
(2014) 08 KL CK 0219

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 24466 of 2009

Kerala Chemicals and Proteins Ltd.

APPELLANT

Vs

Labour Court

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2014) 4 ILR 585 : (2014) 4 KHC 107

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : B.S. Krishnan, Senior Advocate, K. Anand Senior Advocate and Latha Krishnan, Advocate for the Appellant; Mohammed Hashim, Senior Advocate, R. Ranjith, Government Pleader, A. Jayasankar, Manu Govind, B. Meera, Advocate for the Respondent

Judgement

K. Surendra Mohan, J.—The petitioner is a limited company represented by its Managing Director. This writ petition is filed challenging Ext. P4 preliminary order passed by the Labour Court, Ernakulam in Industrial Dispute No. 3 of 2005. According to the petitioner, the Labour Court has exceeded its jurisdiction in passing Ext. P4 order, therefore, it is contended that the said order is liable to set aside. The petitioner had initiated disciplinary action against five of its workmen for misconduct. A domestic enquiry was conducted and the workmen were dismissed from service. Out of the five workmen, one person Sri. P.V. Pradeep, accepted the punishment, received the amounts offered by the Management and left the service of the petitioner. The other four workmen challenged the punishment.

2. The allegation against the workmen is that, one Sri. M.V. Martin, along with four other workmen had assaulted one Sri. P.C. Sasi another workman, on 21/12/2003 at about 4.20 P. M. while he was changing his dress in the rest room. In view of the unruly conduct of the workmen, the Management initiated proceedings against them. A domestic enquiry was ordered. Advocate Renil Anto

was appointed as the Enquiry Officer. The enquiry Officer conducted the enquiry and found that the workmen were guilty of the culpable conduct. On the basis of the enquiry, the Management issued notices to the workmen, considered their explanations and dismissed them from service.

3. The second respondent Union thereupon raised an Industrial Dispute. The Government of Kerala by order dated 26/02/2009 referred the dispute for adjudication of the Labour Court, Ernakulam. The same was numbered as ID No. 3 of 2003. The Union filed claim statement alleging that it was Sri. P.C. Sasi, who manhandled one Sri. K.R. Gireesh and that no action was taken by the petitioner against the said Sri. P.C. Sasi. On the other hand, a domestic enquiry was conducted against the other workmen and they have been dismissed from service. The Management filed written statement contending that it was Sri. M.V. Martin along with four other workmen who had manhandled Sri. P.C. Sasi. The Management produced the enquiry file and examined Advocate Sri. Renil Anto who was the enquiry Officer as a witness. The enquiry file was marked through him. There was no witness on the side of the workmen.

4. The Labour Court, Ernakulam considered the validity of the domestic enquiry that was conducted and as per Ext. P3 preliminary order dated 26/05/2009 held that the Enquiry Officer had conducted the enquiry properly, complying with the principles of Natural Justice. Thereafter, the Labour Court proceeded to consider whether the finding of the Enquiry Officer that the workmen were guilty of the alleged misconduct was supported by evidence. As per another preliminary order Ext. P4 dated 30/06/2009, the Labour Court has found that the findings of the Enquiry Officer that the workmen were guilty of the alleged misconduct is unsustainable in law and liable to be set aside. Thereafter, the case has been posted for the Management to adduce evidence in support of the order of the dismissal passed against the workmen. The writ petitioner is aggrieved by Ext. P4.

5. According to Senior Counsel Sri. B.S. Krishnan, Ext. P4 order is unsustainable and liable to be set aside. The Labour Court having found as per Ext. P3 preliminary order that the domestic enquiry conducted by Management was fair and in compliance with the principles of natural justice, it had no jurisdiction to consider whether the finding of the Enquiry Officer was justified or not. It is pointed out that, no evidence whatsoever was let in by the workmen. Therefore, a reappraisal of the evidence adduced by the management to find out whether it supported the conclusions of the Enquiry Officer was absolutely uncalled for. It is further pointed out that, the practice of passing a second preliminary order in the proceedings is also irregular and in excess of the jurisdiction of the Labour Court. According to the learned Senior Counsel, once it is found that a proper enquiry was conducted by the Management, the Labour Court has no power to differ from the findings of the Enquiry Officer or to arrive at a different conclusion. Reliance is placed by the learned Counsel on various decisions of the Apex Court as well as this Court in support of his contentions.

6. The contentions of the learned Senior Counsel are refuted by Advocate Shri. Mohammed Hashim. According to the counsel, the writ petition itself is not maintainable since a caution against entertaining writ petitions against such preliminary orders has been sounded by the Hon'ble Supreme Court in various decisions. Endeavour should at all times be to ensure that the final adjudication of the dispute is not held up. Since Ext. P4 is only a preliminary order, it is contended that the Management would have the opportunity to challenge the same if the final Award is against it. Though the domestic enquiry has been set aside, the Management has been granted an opportunity to adduce evidence to justify the order of dismissal passed against the workmen. It is for the Management to avail the said opportunity and to justify its action by adducing proper evidence. It is therefore contended that this writ petition is only to be dismissed.

7. Heard.

"The question that arises for consideration is whether the Labour Court has the jurisdiction to reappraise the evidence adduced during the domestic enquiry and to find out whether the findings of the Enquiry Officer are supported by the said evidence?"

But before answering the above question, it is to be noted that the allegation against the workmen relates to an incident in which an unskilled workman Sri. P.C. Sasi was assaulted. According to the Management, he was assaulted by the five charge-sheeted workmen. The case of the workmen is that, it was Sri. P.C. Sasi who manhandled one Sri. K.R. Gireesh and that the Management has not taken any action against the said workmen. However, it is not in dispute that, a domestic enquiry was conducted. The workmen participated in the enquiry. Evidence was adduced by them. The witnesses were cross-examined. The workmen were heard. The Enquiry Officer has on the basis of the evidence adduced, found that the workmen were guilty of the charges levelled against them. On the basis of the report of the Enquiry Officer, the workmen have been dismissed. It is the said dismissal that has been made the subject-matter of the industrial dispute by the second respondent on behalf of the four workmen involved.

9. As in all other similar cases, the first question that arose for the consideration of the Labour Court was whether the domestic enquiry that was conducted was valid and proper. For the purpose of supporting the domestic enquiry, the Management examined the Enquiry Officer and marked the enquiry file through him. No evidence has been adduced on the side of the workmen. On the basis of the above materials, the Labour Court has, as per Ext. P3 preliminary order found that the enquiry was proper and that the same was conducted in compliance with the principles of Natural Justice. The contention of the Management is that, having found that the enquiry was valid and proper, the Labour Court ought to have sustained the punishment imposed on the workmen. Instead, the Labour Court went further and proceeded to consider whether the

findings of the Enquiry Officer were supported by the evidence adduced at the enquiry. As per Ext. P4 preliminary order, on a reappraisal of the entire evidence, the Labour Court has found that the findings of the Enquiry Officer were not supported by the evidence adduced. It is the said proceedings that are under challenge as being vitiated by want of jurisdiction. However, the said contention cannot be countenanced after the introduction of Section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act "for short).

10. Section 11A of the Act reads as follows:

"11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- 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 re-instatement 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:

Provided that in any proceeding under this Section, the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

A perusal of the above provision leaves no room for doubt that the Labour Court is clothed with sufficient power to satisfy itself whether an order of discharge or dismissal was justified. The above provision has been interpreted and explained by the Apex Court in a number of decisions commencing from the decision in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, . After considering the scope of the power that is available, the Hon"ble Supreme Court held as follows:

"Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved."

It has therefore to be held that the Labour Court has the power for reappraisal of the evidence. It has been held by the Apex Court at the same time that, this Court exercising power under Article 226 of constitution does not have a similar power of reappraisal of the entire evidence.

10. The above view has been reiterated in various subsequent decisions of the Apex Court, including *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, and *Workmen of Balmadies Estates Vs. Management Balmadies Estate and Others*, .

11. In *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another*, also, the Hon''ble Supreme Court had to consider the above question. The Hon''ble Supreme Court has expressed its displeasure at the exercise that was undertaken by the High Court, in the following words:

"The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally re-appreciating the evidence and drawing conclusions of his own pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a judicial officer. The findings of the fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken."

12. In the present case, it is no doubt true that, the Labour Court had passed Ext. P3 preliminary order finding that the domestic enquiry was properly conducted and in compliance with the principles of Natural Justice. However, it has by Ext. P4 proceeded to consider the sustainability of the findings of the Enquiry Officer by re-appraising the evidence. A question is raised as to whether the Labour Court had the power to pass the second preliminary order, which is a procedure unheard of. Though the propriety of the impugned action of the Labour Court in passing the second preliminary order is debatable, it cannot be disputed that, the Labour Court had the power to undertake the reappraisal of evidence. It is also worth noticing that, no final Award has been passed by the Labour Court. Therefore, I am not satisfied that the passing of the second preliminary order even if considered to be irregular, is an infirmity that could render the impugned order, Ext. P4, invalid. It is also necessary to notice that, what the Labour Court has done thereafter is, only to give a further opportunity to the Management to adduce evidence to sustain its action. Therefore, the Management has been provided with the full opportunity of adducing evidence afresh to prove the charges against the delinquent workers. The only difference is that, the evidence so adduced would be appraised by the Labour Court itself. It cannot therefore be accepted that, the passing of the second preliminary order Ext. P4 has visited the Management with any prejudice. The procedure adopted provides both the Management and the workmen with sufficient opportunity to let in evidence in support of their rival contentions. Therefore, I am not satisfied that any interference with Ext. P4 is called for.

13. Apart from the above, as pointed out by the learned Counsel for the second respondent, the Hon''ble Apex Court as well as this Court have cautioned against any interference with such preliminary orders unless there are compelling circumstances justifying such interference. Reliance has been placed on a number of decisions to drive home the above contention.

14. In *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, , the Hon''ble Supreme Court has explained the approach that should be adopted in such circumstances, in the following words:

"We are therefore clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

15. In *Sadhu Ram Vs. Delhi Transport Corporation*, , *S.K. Verma Vs. Mahesh Chandra and Another*, and *D.P. Maheshwari Vs. Delhi Administration and Others*, the Hon''ble Supreme Court has held that, the High Court should not constitute itself into an Appellate Court and embark upon an exercise of reappraisal of the evidence of the Labour Court, for which, it does not have the power. This Court has held in *Kerala State Electricity Board v. Rajamoni* 1992 KHC 296 : 1992 (2) KLT 66 that, this Court should not interfere with preliminary orders like Ext. P4 since such orders are capable of being challenged along with the final order that is to be passed by the Labour Court after adjudication of the dispute, finally. The above being the legal position, I am not satisfied that any interference with the impugned order, Ext. P4 is called for at this stage. It is for the Management to adduce proper evidence to support the order of dismissal passed against the workmen, before the Labour Court. It shall be open to the petitioner to challenge Ext. P4 order also, along with the Award of the Labour Court, if it is against the petitioner.

For the above reasons, this writ petition fails and is accordingly dismissed.