

(1979) 07 GUJ CK 0002
In the Gujarat High Court

Kanabhai Nagajan

APPELLANT

Vs

Brooks Bond (India) Ltd.

RESPONDENT

Date of Decision : 26-07-1979

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(c), 10(1)(c), 11A

Citation : (1980) 21 GLR 724

Hon'ble Judges : B.J. Divan, C.J;R.C. Mankad, J

Bench : Division Bench

Judgement

R.C. Mankad, J.—The petitioner who was a workman in the employment of the respondent has challenged the judgment and order dated December 15, 1978 passed by the First Labour Court, Rajkot, remanding the matter to the management with a direction to give a show cause notice to him and to consider his explanation with regard to the punishment sought to be imposed on him.

2. Petitioner was in the employment of the respondent and serving as a watchman at Jamnagar. He was found drunk and behaving in a disorderly manner and was not in a position to discharge his duty. An inquiry was held against him and at the conclusion of the inquiry by an order dated November 19, 1974, the petitioner was dismissed from service. An industrial dispute arising as a result of this dismissal order was referred for adjudication to the first Labour Court at Rajkot u/s 10(1)(c) of the Industrial Disputes Act, 1947. The dispute which was referred to the Labour Court was in the following terms:

Shri Kanabhai Nagajan should be reinstated on his original post with full back wages with effect from 19-11-1974.

The Labour Court after recording evidence by its impugned judgment and order held to the effect that the inquiry held against the petitioner was defective in so far as the petitioner was not given an opportunity to show cause against the proposed penalty. Under Model Standing Order 25(5)(c), if on the conclusion of the inquiry, the workman has been found guilty of the charges learned against

him and it is considered, after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed, that an order of dismissal or discharge or suspension or fire or step page of annual increment or reduction in rank would meet the ends of justice, the employer shall pass an order. However, the petitioner was not given such an opportunity. The Labour Court, therefore, held that the inquiry to that extent was defective. After reaching this conclusion, the final order, which was passed by the Labour Court was as follows:

The inquiry papers are sent back to the management with a direction to give show cause notice to the worker, to consider his explanation, and keep an open mind and to come to an independent decision on merits. As the matter is old, the direction is given to return the papers with the report within one month from the receipt of the papers by the management. If further time is required, then the parties should traverse the Court for the same. Final decision will be given after considering the explanation of the worker and findings of the management and after hearing the learned Advocates for the parties.

It is this order passed by the Labour Court which is called in question in this petition.

3. Mr. P.M. Thakkar, the learned Advocate appearing for the petitioner submitted that the Labour Court had no power to remand the matter to the management to give an opportunity to the workman to show cause against the proposed penalty. Once it came to the conclusion that the domestic inquiry held by the respondent was defective, the only order which the Labour Court could have passed was to set aside the order of dismissal and reinstate the petitioner in service from the date of dismissal order.

4. Now, it is not disputed that under Model Standing Order 25(5)(c), it was incumbent upon the respondent to give a reasonable opportunity to the petitioner of making a representation on the penalty proposed. The order of dismissal could not have been passed without giving such opportunity. It, therefore, cannot be disputed that the domestic inquiry held by the respondent was defective. The question which then arises for our consideration is whether the Labour Court could have remanded or sent back the case to the management for giving an opportunity to the petitioner to show cause against the proposed punishment as has been done in the instant case. The Labour Court was not sitting in appeal against the order passed by the respondent. In other words, it was not an authority examining the validity of the order passed by an authority subordinate to it. Ordinarily, it is only the appellate authority, which can remand a matter for further investigation or inquiry to the authority subordinate to it. Respondent not being subordinate to the Labour Court, or in other words, the Labour Court not being an appellate authority to which the respondent was subordinate, the Labour Court could not have remanded or sent back the matter to the respondent. Mr. B.R. Shah, the learned Advocate, appearing for the respondent has not been able to point out any provision in the Industrial

Disputes Act, which empowers the Labour Court to remand the matter to the management. Section 11-A of the Industrial Disputes Act, deals with a dispute relating to discharge or dismissal of a workman, which has been referred to the Labour Court, Tribunal or National Tribunal for adjudication. It provides that where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Proviso to Section H-A is not material for our purpose. Therefore, once the Labour Court comes to the conclusion that the order of dismissal was not justified, the only course which it can adopt is to set aside the order of dismissal and direct reinstatement of the workman or give such other relief to the workman as the circumstances of the case may require. There is no provision in the Industrial Disputes Act, which confers power on the Labour Court to remand the matter to the employer to re-investigate facts or to cure any defect or fill up any lacuna in the inquiry. In the instant case, the Labour Court has not finally recorded its finding on the question whether or not the order of dismissal was legal, proper or justified. Without recording such a finding, it has sent the matter back to the management to give a show cause notice to the petitioner against the proposed penalty. In other words, it has remanded the matter to the respondent to give a reasonable opportunity to the petitioner to show cause against the proposed penalty. In the absence of any power to pass such an order, the order passed by the Labour Court must be held to be without jurisdiction.

5. What is the proper course to be adopted in a case like this has been considered by the Supreme Court in *Lakshmiratan Cotton Mills Co. Ltd. Vs. Its Workmen*, . The Supreme Court has observed that Clause (c) of Standing Order 26 clearly contemplates a notice to be given to the workman for the purpose of enabling him to show cause within a specified period as to why the proposed punishment of dismissal should not be acted on him. The notice is required to be given not as a mere idle formality it has a meaning and a purpose, it is intended to provide an opportunity to the workman to show cause against the proposed punishment of dismissal. The workman may show that the findings of the enquiry officer are not justified on the evidence on record or that even if the findings are justified, they do not warrant the extreme penalty of dismissal from service having regard to the nature or gravity of the misconduct, the past record of the workman and any other extenuating circumstances. The notice must, therefore, give a reasonable opportunity to the workman. That is a condition precedent which must be satisfied before an order of dismissal can be validly passed by the employer. The Supreme Court further observed that even where it

is found that the domestic inquiry held by the employer is due to some omission or deficiency, not valid, the employer can none-the-less support the order of dismissal by producing satisfactory evidence and proving misconduct, when the dispute arising out of the order of dismissal is referred for industrial adjudication. Where in a reference against the dismissal of workman for misconduct the employer made an application before the Industrial Tribunal praying that if for any reason the Industrial Tribunal was inclined to take the view that the domestic enquiry held by the employer was improper or not according to law; the appellant should be given an opportunity to prove its case on merits and for that purpose file and prove additional documents, the Industrial Tribunal should have either declined to try the issue as to validity of the domestic enquiry as a preliminary issue and directed the employer to lead its evidence simultaneously on the issue as to the validity of the domestic inquiry as also in regard to the misconduct of the workman so as to justify its action or decided to deal with the validity of the domestic enquiry as a preliminary issue and if the finding on the preliminary issue went against the employer then to give an opportunity to the employer to adduce additional evidence to justify its action.

6. In the present case, as pointed out above, the Labour Court has recorded a finding that the domestic enquiry held by the respondent was defective inasmuch as no notice was given to the petitioner to show cause against the proposed penalty. After reaching this conclusion, there was no question of remanding the matter to the respondent as has been done by the Labour Court in this case. Once the domestic inquiry is held to be defective, it would be open to the employer to support the order of dismissal by producing satisfactory evidence and proving misconduct. We do not agree with Mr. Thakkar that the only course open to the Labour Court was to set aside the order of dismissal and reinstate the petitioner. As pointed out above, the Labour Court has not finally recorded any finding whether or not the order of dismissal was legal, proper or justified. In the absence of any such finding, question of reinstating the petitioner does not arise. We are, therefore, unable to accede to Mr. Thakkar's prayer that in the event of the order of the Labour Court is set aside, the petitioner should be ordered to be reinstated in service from the date of dismissal. The only proper order to pass would be to set aside the order passed by the Labour Court and send the matter back to it for proceeding in accordance with law from the stage of its finding that the domestic inquiry held by the respondent was defective.

7. In the result, we allow this petition, set aside the impugned order passed by the first Labour Court Rajkot and send the matter back to it with a direction to decide it afresh in accordance with law from the stage of its finding that the domestic inquiry held by the respondent was defective.

Rule made absolute-accordingly. The Respondent to pay costs to the petitioner.