
(2003) 06 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6175 of 2000

IFGL Refractories Ltd.

APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Another

RESPONDENT

Date of Decision : 24-06-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (2003) 06 OHC CK 0006

Hon'ble Judges : R.K. Patra, J;M. Papanna, J

Bench : Division Bench

Advocate : S. Mohanty, N.C. Sahoo, D. Mohanty, S. Pattnaik, S.P. Panda, S. Nanda and P.K. Muduli, for the Appellant; S.B. Jena, S.J. Nanda, S. Behera, S.S. Mohapatra for Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Patra, J.—Industrial Tribunal, Rourkela passed an order on 9.5.2000 in I.D. Case No. 25 of 1999 (State) calling upon the Management to lead evidence to prove that the domestic inquiry conducted against the workman was fair and proper. Being felt aggrieved by the said direction, the Management has filed this writ petition.

2. The Government of Orissa in Labour and Employment Department order No. 6805/LE dated 20.5.1999 in exercise of the powers conferred by Section 12(5) read with Clause (d) of Section 10(1) of the Industrial Disputes Act, 1947 has referred the following dispute for adjudication by the Industrial Tribunal, Rourkela:

Whether the action of the vice-President (Works) of M/s. I.F.G.L. Refractories Ltd., Kalunga Industrial Estate, Kalunga Industrial Estate, Kalunga, Dist-Sundargarh in dismissing Sri Negi Kishan, Workman Emp. No. 6K-72 from services with effect from 15.11.97 is legal and or justified? If not what relief the workman is entitled to?

3. On receipt of the reference, the matter has been registered as I.D. Case No. 25 of 1999 (State) on the file of the Industrial Tribunal, Rourkela. On being noticed, the workman, as the second party, has filed statement of claim on 6.9.1999 alleging inter alia that he was dismissed from service on the basis of a domestic inquiry which was conducted in a slipshod manner in violation of principle of natural justice and fair play. The workman accordingly prayed for his reinstatement with full back wages. The Petitioner filed its written statement denying the allegations made by the workman in his statement of claim. In paragraph-13 of the written statement the Petitioner pleaded that all reasonable opportunity was provided to the workman to defend himself in the domestic inquiry, but he did not avail of the same. In paragraph-18 of the written statement it was further stated that the Management without prejudice to the statements made in the written statement be permitted to justify its action against the workman by adducing fresh evidence in case it is found by the Tribunal that the domestic inquiry was invalid, improper or defective. The documents on the basis of which the written statement was filed have been referred to therein. Considering the pleadings of both parties, the Tribunal has framed the following issues:

(I) Whether the domestic enquiry is fair and proper?

(ii) Whether the action of the Vice-President (Works) of M/s. IFGL Refractories Ltd. in dismissing Sri Negi Kishan, Workman Emp. No. 6K-72 from services with effect from 15.11.97 is legal and/or justified?

(iii) If not what relief the workman is entitled to?

On 7.4.2000 the workman filed a petition praying that the Management should be directed to adduce evidence first to the effect that the domestic inquiry was properly conducted justifying his dismissal from service. The Management filed counter stating inter alia that the prayer of the workman has no merit and the workman should be asked to adduce his evidence first. The Tribunal on 9.5.2000 considered the matter and held as follows:

The core issue in this case is Issue No. I, "Whether the domestic inquiry is fair and proper?". The Ist party management is to lead evidence to prove that the domestic enquiry is fair and proper. So that the order of dismissal would be held as legal. If neither party leads evidence, then the Ist party management will lose this case. Therefore, the Ist party management is to lead evidence first.

As already mentioned, the Management challenges in this petition the above mentioned order.

4. Shri Mohanty submitted that the Tribunal having not decided the question relating to the fairness of the domestic inquiry erred in law in directing the Petitioner to adduce evidence in support of its case that the domestic inquiry was fair and proper. In this connection, he placed reliance on the judgment of the Supreme Court in Neeta Kaplish Vs. Presiding Officer, Labour Court and Another,

On perusal of the judgment of the Supreme Court it appears that the Labour Court in that case came to the conclusion that the inquiry conducted by the Management was not fair and proper and it called upon the Management to produce its evidence on merit. The Management did not lead evidence but produced only one witness whose evidence was of formal nature. Since the Management did not produce any evidence on merit, the workman also did not produce any evidence. The Labour Court accordingly dismissed the claim of the workman. The Supreme Court observed that having regard to the findings recorded by the Labour Court that the domestic inquiry was not properly and fairly held and an effective opportunity of hearing was not given to the workman, the Labour Court was right in calling upon the Management to lead fresh evidence, but the management did not lead any fresh evidence on merit. The Supreme Court accordingly held that for that reason the claim of the workman cannot be rejected and observed rather the claimant is entitled to be granted relief then and there. The Court, however, remained the case back to the Labour Court to decide the case afresh after requiring the parties to lead fresh evidence on merit.

5. In the case at hand, the moot point to be decided is whether the domestic inquiry against the workman was conducted in a fair manner in accordance with principles of natural justice. The twin questions i.e. dismissal from service and proper holding of inquiry are intermingled. As observed by the Supreme Court in *Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others*, , "burden of proof" means sometimes that a party is required to prove an allegation before judgment can be given in its favour. It also means that on a contested issue one of the two contending parties has to introduce evidence. The burden of proof assumes importance where by reason of not discharging the burden which was put upon it, a party must eventually fail. In order to succeed the Management has to establish that the domestic inquiry was conducted fairly. As the burden of proof lies on it, the Tribunal has rightly directed it to lead evidence first in support of its case. In the circumstances, the direction of the Tribunal in this regard cannot be faulted with.

There is no merit in this writ petition which is liable to be dismissed.

6. Before parting with this case, we may note that this proceeding at the instance of the Management has resulted in delay in disposal of the main case pending on the file of the Tribunal. Such delay has not helped either of the parties. We, accordingly, call upon the Tribunal to dispose of the case as expeditiously as possible preferably within three months of receipt of the writ.

Resultantly the writ petition is dismissed.

M. Papanna, J.

7. I agree.