

(1992) 02 KAR CK 0017
In the Karnataka High Court
Case No : W.A. No. 316 of 1991

K.S.R.T.C.

APPELLANT

Vs

Basangoudar

RESPONDENT

Date of Decision : 18-02-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33 (2) (b)

Citation : (1993) 3 LLJ 799

Hon'ble Judges : S.P. Bharucha, C.J.;Shivraj Patil, J

Bench : Division Bench

Advocate : Thomas Peter, for M.L. Govindaraj, for the Appellant; V. Lakshminarayana, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Bharucha, C.J.—The first respondent in the Appeal was employed by the appellant, the Karnataka State Road Transport Corporation, as a conductor. It was alleged that he has committed certain acts of misconduct. A domestic enquiry was held. The findings thereon resulted in his dismissal from the appellant's service. He thereupon raised an industrial dispute u/s 10 of the Industrial Disputes Act, which was referred to the Labour Court, Hubli, (2nd respondent) for adjudication. The appellant filed before the Labour Court an objection statement which justified the order of the dismissal that was passed. The 2nd respondent held on 30th April. 1988 the domestic enquiry to be unfair and improper. Thereafter the matter was posted for arguments. It was adjourned on five occasions. The arguments of the learned Advocate for the 1st respondent were heard. Thereafter, the appellant filed an application to be permitted to file additional objections as under:

"that if this Court holds that the domestic enquiry is held to be not fair and proper, this respondent be permitted to adduce further evidence to prove the misconduct of the applicant on merits".

The second respondent found that the plea to lead evidence to prove the misconduct of the respondent had not been taken at the earlier stage, but only after the order concerning the domestic enquiry had been passed, the matter had been posted for evidence and arguments and the argument of the first respondent's Advocate had been heard on merits. Accordingly, the application to file additional objections are rejected. The second respondent then proceeded with the matter and set aside the order terminating the services of the first respondent. It was held that the first respondent was deemed to be in service and would be entitled to 50% back-wages.

2. The order of the 2nd respondent rejecting the application to file additional objections as also the Award were challenged by the appellant in the Writ Petition. The learned Judge, as aforesaid, rejected the Writ Petition.

3. It was submitted on behalf of the appellant that the second respondent had been in error in rejecting the application of the appellant to file further additional objections and, thus, in preventing the appellant from leading evidence before the 2nd respondent to prove the misconduct alleged against the first respondent and justify Supreme Court in *Rajendra Jha Vs. Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad and Another*. This was a case that related to an application filed by the employer u/s 33(2)(b) of the Industrial Disputes Act seeking approval of the Labour Court to the order of dismissal passed against the employee and it was found that when the hearing of the application u/s 33(2)(b) was nearing completion, but before the final order was passed thereon, the employer asked for an opportunity to lead evidence to justify the order of dismissal. The Labour Court then held by a common judgment that the departmental inquiry was vitiated but that employer should be allowed to lead evidence to justify the order of dismissal. In the first place, this judgment was delivered in the context of Section 33(2)(b). In the second place, the employer asked for an opportunity to lead evidence before the Labour Court held upon the validity of the departmental inquiry.

4. Reliance was also placed upon the judgment of the Supreme Court in *Desh Raj Gupta Vs. Industrial Tribunal IV, U.P., Lucknow and another*. That case concerned a reference under the U.P. Industrial Disputes Act, 1947, similar to a reference u/s 10 of the Industrial Disputes Act. The Tribunal examined in the first instance the question whether the principles of natural justice had been followed in the domestic inquiry and held in favour of the employee and, proceeding further, it asked the employer to justify the order and to justify the order of punishment on merits, which the employer did. The Supreme Court held, upon an analysis of the situation, that the Tribunal by asking the employer to justify the punishment by adducing additional evidence, had merely reminded the employer of his rights and the employer promptly had availed of the opportunity, which had not objected to on behalf of the employee. The Supreme Court therefore rejected the contention that the Tribunal had exceeded its jurisdiction in asking the employer to lead evidence.

5. In our view, the law that is applicable to the facts before us is laid down in the judgment of the Supreme Court in Shambhu Nath Goyal Vs. Bank of Baroda and Others, That was a case where the Court, in paragraph 16, specifically considered the question as it arose in a reference u/s 10 of the Industrial Disputes Act after the workman had been punished pursuant to a finding of guilt recorded against him in a domestic enquiry. It was held that in such a case there was no question of the employer filing any application for permission to lead further evidence in support of the charge framed against the workman for the defect in the domestic enquiry was pointed out by the workman in his written statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the employer had an opportunity to look into the statement before it filled its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity to lead further evidence in respect of the charge in the written statement itself. "If it does not choose to do so at that stage", the Supreme Court stated, "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..."

6. In this view of the matter, the second respondent was justified in refusing to allow the appellant to file further objections and thus to lead evidence before it to support the charge of misconduct levelled against the first respondent. The Appeal is accordingly dismissed. No Costs.