
(1987) 10 KL CK 0015

In the High Court Of Kerala

Case No : W.A. No. 619 of 1985 and O.P. No. 2749 of 1987

Kodakkat Service Co-Operative Society Ltd.

APPELLANT

Vs

The Labour Court and Others

RESPONDENT

Date of Decision : 09-10-1987

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33

Citation : (1987) 10 KL CK 0015

Hon'ble Judges : V.S. Malimath, C.J.; Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : M. Ramachandran, for the Appellant; Government Pleader for Respondents 1 and 3 and M.V. Joseph, for Respondent 2, for the Respondent

Judgement

V.S. Malimath, C.J.—For the sake of convenience we advert to the contesting parties as the Management and the workman. Writ Appeal No. 619 of 1985 is by the Management challenging the judgment of the learned Single Judge in O.P. No. 771 of 1985. O.P. No. 2749 of 1987 is also by the Management challenging the final award made against the Appellant/Management in I.D. No: 96 of 1978. As the decision in the O.P. depends entirely upon the decision in the writ appeal, both of them were heard together and disposed of by this common judgment.

2. The relevant facts that are necessary for disposal of these cases may briefly be stated as follows:- The workman was kept under suspension on 12th December 1977 and after holding a domestic enquiry the charges having been held proved the workman was dismissed from service by order made on 18th February 1978. The dispute regarding wrongful termination of the workman was referred in I.D. No. 96 of 1978 to the Labour Court, Kozhikode. The termination was challenged principally on the ground that the domestic enquiry was not properly held, that principles of natural justice have been violated and that the workman has been denied a reasonable opportunity of placing his case in the domestic enquiry. At the request of the parties the Labour Court decided to hear and dispose of as a preliminary issue the question as to whether the domestic

enquiry is vitiated on the ground that it has not been properly held. The Labour Court after considering the case put forward by both the parties and their contentions recorded a finding on 27th April 1983 to the effect that the domestic enquiry is vitiated. Though a consequential final order could have been made immediately by the Labour Court it was not so done and the case stood adjourned. At a subsequent stage the Management made an application M.P. No. 14/84, dated 9th February 1984, presented on 29th March 1984, seeking an opportunity to lead evidence before the Labour Court to prove the charges levelled against the workman. This was followed by another application M.P. No. 24/84 wherein a request was made to permit amendment of the written statement taking a specific plea to lead evidence before the Labour Court to prove the charges levelled against the workman. Both the applications were heard together and disposed of by the Labour Court by a common order dated 14th December 1984. By the said order, the Labour Court rejected both the applications. It is the said order that was challenged by the Appellant in O.P. No. 771 of 1985. The learned Single Judge having dismissed the Original Petition after coming to the conclusion that the order of the Labour Court does not call for interference, the decision is challenged in writ appeal. Subsequent to the passing of the order Ext. P-1 an award came to be made in favour of the workman on 31st December 1984 which has been challenged by the Appellant in O.P. No. 2749 of 1987.

3. The principal grievance of the Appellant/Management is in regard to the decision of the Labour Court in not giving an opportunity to the Management of adducing evidence before the Labour Court to prove the charges levelled against the workman. The Labour Court has recorded a finding to the effect that the request for leading evidence before the Labour Court for the first time by an application made on 29th March 1984 though the Management had ample opportunity of doing so by filing application at earlier stages, is not maintainable. The Labour Court came to the conclusion that the application is belated and that there are no good grounds to entertain the application made at a very belated stage.

4. It was firstly contended by the learned Counsel for the Management that it is an error to hold that the application was made for the first time on 29th March 1984 for leading evidence to prove the charges against the workman. It was argued that an oral application was made on the very date on which the finding was recorded on the preliminary issue, namely, on 27th April 1983 and that oral request was granted by the Labour Court. Sri M.V. Joseph, the learned Counsel appearing for the workman, however contended that no such request was made by the Management on 27th April 1983 and the Labour Court has rightly taken the view that the application made for the first time by application presented on 29th March 1984 is belated. It is necessary to point out that there is no specific plea in the Original Petition filed by the Management to the effect that an oral request was made by it on 27th April 1983 for opportunity to adduce evidence and that the said oral request was orally granted by the Labour Court. If there

was truth in the allegation of the Management in this behalf there should have been a clear averment to that effect in the Original Petition. The learned Counsel for the Appellant however invited our attention to a statement in paragraph 3 of the affidavit to the effect, wherein it is stated:

The Petitioner raised a preliminary issue regarding the validity of the enquiry. By an order dated 27th April 1983, the first Respondent found that the enquiry is not proper and valid. Thereupon the Petitioner sought opportunity to lead evidence before the 1st Respondent to establish the misconduct of the 2nd Respondent. The Petitioner filed M.P. No. 14 of 1984 seeking permission to lead evidence regarding the charges levelled against the 2nd Respondent. The Petitioner also filed another petition M.P. No. 24 of 1984 for receiving an additional written statement seeking opportunity to lead evidence to establish the misconduct of the 2nd Respondent.

Though there is a vague assertion that the Petitioner sought an opportunity to lead evidence it is not stated when and how that request was made. The certified copy of the order-sheet which was placed for our perusal during the course of the arguments also does not bear out this fact. What is of considerable significance is that in the formal application M.P. No. 14/84 the Appellant has not adverted to the fact that an oral request was already made in this behalf on 27th April 1983 and that the same was also granted by the Labour Court on that day. Though in the subsequent application M.P. No. 24 of 1984 made for amendment on 10th November 1984 there is a reference to the request made and it having already been granted no particulars about the oral application made on 27th April 1983 and it having been granted orally are clearly stated. Besides the Labour Court, which must be aware of the oral request made and oral permission it had granted, does not say that such a request was made and it was granted on that day. Having regard to these facts and circumstances, we have no hesitation in repelling the case of the Management that an oral request was made on 27th April 1983 and the same was granted by the Labour Court to adduce evidence in support of the charges against the workman. We have therefore to proceed on the basis that the application was made for the first time on 29th March 1984 in M.P. No. 14/84 seeking permission of the Labour Court to adduce evidence in support of the charges. Whereas the learned Counsel for the Workman Sri Joseph contends, that having regard to the law laid down by the Supreme Court the request in a reference u/s 10 of the Industrial Disputes Act wherein the enquiry is challenged on the ground that it is not properly held for adducing evidence before the Labour Court, if the enquiry held is found to be vitiated, can be made only before or at the time of presentation of the written statement and not at a later stage, the counsel for the Appellant/Management would contend also having regard to the pronouncement of the Supreme Court that the Management is entitled to make such a request at any time before the proceedings are terminated. The learned Counsel for the workman, Sri Joseph relies upon the decision of the Supreme Court reported in Shambhu Nath Goyal Vs. Bank of Baroda and Others, wherein paragraph 12 reads as follows:

We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workman referred to in the above passage in the application which may be filed by the Management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission u/s 33 of the Industrial Disputes Act, 1947, to take a certain action or grant approval of the action taken by it. The management is made aware of the workman's contention regarding the defect in the domestic enquiry by the written statement of defence filed by him in the application filed by the management u/s 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any delay. But when the question arises in a reference u/s 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the Management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage, it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do.

What is clearly laid down by the Supreme Court is that the application for seeking opportunity must be made at the earliest opportunity, for any delay in making such an application or request acts prejudicially to the interests of the workman. Their Lordships have clearly stated the reason why the application should be made at the earliest point of time. Whereas in an application made u/s 33 of the Industrial Disputes Act the Management comes to know that a contention is raised that the domestic enquiry is vitiated it not having been held properly only when the workman takes up such a plea in his written statement, in a reference u/s 10 of the Industrial Disputes Act, wherein termination is challenged on the ground that the domestic enquiry is not held properly, the Management has the earliest opportunity to taking that plea of seeking opportunity of leading evidence in support of the charges if the enquiry is held vitiated when it has an opportunity to file its written statement. In labour disputes, the parties are unequal, the management being strong and powerful and the workman is often weak and helpless. When a workman is kept out of job for a long number of years the suffering and harassment that he undergoes would be enormous. If the delay is unreasonable the workman cannot stand the delay in the termination of the proceedings not because there is weakness in his

case but he cannot continue to remain in a state of unemployment and may knuckle down and accede to the demands of the Management. This results in, unfair treatment of the workman. That is the reason why the Supreme Court held that undue delay in making such an application may lead to wrecking the morale of the workman and it may compel him to surrender which he may not otherwise do. This is the basic principle behind the decision of the Supreme Court laid down in the Shambhu Nath Goyal Vs. Bank of Baroda and Others, that the Management should seek permission to lead evidence in support of the charges if the enquiry is held vitiated at the earliest point of time and should avoid further delay which may result in protracting the proceedings. That being the position it may become necessary to examine the facts and circumstances of the case. Reliance was however placed by the learned Counsel for the Appellant/ Management on the decision of the Supreme Court reported in Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, , wherein it is observed in paragraphs 34 and 35 as follows:

Having given our most anxious consideration to the question raised before us, and minutely examining the decision in Cooper Engineering Ltd., case 1975 Lab. I.C. 1441 (SC) to ascertain the ratio as well as the question raised both on precedent and on principle, it is undeniable that there is no duty cast on the Industrial Tribunal or the Labour Court while adjudicating upon a penal termination of service of a workman either u/s 10 or u/s 33 to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic enquiry was at all held, or if held, was defective in favour of the workman. Cooper Engineering Ltd., case merely specifies the stage at which such opportunity is to be given, if sought. It is both the right and obligation of the employer, if it so chooses, to adduce additional evidence to substantiate the charges of misconduct. It is for the employer to avail of such opportunity by a specific pleading or by specific request. If such an opportunity is sought in the course of the proceeding the Industrial Tribunal or the Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect, no duty is cast on the Labour Court or the Industrial Tribunal suo motu to call upon the employer to adduce additional evidence to substantiate the charges.

Viewed from this angle, in the present case there was neither a pleading in which any such claim for adducing additional evidence was made, nor any request was made before the Industrial Tribunal till the proceedings were adjourned for making the award and till the award was made. The case squarely falls within the ratio of Delhi Cloth and General Mills Co. case 1973 Lab I.C. 851 (SC). Therefore, the Division Bench of the Calcutta High Court was clearly in error in granting such a non-sought opportunity at the stage of the Letters Patent Appeal.

It is clear from this decision of the Supreme Court that the Labour Court is under

no obligation suo motu to afford an opportunity to the Management to lead evidence in support of the charges when no such opportunity is sought by the Management. It is necessary to point out that this decision was considered by the Supreme Court in the Shambhu Nath Goyal Vs. Bank of Baroda and Others, It is after considering the ratio of this decision, the Supreme Court has laid down in paragraph 12 of the judgment which we have earlier quoted. We have therefore no hesitation in taking the view that the Appellant cannot succeed unless he establishes that an opportunity was sought at the earliest possible time having regard to the facts and circumstances of the case.

5. It is necessary to point out that in this case the workman was kept under suspension in the year 1977 and he came to be dismissed from service by the Management in February 1978. The workman having raised the dispute regarding wrongful termination on the ground that proper domestic enquiry was not held, the same was referred u/s 10 of the Industrial Disputes Act on 30th November 1978. The written statement came to be filed by the Management on 28th March 1979. The finding on the preliminary issue came to be recorded on 27th April 1983. As held already by us, the request for leading evidence to prove the charges came to be made by the Management in M.P. No. 14 of 1984 on 29th, March 1984. It is therefore clear that the request was made nearly six years after the termination of service of the workman and more than five years after the reference was made and about five years after the written statement was filed by the Management. Having regard to the enormous delay of five years in making the application requesting an opportunity to adduce evidence in support of the charges before the Labour Court, inference is irresistible namely that the belated entertainment of such a request is highly prejudicial to the interests of the workman. It would be most unfair at this belated stage to permit the Management to raise such a plea resulting in further protraction of the dispute and causing great harassment and hardship to the workman. We have therefore no hesitation in taking the view that the application made by the Management was rightly rejected by the Labour Court. The learned Single Judge was therefore justified in dismissing the Original Petition, by the Appellant. Hence the writ appeal fails and is dismissed.

6. Consequent upon the dismissal of Writ Appeal No. 619 of 1985, O.P. No. 2749 of 1987, wherein the final award is challenged, has to fail. Accordingly, O.P. No. 2749 of 1987 is dismissed. Having regard to the circumstances of the case, the Respondent/workman is entitled to their costs; Advocate's fee Rs. 500 in each case.