
(1987) 09 PAT CK 0020
In the Patna High Court

Instrumentation Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 24-09-1987

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 311
Evidence Act, 1872 — Section 58

Citation : (1988) 2 LLJ 222 : (1988) PLJR 145

Hon'ble Judges : S.C. Mookherji, J;Lalit Mohan Sharma, J

Bench : Division Bench

Judgement

Lalit Mohan Sharma, J.—This letters patent appeal is directed against the judgment of a learned single Judge of this Court in C.W.J.C. No. 121 of 1979(R). The writ application was filed by respondent No. 2, Raj Narain Singh, and was allowed on 13th May, 1986.

2. The writ petitioner was working under the appellant as a driver. On 7th October 1984, he was served with a show-cause notice along with certain charges and he submitted his reply two days later. The management, after considering his explanation, held him guilty of theft and breach of trust and faith, and in accordance with the Standing Orders, terminated his services and directed certain amounts to be deducted from his dues. A copy of the order was annexed to the writ petition as annexure "I".

3. The workman made an application, annexure 2, u/s 26 of the Bihar Shops and establishments Act (hereinafter referred to as "the Act") before the Labour Court, Bokaro Steel City, praying for permission to adduce evidence and for finally directing his reinstatement in service with consequential monetary benefits. The management filed its written statement, annexure 3, refuting the allegations. Evidence was led on behalf of both sides. After a detailed examination of the evidence and circumstances, the Labour Court, respondent No. 1, held that the statements made by the workman in his show-cause involved admission of facts which established the charge and there was no reason for interfering with the

impugned order of termination The Labour Court further held that as the workman, being a motor transport worker was covered by the provisions of the Motor Transport Workers Act, the application under the Shops Act was not maintainable. The case was thus dismissed by the judgment, annexure 4 to the writ petition. In this background, the workman, Raj Narain Singh, filed the writ application which was registered as C.W.J.C. No. 121 of 1979(R) praying for quashing annexures 1 and 4 and for reinstating him in service with consequential monetary benefits.

4. Admittedly, the workman was employed as a driver under the appellant from 1971 to 9th October 1974, on which date his services were terminated due to an incident relating to removal by him of some scrapwood belonging to the company. Surplus scrap-wood available with the management was sold to the employees at a highly concessional rate of Rs. 5 per quintal and the workman paid a sum of Rs. 10 as the price of two quintals of such wood and obtained receipt No. 412 on 16th July, 1974. On the strength of this receipt, he was trying to carry away 12 quintals of scrap-wood on 26th September 1974, on a truck belonging to the company which he was not entitled to drive. He was stopped by the security guard of the company. He deposited the price of additional 10 quintals and obtained another receipt dated 27th September 1974. The petitioner claimed that he was orally allowed to drive the company's truck by Shri Ved Prakash, a senior engineer of the company. In answer to the management's case that the said Shri Ved Prakash had no authority to authorise anybody to use the company's truck, the petitioner did not suggest any reply. A show-cause notice was served on the petitioner on 7th October 1974, mentioning three charges of (i) removing 12 quintals of scrap-wood without prior Sanction (ii) using the company's truck without advance and written approval of the competent authority and (iii) of dishonesty, theft, breach of trust and misutilisation of company's property. The petitioner submitted his show-cause, which reads as follows:

To

The Manager (Projects), Instrumentation Ltd. B.S. City.

Dear Sir,

With reference to your letter No. BOK/ 01/74 dated 7th October 1974, I beg to state the following points in support of your confidential Office Order.

(1) I had paid a sum of Rs. 10 for 2 quintals as per receipt No. 412. But when the scrap-wood was weighed by the security guards, it was found to be 12 quintals.

(2) The reason for excess scrap-wood is that there is no weighing machine in our company which reason this discrepancy.

(3) When I was informed by the management that I should pay another Rs. 50 for 10 quintals, I did the same, vide receipt No. 456.

(4) Permission for use of vehicle No. BRX 5104 was given to me by Sri Ved Prakash, Senior Engineer.

Thanking you,

Yours faithfully, (Sd.) R.N.Singh Driver

Date 9-10-1974

5. No further enquiry was held thereafter and the impugned order terminating his service and imposing certain penalty was passed and communicated to him by letter, annexure 1. The petitioner, after making a futile attempt before the Labour Superintendent, Bokaro Steel City, filed an application under the provisions of the Bihar Shops and Establishments Act. The management filed their written statement and both sides led evidence. The Presiding Officer of the Labour Court after considering the evidence and circumstances in the case held that the allegations made against the workman were entirely correct and the basic facts on which the inference of guilt can be legitimately drawn, were established even on the show-cause of the workman himself. The action taken by the management did not, therefore, call for any interference.

6. The learned single Judge who heard the writ case agreed with the Labour Court that the application filed before it under the Shops Act was not maintainable. He, however, held that as the workman was misled by the State Labour Agency in approaching the wrong forum, he should not be made to suffer and his claim on merits should be considered by the High Court itself. The learned Judge then proceeded to examine the case of the workman against the order of termination of his service and enunciated the points which, according to him, arose for decision in the last sentence of paragraph 6 of his judgment in the following words:

The question, therefore, boils down to (a) whether Instrumentation Ltd. is an instrumentality or agency of the Government (b) whether the order of termination on the ground of misconduct without holding any enquiry is violative of Article 14 of the Constitution of India and (c) whether the show-cause filed by the petitioner is an admission of his guilt.

7. Overruling its objection, the company was treated to be "State" for the purposes of Part III of the Constitution. It was further held that since no enquiry was made after receipt of the workman's show-cause, the termination order in annexure "I" was in violation of Article 14 of the Constitution and, therefore, fit to be quashed. The finding of the Labour Court on the merits of the case was set aside as being "non est" on the ground that the application before it was not maintainable. The learned Judge further observed that a certain part of the ground assigned by the company for dismissing the petitioner could not be treated to be covered by the charges served upon him and that the management appeared to have been unreasonable and vindictive. On the question as to what relief should be granted to the writ petitioner, the learned Judge overruled the

argument of the management based upon the alleged loss of confidence of the employer and held that the workman would be deemed to be in continuous service and would be paid the wages and other benefits for the entire period besides costs of the litigation assessed at Rs. 1,000. This judgment is under challenge before us.

8. Mr. Ranen Roy, appearing for the appellant-company, argued that the company cannot be deemed to be "State" under Article 12 of the Constitution of India and, therefore, the learned single Judge should have confined himself to a consideration of the points available against the order, annexure 4, and should not have enlarged the scope of the writ case. He contended that the issue has to be decided by applying the six tests laid down by the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, . The argument is that although the authorised capital of the company was seven crores, the Government has only 100 shares out of 70,000 and it cannot, therefore, be said that it is a Government company. He pointed out that there was no evidence on record with respect to the tests 2 and 3 relating to expenditure and monopoly. Mr. Roy also relied on the decisions in *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, , and *Sow Prakash Rekhi v. Union of India* 1981 LLJ 79, and on the observation made in the sidelined portion of column No. 1 of page 86 of the judgment in *Heavy Engineering Mazdoor Union Vs. State of Bihar and Others*, . This question has been considered by the learned single Judge in paragraphs Nos. 6 to 8 of his judgment and I agree with his views and I do not consider it necessary to repeat the reasons mentioned therein.

9. The finding of the Labour Court that the application before it under the Shops Act was not maintainable has been affirmed by the judgment under appeal and Mr. Jay Narayan, counsel for the workman, has not challenged its correctness before us. The question, therefore, arises as to whether in the facts and circumstances of the case, the High Court should have exercised its writ jurisdiction directly and quashed the order of the employer appellant-company. Mr. Roy contended that Article 14 of the Constitution is not attracted at all in the present case and the ground mentioned in the judgment under appeal is one based on Article 311 of the Constitution. Since the company cannot be characterised as "State" for the purpose of Article 311 of the Constitution, the writ application should have been dismissed as not maintainable. There appears to be considerable force in the argument. The present case is not one in which the workman-petitioner was not given any opportunity to place his defence at all. The charges were served upon him and he was asked to give his explanation and he actually availed of the opportunity. According to the management, a further enquiry was not called for in view of the statements made in the show-cause. In the opinion of the learned single Judge, the writ petitioner ought to have been called upon to lead his evidence. The issue thus related to the question whether the opportunity afforded to the workman was adequate or not, and depended on a correct interpretation of the facts and circumstances of the case. Mr. Roy relied on the observations in paragraph 29 of the judgment in *The Workmen of*

Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, , and in State of Jammu Kashmir Vs. Mir Gulam Rasul, , in support of his point that non-holding of a formal domestic enquiry does not amount to a violation of the fundamental rights. He pointed out that in the Firestone case (supra), it was said that if a workman is dismissed without holding an enquiry or if the enquiry held is found to be defective, the employer and employee were entitled to adduce evidence in support of their respective cases. In State of Jammu and Kashmir v. Ghulam Rasool, (supra), a similar question was considered in paragraph 6 of the judgment and was answered against the writ petitioner. In Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, , the distinction between labour cases and cases of Government servants has been emphasised in the following words at p. 110:

...If disciplinary enquiry has not preceded the prejudicial order in the case of a Government servant, the action would be bad while in the case of a workman, the order could be justified even in the course of adjudication before the appropriate Tribunal under the Industrial Disputes Act even though no enquiry had been undertaken earlier.

The decision in Burn and Co., Calcutta Vs. Their Employees, , also supports the company. Otherwise, the Supreme Court would not have, in p. 234 of the judgment, rejected the claim of reinstatement made by the workman A. Banerjee "on the ground that he had been discharged without the company framing a charge or holding an enquiry, and that the rules of natural justice had been violated." On a consideration of the circumstances of this case, in the light of the decisions referred to above, I hold that the irregularity pointed out by the counsel of the workman did not come within the purview of Article 14 or any other Article of Part III of the Constitution. It is firmly established that merely because a juristic institute may be an "authority" and, therefore, "State" within the meaning of Article 12, it is not relegated to the position of "State" for the purpose of the other parts of the Constitution. The writ application, therefore, should have been dismissed in all the absence of a ground based on violation of fundamental rights.

10. Assuming that it was permissible to examine the ground urged on behalf of the workman that the opportunity given to him was not adequate, I would hold that in view of the circumstances of the case, the point was fit to be rejected. The observations of the Supreme Court in The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, and Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, , on this aspect are illuminating. In the first case, a workman allegedly violated the provisions of the Coal Mines Regulations and after giving him an opportunity for an explanation in writing, the Regional Inspector recommended cancellation of the certificate under Regulation 26(3). The Board of Mining Examination, acting on the recommendation but without giving a fresh notice to the workman or holding an enquiry in his presence, cancelled the certificate. This order was quashed by the

High Court, *inter alia*, on the ground that the Board should have given an opportunity to the workman before the cancellation of the certificate and its absence violated natural justice, voiding the order. The judgment was reversed by the Supreme Court, and while so doing, it was said that if fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice without reference to the administrative realities and other factors of a given case, can be exasperating. If the totality of the circumstances satisfies the Court that the party visited with an adverse order has not suffered from denial of reasonable opportunity, the court should decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures. In *Union of India v. Sankalchand Himatlal Sheth*, (*supra*), the Supreme Court reiterated the observations in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , that the aim of the rules of natural justice is to secure justice or, to put it negatively, to prevent miscarriage of justice. The court has to decide with reference to the circumstances of a given case whether observance of a particular rule of justice was necessary for a just decision. Examining the circumstances of the present case in the light of these decisions, I hold that the petitioner did not suffer any prejudice whatsoever, and annexure 1 was not liable to be quashed on this ground.

11. In the alternative, it was urged on behalf of the company that the High Court, if it undertook to decide the dispute on merits, should have given the appellant an opportunity to lead its evidence in proof of the charges. It was stated by Mr. Roy before us that he represented the management before the learned single Judge also and that it was not indicated at any stage that the High Court would examine on merits the correctness or otherwise of the charges levelled against the workman and consequently the case of the company was not presented in that light. In the written submission filed on behalf of the workman after the close of the arguments in the case, it was stated as follows:

The record of the proceedings before the writ court and the judgment under appeal would show that the parties were asked to file affidavits and bring such other materials on record as they wished to. Taking advantage of the same, the appellant placed its original record relating to the matter in controversy in a bid to justify the impugned order of termination t at failed to satisfy the writ court on this point.

It was mentioned by the lawyer of the company, later, that a copy of the argument had not been served upon him. The case was directed to be placed for further hearing and on 17th September 1987, supplementary arguments were addressed. A reply by the appellant's counsel was also filed denying the statement. It is said that the company had referred to only two documents before the learned single Judge, namely, articles of association and show-cause filed by the workman and no argument based on any other document was

addressed. In view of the contradictory statements made on behalf of the parties before us, we asked learned Counsel for the workman-respondent to point out as to which order in the order-sheet of the writ case or which part of the judgment under appeal, indicated that the opportunity as alleged was given to the company and was availed of. Learned Counsel went through the records thoroughly and conceded that the statement in the written submission was made on the impression and was not supported by records. I have also gone through the entire order-sheet of the writ case and do not find any order in support of the assertion made on behalf of the workman. The position of the judgment under appeal is also the same. According to the version of Mr. Roy, when during the hearing of the writ case in 1985, it was suggested on behalf of the workman that the High Court may directly examine the validity of the order of termination of service passed by the employer, the question whether the company was an instrumentality of the "State" or not arose and a very brief supplementary affidavit in this regard was filed thereafter on 3rd January 1986, on behalf of the workman without giving any details and neither side dealt with the merits of the charges. On behalf of the company the articles of association was referred to in relation to this point only. The judgment under appeal corroborates the stand taken by Mr. Roy on behalf of the appellant and I accept the same as correct.

12. In both the impugned annexures 1 and 4, it has been said that the statement made in the show-cause of the workman amounted to admission of such facts which established the charges. The learned single Judge has not approved this interpretation of the written statement and his view has been challenged by Mr. Roy as not correct, inter alia, on the ground that the High Court while deciding the case was not sitting in appeal. It is submitted that the finding of the employer was based on relevant materials and its correctness could not be questioned before the High Court by a writ application. Learned Counsel appears to be right.

13. In paragraph No. 9 of the judgment under appeal it was observed that the second ground in annexure 1 (letter of termination) which runs as follows, was not mentioned in the charge:

You are not authorised to drive company's truck, which was done voluntarily by you.

The third ground given in annexure 1 is:

No permission for using the truck for transporting the wood was given to you by the company's authorised representative.

Mr. Roy pointed out that in the show-cause notice, the workman was asked to give his explanation in regard to-

(2) The circumstances under which you have used the company's truck without advance and written approval of the competent authority/controlling officer.

In his reply, the petitioner did not suggest that the engineer, Ved Prakash, was

empowered to authorise the use of the truck. It has rightly, therefore, been contended that the second ground in annexure I cannot be deemed to be not covered by the show-cause notice. Learned Counsel is also right in saying that in the absence of a plea that Ved Prakash could have given such permission, which fact has not been asserted by the workman even in this Court at any stage, a further enquiry was not essential. The learned single Judge has further said that the petitioner has stated that he had paid the price for the entire 12 quintals of scrapwood and that "payment of consideration can be a deferred one also" and, as such, the impugned order of termination of service must be struck down as violative of Article 14 of the Constitution. I do not think, the view expressed is correct. The manner in which the price of 12 quintals of scrap wood was deposited is not in dispute. The relevant facts, as stated earlier in this judgment, are established even on the case of the workman, namely, that he had deposited the price of only 2 quintals of wood in advance and the price of additional 10 quintals was paid only when he was stopped by the Security Guard in his attempt to get away with six times the weight he was authorised to take.

14. From these materials the employer came to the conclusion that the charges against the workman had been established. One may not on the basis of these materials draw the same conclusion, but that cannot be a ground for scrutinising the merits of the finding as has been done in the judgment under challenge. The question is as to whether the finding is based on relevant materials, and the answer, in my view, is in the affirmative. Besides, the finding does not appear to be perverse or unreasonable. Further, the employer or its officers do not appear to have acted with malice and the management cannot be condemned for unfair labour practice. I, therefore, hold that the order in annexure 1 was not liable to be quashed.

15. So far as the order of the Labour Court, annexure 4, is concerned, the finding that the workman's application was not maintainable is not under challenge. The question is as to whether the Labour Court was justified in examining the merits of the respective cases of the parties with respect to the charges. The Court could have refrained from so doing but it has to be remembered that the workman was at that stage not accepting the position that his application was misconceived and was pressing for a decision on merits. Acceding to his prayer, the Labour Court proceeded further. The Court was presumably following the observations in many authoritative decisions deprecating dismissal of labour cases on preliminary grounds and recommending decisions on all the points. However, the finding in annexure 4 on the merits may be held not to be binding on the workman if he takes any further step under a relevant labour Act.

For the reasons indicated above, the judgment in the writ case is fit to be reversed and the writ application to be dismissed. Before concluding, however, I would mention several other points urged on behalf of the appellant-company.

16. Mr. Roy contended that, having regard to the nature of the charges levelled against the workman and the protracted litigation which has further embittered

the relations between the parties, the order of reinstatement of the writ-petitioner should not have been passed. Reliance was placed on Chandu Lal Vs. Management of Pan American World Airways Inc., dealing with the effect of loss of confidence of the employer. Our attention was also drawn to the fact that the company could not be held to be responsible for the considerable delay in the petitioner's approaching this Court, and he, therefore, should not have been held entitled to the wages during which period he did not render any service. The direction in regard to payment of a sum of Rs. 1,000 by way of costs over and above Rs. 1,410 allowed earlier for postponement of the case on the ground of the illness of the company's counsel, was also challenged. As the appeal succeeds, these points have become redundant.

17. In the result, the judgment allowing the writ case is set aside and the writ application is dismissed, subject to the observations in paragraph 8 of Chandu Lal Vs. Management of Pan American World Airways Inc., . The parties shall bear their own costs, but the company shall not be entitled to recover the amount of Rs. 1,410 already paid to the workman as adjournment cost.

Per S.C. Mookherji, J.

While agreeing with my learned brother that the appeal has to be allowed, I would like to add a few words of mine. As indicated already, the learned single Judge was of the view that the impugned order of termination of service of the workman-respondent is fit to be struck down as violative of Article 14 of the Constitution. In the instant case, on the facts and circumstances, the view expressed by the learned single Judge does not appear to be correct. Here, most of the facts go admitted and there is also no controversy that in pursuance of the show-cause notice, the workman-respondent in clear words admitted to have been carrying much more fuel-wood than what he was entitled to. Thereafter, on a consideration of this aspect of the matter, the termination order was issued. A case has, however, been sought to be made out by the workman-respondent that the order of termination was passed without giving him any chance to place his defence. But, after the show-cause, it would have been a futile attempt to make any such exercise. The Supreme Court has pointed out in the case of State of Haryana and Another Vs. Rattan Singh, , that in a domestic inquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. It is true that the provisions of the Evidence Act are not applicable in this case, but one cannot overlook the principles embodied in Section 58 of the Evidence Act which lays down that facts admitted need not be proved and therefore where the facts are admitted and those are sufficient to make out a case of misconduct, etc., any further departmental inquiry would have been an empty formality.

19. In K.L. Tripathi Vs. State Bank of India and Others, , it has been observed at p. 11 that:

The basic concept is fair play in action- administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be

any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified is in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no dispute regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.

The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind his back, cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination, specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts, but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.

20. In the case in hand, on the admitted facts, the management rightly came to the conclusion that the workman-respondent was guilty of theft, breach of trust and faith and, therefore, they were entitled to terminate his services in accordance with the standing orders. In any event, in view of the conduct of respondent No. 2, which becomes evident from the facts aforementioned, he has disentitled himself from obtaining an equitable relief from this Court.