
(2013) 09 MAD CK 0043
In the Madras High Court
Case No : Writ Petition No. 8886 of 2006

K. Kuberan

APPELLANT

Vs

The Management of Express Publications (Madurai) Ltd. and
The Presiding Officer, Principal Labour Court

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2013) 4 LLJ 422

Hon'ble Judges : K. Ravichandrababu, J

Bench : Single Bench

Advocate : G. Justin, for the Appellant; S. Vijayaraghavan for R1, for the Respondent

Final Decision : Dismissed

Judgement

K. Ravichandrababu, J.—The present writ petition is filed by the workman challenging the order of approval granted by the second

respondent u/s 33(2)(b) of the Industrial Disputes Act, 1947, in discharging the petitioner from service by the first respondent Management. The

case of the petitioner is that he was appointed as Semi Skilled Ballar in Electrical Department under the first respondent Management on

10.3.1982. The first respondent declared lock out from 24.9.1995 and insisted the workers to give an undertaking to leave the Welfare Union and

to join the Indian Express Workers" Union, which the petitioner refused. Thereupon, the first respondent placed the petitioner under suspension on

3.10.1995. A charge memo was issued on 15.11.1995. An enquiry officer was appointed to enquire into the charges. The petitioner did not

participate because the enquiry officer was biased.

2. The petitioner also stated that he was not paid traveling allowance, though the

enquiry was conducted outside the office. However, the enquiry was proceeded and the enquiry officer gave his findings on 25.4.1997 against the petitioner. Accepting the said findings, the Management imposed the punishment on the petitioner by discharging him from service, by an order dated 7.4.1999. Since the industrial dispute was pending before the labour Court in I.D. No. 391 of 1998, the Management filed an application u/s 33(2)(b) of the Industrial Disputes Act, 1947, seeking for approval of the discharge order. The said application came to be allowed by the impugned order dated 5.5.2004. Hence, the present writ petition is filed before this Court.

3. The Management resisted the above writ petition and filed a detailed counter.

4. The learned counsel appearing for the petitioner submitted as follows:

5.1. The enquiry was not properly conducted. When the Management has chosen to conduct the enquiry outside the factory premises, the petitioner was not given the traveling allowance. The petitioner sought for change of enquiry officer and the same was not considered by the Management. The charge sheet given to the petitioner did not contain the list of witnesses or the documents that were to be relied upon by the Management. The enquiry was conducted ex-parte wherein 9 witnesses were examined and 49 documents were marked. Out of the 49 documents, many were in relation to the statements given by some third parties which were recorded behind the back of the petitioner. Thus, the core contention of the learned counsel appearing for the petitioner is that there is a clear violation of principles of natural justice in conducting the enquiry and consequently, the second respondent was not justified in granting the approval u/s 33(2)(b) of the Industrial Disputes Act, 1947.

5. Per contra, the learned counsel appearing for the first respondent Management submitted that nothing was done behind the back of the petitioner during the enquiry and on the other hand he was given sufficient opportunity. The learned counsel invited the attention of this Court to various dates and events and submitted that during the enquiry, at every stage, the petitioner's request was considered by the Management and in spite of the same, the petitioner failed to participate in the enquiry and deliberately stayed away with the ulterior motive. He further submitted that enquiry was conducted only at Chennai and therefore, there is no question of

granting any traveling allowance and there is no Rule, which provided for granting such allowance.

6. He further submitted that normally, charge sheet given to the delinquent will not contain the list of witnesses or the documents to be marked during the enquiry. Only at the time of conducting the enquiry, those details will be given to the delinquent so as to enable him to defend the case.

7. He further submitted that the proceedings u/s 33(2)(b) of the Industrial Disputes Act, 1947, is summary in nature and therefore, the second respondent has rightly allowed the application and granted the approval by taking note of the fact that a proper enquiry was conducted by the Management.

8. He further submitted that mere granting of approval u/s 33(2)(b) of the Industrial Disputes Act, 1947, does not preclude the petitioner from challenging the order of punishment separately and therefore, it is the contention of the learned counsel that the petitioner is in no way prejudiced

by the order granting approval. It is also submitted by him that the petitioner has not so far filed any industrial dispute challenging the punishment

order of discharge. In support of his contentions, the learned counsel appearing for the first respondent relied on the following decisions in Bank of

India Vs. Apurba Kumar Saha, , Management of Binny Ltd., Engineering Division Vs. Presiding Officer, Industrial Tribunal and Another, and

Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, .

9. Heard the learned counsel appearing on either side and perused the materials produced before this Court.

10. The point for consideration in this writ petition is as to whether the grant of approval by the second respondent u/s 33(2)(b) of the Industrial Disputes Act, 1947, is valid or not.

11. Before considering the said issue, it is to be noted that what was sought by the Management before the second respondent was an approval of

the order of punishment and that granting of such approval does not preclude the employee from challenging the order of punishment in a separate

proceedings. The Hon'ble Supreme Court has considered the very same issue in Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and

Another, . The Apex Court has held in paragraph 6 of the said decision that the only scope of the enquiry before the Tribunal exercising jurisdiction

u/s 33 is to decide whether the ban imposed on the employer by that Section should be lifted or maintained by granting or refusing the permission

or approval asked for by the employer. It is observed therein that if the permission or approval is refused by the Tribunal, the employer would be

precluded from discharging or punishing the workman. But the reverse is that even if the permission or approval is granted that would not validate

the action of the discharge or punishment by way of dismissal taken by the employer. It is observed therein that the permission or approval would

merely remove the ban so as to enable the employer to make an order of discharge or dismissal but the validity of the order of discharge or

dismissal would still be liable to be tested in a reference at the instance of the workmen u/s 10. Thus, the validity of the discharge is still open to be

challenged by the workman, even after the grant of approval u/s 33(2)(b) of the said Act. Therefore, this Court in this proceedings cannot go into

the correctness or otherwise of the order of discharge passed by the first respondent Management. So, what is to be seen is as to whether the

grant of approval as contemplated u/s 33(2)(b) of the Industrial Disputes Act, 1947, has been validly made or not.

12. The only grievance of the petitioner is that the enquiry was not conducted properly and therefore the same having been done as an ex-parte

enquiry, the second respondent ought not to have granted the approval. Thus, we need to find out as to whether such grievance of the petitioner is

well founded.

13. The learned counsel appearing for the first respondent Management, in the additional typed set of papers, placed certain dates and events, that

had taken place during the course of enquiry. He submitted that those dates and events were extracted from the enquiry proceedings. The said

details furnished by the first respondent in the additional typed set of papers are not disputed by the learned counsel appearing for the petitioner. In

fact, the learned counsel appearing for the first respondent invited the attention of this Court to the minutes recorded at every day proceedings of

the enquiry. The dates and events given by the first respondent are extracted hereunder:

8.4.1996 Petitioner's request for advocate assistance was considered and allowed

25.06.96 Management's documents filed

26.08.96 petitioner raised objections against the participation of Advocate on behalf of the

Management

20.09.96 Petitioner raised the same issue again and refused to co-operate in the enquiry

17.10.96 Petitioner refused to co-operate in the enquiry and informed he will walk-out from the

enquiry if the management's first witness is taken. Given LAST CHANCE

20.11.96 Petitioner took the same stand. Another opportunity is given.

17.12.96 Petitioner took the same stand Given LAST CHANCE second time.

08.03.97 Management's advocate representative is withdrawn. Personnel Officer of the

Management is appointed as Management Representative. Petitioner, raised some other demands, like the enquiry to be conducted in the company premises etc. and

walked-out of the enquiry. Management first witness recorded in his absence. The witness recording and sent to Petitioner by Regd. Post with Acknowledgment Due duly giving opportunity to Petitioner for cross examining him.

08.04.97 Petitioner not attended the enquiry. He was set exparte.

Second witness of Management recorded.

22.04.97 Management's 3rd, 4th, 5th and 6th witness recorded

24.04.97 Management 7th, 8th, 9th witness recorded.

Enquiry concluded.

14. From the perusal of the dates and events, it would show that the petitioner was originally sought for permission for assistance of an Advocate

on his behalf. It is seen that the said request was considered and allowed by the enquiry officer on 8.4.1996. However, the petitioner thereafter

objected to the presence of an Advocate on behalf of the Management on 26.8.1996. On that ground, he refused to co-operate with the enquiry

and the matter was adjourned on several occasions commencing from 26.8.1996 to 17.12.1996. Thereafter, the Management had withdrawn their

Advocate's presence and Personnel Officer of the Management was appointed as the Management Representative. This happened on 8.3.1997.

Even then, the petitioner did not co-operate with the enquiry and participate. However, he raised another demand by saying that enquiry should be conducted only in the Company premises and the petitioner should be paid the traveling allowance. At this juncture, it is to be noted that the petitioner has not raised any such objection at the initial stage. Only on 8.3.1997, nearly after one year, he raised the present objection. At any event, as the enquiry was conducted within the same city, the question of granting any traveling allowance did not arise. Further, as to how the petitioner was prejudiced by holding the enquiry outside the company premises has not been explained. When the matter again was posted on 8.4.1997, the petitioner did not attend the enquiry and therefore, he was set ex-parte. Consequently, after examining the Management side witnesses and marking the documents on their behalf, the enquiry was concluded on 24.4.1997. Thus, from these factual details, which are not disputed by the other side, I am of the considered view that the petitioner cannot be permitted to contend that there is violation of principles of natural justice. On the other hand, it only appears that the petitioner wanted to drag on the proceedings one way or the other so as to prolong the enquiry proceedings.

15. When the petitioner sought for assistance of an Advocate during enquiry, the same was allowed by the Management. However, the petitioner objected to the presence of the Advocate on behalf of the Management. I fail to understand as to how the petitioner could make such objection. However, the fact remains that the Management had withdrawn the presence of their Advocate and in spite of such withdrawal, the petitioner did not take part in the enquiry. On the other hand, he raised various new grounds, which, in my considered view, are not reasonable. Therefore, the enquiry officer, rightly, by setting the petitioner ex-parte, proceeded with the enquiry and concluded the same. I find no irregularity or illegality in such procedure. Thus, the petitioner cannot complain of the violation of principles of natural justice.

16. At this juncture, it is useful to refer the decision of the Hon'ble Supreme Court reported in Bank of India Vs. Apurba Kumar Saha, .

Paragraph 4 of the said decision reads as follows:

4. Having regard to the arguments addressed by learned counsel on both sides

we have gone through the papers and seen that the High Court's view that there was violation of principles of natural justice, in conducting the disciplinary proceedings against the respondent, was wholly unjustified. The records of the disciplinary proceedings show that the respondent had avoided filing of the written explanation for the charges of misconduct levelled against him and also had for no valid reason refused to participate in the disciplinary proceedings. A Bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceeding of defending himself against the charges of misconduct involving his integrity and dishonesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself of the charges levelled against him and the disciplinary proceeding conducted against him by the Bank-employer had resulted in violation of principles of natural justice of fair hearing.

(Emphasis supplied)

17. The learned counsel appearing for the first respondent also relied on the decision of the learned Judge of this Court in Management of Binny

Ltd., Engineering Division Vs. Presiding Officer, Industrial Tribunal and Another, wherein the learned Judge observed as follows:

10...The sequence of events referred to above would clearly indicate that opportunities of explaining the charges against the workman have been

given, but the tenor of the letters submitted by the workman/second respondent right from the reply to the show-cause notice and even after the

conclusion of the enquiry before the enquiry officer, would manifestly indicate that the workman was not inclined to participate in the enquiry and

he was gathering materials for future litigation. The persistent request of the second respondent for the Tamil version of the notice, dated April 20,

1992, would clearly prove the abovesaid intention of the second respondent. When such notice is of no consequence, his persistent request for the

Tamil version and the non-furnishing of such Tamil version of the notice cannot at all be regarded to be a violation, which caused prejudice to the

respondent in participating in the enquiry. One cannot import fine principle of law and weigh the same in golden scales to come to the conclusion

that the principles of natural justice have been totally violated.

12...The term ""natural justice"" should not be expanded beyond a limit by which

a person cannot be allowed to take undue advantage and make the enquiry as a mockery. Useful reference can be had to the judgment of the Supreme Court in the case of The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, .

Considering the above said decisions of the Apex Court and the learned Judge of this Court, I am of the view that the petitioner is not justified in contending that there is violation of principles of natural justice. On the other hand, he was given sufficient opportunity to defend his case, which he failed to utilise. Having failed to utilise such opportunity, he cannot contend that the documents marked by the Management were in support of the statements recorded behind the back of the petitioner. Likewise, as rightly pointed out by the learned counsel appearing for the first respondent, charge sheet need not contain the list of witnesses and the documents, which are to be relied on by the Management. If those details are furnished to the delinquent before commencing the enquiry, it would serve the purpose. Therefore, the grounds raised by the petitioner in this writ petition is totally unsustainable and therefore, I am of the considered view that the petitioner has not made out a case for quashing the impugned order.

Accordingly, the writ petition is dismissed. No costs.