

(2003) 10 GAU CK 0015
In the Gauhati High Court
Case No : WP (C) No. 5723 of 2001

Kulendra Lahkar

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 30-10-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2004) 102 FLR 109 : (2004) 2 GLR 19 : (2005) GLT 387 Supp

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A. Dasgupta and S. Das, for the Appellant; G.A. and A.C. Das, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—An award dated 6.9.1999 passed by the learned Labour Court, Guwahati in Reference Case No. 12/1997 has been put to challenge in the present writ proceedings. The aforesaid reference had been registered in the Labour Court at Guwahati on the basis of a dispute between the writ petitioner and the management, which had been referred for adjudication to the learned Labour Court by Notification dated 10.2.1997. In so far as the present writ petition is concerned, the following two questions referred for adjudication by the learned Labour Court would have relevance :

(1)(a) Whether the management of M/s.. Tea Brokers (Guwahati) Pvt. Ltd., Guwahati was justified in dismissing Sri Kulendra Lahkar and Sri Naresh Sarma from services?

(b). If not, are the said workmen entitled to reinstatement to their job with full back benefit or any other relief in lieu thereof?

2. Before the learned Labour Court, a preliminary question with regard to the validity of the domestic enquiry held against the writ petitioner delinquent workman was framed and the said preliminary issue was elaborately adjudicated

by allowing both the sides to adduce evidence in support of the respective stands. The learned Labour Court on the basis of the evidence brought on record by the respective parties, on the grounds and reasons assigned, held that the domestic enquiry against the writ petitioner was conducted fairly and in consonance with the principles of natural justice and that having regard to the charges brought and proved against the delinquent workman, no cogent ground to interfere with the punishment of dismissal was made out. The learned Labour Court having answered the questions referred on the aforesaid basis, being aggrieved, the delinquent workman had instituted the present writ petition challenging the correctness of the impugned findings recorded by the learned Court below.

3. Mr. A Dasgupta, learned counsel for the writ petitioner in course of the very strenuous arguments advanced in support of the challenge made in the writ petition, has contended that out of the four charges levelled against the writ petitioner by charge-memo dated 11.10.1995, two charges, i.e., Charge Nos. 1 and 4 brought against the writ petitioner were in respect of acts committed in relation to the Business Manager, who had issued the charge-sheet and had also deposed as a management witness in course of the enquiry proceedings. The findings of the enquiry officer appointed to enquire into charges were concurred with by the aforesaid person, i.e., the Business Manager who had also imposed the punishment of dismissal from service. Relying on several judgments of the Apex Court, the contention advanced is that the possibility of bias being writ large on the facts of the case, the punishment imposed would be legally fragile and the learned Labour Court not having adjudicated the case from the aforesaid standpoint, the award passed needs appropriate correction. Reliance in particular has been placed on a judgment of the Apex Court in the case of *Surendra Kumar v. State of Bihar and Ors.*, reported in AIR 1985 SC 86 . The facts of the aforesaid case, cited shortly, are that in a departmental enquiry, which was described as a trial under the U.P. Police Regulations, Deputy Superintendent of Police was appointed as the authority to conduct the "trial". In course of the trial, to rebut certain evidence adduced by the delinquent, the Presiding Officer stepped into the witness-box and gave evidence. Eventually, on the basis of the materials recorded in the trial, the same Deputy Superintendent of Police, who gave evidence, passed the order of punishment. The aforesaid course of action adopted was strongly deprecated by the Apex Court holding the same to be contrary to the elementary principle of natural justice and fairness. In the case of *Third Income Tax Officer, Mangalore Vs. M. Damodar Bhat*, again relied upon by the learned counsel for the petitioner in support of the submissions advanced, charges against the delinquent employee were enquired into by the General Manager of the Company as the enquiry officer. After 5 witnesses on behalf of the Management were examined, the General Manager, who had earlier conducted the enquiry deposed as a witness in favour of the Management. The enquiry proceedings, it must be noticed, at that stage were taken over by one Ramanathan Baboo, a Director of the Company. The materials on record in the

aforesaid case disclosed that the enquiry officer, who subsequently took over, i.e., Ramanathan Baboo had actively participated in deciding who should be the witnesses in support of the charges and in what order the witnesses were to be examined. As the eventual order in the case, imposing punishment on the delinquent employee, was passed by the very same person, i.e., Ramnathan Baboo, the Apex Court took the view that the eventual conclusion of guilt and imposition of punishment was vitiated by unfairness, demonstrated by the actions taken by the very same person, who had examined himself to prove the charges against the delinquent workman.

The third case relied upon, on behalf of the writ petitioner, is reported in 1984 SCC 1356 (Arjun Chaubey v. Union of India and Ors.). In the aforesaid case, the delinquent employee was charged with misconduct qua the Deputy Chief Commercial Superintendent of the Northern Railways. The explanation submitted by the delinquent employee to the charges levelled were considered by the Deputy Chief Commercial Superintendent himself and the punishment was also imposed by the said authority himself. The aforesaid actions were held by the Apex Court to be contrary to the principles of natural justice.

4. On the basis of the aforesaid case laws relied upon, the contentions advanced by Mr. A. Dasgupta, learned counsel for the petitioner is that in the present case, the Business Manager himself had issued the charge-sheet and the charge-sheet contained two separate charges, i.e., Charge Nos. 1 and 4, which pertain to misconduct qua the Business Manager himself who had also participated in the enquiry on behalf of the Management and adduced evidence in support of the charges. Thereafter, though the enquiry was conducted by an independent person, the report of enquiry was accepted by the Business Manager, who also imposed the punishment in question. The submission advanced, in short, is that the possibility of bias being clearly evident in the facts of the present case, the punishment must be held to be vitiated in law.

5. Arguing on behalf of the respondent Management, Mr. A. Das learned counsel, has sought to controvert the arguments advanced on behalf of the petitioner by contending that in so far as the Charge Nos. 1 and 4 are concerned, the Business Manager was the only available witness, who could have thrown light on the said charges. The enquiry was conducted by an independent person whose impartiality and reasonableness in the conduct of the enquiry has been elaborately discussed by the learned Labour Court in the impugned award. As the enquiry was conducted by an independent person and in the enquiry report, the petitioner-workman has been found to be guilty of the charges, no infirmity can be found in the punishment imposed as well as in the award of the learned counsel for the respondent has submitted that there would be no occasion for the Court to exercise its extraordinary powers under Article 226 of the Constitution of India to interfere with the impugned award.

6. Before adverting to the respective contentions advanced on behalf of the rival parties, one additional argument advanced on behalf of the writ petitioner must

be answered. Mr. Dasgupta, learned counsel arguing for the writ petitioner has contended that it would not be necessary for this Court to go into the entire gamut of issues raised in the present case if this Court is to hold the present to be a fit case for interference with the punishment imposed in exercise of powers u/s 11A of the Industrial Disputes Act, 1947.

The power to interfere with the punishment imposed by the Management, as vested by Section 11A of the Act, is a rare power to be exercised for the ends of justice and not on the individual perception of the judge as to whether the punishment imposed is proportionate. In the instant case, if the charges are held to be proved, it is my considered view that no occasion would arise for this Court, even remotely, to consider the applicability of Section 11A of the Act, as having regard to the nature of the charges, the eventual decision as to whether discipline in the respondent-company has been violated and, if so, to what degree and extent, are questions which must be left to be considered by the Management. It would therefore be wholly inappropriate for this Court to go into proportionality of the quantum of punishment in the facts of the present case. This Court, therefore, is not inclined to exercise powers u/s 11A of the Act even on a hypothetical assumption of the charges being proved against the writ petitioner.

7. This would bring us to the main aspect of the consideration that the facts of the present case would call for. The fundamental principles of jurisprudence that have firmly embedded themselves to our system of laws is that every person against whom charges are levelled must be given an adequate opportunity to defend himself and the employer in a departmental proceeding, has to conduct the proceeding in conformity with the principles of natural justice, fairness and reasonableness. The necessity of adhering to the aforesaid principles at times finds manifestation in the statute law and on most occasions through judicial pronouncements made from time to time. It is neither possible nor would it be desirable, even to make an endeavour, to put such principles within the four corners of a straitjacket formula ; all would depend on the facts and circumstances of the case. In the instant case two out of the four charges levelled against the workman were for misconduct qua the Business Manager, who himself issued the charge-sheet and participated in the enquiry as a witness and thereafter, held the said charges to be proved. Not much discussion or elaboration is required to come to the conclusion that in so far as the aforesaid two charges, i.e., Charge Nos. 1 and 4 are concerned, the action of the Business Manager amounts to the same person acting as the prosecutor and judge in respect of allegations in which he was personally involved. Such a course is certainly not envisaged under the system of law that governs the country. The Business Manager having so acted, this court unhesitatingly holds that the conduct of the enquiry as well as the eventual conclusion, including the punishment imposed in so far as the aforesaid two charges, i.e., Charge Nos. 1 and 4 is concerned, to be wholly illegal.

8. The above conclusions of the Court, however would not end the matter in favour of the writ petitioner-workman. There were two charges, i.e., Charge Nos. 2 and 3 against the writ petitioner in which charges, the Business Manager was not personally involved. However, the materials on record, including the proceedings of enquiry reveal and it is agreed at the Bar by the learned counsels for the parties that the Business Manager while examining himself in the domestic enquiry did tender evidence touching upon the aforesaid two charges, i.e., Charge Nos. 2 and 3 also. If that be so, it must be understood that the Business Manager was interested in proving the said charges against the writ petitioner. If the Business Manager was interested in proving the charges against the writ petitioner, he certainly ought to have delegated the function of acceptance of the enquiry officer's report holding the said charges to be proved and further consequential action as may have been called for, to some other authority. The same was not done and instead the Business Manager, who gave evidence in support of the charges, decided the correctness of the findings of the enquiry officer holding the writ petitioner to be guilty of the aforesaid charges and thereafter imposed the punishment in question on the writ petitioner. The aforesaid course of action adopted is certainly contrary to all established principles of natural justice, fairness and reasonableness.

For the aforesaid reasons elucidated, the impugned award dated 6.9.1999 shall stand set aside. It will be open for the Management now to adduce evidence on the merits of the case to satisfy the learned Labour Court with regard to the legality of the order of the dismissal passed. The parties shall appear before the learned Labour Court within 3 months from today and take such further order or other orders from the learned Labour Court as may be called for in the light of the stand taken by the parties before this Court.

Writ petition shall stand allowed as indicated above.