
(2008) 01 KL CK 0038

In the High Court Of Kerala

Case No : Writ Petition (C) No. 409 of 2008 (W)

High Range Estate Employees" Assn.

APPELLANT

Vs

The Industrial Tribunal

RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:

Citation : (2008) 116 FLR 1129 : (2008) 1 KLJ 392 : (2008) 3 LLJ 43

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : A. Jayasankar, for the Appellant; A.J. Varghese (GP), for the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—The unions representing the workmen concerned in ID. No. 8/06 before the Industrial Tribunal, Idukki are the petitioners herein. They are challenging Ext.P 1 preliminary order passed by the Tribunal in that I.D. The issue referred for adjudication was dismissal of some workmen. The workmen were dismissed after conducting domestic enquiries. Therefore the Tribunal considered the validity of the enquiries as a preliminary point and passed Ext.PI order holding that the enquiries were held validly and properly and the conclusions arrived at by the enquiry officer were also supported by evidence on record.

2. This preliminary order is challenged in this writ petition on the following grounds.

First it that the enquiry proceedings on the face of it do not show that in the enquiries the management was represented by a presenting officer and therefore it must be presumed that the enquiry officer had acted both as prosecutor and Judge which would amount to violation of principles of natural justice. The second contention is that the enquiry files did not contain charge sheets and therefore the enquiries must be deemed to have been conducted without charge

sheets. The third contention is that copies of certain documents produced by the management were not supplied to the workmen. These contentions were specifically adverted to by the Tribunal and negated giving reasons for rejecting the same.

3. Regarding the first contention, the Tribunal, on the basis of the evidence of the enquiry officer before the Tribunal, found that there was in fact a presenting officer representing the management, who only conducted the case on behalf of the management before the enquiry officer. Regarding the second contention the enquiry officer, who gave evidence before the Tribunal, categorically deposed that the memos of charges were read out to the workmen at the beginning of the enquiries and they had denied the charges levelled against them in those memos of charges. Regarding the third contention, the Tribunal found that the enquiry officer never relied upon the documents complained of by the Unions and therefore no prejudice was caused to the workmen in the procedure adopted by the enquiry officer.

4. I have considered the contentions of the petitioner in detail 1.

The procedure to be followed in domestic enquiries are not statutory in nature. They are laid down by judicial decisions. It is settled law that mere violation of such procedures itself does not amount to violation of principles of natural justice. The Rules of natural justice are not of form but of substance. Whether rules of natural justice have been followed or not would depend upon the facts and circumstances of each case. Breach of bare technicalities cannot be equated with violation of rules of natural justice. The resultant effect of the violation of the rules of natural justice should result in some sort of sufferance, handicap or prejudice to the workman. The watch word is "prejudice". The very word "domestic" which is often used for describing such enquiries denotes the lack of formalities in such enquiries. What is necessary in such enquiries is to adopt a procedure which would not prejudice the right of the workmen to defend themselves. Any procedure which does not prejudice such right would be a valid procedure notwithstanding the failure to conform to a formal pattern of proceedings as in Courts. Disciplinary action being essentially a managerial function any procedure which is not prejudicial to the right of the workmen to effectively defend themselves in the enquiry and to prove their innocence would be valid. Therefore the workmen, should, in addition to violation of procedure, plead and prove that because of the procedure adopted by the management, prejudice has been caused to the workmen in the matter of defending themselves in the enquiry.

5. In this case, the enquiry officer categorically deposed before the Industrial Tribunal that a presenting officer was in fact appointed by the manager and the management had also sought permission of the enquiry officer to engage that person as the presenting officer in the enquiries. Interestingly, the Union does not specifically plead that there was no presenting officer at all. The only contention is that the enquiry proceedings do not show that a presenting officer

was in fact there to conduct the enquiry on behalf of the management and that the enquiry proceedings are not signed by a presenting officer. On the basis of the evidence of the enquiry officer as MW1, and the enquiry file, the Tribunal found that the workmen had fully participated in the enquiry and cross examined all the witnesses. They were permitted assistance of a co-worker and the workmen had examined witnesses on their side including the manager of the estate in support of their defence. The fact that the proceeding officer did not sign the proceedings of the enquiry also does not spell out any prejudice to the workmen. Therefore the Unions have not only failed to plead and prove any prejudice caused to them in the procedure adopted by the management and enquiry officer, they were also not able to bring out anything even remotely suggesting any prejudice caused to them in their defence.

6. In any event, there is no law laid down that in every domestic enquiry the management shall appoint a presenting officer. As already stated, disciplinary action is purely a managerial function. The only requirement for validity of that action is that the same should be in compliance with the principles of natural justice. Such proceedings cannot be regarded as proceedings of a Court of Tribunal and cannot be circumscribed by any rules of procedure unless of course such procedure is incorporated in the Standing Orders applicable to the workmen, which is not the case here. The enquiry officer is a fact finding authority who is required to record the evidence brought in by the management and the workman/workmen involved and give his findings on the basis of the evidence so recorded. What is required of the enquiry officer is to record that evidence without bias in compliance with principles of natural justice. The appointment of a presenting officer for the management is only to enable the management to present their evidence in an orderly manner to their best advantage. They may or may not choose to appoint one. If no presenting officer is appointed, the management shall cause their witnesses to be present before the enquiry officer and the enquiry officer shall record their evidence as stated by them, with opportunity to the workman to cross examine the witnesses. The enquiry officer can put questions to the witnesses for clarification whenever necessary without a biased mind. Actually, non-appointment of presenting officer is to the disadvantage of the management, in so far as the management would not be able to put forward their evidence properly and cross examine the witnesses of the workman, if there are, effectively. In any event, such non-appointment of enquiry officer does not cause any prejudice to the workmen. On the other hand disadvantage, if any, is to the management themselves. Therefore the mere fact that no presenting officer is appointed does not vitiate the enquiry in any manner. However, in the absence of presenting officer, the enquiry officer cannot take up the role of the presenting officer although he may put questions to the witnesses without bias, merely for clarification, of course with opportunity to the workman to cross examine the witnesses after the enquiry officer has recorded the answers to his questions. He cannot cross examine the witnesses or put leading questions to the witnesses of the

management exposing himself to the allegation of bias, in which case it would amount to violation of principles of natural justice, (see the decision of the Karnataka High Court in Bharat Electronics Ltd. v. K. Kasi (1987) 2 LLJ 203. In this case, there is absolutely no averment whatsoever to the effect that the enquiry officer cross examined any witness or that he has put any questions to the witnesses which can be regarded as exposing himself to the allegation of bias. That being so that is absolutely no prejudice caused to the workmen in any manner. On the other hand the evidence shows that the enquiry officer conducted the enquiry after complying with all principles of natural justice, with every opportunity to the workmen to defend themselves in the enquiry. In such circumstances, there is absolutely no merit in the contention raised by the petitioner in this regard. Therefore the finding of the Tribunal on the first issue is perfectly valid.

7. Regarding the 2nd contention, the petitioner Unions have no case that no charge sheets have been issued to the workmen in question. They also do not dispute the fact as deposed by the enquiry officer that the charges were read out to the workmen at the beginning of the enquiries and they denied those charges. They could not prove that the enquiry was conducted on charges other than those charges. They could not prove that any findings other than in respect of those charges read out to the workmen on which the enquiries have been conducted, have been entered by the enquiry officer. That being so, the mere facts that the charge sheets have not been marked or do not find a place in the enquiry proceedings, do not vitiate the enquiries in so far as the petitioners have not been able to show any prejudice caused to the workmen in this regard also. In such circumstances, I cannot countenance this contention also.

8. Regarding the 3rd contention, the Tribunal found that the documents regarding which complaint is raised by the petitioners herein was never relied upon by the enquiry officer in the enquiry for any of his conclusions. The petitioners have not been able to satisfy me otherwise also to prove any prejudice caused to the workmen in this respect. Therefore the 3rd contention is also without merit.

9. Therefore none of the three contentions raised in this writ petition against Ext.Pl preliminary order holds good. As such there is no merit in the writ petition and accordingly the same is dismissed.