

(1998) 02 KAR CK 0068

In the Karnataka High Court

Case No : Writ Petition No. 32591 of 1997

M/s. Triton Valves Limited, Mysore

APPELLANT

Vs

The Labour Court, Mysore and Another

RESPONDENT

Date of Decision : 18-02-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10 (4-A)

Citation : (1999) 81 FLR 577 : (1998) 3 KarLJ 681 : (1999) 1 LLJ 775

Hon'ble Judges : G. Patri Basavana Goud, J

Bench : Single Bench

Advocate : Sri S.N. Murthy, for the Appellant; Sri K. Vishnukumar, Sri K.H. Jagadish, High Court Government, for the Respondent

Judgement

1. The learned High Court Government Advocate takes notice for 1st respondent. 2nd respondent appears in person.
2. By consent of both sides, the matter is heard and is being disposed of finally at this stage.
3. The petitioner-employer manufactures valves, and the 2nd respondent-workman, a Science Graduate, had been working as a Quality Assistant.
4. The 2nd respondent-workman is now dismissed from service. The order of dismissal had been preceded by four separate enquiries in respect of four different charges, in all of which, the workman was found guilty. The disciplinary authority, having accepted the said findings on proof of charge, has passed the order of dismissal. In that regard, the 2nd respondent-workman raised an industrial dispute before the Labour Court, Mysore, by filing an application u/s 10(4-A) of the Industrial Disputes Act, 1947 ("Act" for short). On the preliminary questions as to validity of the domestic enquiries, the Labour Court, by its order dated 18-9-1997 at Annexure-E, held all the four enquiries as invalid. The said order at Annexure-E is now sought to be quashed in this writ petition under

Articles 226 and 227 of the Constitution filed by the petitioner-employer.

5.1. The 2nd respondent-workman, at the outset, submits that, taking recourse to Article 226 of the Constitution for challenging an order on a preliminary issue like the one at Annexure-E is impermissible, such a practice having been strongly deprecated by the Supreme Court in *D.P. Maheshwari v Delhi Administration and Others*. It is true that the Supreme Court has strongly deprecated the tendency on the part of the employer therein repeatedly dragging the workman concerned to higher forums by raising preliminary objections, so much so that, thirteen years after the reference of the dispute for adjudication, the matter was still at the stage of consideration of the preliminary question. The Supreme Court also found it necessary to point out that, there was a time when it was thought prudent and wise policy to decide preliminary issues first, but that the time appeared to have arrived for a reversal of that policy, and that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues, nor should High Courts, in the exercise of their jurisdiction under Article 226 of the Constitution, stop proceedings before the concerned labour forum.

5.2. It however needs to be pointed out that, the Supreme Court was seriously agitated on the facts of that particular case on account of the repeated attempts that the employer had been making in frustrating the adjudication of the dispute. There was, however, another occasion wherein the Supreme Court did consider interference even at the stage of preliminary issue, where the matter involved consideration of a question as to whether the workman has a right to be represented by an Advocate in a domestic enquiry. That was in *Harinarayan Srivastav v United Commercial Bank and Another*. From the body of the judgment, it appears that the matter had reached the Supreme Court at the stage of consideration of the preliminary issue itself and while the main dispute was still pending adjudication before the labour forum. The question that had arisen therein was, whether workman concerned had a right to be represented by an Advocate as had been contended by the workman. The Supreme Court referred to para 19.12 of the Bipartite Settlement which permitted the workman to defend himself with the assistance of an Advocate as one of the options. Nevertheless, the Supreme Court found on facts that the allegations were very simple and were not complicated, and that, in the circumstances, failure to permit the workman to engage an Advocate was not violative of principles of natural justice.

5.3. It could thus be seen that while generally, the tendency to take recourse to Article 226 of the Constitution and to have further proceedings before the Labour Court stalled by an employer who can well afford to approach the higher forums, is to be strongly deprecated as has been done by the Supreme Court in *Maheshwari's* case, *supra*, there would be still be some cases wherein, even on preliminary issue, a decision may go to the very root of the matter and the High

Court, in appropriate case, may find it necessary to intervene and to pronounce upon the correctness or otherwise of the finding of the Labour Court on the preliminary issue concerned. The question as to whether, in a domestic enquiry, a workman, on "the facts and in the circumstances of" that particular case, is entitled to the assistance of an Advocate is such a question as has been so accepted by the Supreme Court itself in *Hannarayan Srivastav's case*, supra, it is permissible to go into the merits under Article 226 of the Constitution.

6. The Labour Court, in the impugned order, has held the domestic enquiries to be invalid on two grounds; one is that the 2nd respondent-workman had been denied an opportunity of being represented by an Advocate, for which he had made a request. The second one is that the 2nd respondent-workman had made a request for production of certain documents and that, in spite of a direction by the inquiring authority in that regard, the management did not produce the documents.

7.1. Firstly with regard to the question as to whether, on the facts and in the circumstances of this particular case, the 2nd respondent-workman was in dire need of assistance of an Advocate and whether the inquiring authority, by denying such assistance, deprived the 2nd respondent of an opportunity to properly defend himself and whether all the four enquiries, therefore, were in violation of principles of natural justice. In this regard, we may also bear in mind relevant provisions of the Standing Orders applicable to the petitioner establishment.

7.2. Clause 31-03-01 of the Standing Orders applicable to the petitioner, inter alia provides that in a domestic enquiry, the employee, if he so desires, may have one representative of his choice from amongst the employees of the company to assist him during the enquiry. No outsiders shall be allowed to represent him in the enquiry. The 2nd respondent, submits that, no co-worker had been willing to render assistance to him and that he was compelled in the circumstances to ask for assistance of an Advocate. Even assuming for a moment that no other co-worker was coming forward to assist him, the question is whether, merely on this basis, the 2nd respondent had a right to be represented by an Advocate. As noticed earlier, in *Harinarayan Srivastav's case*, supra, even where bipartite settlement enabled a workman, as an option, to avail of the services of an Advocate, the Supreme Court found that the allegations were so simple that the said option could not have been, as of right, exercised. In the Standing Order as applicable to the petitioner-establishment as referred to earlier, there is no provision for assistance of an Advocate. The 2nd respondent is a manufacturer of Valves. All the four charges concerned in the four enquiries are purely technical, which could be properly understood by the workman. One charge related, for example, to raise in temperature not properly supervised by the present 2nd respondent-workman. Another charge related to the 2nd respondent not taking follow-up action in respect of variation in the temperature. These are all matters which are very much within the knowledge of 2nd

respondent and, even if no co-worker had been coming forward to assist him, he himself could have appropriately defended himself. The allegations were simple and not complicated, particularly from the view point of the workman who is a Science graduate. The Labour Court was grossly in error in coming to the conclusion that the 2nd respondent was entitled to legal assistance. On the facts and in the circumstances of this particular case, it is apparent that the 2nd respondent neither could have asked, as of right, for the assistance of an Advocate, nor was it necessary, having regard to the nature of the charges levelled against the workman.

8. The next ground on which the Labour Court has held the domestic enquiries to be invalid is that, certain documents had been called for by the 2nd respondent-workman and that, in spite of a direction to that effect by the inquiring authority, the management refused to produce the same. The learned Counsel for the petitioner Sri S.N. Murthy submits that, in that event, the inquiring authority could have drawn adverse inference. The matter cannot be viewed as simple as that. It was a question of the very livelihood of the 2nd respondent-workman. He was being accused of negligence in duty and not taking follow-up action. In one particular case, where there was variation of temperature, it was not entirely confined to 2nd respondent-workman. There were other workman also. It was in this context that the 2nd respondent-workman insisted upon the production of an apology letter given by an Operator, in addition to the Moulding Cards. The said apology letter was very much relevant for the purpose of the enquiry inasmuch as, the 2nd respondent perhaps, could have shown from the contents thereof that he was not guilty. In spite of there being a specific direction by the inquiring authority to produce the documents, the management refused to do so. The Labour Court, therefore, in the circumstances, was right in holding the domestic enquiry in all the four cases as invalid, so far as this particular ground is concerned.

9. The impugned order, though cannot be sustained on the ground that enquiry was invalid for not permitting the 2nd respondent-workman to avail the services of an Advocate, nevertheless needs to be sustained on the ground that the documents called for by the 2nd respondent-workman and found relevant by the inquiring authority, had not been produced by the management.

10. The writ petition is, therefore, dismissed.

11. The next stage is for the management to lead evidence in justification of its action and to substantiate the charges levelled against the 2nd respondent-workman. Workman may also lead evidence to the contrary. The Labour Court shall see to it that the adjudication of the dispute and passing of the award is as expeditiously done as possible, and at any rate, not later than six months from today.