
(1981) 07 KL CK 0012
In the High Court Of Kerala

Management of Arya Vaidya Pharmacy (Coimbatore) Ltd.	APPELLANT
Vs	
Secretary, Arya Vaidya Pharmacy Employees Union and Another	RESPONDENT

Date of Decision : 29-07-1981

Acts Referred:

Citation : (1982) 1 LLJ 364

Hon'ble Judges : K. Bhaskaran, J

Bench : Single Bench

Judgement

K. Bhaskaran, J.—On the basis of the finding of a domestic enquiry, the management of the Arya Vaidya Pharmacy (Coimbatore) Ltd., dismissed two of its workmen, a compounder and an attender, employed in its Calicut Branch, on a charge of theft. The cause of the workmen dismissed was espoused by the Ist respondent, the Secretary, Arya Vaidya Pharmacy Employees Union. The dispute referred to the 2nd respondent, Labour Court, Kozhikode, having resulted in Ext. P1 award whereunder the order of dismissal passed by the management was set aside and the workmen were ordered to be reinstated, the management has filed this writ petition for quashing Ext. P1 award.

2. The issues raised before the Labour Court, as are seen at page 22 of the paper book, read as follows:

(i) Is the finding of the domestic enquiry officer perverse and does not follow from the evidence adduced before him?

(ii) Is the management entitled to rely upon a plea of loss of confidence in the workers in this case?

(iii) What orders as regards termination of service of Shri P. Mani, compounder and Shri P. Sivadasan, attender from the Calicut Branch of the Arya Vaidya Pharmacy (Coimbatore) Limited be passed ?

On the first point the finding entered towards the end of paragraph 17 of Ext. P1

award reads as follows:

Anyhow when we read the evidence adduced before the enquiry officer and also the evidence given by MW2, we can easily come to the conclusion that he has given a finding which does not in any way find any basis on the evidence adduced before me and, therefore, is perverted.

On the second question, after discussing the matter at considerable length, the Labour Court came to the conclusion that the contention regarding loss of confidence could not be relied upon by the management in this case against those two delinquent workmen. On the 3rd question the finding of the labour Court was that in view of its findings on points Nos. 1 and 2, both the delinquent workmen would have to be reinstated with full benefits as regards continuity of service and backwages.

3. The counsel for the petitioner submitted that in view of the finding that the conclusion reached by the enquiry officer was perverse, an opportunity ought to have been given by the Labour Court to the management to substantiate its action by adducing evidence before the Labour Court. The circumstances under which the management could avail of an opportunity to lead evidence to justify its action before the Labour Court or Industrial Tribunal have been broadly, though not exhaustively, indicated in the decision of the Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, followed in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, Principle No. (4) enunciated in *Workmen of Firestone Tyre & Rubber v. Management* (supra) reads as follows:

2. Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action: and it is open to the employee to adduce contra.

In this case there was no contention by the 1st respondent - union either that no enquiry was conducted or that the enquiry conducted was not in conformity with the principles of natural justice. The contention of the 1st respondent-union was the conclusion reached by the enquiry officer was perverse, not warranted by the evidence on record. It is while dealing with this point that the Labour Court held that the conclusion reached by the enquiry officer was perverse and could not be sustained. In such circumstances it is not open either for the management to ask for, or for the Labour Court to grant, further opportunity to supplement or Improve the evidence adduced at the domestic enquiry. I have, therefore, no hesitation in rejecting the contention advanced on behalf of the management that the 2nd respondent Labour Court, after having found that the conclusion reached by the enquiry officer was perverse, ought to have given the management a further opportunity to adduce evidence in support of the action

taken by it.

4. Now we pass onto the second contention advanced by the petitioner. According to the counsel for the petitioner the Labour Court ought to have accepted the plea of the management that it had lost confidence in the two workmen, the compounder and the attender involved in the dispute and, as such, it ought not to have ordered their reinstatement into service. As already mentioned, the charge against the workmen related to the commission of theft which, on enquiry, the Labour Court found was not proved. The management did not initiate disciplinary proceedings against the workmen on the ground that it had lost confidence in them. As a matter of fact loss of confidence was not at all a reason advanced by the management for termination of their service, the order of dismissal was based purely on the ground that they were found guilty of act of theft. Reinstatement of the workmen into service when order of dismissal passed against them on the basis of the finding in a domestic enquiry is set aside, is the general rule, and it is not open to the management in despair, as a last resort, to raise a plea of confidence when it finds that the finding of guilt entered in the domestic enquiry on the basis of which the order of dismissal was passed by the management, was bound to be set aside by the Labour Court. In other words, the action initiated on grounds other than loss of confidence could not be converted into or developed into a case of loss of confidence to suit the convenience of the management to sustain the act of termination which the Labour Court on the facts established found to be illegal. In the present case the order of termination was passed by the management solely on the finding of the enquiry officer that the delinquent workmen were involved in an act of theft. When the Labour Court found that termination order based on the finding in the domestic enquiry could not be sustained it is not open to the management as a matter of right to raise an alternate plea of loss of confidence which plea was never advanced at an earlier stage. The counsel for the petitioner relied on two decisions of the Supreme Court, (1) Assam Oil Company Vs. Its Workmen, (2) Francis Klein and Co. (P) Ltd. Vs. Their Workmen and Another, On a careful consideration of the facts in those cases, I am afraid, these decisions are not applicable to the facts on hand. There could be no common yardstick for determining whether a case of loss of confidence has been made out or not; the decision in each case would depend upon the peculiar facts and circumstances surrounding it. Here the workmen involved were a compounder and an attender. It has not been shown that there existed any fiduciary relationship between the petitioner and the delinquent workmen. If any vague assertion, not supported by cogent evidence, to prove the bona fide of the plea raised, is accepted to be a ground for refusing reinstatement on a payment of pittance by way of compensation that would amount to giving the management an alibi to wriggle out of the natural consequences that would otherwise follow from the decision of the Labour Court or Industrial Tribunal. The success or failure of the plea of loss of confidence essentially depends upon the assessment of the facts and circumstances, considering the nature of the duty of the workmen, the trust

reposed by the management on the workmen and the fiduciary relationship, if any involved between the management and the workmen in the day-to-day work of the workmen. That assessment is the duty of the Labour Court or the Industrial Tribunal, and that cannot be interfered with by the High Court unless there is a basic error which vitiates it or there is something in it which shocks the conscience of the Court. Looked at the issue in this background I find no ground to differ from the decision of the Labour Court, especially when the petitioner is not shown to have pleaded, much less proved, that the past record of the two workmen concerned was such as to warrant the conclusion that their reinstatement into service would create problems for the maintenance of discipline in the establishment.

5. Lastly, the counsel for the petitioner submitted that any other direction except reinstatement could have been ordered by the Labour Court in as much as the power to examine the punishment awarded need not invariably end in an order for reinstatement of the workmen. He also submitted that considering the seriousness of the charge levelled, the strained relationship between the management and the workmen concerned and the long time lag between the date of termination of service of the workmen and now, the implementation of the award passed by the Labour Court would cause considerable hardship to the management. Once the Labour Court finds that the material on record did not justify the conclusion reached by the enquiry officer that the delinquent workmen were guilty of the charge levelled against them, what should follow is reinstatement of the workmen into service setting aside the order of wrongful dismissal passed by the management; and none of the above grounds put forward by the management would justify a departure from this normal practice. When the Labour Court has objectively assessed the overall position on a fair consideration of the material placed before it, and come to the conclusion that reinstatement into service was to follow its decision to set aside the wrongful dismissal, it is not for this Court to interfere with the discretion exercised by the Labour Court. No exceptional circumstance warranting the denial of the benefit of reinstatement having been made out, I do not find my way to accede to the request of the counsel for the petitioner that the order of reinstatement should be modified into some other direction. For the view that I have taken I find support in the decision of the Supreme Court in *The Management of Panitole Tea Estate Vs. The Workmen*,

6. For the foregoing reasons the writ petition fails and is dismissed, however, in the circumstances of the case, without any order as to costs.