
(2012) 07 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No's. 11236-237 of 2012

John D'souza

APPELLANT

Vs

Divisional Controler, K.S.R.T.C., Bangalore

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33 (1) (a)

Citation : (2012) 135 FLR 731 : (2013) 1 LLN 500 : (2013) LLR 105

Hon'ble Judges : S.B. Adi, J

Bench : Single Bench

Advocate : John D'souza, for the Appellant; B.L. Sanjeev, for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi, J.—These writ petitions are by the workman, questioning the order on preliminary issue dated 16.3.2012 in Serial Application No. 1/2010 in Ref. No. 243/2006, pending on the file of 1st Additional Labour Court, Bangalore.

Petitioner was subjected to a domestic enquiry on the charge of remaining unauthorized absent from 18.8.2005 to 29.10.2005 for 72 days. However, the Enquiry Officer records as absent till the date of enquiry. In this regard, a domestic enquiry was held. The Enquiry Officer submitted his report holding that the charges are proved. The Disciplinary Authority, based on the enquiry report issued a second show cause notice to the petitioner and petitioner gave his reply to the said second show cause notice. The Disciplinary Authority having not satisfied with the explanation and by accepting the findings of the Enquiry Officer, held that the misconduct is proved and awarded major punishment of dismissal from service. Since the reference was pending under the provisions of the Industrial Disputes Act (for brevity "the Act") in Reference No. 243/2006, the Corporation filed an application seeking permission to dismiss the petitioner from service as required u/s 33(1)(a) of the Act. While hearing the said application, the Labour Court framed an issue "as to whether the enquiry is fair and proper".

On the said issue, the Labour Court gave a finding that the enquiry is fair and proper. As against the said finding, this writ petition has been filed.

Petitioner appeared as party in person and contended that the petitioner had no opportunity before the Enquiry Officer, as such, the enquiry report submitted by the Enquiry Officer is violative of the principles of natural justice and consequently, enquiry is not fair and proper.

2. To substantiate his contention, he relied on the findings of the Labour Court on preliminary issue and submitted that, though he had remained absent between 11.3.2010 to 12.8.2010, however, when the enquiry was fixed on 15.4.2010, he could not be present on 15.4.2010, as his mother was suffering from illness and she died on 25.4.2010, as such, he could not appear before the Enquiry Officer on 15.4.2010. On 13.5.2010 also he could not appear, as he was in his native place, hence, he had not received the notice. The notice of the enquiry fixed on 4.6.2010 was served on petitioner at 3.30 p.m. on the very date of enquiry, as such, by the time he went to the office of the Enquiry Officer, he had concluded enquiry at 11.00 a.m. itself. Before the next date of hearing, petitioner had sent request adjournment letter 17 days in advance to the next hearing date inter alia stating that, his lawyer at Delhi had requested him to go to Delhi, as such he was not in Bangalore between 6.7.2010 and 16.7.2010. Despite the advance adjournment letter, the Enquiry Officer closed the case on 15.7.2010 and posted the matter for written argument on 12.8.2010. On 12.8.2010 also, the petitioner could not be present, as he was issued with a warrant to appear before the Criminal Court in C.C. No. 3824 of 2009. Accordingly, he appeared before the Criminal Court. However, he had sent an adjournment letter to the Enquiry Officer through one of his friends, but the letter had reached the Enquiry Officer only at 16:05 hours, as the person, who had taken the request adjournment letter was not permitted inside the Regional Office, since the visiting time was only after 3 p.m. As such, the default on the part of the petitioner was neither deliberate nor intentional but bona fide. Hence, the enquiry conducted without any opportunity to the workman is not fair and proper, as such, the same vitiates.

3. He relied on the judgment of this Court in the matter of *The Management of M/s- Siruguppa Sugars and Chemicals Ltd. v. C.S. Mohan and another*, 2003 (98) FLR 421 (Kar.) and submitted that, even against the order on the preliminary issue, the writ is maintainable. He also relied on the judgment of the Apex Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, in the matter of *The Workmen of M/s. Firestone Tyre & Rubber Co. of India P. Ltd. v. The Management and others* and submitted that, an enquiry without opportunity to the workman is not sustainable.

4. He further contended that, nearly 25 adjournments were granted to the management, however, as far as the petitioner is concerned, the Enquiry Officer being biased against him, deliberately did not adjourn the matter at the request of the workman and concluded the same without giving an opportunity to the petitioner.

5. On the other hand, learned Counsel appearing for the Corporation submitted that, on 11.3.2010, the matter was fixed for evidence. However, the enquiry was adjourned at the request of the workman accordingly, it was fixed on 15.4.2010, though the workman was aware of the date, he remained absent. The Enquiry Officer for the absence of the workman posted the matter on 13.5.2010. The notice of hearing of the enquiry dated 13.5.2010 was also sent to the address given by the workman. Though the intimation was also sent at the address of the workman, workman still remained absent. Thereafter also the Enquiry Officer sent another notice of the hearing dated 4.6.2010. On 4.6.2010 also, the workman remained absent and despite the workman remaining absence on 4.6.2010, the Enquiry Officer shown further indulgence by adjourning the matter on 15.7.2010. Despite the workman remained absent for several occasions, the Enquiry Officer after giving sufficient opportunity had posted the matter for written arguments. Having noticed the series of adjournments and also having noticing that the workman is not showing any interest in appearing before the Enquiry Officer, the Enquiry Officer found that, no purpose would be served in adjourning the matter again and again, closed the defence evidence and posted the matter for argument on 12.8.2010. Even on 12.8.2010, the petitioner remained absent and as such, the Enquiry Officer based on the evidence submitted his report.

6. Learned Counsel for respondent submitted that, the fairness of the enquiry does not mean that the Enquiry Officer should go on granting dates as and when the workman remains absent. He has shown over-indulgence to the workman by adjourning the matter on several occasions and having adjourned on several occasions and having found that the petitioner has not shown any interest in the matter, has submitted his report.

7. The Labour Court taking into consideration all these circumstances has found that the enquiry is fair and proper. Apart from this, though the contention is raised before the Court that the petitioner's mother expired on 25.4.2010. Such contention was never raised before the Labour Court nor any document is produced. Even assuming that there was such an unfortunate incident in the family of the workman, but the workman thereafter also has not shown any interest in the matter. Hence, findings of the Labour Court do not call for interference.

8. In a dispute raised before the Labour Court a preliminary issue as to the fairness of the enquiry as required is framed. In this case also, when the management made application for permission to pass an order of dismissal against the petitioner in Reference No. 243/2006, the Labour Court before going into the victimization and proportionality of punishment, has considered the issue as to the fairness of the enquiry. While considering the fairness of the enquiry, it has considered the proceedings of the Enquiry Officer and by the impugned order, it has held that the enquiry is fair and proper.

9. The scope of interference under Articles 226 and 227 of the Constitution of

India on an interlocutory order is very limited. However, the petitioner being a party-in-person, argued at length to substantiate that no fair and proper enquiry was conducted by the Enquiry Officer.

10. Petitioner is not disputing that he had remained absent before the Enquiry Officer from 11.3.2010 to 12.8.2010. Case of the petitioner is that, on 15.4.2010 though he knew the date, however, because of ailment of his mother, he could not appear before the Enquiry Officer. Assuming that there was an unavoidable circumstance, which could not permit the petitioner to attend the enquiry on 15.4.2010, at least he could have sent the intimation to the Enquiry Officer in this regard. It is submitted that, the petitioner's mother died on 25.4.2010, but between 25.4.2010 and the next date of hearing, there was a gap of nearly 18 to 19 days and petitioner himself was facing a domestic enquiry, as a diligent person at least on 13.5.2010, he should have appeared, but the explanation offered by the petitioner is that, on that day also, he was not in Bangalore and he had gone to his native place. It only shows that, for the petitioner, a domestic enquiry in his own case did not become important. Further, from the proceedings before the Enquiry Officer, it is clear that, petitioner does not even care to know the next date of hearing. In turn, another notice was sent intimating the next date of hearing as 4.6.2010. However, even on 4.6.2010, the petitioner does not appear and his explanation is that, notice was served on him only on 4.6.2010, as such, he could not appear in time. Even if it is accepted that he could not appear on 4.6.2010, atleast on the next date of hearing, he should have appeared, having regard to the several adjournments. In the notice dated 4.6.2010, it is specifically mentioned that the same is a final notice issued to the petitioner to appear before the Enquiry Officer. Petitioner does not take it seriously. Even on 4.6.2010 also he does not appear before the Enquiry Officer. On 4.6.2010 also, the Enquiry Officer again adjourns the matters to 15.7.2010. 17 days before 15.7.2010, the petitioner sends an application to the Enquiry Officer informing that he will not be available in Bangalore from 6.7.2010 to 16.7.2010, as he is required to attend a matter in Supreme Court at Delhi and that matter is urgent. Now when the final notice is issued to the petitioner to appear before the Enquiry Officer and the enquiry is being held against the petitioner in his own case, still the petitioner ignores the same and he avoids the attending the hearing on 15.7.2010. This conduct of the petitioner also shows that the enquiry in his own case is not important, and does not give any importance to the same. He further does not appear even on 12.8.2010 on the ground that, a warrant was issued asking him to appear before the Criminal Court and to substantiate the same, he sends adjournment letter, which was received by the Enquiry Officer at 16:05 hours on the said date i.e., after the conclusion of the enquiry. Along with the said letter, he also mentioned the criminal case and he has also substantiated before the Labour Court that on 12.8.2010, he had appeared before the Criminal Court.

11. Even taking into consideration that, he had appeared before the Criminal Court and he could not appear before the Enquiry Officer, whether the workman

was justified in not appearing before the Enquiry Officer even after giving several adjournments. The contention that in case of the management, nearly 25 adjournments were granted, is not a ground not to appear before the Enquiry Officer.

12. The Apex Court on the question as to violation of principles of natural justice in a judgment in the matter of *State Bank of India v. Hemant Kumar*, 2011 (129) FLR 553 (SC). has observed the extent to which the principles of natural justice is applicable, the principles of natural justice cannot be stretched to a point where they render in-house proceedings unworkable.

12. We are of the view that both the reasons assigned by the Tribunal for condemning the departmental enquiry as defective are completely intertable. The principles of natural justice cannot be stretched to a point where they would render the in-house proceedings unworkable. Admittedly, the respondent had not appeared for the enquiry on two earlier dates. On the third date too he was absent and there was no intimation from him before the enquiry officer, yet to Tribunal insists that it was the duty of the enquiry officer to find out from the department concerned of the bank whether any intimation or application was received from the respondent.

13. Let us take a case where the enquiry is not being held in the bank premises or even in the same town, where the branch of the bank concerned is located. In such a situation, it may take hours or even a day or two to find out whether any letter or intimation from the person facing the inquiry was received in the bank and for all that time the Enquiry Committee would remain suspended animation. The Tribunal's observation that it was only the third date of hearing and hence, it could not be said that the respondent had adopted dilatory tactics can only be described as unfortunate.

13. From the observation of the Apex Court makes it clear that, the principles of natural justice cannot be stretched to a point where they would render the in-house proceedings unworkable. In the said case, the workman had remained absent on third date also. The Apex Court has held that, principles of natural justice cannot be stretched to render the enquiry itself as unworkable.

14. Admittedly, it is a domestic enquiry. A person, who is subjected to enquiry having given the notice of dates of hearing in advance and does not avail the opportunity given to him and remains absent one after another date of hearing, he cannot claim that there is violation of principles of natural justice. The principles of natural justice, no doubt, requires an opportunity to be given to a person likely to be affected, but the opportunity given to the person, if it is not utilized, he cannot claim that there is violation of principles of natural justice. Assuming that in this case, on 15.4.2010, the petitioner could not appear, but nothing prevented him from appearing on 13.5.2010. He himself being facing the enquiry, it is his duty to attend the enquiry proceedings on 15.4.2010 the date which was known to him, he should have appeared before the Enquiry Officer,

instead, petitioner claims as a matter of right to remain absent. One, who is not diligent in his own proceeding, cannot allege that the proceedings are vitiated as violative of principles of natural justice. The reasons given for not attending the enquiry is per se not acceptable.

15. In my opinion, though this Court is not required to interfere with the interlocutory orders, however, the workman - party-in-person insisted to consider the matter by considering the findings given by the Labour Court, accordingly, it was considered.

16. I hold that the Enquiry Officer has given the opportunity and the said opportunity was not utilized by the workman, as such, it cannot be said that there is violation of principles of natural justice. Considering the above circumstances, I find that there is no error in the findings of the Labour Court on the preliminary issue.

Accordingly, the petitions fail and are dismissed.