
(2000) 01 RAJ CK 0031
In the Rajasthan High Court
Case No : C.W.P. No. 641 of 1994

Khadi Gramodyog Pratisthan

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-01-2000

Acts Referred:

Constitution of India, 1950 — Article 142, 226, 227, 311(2)
Industrial Disputes Act, 1947 — Section 11A
Penal Code, 1860 (IPC) — Section 380

Citation : (2000) 2 LLJ 493 : (2000) 4 WLC 106

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

Bench : Single Bench

Advocate : Rajesh Joshi, for the Appellant; B.L. Purohit, for the Respondent

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed challenging impugned Award passed by the Labour Court dated February 16, 1993 (Annexure-7).

2. The facts and circumstances giving rise to this case are that the "Appropriate Government" made a reference, vide order dated March 8, 1978, to the Labour Court, Bikaner, as to whether the termination of services of respondent-workman Shiv Shanker Ranga was valid, and if not, to what relief he was entitled to? The claim petition was filed before the Labour Court alleging that the respondent-workman had satisfactorily worked for seven/eight years and his services were terminated in October 1962 without holding an enquiry. Subsequently, he was also involved in a criminal case where he stood acquitted vide judgment and order dated October 16, 1976; and as the termination of services of the workman had not been in consonance with the provisions of the Industrial Disputes Act, 1947, therefore, the same may be declared illegal. The present petitioner filed S.B. Civil Writ Petition No. 6034/1978 on the ground that the reference had been made by the "Appropriate Government" after sixteen years of the termination of services of the workman and it was not permissible to make a

reference at such a belated stage. The said writ petition stood dismissed by this Court vide judgment and order dated February 6, 1979. Again, the petitioner filed S.B. Civil Writ Petition No. 30/1982 on the ground that the termination was in violation of the settlement/compromise reached between the parties and there was no dispute, therefore, the Labour Court be restrained from proceeding with the matter. The said writ petition also stood dismissed, vide judgment and order dated October 22, 1991, holding that it was not permissible for the petitioner to challenge the issues in piece-meal and the Labour Court would consider as to whether the termination was lawful or not, and even if the termination was found to be lawful, whether any direction for back-wages for the period between the date of termination and date of making the claim before the Competent Authority by the workman, should be made? After giving opportunity to both the parties, the impugned Award has been made on February 16, 1993 (Annexure-7). Hence this writ petition.

3. Mr. Purohit, learned counsel appearing for the respondent- workman, has raised the preliminary objection regarding maintainability of the writ petition on the ground that the similar pleas have been taken by the present petitioner in the earlier writ petitions and he cannot be permitted to raise the issues again. The first petition filed by the petitioners stood dismissed on the ground that delay in making the reference would be no ground to interfere, and this judgment is in consonance with the law laid down by the Hon"ble Supreme Court in Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, The second writ petition was also rightly dismissed on the ground that it was not permissible for the employer to challenge the proceedings in piece-meal. This judgment is, also, in consonance with the law laid down by the Hon"ble Supreme Court in S.K. Verma Vs. Mahesh Chandra and Another, wherein the Hon"ble Apex Court has held that once a reference is made, the Tribunal must be allowed to proceed with the case on merits and no attempt should be made to evade decision on merits by raising preliminary objections on any technical ground and drag the workman from Court to Court wasting "public time and money. But in both these cases, the controversy involved in the instant case had not been determined, therefore, the preliminary objection raised by Mr. Purohit is not tenable.

4. The learned Labour Court, after considering the evidence on record, has recorded the following findings of facts:-

(1) Respondent-workman, while working with the petitioner, had embezzled certain amount and when inquiry in this respect was held, he had admitted his guilt and agreed to deposit the amount of deficiency found in the Accounts;

(2) the workman failed to deposit the said amount, as agreed by him, and the Management lodged an F.I.R. against him u/s 380 I.P.C. and the trial Court had convicted him and awarded the sentence of three years" rigorous imprisonment;

(3) in appeal against the order of conviction and sentence, the Appellate Court

remanded the case back on certain technical grounds and when the matter was pending for re-consideration by the trial Court, the workman persuaded the Management to accept the amount as agreed by him earlier and not to lead evidence before the trial Court. On the basis of this compromise, the Management did not lead evidence before the trial Court and the workman was acquitted vide judgment and order dated October 16, 1976.

(4) after acquittal, the said amount was deposited with the petitioner, as per the compromise, as the same had already been deposited by the workman with third person;

(5) though the workman was removed from service in October 1962, he raised the industrial dispute at a belated stage in 1977 and reference was made in 1978:

(6) though the workman had admitted the embezzlement when inquiry was held and agreed to pay the amount, but no inquiry was held for removal of the workman and, therefore, the termination was in violation of the provisions of the Industrial Disputes Act, 1947;

(7) the evidence adduced u/s 11-A before the Labour Court sufficiently proved the fact that the workman was guilty of embezzlement and his removal was justified; and

(8) as the workman was removed without holding any inquiry, he was entitled for the back-wages from the date of raising the industrial dispute till the date of Award along with all other consequential benefits.

5. The findings of facts have not been disputed by either of the parties. The basic questions involved in this case are; (i) whether in the facts and circumstances of the case, where the workman himself had admitted the embezzlement and agreed to deposit the amount and in fact deposited it subsequently, the inquiry was necessary as required under the statutory provisions; and (ii) whether under these facts and circumstances, once the Labour Court recorded the findings of fact that the termination was valid, the back wages could have been awarded to the workman?

6. The issues involved in this case are no more res Integra. In State of Uttar Pradesh Vs. Om Prakash Gupta, the Hon"ble Apex Court has held that even in an inquiry under Article 311(2) of the Constitution, if the inquiry is not held as per the procedure prescribed, or in violation of the principles of natural justice, the Courts have to see as to whether the non-observance of any of those principles in a given case, has resulted in deflecting the course of justice, and what principle of natural justice should be applied in a particular case, depends upon the facts and circumstances of that case and an order of punishment would not stand vitiated merely because of the violation of principles of natural justice.

7. In Channabasappa Basappa Happali Vs. The State of Mysore, while dealing with the case of similar nature, i.e. of departmental enquiry, the Hon"ble

Supreme Court has held that where the delinquent admits all the relevant facts, on which the decision could be given against him, it could not be said that the inquiry was in any breach of principles of natural justice or the statutory requirement for the reason that "there is no distinction between "admission of facts" and "admission of guilt". When the delinquent admits the facts, he is guilty and his plea amounts to a plea of guilt."

8. In S.L. Kapoor Vs. Jagmohan and Others, the Hon"ble Supreme Court has held as under at page 147:

"..... where on the admitted or undisputable facts, only one conclusion is possible and under the law, only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs."

9. In K.L. Tripathi Vs. State Bank of India and Others, it was observed as under:

"..... Whether there has been any infraction of the application of that principle, has to be judged in the light of the facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the material and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula in order to sustain a complaint of violation of principles of natural justice. It has to be established that prejudice has been caused to the appellant by the procedure followed."

10. While deciding the said case, the Hon"ble Apex Court placed reliance upon its earlier judgments in Jankinath Sarangi Vs. State of Orissa, and Union of India (UOI) and Another Vs. P.K. Roy and Others, In Mehta M.C. Vs. Union of India (UOI) and Others, wherein a similar view had been reiterated.

11. In Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The Educational Appellate Tribunal and Another, the Hon"ble Apex Court has observed as under.

"Giving of opportunity or an inquiry, of course, is a check and balance concept that no one"s right be taken away without giving him/her opportunity, or without inquiry in a given case, or where the Statute requires. But this cannot be, in a case where allegations and charges are admitted and no possible defence is placed before the Authority concerned, what inquiry is to be made when one admits violation? In a case where the facts are almost admitted, the case reveals itself and is apparent from the face of record and in spite of opportunity, no worthwhile explanation is forthcoming, as in the present case, it would not be a fit case to interfere with the termination order."

12. Thus, in view of the above, once the Labour Court has recorded the findings of facts that the workman had admitted his guilt in an inquiry held against him and had also agreed to make deposit and when he failed to make the deposit, an

F.I.R. was lodged, I fail to understand, in view of the law as referred to above, how it could have been held that though the termination was justified but it could not have been made without holding the full-fledged inquiry on the charges. Thus, in the facts and circumstances of this case holding an enquiry for removal of the workman was not warranted as the workman had admitted the guilt of embezzlement. Moreso, in view of the judgment of the Hon''ble Supreme Court in Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, no punishment other than removal could have been imposed.

13. There is another aspect of the matter. The workman had made a promise to make the payment and on that basis, the Management did not adduce the evidence before the trial Court after remand of the case and the workman stood acquitted and he deposited the money. These circumstances are sufficient to prove his guilt. The Agreement dated September 11, 1974 (Annexure-3) reads as under:-

"I, Shiv Shanker Ranga and Raman Lal Rathi, who had been employees in the Khadi Gramodhyog, have no claim in respect of salary, from 1958 till today. There is a criminal case pending against us and in respect of that matter, we should not put any kind of claim against the Khadi Gramodhyog, or any of its officers."

14. This Agreement was signed by both the parties and was honoured by the present petitioner as it did not lead any evidence against the workman and once the workman had forgone all his claims against the Khadi Gramodhyog, he could not have been awarded anything by the Labour Court as in a similar situation in N.A. Mohammed Kasim v. Sulochana, : AIR 1995 SC 1624 the Apex Court has observed as under at page 1627 of AIR:-

"Defendant Nos. 1 and 2 have stepped in the shoes of defendant No. 4 and would be bound in equity to make good the promise made by defendant No. 1 etc. In our view, this is a fit case for invoking our powers under Article 142 of the Constitution of India for giving equitable relief to the respondent plaintiffs 1 and 2, not on the ground on which they claimed the relief in the suit but on the ground of promissory estoppel, equity and fair play,"

15. Undoubtedly, this Court does not have the power as the Hon''ble Supreme Court has under Article 142 of the Constitution. But the powers under Articles 226 and 227 are enough to grant relief on equity and fair play as in Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, the Hon''ble Apex Court has observed as under at page 84:-

"This Article is couched in comprehensive phraseology and it ex-facie confers wide powers on the High Court to erase injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the parties for which and the person or Authority against whom, it can be exercised."

16. Even on the issue of "relating back", the judgment of the Labour Court cannot be upheld. Much reliance has been placed by Mr. Purohit on the judgment in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, and it has been submitted by Mr. Purohit that the question of awarding the back wages cannot be interfered with. The said submission is not tenable for the reason that the issue has been considered by the Hon'ble Apex Court time and again subsequent to the said judgment in Gujarat Steel Tubes (supra),

17. This issue was considered by the Supreme Court in Desh Raj Gupta Vs. Industrial Tribunal IV, U.P., Lucknow and another, and the Apex Court held that in a case where Industrial Tribunal comes to conclusion that the domestic inquiry was unfair and holds the inquiry itself and even then it comes to conclusion that the termination was valid or termination order was passed on substantial evidence, the termination would be effective from the date the Labour Court passed the order. However, in R. Thiruvirkolam Vs. Presiding Officer and another, the Supreme Court took a contrary view and held that in such an eventuality, the order of the Labour Court will relate back to the date of order of termination passed by the employer and in such a case, the workman cannot be held entitled for any relief for the interregnum period from the date of termination order passed by the employer and final award made by the Tribunal.

18. All these cases were reconsidered by the Supreme Court in Punjab Dairy Development Corporation Limited and another, etc. Vs. Kala Singh, etc., the Apex Court held that the judgment in Desraj Gupta's case (supra) was not a correct law. The Supreme Court had subsequently, in Anna Manikrao Pethe Vs. Presiding Officer, School Tribunal, Amravati and Others, has reiterated the law laid down by Supreme Court in R. Thiruvirkolam's case (supra).

19. Moreso, in Graphite India Ltd. and Another Vs. Durgapur Projects Ltd. and Others, the similar principle has been reiterated and it has been held that when an action is approved, it would relate back to the date of action.

20. Thus, in view of the above, the writ petition succeeds and is allowed. The impugned Award passed by the Labour Court is set aside. There shall be no order as to costs.