
(2010) 04 MAD CK 0364

In the Madras High Court

Case No : W.P.Nos. 7191 to 7204 of 2010

Hydraulics Private Limited, Pondicherry

APPELLANT

Vs

Presiding Officer, Labour Court, Pondicherry and Others

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0364

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Yashodvardhan and S. Venkataraman, for the Appellant;

Final Decision : Allowed

Judgement

K. Chandru, J.—The petitioner is the management in all these writ petitions. The writ petitions are filed against the order passed by the first respondent/Labour Court, Pondicherry dated 11.3.2010 in I.A. No. 71 of 2007 in I.D. No. 32 of 2005 (L), I.A. No. 77 of 2007 in I.D. No. 39 of 2005 (L), I.A. No. 90 of 2007 in I.D. No. 31 of 2005 (L), I.A. No. 75 of 2007 in I.D. No. 37 of 2005 (L), I.A. No. 81 of 2007 in I.D. No. 43 of 2005 (L), I.A. No. 91 of 2007 in I.D. No. 45 of 2005 (L), I.A. No. 80 of 2007 in I.D. No. 42 of 2005 (L), I.A. No. 76 of 2007 in I.D. No. 38 of 2005 (L), I.A. No. 73 of 2007 in I.D. No. 34 of 2005 (L), I.A. No. 79 of 2007 in I.D. No. 41 of 2005 (L), I.A. No. 82 of 2007 in I.D. No. 9 of 2006 (L), I.A. No. 74 of 2007 in I.D. No. 35 of 2007 (L), I.A. No. 78 of 2007 in I.D. No. 40 of 2007 (L) and I.A. No. 72 of 2007 in I.D. No. 33 of 2005 (L) respectively.

When the matter came up on 9.4.2010, this Court, on finding that the proceeding before the Labour Court is still on a question of framing a preliminary issue, directed notice to be served on the second respondent in these writ petitions privately as well as on the Counsel who appeared for the workmen before the Labour Court.

2. It is the case of the management that the second respondent/workman in each of the writ petitions raised industrial disputes regarding their

nonemployment u/s 2-A of the Industrial Disputes Act and they also claimed to set aside their order of dismissal and for a further direction to pass an award reinstating them with back-wages and other benefits. The claim statements filed by the workmen were registered as various industrial disputes and notice was issued to the petitioner/management

3. The petitioner/management filed detailed counter statements. In the counter statements, apart from justifying the disciplinary action taken by them, including conducting of a proper domestic enquiry they also reserved their right to adduce additional evidence, if necessary, to prove the charges before the Labour Court and to justify the action.

4. After filing the counter statements, the petitioner/management also took out various applications in I.A. No. 71 of 2007 in I.D. No. 32 of 2005 (L) I.A No. 77 of 2007 in I.D. No. 39 of 2005 (L), I.A. No. 90 of 2007 in I.D. No. 31 of 2005 (L), I.A. No. 75 of 2007 in I.D. No. 37 of 2005 (L), I.A. No. 81 of 2007 in I.D. No. 43 of 2005 (L), I.A. No. 91 of 2007 in I.D. No. 45 of 2005 (L), I.A. No. 80 of 2007 in I.D. No. 42 of 2005 (L), I.A. No. 76 of 2007 in I.D. No. 38 of 2005 (L), I.A. No. 73 of 2007 in I.D. No. 34 of 2005 (L), I.A. No. 79 of 2007 in I.D. No. 41 of 2005 (L), I.A. No. 82 of 2007 in I.D. No. 9 of 2006 (L), I.A. No. 74 of 2007 in I.D. No. 35 of 2007 (L), I.A. No. 78 of 2007 in I.D. No. 40 of 2007 (L) and I.A. No. 72 of 2007 in I.D. No. 33 of 2005 (L) respectively, requesting the Labour Court to decide the validity of the domestic enquiry conducted into the charges leveled against the second respondent in these writ petitions as a preliminary issue and to decide the same at the first instance and in the event the domestic enquiry is held to be vitiated then without prejudice to their stand to challenge such a preliminary order to let in oral evidence to substantiate the order of dismissal.

5. On the interim applications filed, the second respondent in these writ petitions filed counter statements stating that u/s 10(4) of the Industrial Disputes Act, the Labour Court is bound to adjudicate the issues which are referred and the matters incidental thereto. It was stated that the interim applications were filed after one year after the counter statements were filed and they have also narrated as to how the enquiry was fair and proper. It was stated that no evidence has been recorded either from the workers side or management side and therefore, seeking permission to lead additional evidence amounts to mockery of justice. It was further stated that the domestic enquiry conducted on the alleged charge of violating Civil Court order is also not supported by any legal evidence. It was also asserted that going into the question of validity of domestic enquiry is incidental to the main issue and therefore, there need not be any separate issue.

6. The first respondent/Labour Court, by a similar order dated 11.3.2010, dismissed the applications filed by the petitioner/management. In paragraph [6], the Labour Court observed as follows:

6 It has to be seen that the petitioner has terminated the respondent from service after holding domestic enquiry on the charges levelled against the respondent. A perusal of the records goes to show that the petitioner was forced to frame the charge on the ground that the respondent allegedly violated an injunction order passed by the Civil Court.

This Court can achieve an effective adjudication on the issue referred by the Government only if an exhaustive trial is conducted by examining witnesses on both sides and marking all available relevant and material documents. In this petition, the petitioner prays for a decision by this Court as to whether the domestic enquiry held was vitiated or not. This is subject-matter of the main I.D. referred by the Government for adjudication because this Court has to consider whether the dismissal of the workmen as a result of domestic enquiry held was justified or not. Once the above mentioned issue in dispute is decided, then the outcome of such decision would be the answer for the industrial dispute referred by the Government to this Court. Moreover, the above I.D. is pending adjudication for nearly four years. Hence, this Court finds that it is not necessary at this stage to take up the validity of the domestic enquiry as preliminary issue. On the other hand, the petitioner company herein is hereby directed to co-operate with this Court for speedy disposal of the Industrial Dispute.

7. The short question is whether the Labour Court was correct in refusing to frame a preliminary issue as requested in the interim applications filed by the petitioner /management?

8. The issue raised herein is no longer *res Integra*. The Supreme Court vide its judgment in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, dealt with the scope of section 11-A of the Industrial Disputes Act and gave an exhaustive interpretation as to the role of the Labour Court in adjudicating the dispute after the introduction of section 11-A of the Industrial Disputes Act. In paragraphs (37) to (39), it was observed as follows:

37. If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognised by this Court in its various decisions, has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier, the section would have been differently worded. Admittedly, there are no express words to that effect, and there is no indication that the section has impliedly changed the law in that respect. Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no enquiry or the enquiry held by him is found to be

defective. Of course, an opportunity will have to be given to the workman to lead evidence contra. The stage at which the employer has to ask for such an opportunity, has been pointed out by this Court in *Delhi Cloth and General Mills Co. Ltd. v. Ludh Budh Singh*. 1972 (25) FLR 1 . No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just referred to above, it is open to the Tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary issue. If its finding on the subject is in favour of the management, then there will be no occasion for additional evidence being cited by the management. But if the finding on this issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence justifying his action. This right in the management to sustain its order by adducing independent evidence before the Tribunal, if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years.

38. All parties are agreed that even after section 11-A, the employer and employee can adduce evidence regarding the legality or validity of the, domestic enquiry, if one had been held by an employer.

39. Having held that the right of the employer to adduce evidence continues even under the new section, it is needless to state that, when such evidence is adduced for the first time, it is the Tribunal which has to be satisfied on such evidence about the guilt or otherwise of the workman concerned. The law, as laid down by this Court that under such circumstances, the issue about the merits of impugned order of dismissal or discharge is at large before the Tribunal and that it has to decide for itself whether the misconduct alleged is proved, continues to have full effect. In such a case, as laid down by this Court, the exercise of managerial functions does not arise at all.

9. Therefore, in the light of the above interpretation given by the Supreme Court over section 11-A of the Industrial Disputes Act, it is incumbent upon the Labour Court to frame a preliminary issue with reference to the validity or otherwise of the domestic enquiry conducted by the employer and in case the enquiry is held to be intact, then the parties will have to address argument on the merits of the finding recorded in the enquiry and even thereafter, the Labour a Court can interfere with the penalty imposed by the employer by virtue of the power vested u/s 11-A of the Industrial/Disputes Act. In case the a Labour Court comes to the conclusion that the enquiry is invalid, then in the absence of the employer seeking for any permission to lead fresh evidence, there is no obligation for the labour Court to grant any such permission.

10. In the present case, the petitioner/management not only in the counter a statements but also in the affidavits filed in support of the interim applications sought for such permission. Therefore, in the light of the judgment of the Supreme Court in *Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another*, . the Labour Court is bound to afford such an opportunity should it come to the conclusion that the enquiry is unfair.

11. With regard to the need to frame a preliminary issue on the domestic enquiry conducted by the employer, the Supreme Court in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, . in paragraph (22), held as follows:

22. 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 the 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.

12. Therefore, this will safeguard the apprehension of the workmen that after the preliminary issue is determined and should it go against the management, they may stall the further proceedings by challenging those orders before this Court. The Supreme Court has forewarned that the High Court should not entertain any writ petition against the preliminary order and the management must be allowed to challenge the same in case a final award is held against them.

13. In a case where without framing a preliminary issue the Labour Court on the plea of composite answering reference recorded evidence even before a decision on the preliminary issue, such an action on the part of the Labour Court was frowned by the Division Bench of this Court in *Madurai Devakottai Transport private Limited v. Labour Court, Madurai* and another. 1976 (2) LLJ 257. The Division Bench in paragraph (3) observed as follows:

3. At the stage of enquiry it appears that the Counsel for the management requested the Labour Court to decide the question as to whether the domestic enquiry is fair and proper, as a preliminary issue on the ground that if it is found that the domestic enquiry is fair and proper, no further question would arise and that the Labour Court would have no jurisdiction to proceed with the matter any further.

14. In the light of the above, this Court is obliged to interfere with the orders impugned in these writ petitions. Accordingly, the impugned orders dated 11.3.2010 made in I.A. No. 71 of 2007 in I.D. No. 32 of 2005 (L), I.A. No. 77 of 2007 in I.D. No. 39 of 2005 (L), I.A. No. 90 of 2007 in I.D. No. 31 of 2005 (L), I.A. No. 75 of 2007 in I.D. No. 37 of 2005 (L), I.A. No. 81 of 2007 in I.D. No. 43

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In the result, all the writ petitions stand allowed. No costs. Consequently, M.P. No. 1 of 2010 in W.P. No. 7191 of 2010, M.P. No. 1 of 2010 in W.P. No. 7192 of 2010, M.P. No. 1 of 2010 in W.P. No. 7193 of 2010, M.P. No. 1 of 2010 in W.P. No. 7194 of 2010, M.P. No. 1 of 2010 in W.P. No. 7195 of 2010, M.P. No. 1 of 2010 in W.P. No. 7196 of 2010, M.P. No. 1 of 2010 in W.P. No. 7197 of 2010, M.P. No. 1 of 2010 in W.P. No. 7198 of 2010, M.P. No. 1 of 2010 in W.P. No. 7199 of 2010, M.P. No. 1 of 2010 in W.P. No. 7200 of 2010, M.P. No. 1 of 2010 in W.P. No. 7201 of 2010, M.P. No. 1 of 2010 in W.P. No. 7202 of 2010, M.P. No. 1 of 2010 in W.P. No. 7203 of 2010 and M.P. No. 1 of 2010 in W.P. No. 7204 of 2010 are closed.