

(1985) 02 DEL CK 0033

In the Delhi High Court

Case No : Civil Writ No. 2066 of 1981

Management of Sylvania and Laxman Ltd.

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 12-02-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1985) 51 FLR 81 : (1995) 3 LLJ 498

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : O.C. Mathur, A.M. Dittia and Meera Mathur, for the Appellant; P.M. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Chadha, J.—This petition under Article 226 of the Constitution of India seeks to quash an order dated 29th July 1981, passed by the Industrial Tribunal, Delhi refusing to accord approval sought by the Management in respect of the action of dismissal of workman by an application u/s 33(2)(b) of Industrial Disputes Act 1947 (hereinafter referred to as "Act").

2. Shri Ram Avadh, respondent No. 4 (workman) was in the employment of M/s. Sylvania & Laxman Ltd. (For short called the "Management"). He was charge-sheeted on 4th July 1977 for beating another workman in the factory and creating indiscipline there. At the same time keeping in view the seriousness of the charges, the workman was suspended from the service. He was directed to remain present in the security department situate at the main gate at 10 a.m. so that if there was any letter or order which could be given to the workman. An Explanation was submitted by the workman on 30th July 1977. The Management having found the same to be unsatisfactory directed a domestic enquiry being initiated against him. The enquiry officer submitted his report on 17th of December 1977 holding the charges to be proved against the workman. The disciplinary authority concurred with the findings of the enquiry officer and

passed the order of dismissal of Respondent No. 4 from service w.e.f. 5th of May 1978. In view of the pendency of Industrial Dispute reference No. I.D 27 of 1976 before the Industrial Tribunal, the management filed an application for approval of the action of the dismissal of the workman in compliance with the provisions of Section 33(2)(b) of the Act. The Tribunal by the impugned order declined to grant the approval sought by the Management.

3. The Tribunal expressed the opinion that the ex parte enquiry conducted by the management is unfair and improper when the workman was denied subsistence allowance which was required to be paid during the pendency of the enquiry and which the workman repeatedly requested the management to pay to him for maintaining himself and for defending himself in the enquiry.

4. The main submission of Shri O.C. Mathur, learned counsel for the management, is that the workman was given fair and reasonable opportunity to participate in the domestic enquiry and to defend himself but he did not do so. The counsel took the plea that the workman did not participate in the enquiry for ulterior motive. The workman at no stage during the course of enquiry proceedings and prior to the stage of the proceedings before the Tribunal had contended that there was any violation of the provisions of the standing orders because subsistence allowance was not paid or it created any prejudice. The fact is that the workman walked out of the enquiry without any reason and Therefore, the enquiry had to be held ex parte. The contention of the counsel is that the conclusions of the Tribunal are based on no evidence and in any event are perverse.

5. The reference is made to the Standing Order 24(c) which inter alias provides that the workman under suspension shall not enter the factory premises during the period of suspension except with the special permission of the Manager or any person authorised by him. The managements, says the counsel, passed specific orders directing the presence of the petitioner in the Security Department situate at the main gate at 10 A.M. every day and as the workman failed to comply with the necessary condition, he was not entitled to any subsistence allowance and for this reason it was not paid. The provisions of the Standing Order 24(c) providing for the suspension allowance reads as under:

24(c) "Workman, who is charge- sheeted, may having regard to the gravity of the offence and other circumstances, be suspended simultaneously. A suspended worker shall get 50% of his basic wages and dearness allowance up to a period of 90 days in case of the departmental enquiry and for 180 days if the enquiry is held up by an outside agency. Thereafter, the rate of subsistence allowance will be three-fourth of the basic wages and allowances. But the level of this benefit will be less if the delay in the disposal of the proceedings is attributable to the worker himself, i.e., where such enquiry or proceedings are prolonged beyond 180 days for reasons directly attributable to the workman, the allowance shall be one-quarter of such wage. The workman under suspension shall not enter the Factory premises during the period of suspension except with the special

permission of the Manager or any person authorised by him"

6. By order dated 4th July 1977 the workman was suspended from the service. It is the admitted case that the workman was paid subsistence allowance for the period ending 31st August 1977, and thereafter no subsistence allowance was paid. The subsistence allowance for the month of September 1977 became due and payable on 7th October 1977. The proceedings before the Enquiry Officer were fixed on 24th September 1977 for 8th of October 1977. The workman was present at the factory gate at 11.05 A.M. but the Enquiry Officer arrived in the factory at about 11.30 A.M. when the workman had left. The Enquiry Officer adjourned the proceedings to 22nd October 1977, and directed that the workman be informed immediately. On the next date of hearing, namely, 22nd October 1977, the workman was present. The representative of the workman stated that the Management had leveled false charges on the workman and the documents demanded from the Management had not been supplied. It was also stated that he did not know it fully by then as to on what basis the workman had been arrested. The proceedings then record:-"He also stated that on the one hand the management was referring to their standing orders and on the other hand they themselves have violated the standing orders and not paid the salary of September 1977 to the suspended employee till then. He also asked for the copy of the Standing Orders". On the directions of the Enquiry Officer the Management's representative gave a copy of the Standing Orders to the employee's representative. The proceedings were adjourned to 29th October 1977. On that day the workman stated that he could not participate in the enquiry until his salary was paid. The proceedings of the enquiry officer record that it was made clear to the workman that the salary had no connection with the enquiry proceedings and that he should directly contact the management regarding salary. It then records: "At this stage the employee stated that no solution would be found by participating in the enquiry because he was residing in Delhi and it is very difficult to live in Delhi without salary. He has to pay rent every month and incur expenses on transport also. It was stated to the enquiry officer that he should tell the employer about his salary having talked to the management on the next date of the enquiry". The proceedings are adjourned to 8th November 1977 when the workman appeared and handed over one letter dated 8th November 1977 to the Enquiry Officer. In that letter the workman raised several grounds of harassment including "without any reason stopping my salary etc.". On the next hearing the workman filed another letter but the copy of that letter is not on the record. On that date the workman stated that he did not want to participate in the enquiry proceedings and that he had not received the replies to his letters dated 8th Nov. 1977 and 15th Nov. 1977. It is thereafter that the workman walked out of the enquiry proceedings and ex-parte enquiry proceedings were conducted.

7. One of the objections raised by the workman in the written statement before the Industrial Tribunal is that the employer did not pay to the workman even the suspension allowance making it impossible for him to lead his evidence. In

support of this the workman entered the witness box and made a statement on oath wherein he stated that he wanted suspension period payment from the management and was not paid and so the enquiry was not completed. In the cross-examination he stated that he did not get full opportunity.

8. In granting approval of the action of the Management by the Tribunal u/s 32(b) of the Act, it is the duty of the Tribunal to see, inter alia, whether a proper domestic enquiry in accordance with the relevant rules or the standing orders has been held as also whether there has been compliance with the principles of natural justice and fair play. On the basis of the material contained in the proceedings before the Enquiry Officer and the evidence before the Tribunal, the Tribunal came to a finding that the workman who has not been paid his suspension wages cannot maintain himself and cannot defend himself in the enquiry against him. The non-payment of suspension allowance to which the workman was entitled during suspension under the certified standing orders is a clear breach of the standing order; and the non-payment of suspension allowance clearly appears to have prejudiced the workman in maintaining himself during the enquiry and in leading evidence of his own. This finding of the Tribunal is supported by the evidence on the record and cannot be branded as perverse. It is not the function of this Court to reappraise the entire evidence and to come to an independent finding in the proceedings under Article 226 of the Constitution. This Court will only interfere if the order of the tribunal suffers from the jurisdictional defect or is vitiated by any error on the face of the record be it vocative of the principles of natural justice. It was not necessary for the Tribunal to deal with all points raised, as the enquiry itself was vitiated because of the violation of the principles of natural justice. The management did not lead evidence before the Tribunal that the suspension allowance was not paid to the workman because he failed to attend the factory gate at 10 A.M every day. Such a direction is clearly contrary to the Standing Order 24(c) which provides that the workman under suspension shall not enter the factory premises during the period of suspension. The direction in the order dated 4th of July 1977 was only with a view to serve any letter or order on the workman for which his presence in the Security Department situate at main gate at 10 A.M. was desired. There is no indication or orders that the workman was required to report for duty every day. It is in these circumstances that the Tribunal did not rightly deal with to this part of the material on the record while passing the impugned order.

9. I, Therefore, find no merit in this writ petition which is hereby dismissed with no orders as to costs.

10. During the pendency of the writ petition the stay of the operation of the impugned order was granted conditionally on the management depositing 50% of the back wages in the Court. The workman was allowed to be withdrawn if after giving security for restitution to the satisfaction of the Registrar of this Court. The workman could not furnish security and the amount is still lying in the Registry. This amount be now paid to the workman without security, it will be

open to the workman to seek his remedies for the payment of the balance wages.