
(2016) 08 OHC CK 0038
In the Orissa High Court
Case No : O.J.C. No. 2363 of 1984

Hadibandhu Malik

APPELLANT

Vs

Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 23-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 12

Citation : (2016) 151 FLR 357 : (2017) 1 LLJ 38

Hon'ble Judges : Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s. J. Patnaik, A.K. Bhagat and Mr. P. Palit, Advocates, for the Petitioners; M/s. P.M. Das and D.P. Mohanty, A.S.C, for the Opposite Parties

Final Decision : Dismissed

Judgement

S.N. Prasad, J.—In this writ petition the award passed in Industrial Dispute Case No.14 of 1976 is under challenge whereby and where under the Presiding Officer, Labour Court has answered the reference against the opposite party - Workmen. The terms of the reference is :-

"Whether the dismissal of Shri Hadibandhu Mallick, Jamadar by the Management of Titaghur Paper Mill No.3, Choudwar with effect from 10.3.1969 is legal and/or justified? If not, to what relief the said workman is entitled?"

2. After the reference having been made to the Labour Court the parties have adduced their evidence and after going through the rival submissions and the documents produced before the Tribunal regarding answering the issue as to whether the dismissal of the petitioner is legal/justified, the Presiding Officer, Labour Court has formulated 9 issues for consideration, they are:-

(i) If the reference is maintainable?

(ii) If the workman did not made any demand challenging the action of the management and claiming reinstatement and if there has been no refusal by the

management to accede to the demand?

(iii) If the present reference is incompetent in view of the order passed on 8.4.1971 in Misc. Case No.21/69 under Section 33(2)(b) of the I.D. Act, 1947 relating to this workman?

(iv) If the dispute has been stale and thus the reference is bad in law?

(v) If there has been any proper and fair domestic enquiry against the second party workman?

(vi) If the domestic enquiry is vitiated on account of violation of the principles of natural justice?

(vii) If the allegations of misconduct against the workman are true?

(viii) If the action of the management in dismissing the workman second-party from service is actuated by malafide, victimisation and unfair labour practise?

(ix) To what relief, if any, the workman second-party is entitled?

3. The Presiding Officer after discussing the facts in detail has answered the issues based upon the documents and examination and cross-examination of the witnesses who have led their deposition, has held that the dismissal is justified. The Labour Court has taken into consideration the submission of the petitioner that on the ground of not giving second show cause notice before inflicting major punishment of dismissal, the order of dismissal will be vitiated in the eye of law, while dealing with the issue, the Labour Court has held that in the certified standing order which is binding upon the parties there is no provision to issue second show cause notice before penalty of dismissal and as such in absence of any provision as to the second show cause notice before the proposed punishment is imposed as has not been provided in the standing orders, the employer is not obliged to give such an opportunity to the delinquent workman.

4. He has further gone into the legal position that even in the provision of Article 311 of the Constitution, applicable to the public servants, a provision for second show cause notice has been abolished after recent amendment of that article and thereby refused to interfere with the order of dismissal.

5. Thus the sole ground taken by the opposite party-workman, the petitioner herein that due to non-furnishing of second show cause notice the order of dismissal will be vitiated in the eye of law, but we are in agreement with the finding given by the Presiding Officer, Labour Court since law is well settled after the judgment rendered by Hon'ble Apex Court in the case of Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors, (1993) 4 SCC 727 wherein at paragraph 31 their Lordships have been pleased to hold that merely on account of non-furnishing the second show cause notice before inflicting major punishment, the order of dismissal will not be said to be vitiated in the eye of law unless the delinquent employee has shown as to how he is prejudiced by non-supply of second show cause notice before inflicting major punishment, but after

going through the finding given by the Presiding Officer in the award impugned in this writ petition, we found no where that the petitioner has taken the point as to how he is prejudiced by non-supply of copy of the second show cause notice and as such this ground is not available to the petitioner and on this ground the order of dismissal cannot be said to be vitiated in the eye of law.

6. After going through the finding given by the Labour Court, we find no error apparent in the face of record or perversity in the award, hence we decline to interfere with the finding given by the Labour Court in the award sitting under Article 226 of the Constitution of India by assuming the power of appellate court.

7. In this regard reference may be made to the judgment rendered by Hon''ble Apex Court in the case of Syed Yakoob v. K. S. Radhakrishnan and others, AIR 1964 SC 477 wherein it has been held that the High Court sitting under Article 226 of the Constitution of India may not exercise its power to review the fact finding given by the Tribunal after appreciation of the factual aspect produced before it, otherwise also it will be said that the High Court has acted as appellate court.

8. The proposition laid down by the Hon''ble Apex Court in the case of Syed Yakoob (supra) still holds good and in this respect reference may also be made to the judgment rendered by Hon''ble Apex Court in the case of M/s.Pepsico India Holding Pvt. Ltd. v. Krishna Kant Pandey, (2015) 4 SCC 270 wherein their Lordships while discussing the scope of Article 226 of the Constitution of India in the matter of showing interference with the finding of the Tribunal has been pleased to hold after placing reliance upon the judgment rendered in the case of Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447 as follows:

"17. In case of finding of facts, the court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of his Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarta where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and re-appreciating. Speaking for the Court, Bhagwati, J. as the learned Chief Justice then was, observed at p. 1301 of the report as follows: (SCC p. 864, para 7)

"The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court? It is well settled by the decision of this Court in Waryam Singh v. Amarnath that the ... power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways v. Sukumar Mukherjee to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of

their authority and not for correcting mere errors.

This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bose v. Commr. of Hills Division and it was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority."

9. However the High Court can interfere if there is any error of jurisdiction or if there is perversity in the finding but here since there is no error of jurisdiction and also there is no perversity in the finding, in our considered view there is no infirmity in the order passed by the Tribunal, as such there is no need of interference.

10. Accordingly the writ petition fails and dismissed.