

(1993) 07 GAU CK 0021
In the Gauhati High Court
Case No : Civil Rule No. 1309/88

Jorhat Industries

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 13-07-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1995) 1 LLJ 747

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : D.C. Mahanta, for the Appellant; A. Hazarika, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This application under Article 226 of the Constitution of India arises out of an Order dated September 14, 1986 passed by the Presiding Officer, Industrial Tribunal, Dibrugarh, in reference Case No. 8 of 1981. By that the application u/s 33(2)(b) of the Industrial Disputes Act was disallowed by the Tribunal.

2. The brief facts of the case are as follows:

The petitioner herein, i.e. M/s. Jorhat Industries, Kushal Path, Jorhat, filed an application u/s 33(2)(b) of the Industrial Disputes Act to accord approval to the order of dismissal passed on the workmen. The case of the petitioner is that the Respondents, in the Civil Rule No. 2 to 6 were charge sheeted vide charge sheet dated April 1, 1981 for acts of gross misconduct and they were asked to submit their written explanation. The Respondents No. 2 to 6 did not file any explanation and the domestic enquiry was thereafter held. The Respondents earlier participated in the enquiry but later on they abandoned the enquiry. In the domestic enquiry the charges levelled against the workmen were fully established. The management having applied its mind to the enquiry found the Respondents guilty of gross misconduct and dismissed them from their services.

That earlier to it reference No. 2/81 was pending before the Industrial Tribunal where the Respondents were concerned and as such the application as stated earlier was filed for approval. It was stated in the application that salary of one month was offered to the Respondents as required by law. Before the Tribunal the management sought permission to proceed on merit on the allegations against the Respondents, stated to be prayed orally. The learned Tribunal on consideration of the materials on record inter alia held as follows:-

1. By an order dated June 20, 1986 the domestic enquiry was held to be unfair having found the same to be defective.

2. Thereafter the management sought permission to proceed on merit to prove the allegations against the Respondents No. 2 to 6. This permission originally was alleged to be sought orally but subsequently on the date of hearing i.e., July 14, 1986 an application filed on January 22, 1985 was traced out from the record.

3. The Tribunal also found that in the original application which was filed on August 18, 1981 no permission was sought to justify the domestic enquiry.

4. The application filed by the management became ready for hearing and the management thereafter took time again and again, ultimately only on January 22, 1985 the application for permission to justify the domestic enquiry was filed and the Tribunal found that there was delay of about 3 1/2 years in filing this later application for permission, even this application was not moved and order was not obtained.

3. As stated earlier by order dated June 20, 1986. the domestic enquiry was found to be defective and only after this the management wanted to proceed to lead evidence to justify the domestic enquiry and the learned Tribunal rejected this prayer on the ground of delay relying on a Supreme Court decision mentioned in the award itself.

4. The law on this point is settled by a decision of the Supreme Court reported in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, wherein in paragraph 61 of the Supreme Court pointed out as follows:-(p. 199)

"But if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give the same opportunity to the employee to lead evidence contra, as the request to adduce evidence have been made by the management to the Tribunal during the course of the proceeding and before the trial has come to an end".

The Supreme Court further points out in the same decision that "the management has got right to attempt to substantiate its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed or asked for by the management before the proceedings are closed, the employer can make

no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceeding and it has to decide whether the proceedings have been held properly and the evidence recorded therein are also proper".

5. In the case before the Supreme Court, the Supreme Court on the facts of that case found that the application filed by the management for permission to adduce evidence was highly belated. The Supreme Court in the paragraph 62 of the Judgment pointed out as follows:

"It is no doubt true that the management has got a right to adduce evidence before the Tribunal in case the domestic enquiry is held to be vitiated. The Tribunal derives jurisdiction to deal with merits of dispute only if it was held that the domestic enquiry has not been held properly. But the two stages in which the Tribunal has to conduct the enquiry are in the same proceeding which relates to the consideration of the disputes regarding the validity of the actions taken by the management. Therefore, if the management wants to avail itself of the rights, that it has either to adduce the evidence simultaneously with its reliance on the domestic enquiry or should ask the Tribunal to consider the validity of the domestic enquiry as a preliminary issue with a request to grant permission to adduce evidence if the decision of the preliminary issue is against the management and an enquiry in the preliminary issue in the course of the proceeding and hence, the opportunity given to the management after a decision on the preliminary issue is really a continuation of the same proceeding before the Tribunal".

7. In the case before the Supreme Court the application to adduce evidence was filed after the argument was closed and Supreme Court found that application to be belated one. In the case now before us the validity of the domestic enquiry was decided by the Order dated June 20, 1986 and as it appears from the order sheet of the Tribunal, at no point of time the application dated January 22, 1985 was moved by the management and no permission was sought to adduce additional evidence. In that view of the matter the findings of the Tribunal on the prayer that after the close of the proceeding it cannot be allowed is perfectly justified and in that view of the matter I decline to interfere with the award. Accordingly this writ application is dismissed.

I leave the parties to bear their own costs.