 LLJ 1521

Hon'ble Judges : V.S. Sirpurkar, J; M. Chockalingam, J

Bench : Division Bench

Advocate : R. Vaigai, for the Appellant;

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—This is an appeal against the judgment of the learned single Judge, by which, the learned single Judge dismissed the writ petition filed by the appellant. The appellant at the relevant time was in the service of the respondent. Two enquiries came to be inflicted against him on account of his misconduct. He has been found guilty in one of the enquiries while the other was found by the Labour Court not in keeping with the principles of natural justice. However, in the enquiry in which he was found guilty, the enquiry officer had held firstly that the employee had not handed over the stock list as on January 31, 1979 to the society and had suppressed the same. He secondly found that he had sent the goods by wrongful means to the retail section without showing in the books of account and effected the sales without bills. Thirdly, he found that certain goods were kept in a bureau in his custody without showing them in the books of account and when he was asked about it, he gave a false explanation. These are the findings regarding the first three charges. The fourth charge was that he had sent the finished bed sheets to the retail section of the society without permission, with a view to replace the bed sheets taken from the retail section under suspense. The matter was taken to the Labour Court and the

punishment of dismissal having been given by the management, the Labour Court found in the enquiry in respect of the above charges was in keeping with the principles of natural justice and that all opportunities were given to the appellant to defend himself. The Labour Court, however, came to the conclusion that the punishment of dismissal was excessive and it would have deprived the petitioner/appellant of all the terminal benefits and therefore ultimately the Labour Court converted the dismissal into a simple discharge, so as to enable the appellant/petitioner to get back his terminal benefits.

2. This matter was challenged before the learned single Judge and it was tried to be argued before the learned single Judge that the Labour Court had erred in accepting the findings given by the enquiry officer and that the findings of the Labour Court were perverse. Learned single Judge has dismissed the petition predominantly holding that it was beyond his jurisdiction under Article 226 of the Constitution to look afresh into the findings of fact, which had practically been finalised by the Labour Court. Learned Judge found that the charges, which were found to be proved were substantiated on the basis of the materials available before the enquiry officer and the Labour Court had independently examined the materials available before the enquiry officer. Learned single Judge observes as follows:

".....I see no reason to embark on a reappraisal of that evidence. That is not the function of this Court while exercising the jurisdiction under Article 226 unless there is something in the record which is contrary to the provisions of the Act which is patently arbitrary or perverse."

Learned single Judge also came to the conclusion that the discretion used by the Labour Court u/s 11-A of the Industrial Disputes Act was properly exercised and there was no question of interference with the findings.

3. Learned counsel appearing on behalf of the appellant very forcefully argues that the Labour Court had erred in arriving at the factual findings and that there was a total non-application of mind (sic) on the part of the Labour Court. For example, she relied on the findings on charge No. 4 wherein the enquiry officer had absolved the worker of charge No. 4, yet, the Labour Court had found him guilty. Charge No. 4, as it originally stood, was as follows:

"that he had sent finished bed sheets to the retail section of the society without permission, with a view to replace the bed sheets taken from the retail section under suspense."

Learned counsel took us to page 27 of the records and pointed out that the enquiry officer had absolved the delinquent of that charge. The enquiry officer seems to have recorded:

"In the absence of the President, he had informed the same to the Manager and he had advised him to adjust the accounts by preparing indents to cover the deficits and transferring the excess to the Head Office. The employee had acted

as per the directions of the Manager Sankaran does not touch this charge and therefore I hold that the charge is not proved. If the employee had acted under the directions of the Manager, he cannot be accused of having committed any improper act."

4. When we see the award of the Labour Court, there is a full discussion of the charges in Para. 7 thereof. The Labour Court has given very cogent and convincing reasons while discussing charge No. 4. Similarly charge No. 4 was also discussed by the Labour Court in Para. 8 of the award. The Labour Court had made comments on the evidence of one office boy Subramaniam who had affirmed that on two occasions, he had taken 15 to 20 bedsheets from the godown directly to the retail section, which were given to him by the petitioner to be handed over to Thiru Seerangam at the retail section. The Labour Court has also taken stock of the further statement of Subramaniam, which was marked in the enquiry as Exhibit M1., The Labour Court has recorded that the direct delivery of goods from the godown to the retail section was improper and that these goods were not accounted in the accounts of the society at all. We do not find anything wrong with the observations made by the Labour Court, though seemingly the enquiry officer has absolved the delinquent of that charge. The Labour Court could have come to a different conclusion while discussing the evidence afresh. We do not agree with the contention raised before us that the Labour Court was guilty of non-application of mind or committed any patent error while appreciating the evidence. In fact, we find that the award of the Labour Court is well-reasoned and is much more elaborate than the enquiry report. It seems that the Labour Court has taken all the pains to record its findings. We completely agree with the learned single Judge that it was not for the learned single Judge to reappraise the evidence all over again in the writ proceedings. We have ourselves gone through the award of the Labour Court and find that it was not necessary for the learned single Judge to go into the issue all over again.

5. Learned counsel, thereafter pointed out to us that it was an admitted position that at least till the enquiry was completed, no suspension allowance was paid to the petitioner/appellant. Here the contention was that on that count the enquiry itself was totally vitiated. For this reason learned counsel relied on the judgment of the Apex Court in the case of Fakirbhai Fulabhai Solanki Vs. Presiding Officer and Another, . Our attention was especially invited to the observations made in Fakirbhai Fulabhai Solanki Vs. Presiding Officer and Another, to the following effect:

"5....It follows from the provisions of Sub-section (3) of Section 33 of the Act that the workman does not cease to be a workman until the Tribunal grants permission to dismiss the workman and the management dismisses the workman pursuant to such permission. An order of suspension by itself does not put an end to the employment. The workman continues to be an employee during the period of suspension and it is for this reason ordinarily the various Standing

Orders in force in several factories and industrial establishments provide for payment of substance allowance which is normally less than the usual salary and allowance that are paid to the workman concerned. An order of suspension no doubt prevents the employee from rendering his service but it does not put an end to the relationship of master and servant between the management and the workman. When an application is made u/s 33(3) of the Act, the workman is entitled to defend himself before the Tribunal. In those proceedings it is open to him to show that the domestic enquiry held against him was not in accordance with law and principles of natural justice and the action proposed to be taken against him by the management is unjust and should not be permitted. Sometimes it may be necessary to either of the parties to lead evidence even before the Tribunal. The proceedings before the Tribunal very often take a long time to come to an end. In this very case the proceedings were pending before the Tribunal for nearly six years. Most of the workman are not in a position to maintain themselves and the members of their families during the pendency of such proceedings. In addition to the cost of maintenance of his family the workman has to find money to meet the expenses that he has to incur in connection with the proceedings pending before the Tribunal....."

6. In this paragraph their Lordships conclude:

"No material has been placed before us in this case to show that the appellant had sufficient means to defend himself before the Tribunal."

Relying on this, learned counsel contended that the whole enquiry was vitiated on account of the non-payment of the suspension allowance. Our attention was invited firstly to the award where in Para. 4, at page 90 the Labour Court has observed as under:

"It is true that the petitioner was placed under suspension with effect from September 25, 1980. Suspension pending enquiry is permissible under the bye-laws of the society and, was justified in the circumstances of the case. Having regard to the circumstances of the case, the President of the society did not sanction subsistence allowance of the petitioner....."

These particular sentences form part of the counter-filed by the Management which were being quoted by the Labour Court. From this, it was pointed out that this situation was very much present before the Labour Court. Learned counsel also invited our attention to the affidavit in the writ petition wherein in ground "(i)" of page 107 the following ground was raised:

"(i) I humbly submit that during the period of my suspension, i.e., between September 25, 1980 to February 2, 1982, I was not even paid subsistence allowance as contemplated in the bye-laws of the second respondent-society. Further, I was not paid bonus for the period between July 1, 1979 and June 30, 1980 and from July 1, 1980 till the date of my suspension, till September 25, 1980, I also submit that I was not paid salary for the month of September, 1980, the month I actually worked till the date of suspension on September 25, 1980.

Without prejudice to my contention in the writ petition, I pray that this Hon''ble Court may be pleased to direct the second respondent to pay me the salary and bonus for the period mentioned and other terminal benefits which I am entitled to during the pendency of the writ petition."

From these learned counsel suggested that it was an admitted position that subsistence allowance was not paid and therefore the whole enquiry was vitiated.

7. In the first place, we do not find any complaint having been made in the above ground about the non-payment of subsistence allowance and inability on the part of the petitioner/appellant to take part in the enquiry. In fact the enquiry was attended by the worker. He took full part therein. The matters do not stop there. A preliminary issue was framed regarding the validity of the enquiry and it was held by the Labour Court by its order, dated December 2, 1986, that the enquiry was valid. Apart from the fact that the order is not before us or was not present before the learned single Judge also, no ground seems to have been made by the petitioner at any stage. We have again deliberately reproduced the contention raised in writ petition. There also there was no complaint made that the enquiry was vitiated in any manner. Again no contention seems to have been raised before the learned single Judge that the enquiry was vitiated on account of the non-payment of the subsistence allowance. The tenor of the aforementioned reported judgment of the Supreme Court is not mechanical, so as to hold that when there is non-payment of subsistence allowance the enquiry itself is rendered bad. There have to be some other conditions also. We find that there has been no complaint made regarding the non- payment of the subsistence allowance at any point of time, particularly when that opportunity was available to the appellant/petitioner, firstly on December 2, 1986, when the enquiry was held to be valid on a preliminary issue framed for that purpose. If the point was not raised at any stage thereafter that is before the Labour Court, as also before the learned single Judge we do not think, we would be justified in allowing that point to be raised and for the first time find that the enquiry was hit by the breach of the principles of natural justice and was not a valid enquiry. As it is we find that the petitioner had not made any grudge against that. We, therefore agree with the learned single Judge when he confirms the award of the Labour Court.

8. We are reported that the dues have still not been paid. If the dues are not paid, we direct the respondent to pay those dues within two months from today. The petitioner/appellant shall be entitled to be paid all the dues as prayed in C.M.P. No. 5580 of 1998. That C.M.P shall stand allowed. However, the writ appeal shall stand dismissed. No order as to costs.