
(2004) 02 GAU CK 0032
In the Gauhati High Court
Case No : Writ Petition (C) No. 5011 of 2001

Nimai Dutta

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 12-02-2004

Acts Referred:

Citation : (2004) 3 GLR 469 : (2005) GLT 707 Supp : (2004) 3 LLJ 697

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : B.N. Sarma, for the Appellant; G.N. Sahewalla, for the Respondent

Judgement

P.G. Agarwal, J.—Heard Mr. B.N. Sarma, learned counsel for the petitioner and Mr. G.N. Sahewalla, learned senior advocate appearing for the respondent.

2. This is an application under Article 226 of the Constitution filed by the petitioner Shri Nimai Dutta challenging the award dated December 20, 2000 passed by the Labour Court, Assam, Dibrugarh in Reference Case No. 18/95.

3. The facts of the present case are that the petitioner was a workman serving in Hukanpukri Tea Estate in the district of Tinsukia and he was chargesheeted for an alleged incident on March 15, 1994. Thereafter a domestic enquiry was conducted and acting on the report of the enquiry the petitioner was dismissed from service. An industrial dispute was raised and the matter was referred to the Labour Court by the State Govt. to adjudicate the following issues:

"1. Whether the management of Hukanpukri Tea Estate are justified in dismissing the service of Shri Nimai Dutta with immediate effect vide their letter No. A-8/82/94 dated September 12, 1994.

2. If not, what relief the workman is entitled to?"

4. Vide impugned order, the Labour Court held that the Management of Hukanpukri Tea Estate are justified in dismissing the services of the petitioner Nimai Dutta and he is not entitled to any relief.

5. Mr. Sarma, learned counsel appearing for the workman has challenged the domestic enquiry on the ground that it was conducted by a non-competent person.

6. Admittedly, the enquiry was conducted by Smt. A. Sharma an advocate of Tinsukia.

7. Mr. Sarma however submits that as per the standing orders applicable to the said Tea Estate and as per Sub-clause (iv) of clause 14, the enquiry was required to be conducted by the manager only. Sub-clause (iv) of clause 14 reads as follows:

"(iv) The Manager may, when a worker is charged with misconduct, direct that such worker be suspended pending investigation by the Manager into the charge of misconduct and during the period of suspension the worker shall be entitled to receive an allowance of not less than one-half of wages provided that if the charge of misconduct is not proved the worker shall be entitled to receive the full wage for the period of suspension."

8. A bare perusal of the above standing orders will show that it nowhere provides that the enquiry is required to be conducted by the manager. The above provisions are in the matter of investigation, which is to be conducted by the manager. So far the enquiry is concerned the standing Orders are silent.

9. Mr. Sarma, however, submits that the word enquiry is included in the definition of investigation.

10. We are unable to agree with the above submission. Although the Industrial Disputes Act has not defined enquiry/investigation, the above words are well defined in the Cr.P.C, which shows that investigation precedes enquiry and an enquiry is conducted subsequent to the investigation and the word investigation does not include enquiry. We, therefore, find no merit in the submission that a domestic enquiry was required to be conducted by the manager himself.

11. The next submission of the learned counsel for the petitioner is that, in this case the workman was denied the right of representation. He had applied to the enquiry officer for allowing him to be represented by a lawyer or by any other person, whereupon the petitioner was informed by the management vide letter dated July 4, 1994 Annexure 2 as follows:

"With reference to your letter No. ND/2/INQ/94 dated nil, I would like to point out that Ms. Aroti Sarma, Chalihanagar, Tinsukia will conduct the enquiry on July 6, 1994 at 10 A.M. at my office as already intimated to you vide our letter No. A-4/56/94 dated June 23, 1994.

In this connection, I would also make it clear that since this is a domestic enquiry and not Court proceedings, you are not entitled to be represented by a lawyer or any other person. But you may be allowed to bring one observer who will however not be allowed to examine or cross-examine any witness. You are

therefore, advised to submit the list of your witnesses and also the name of the observer at least one day before the enquiry, so that, arrangement could be made accordingly. Please note that no witnesses or observers will be allowed to participate in the enquiry if their names are not submitted before starting of the enquiry."

12. Thus the fact remains that the petitioner was not allowed to be represented by a lawyer or any other person. So far the engagement of the lawyer by the petitioner is concerned, the petitioner had no right to engage a lawyer as such, because in this case the management was also not represented by any lawyer. The fact, however, remains that the petitioner was not allowed to be represented by any other person.

13. The learned counsel for the petitioner has referred to clause 14 of the Industrial Employment (Standing Orders) Act, 1946. Sub-clause (ba) of the said rules provide that in the inquiry, the workman shall be entitled to appear in person or be represented by an office bearer of the trade union of which he is a member.

14. In the case of Paradip Port Trust, Paradip Vs. Their Workmen, while considering the question of allowing the workman to be represented by a lawyer, the Apex Court has, made a fond hope that in view of recent thinking in the matter of proffering legal aid to the poorer and weaker Section of the people, the Government may consider to lift the embargo u/s 36(4) of the Industrial Disputes, Act. The law is well-settled that in the matter of domestic enquiry also a fair procedure is to be followed and the workman is entitled to a fair hearing.

15. In the present case, we find that an- advocate from Tinsukia was appointed as Enquiry Officer and the management was represented by the manager, a qualified person whereas the workman was denied the opportunity of representing his case by a representative of the union even.

16. In view of the materials on record, we find that the petitioner was denied the opportunity of being represented by any other person.

17. Mr. Sahewalla, learned senior advocate appearing on behalf of the respondent has, however, submitted that the above aspect of the matter may not be considered by this Court as that is not under challenge.

18. The question of fairness of the domestic enquiry was considered by the Labour Court and the order was passed on January 24, 1997. Once the Labour Court was satisfied that the domestic enquiry was fair, it proceeded further and directed the parties to lead evidence and accordingly both sides led evidence. The Labour Court however did not enter into the merit of the matter holding that the domestic enquiry was fair and the only question to be considered is regarding the punishment and thereafter disposed of the matter. It is therefore, submitted that in this case, as the order dated January 24, 1997 has not been specifically challenged, this Court cannot reconsider the question of fairness of the domestic

enquiry.

19. The petitioner has challenged the award passed by the Labour Court in paragraph 15 of the writ petition. It is also averred that the enquiry was vitiated as the petitioner was denied the right to be represented in the domestic enquiry by any other person. There is no dispute at the Bar that the final order/ award was passed by the Labour Court on December 20, 2000 and it was published on February 20, 2001. The said award is under challenge before us. The question that arises for consideration is whether the petitioner is required to challenge the earlier order, dated January 24, 1997. Admittedly, all the earlier orders passed by the Labour Court in the above Reference Case No. 18/95 stands merged in the final order/award and when the final order has been challenged, all the earlier orders leading to the final order become part of the challenge. We can also take a clue from the recent amendment to the CPC whereby the provisions for filing revision u/s 115 CPC have been limited. It is provided that in case or cases, orders against which revisions were earlier permitted, can be taken up by the aggrieved party when the appeal is filed against the final order passed. Thus, an embargo has been placed that each and every order passed by the trial Court in the suit are not required to be challenged. Likewise, it can be said that if a preliminary order has not been challenged in revision, it does not attain finality and the same cannot be challenged when the final order is passed. Article 39(a) of the Constitution of India provides that the opportunities for securing justice are not to be denied to any citizen by reason of economic or other disabilities.

20. Considering the scenario where the workman is fighting against the management, we hold that the workman cannot be denied the right to be represented by any other person in the domestic enquiry and if such right has been denied, then the domestic enquiry cannot be held to be fair and reasonable.

21. In view of the aforesaid and considering the admitted position that the petitioner was denied the right of fair hearing when he was refused permission to be represented by any other person and the domestic enquiry proceeded ex parte, we set aside the impugned award as well as the findings of the domestic enquiry. The petitioner before us shall be reinstated in service with immediate effect.

22. The writ petition stands disposed of.