

(2001) 11 MAD CK 0108

In the Madras High Court

Case No : Writ Petition No. 7876 of 1994

Management of Easun Machine Tool Works

APPELLANT

Vs

Presiding Officer, II Additional Labour Court and Another

RESPONDENT

Date of Decision : 30-11-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2002) 1 LLJ 1100 : (2002) 1 MLJ 228

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : N. Balasubramaniam, for the Appellant; K.M. Ramesh, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Aggrieved by the award of the Second Additional Labour Court, Madras, dated October 4, 1993 made in I.D. No. 371 of 1987, reinstating the workman-second respondent herein into service with back wages for the period of non-employment with all other benefits, the management of Easun Machine Tool Works, preferred the above writ petition.

2. The case of the petitioner-Management is briefly stated hereunder:

Originally most of their employees were belonging to a Union called Madras Chengalput General Workers Union. After sometime, dissatisfied with the attitude of the Madras Chengalput General Workers Union and its office bearers, some of the employees formed a separate Union under the banner of Tamil Nadu National Engineering Employees Union. They also entered into a settlement u/s 12(3) of the Industrial Disputes Act for reopening of the factory before the Assistant Commissioner of Labour on November 25, 1985. In respect of severe financial constraints, the management declared the statutory bonus of 8.33% on December 9, 1995 which was accepted by majority of the employees. On December 9, 1985 at about 4.00 p.m., when the bonus for the year 1984-85 was

paid, the second respondent herein threatened the; workmen who received bonus with dire consequences. He prevented other workmen going out and caused brutal injuries. The action of the second respondent is serious misconduct as contemplated in the Industrial Employment (Standing Orders) Act, 1946 and Rules.

3. For the acts of misconduct, the second respondent was placed under suspension pending enquiry. Since his explanation was not satisfactory, the management conducted a domestic enquiry. He was given ample opportunity to defend himself. The Enquiry Officer submitted a finding to the management stating that the charges have been proved. The second show cause notice was given on November 3, 1986 along with the findings of the Enquiry Officer to the second respondent. After receiving the explanation from the second respondent, the management after considering the entire matter, including his past conduct issued an order of dismissal. Therefore, the second respondent raised an industrial dispute, which was referred for adjudication before the Labour Court, namely the first respondent herein.

4. Before the Labour Court, apart from the claim statement, the workman has also filed I.A.No. 170 of 1990, requesting the Labour Court to receive additional claim statement and also filed another application, namely I.A.No. 722 of 1990 for recalling of W.W.2, on the ground that he wanted to mark the F. I. R. relating to his criminal case. The management has also filed I.A.No. 224 of 1991 praying permission of the Labour Court that for any reasons the Court conclude that the domestic enquiry conducted by the management is defective, the Labour Court should have given an opportunity for them to prove the charges before it. Though the Labour Court has allowed the applications filed by the workman, dismissed the application filed by the management on the ground of delay. After dismissing the application filed by the management and after considering the materials, after holding that the domestic enquiry was not conducted in a proper manner and that the charges were not proved, as per the deposition made by the witness examined in the enquiry, passed award reinstating the workman into service with back wages and other service benefits.

5. Heard the learned counsel for the petitioner management as well as the second respondent-workman.

6. The points for consideration in this writ petition are:

(1) Whether the Labour Court is justified in dismissing the application viz., I.A.No. 224 of 1991 filed by the management seeking permission for fresh evidence, in the event of holding that the domestic enquiry was not conducted in a fair and proper manner?

(2) Whether the Labour Court is justified in allowing the applications, namely I.A.Nos. 170 of 1990, 722 of 1990 filed by the workman for filing additional claim statement and recall of W.W. 2 respectively?

(3) Whether the Labour Court is justified in ordering reinstatement with service and monetary benefits in favour of the second respondent Workman?

7. By memo dated December 10, 1985, the second respondent-workman was charge sheeted that on December 9, 1985 at about 4.00 p.m., when bonus for the year 1984-85 was paid, he threatened the workmen who received the bonus with dire consequence and also used abusive language inside the second floor. Further charge is that, at 4.30 p.m., on the same day the second respondent assembled with the group of workmen in front of the main gate, prevented the other workmen from crossing the road and assaulted them causing bodily injuries. Disorderly behaviour during working hours in the premises, threatening abusing and assaulting workmen at the factory gate in connection with the employment are serious misconducts, as contemplated under the Industrial Employment (Standing Orders) Act, 1946 and Rules applicable to Tamil Nadu Schedule I, Section 16(j) and (i).

8. The second respondent-workman submitted his explanation for the abovesaid memo. Since his explanation was not satisfactory, domestic enquiry was conducted by the management. It is the grievance of the workman before the Labour Court that he was not given adequate opportunity and the domestic enquiry was not conducted in a fair and reasonable manner. After framing separate issue regarding the domestic enquiry, the Labour Court after considering the entire materials placed before the Enquiry Officer arrived at a conclusion that the domestic enquiry was not contended in a fair and acceptable manner and also contended that, in the second show cause notice informing the proposed punishment, absolutely there is no reference regarding past service records as well as the fate of enquiry and the ultimate decision taken against other co-employees who were also alleged to have been involved along with the second respondent herein.

9. Before going into the petition filed by the management, namely I.A.No. 224 of 1991 seeking permission to lead evidence, I shall consider the two applications filed by the workman. In I.A.No. 170 of 1990 which was filed on April 5, 1990, the workman has prayed for permission to file additional claim statement. In I.A.No. 722 of 1990 filed on October 12, 1990, the workman has prayed for recalling of W.W. 2. Based on the averments made in the respective affidavits filed in support of those applications, in the interest of justice and fair play, the Labour Court has allowed those applications. I have also carefully perused the claim made by the workman as well as the objection raised by the management and the reason given by the Labour Court in allowing those applications and I am satisfied that the Labour Court is fully justified in ordering those petitions, as claimed by the workman.

10. Now, coming to I.A.No. 224 of 1991, in the said application the management has prayed for an opportunity to them to adduce evidence and prove the charges levelled against the workman. The said petition admittedly came to be filed only in 1991. In this regard it is relevant to note, after reference by the Government

the workman has filed a claim statement on October 27, 1987. In paragraph 7 of the claim statement it is specifically pleaded that:

"7. .. .The charge sheets did not disclose any material particulars and the charges were vague and indefinite. The management purported to hold a domestic enquiry without furnishing to the workmen concerned either the list of witnesses proposed to be examined in the enquiry or the details of the documents, statements or reports relied upon in support of the charges. No copies were given. The so-called enquiry said to have been held against the workman M. Rajagopal was neither proper nor fair. The workman was denied reasonable opportunity to cross-examine the management witness....."

11. It is clear that in the claim statement filed in 1987 the workman has stated that the domestic enquiry was neither proper nor fair. For this, in the counter statement filed by the management in 1988, absolutely there is no whisper with regard to opportunity to them to adduce evidence in the event of holding that the domestic enquiry was not fair and reasonable. Only in 1991, i.e., after a period of four years, the management has filed LA.No.224 of 1991 seeking permission to lead evidence. Mr. N. Balasubramaniam learned counsel appearing for the petitioner-management vehemently contended that the Labour Court should have given an opportunity for the management to let in evidence to prove the charge before it, once it comes to a conclusion that the enquiry is defective. He also contended that, if the request is made before the proceedings, are concluded, the Labour Court or the Industrial Tribunal; should ordinarily grant opportunity to adduce evidence. In support of the said contention he very much relied on the following decisions:

(1) The Cooper Engineering Limited Vs. Shri P.P. Mundhe, : (2) Shambhu Nath Goyal Vs. Bank of Baroda and Others, : (3) Brakes India Ltd. Vs. Asst. Commissioner of Labour (Conciliation) II and Another, ; (4) State of Punjab and Others Vs. Dr Harbhajan Singh Greasy, : (5) State Bank of Patiala and others Vs. S.K. Sharma, :and (6) D.P. Maheshwari Vs. Delhi Administration and Others, :

12. Though I have gone through the above i referred decisions, I am of the view that it is unnecessary to elaborate the same in view of the recent pronouncement of the Constitution Bench judgment of the Supreme Court in a case of Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, The question posed before the Constitution Bench is that, at p. 200:

"In view of the conflict of decisions of this Court in Shambhu Nath Goyal Vs. Bank of Baroda and Others, : and Rajendra Jha Vs. Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad and Another, : we are referring this matter to a larger Bench which has to be a Bench of more than three Judges. Sri Rao, learned counsel appearing for the respondents states that there is no conflict in the decision. According to us, that submission is not correct. Hence, we are referring this to a larger Bench."

13. Before considering the conclusion of their Lordships, it is useful to refer the

earlier decision of the Supreme Court in a case of Shambhu Nath Goyal v. Bank of Baroda (supra). In Shambhu Nath Goyal case, the Hon"ble Supreme Court has concluded Shambhu Nath Goyal Vs. Bank of Baroda and Others,

"15... . the rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either u/s 10 or Section 33 of the Industrial Disputes Act questioning the legality of the order terminating the service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take certain action or seeking approval of the action taken by it."

The said conclusion in Shambhu Nath Goyal"s case was considered by the Constitution Bench in K.S.R.T. Corporation v. Lakshmiddevamma (supra). After referring all the earlier case laws on this subject, majority view of the Hon"ble Constitution Bench is as follows Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, :

"19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambu Nath Goyal v. Bank of Baroda (Supra), is the correct law on the point"

However, Mr. N. Balasubramaniam, learned counsel appearing for the petitioner by relying on a statement of law made by Hon"ble SHIVARAJ V. PATIL, J. has contended that, in the said Constitution Bench judgment, their Lordships have not taken away power of the Labour Court/Tribunal granting permission to lead additional evidence at any stage of the proceedings before they are concluded. Para 3 of the said judgment is extracted hereunder Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another,

"3. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before Labour Court Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/ Tribunals have power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the Court/ Tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the Court/ Tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice."

14. It is clear that the Supreme Court in its majority view has reiterated that to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the Court/Tribunal to lead additional evidence. No doubt, depending

on the facts and circumstances of the case and if it is just and necessary in the interest of justice, the Labour Court/Tribunal has power to permit the parties to lead additional evidence in appropriate cases. I have already referred to the specific averment made by the workman in the claim statement even in 1987 stating that the domestic enquiry was neither proper nor fair. Though the management was aware of the specific assertion, has not chosen to seek permission to lead evidence in their counter statement filed in 1988. Only after four years, i.e., in 1991 they have filed an application, namely I.A. No. 224 of 1991 seeking permission for fresh evidence. In such a circumstance, as observed by their Lordships in the Constitution Bench *K.S.R. T. Corporation v. Smt. Lakshmidevamma* (supra), though the I Labour Court has power to give permission to lead additional evidence before completion of its proceedings, I am of the view that the management has not adduced sufficient reasons for delay and I am satisfied that the Labour Court has rightly exercised its discretion by dismissing the application of the management.

15. Even on merits, I have already referred to that though similar charges have been made against other co-workers, the management has taken lenient view by suspending them for few days. On the other hand the second respondent-workman being an office bearer of the Union, imposed a capital punishment of dismissal from service for the very same charges. This was considered by the Labour Court and in the absence of fresh evidence before it by the management, has rightly set aside the order of dismissal and ordered reinstatement with service and monetary benefits. I am in agreement with the said conclusion. Though, the Labour Court has stated that the management has not challenged its earlier order dismissing I.A. No. 224 of 1991, it is settled law that the same can be canvassed while challenging the final order of the Labour Court. The contrary conclusion arrived at by the Labour Court is not in terms of settled legal position. However, in all other respects I am in agreement with the conclusion of the Labour Court and I do not find any valid ground for interference.

16. Net result, the writ petition fails and the same is dismissed. No costs.