

(1979) 09 P&H CK 0038
In the Punjab And Haryana At Chandigarh

Om Prakash

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 24-09-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 11, 11A, 33, 33A

Citation : (1979) 09 P&H CK 0038

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Judgement

Rajendra Nath Mittal, J.—This is a petition under Article 226 of the Constitution of India for quashing the award, of the Industrial Tribunal, Punjab, Chandigarh, published in the Punjab Government Gazette, dated August 3, 1973 and directing respondent No. 2 to decide the case in accordance with law.

2. Briefly, the case of the petitioner is that he is the President of the Cinema Employees Union (Regd.), Pathankot, District Gurdaspur, and was an employee of respondent No. 3. It is alleged that the workmen employed in the establishment of respondent No. 3 had raised demands with respect to gratuity scheme, uniforms, et cetera, and due to non-acceptance of the demands by the management, an industrial dispute had arisen which was referred by the State Government for adjudication u/s 10 of the Industrial Disputes Act (hereinafter referred to as the Act). It is further averred that the petitioner was a concerned workman in that industrial dispute. The Industrial dispute was referred to the Industrial Tribunal and at the relevant time the reference was pending.

3. It is further averred that on account of the activities of the petitioner as President of the Union he became an eye-sore to the Government and they concocted false case at the instance of Mr. Naik Ram against him that he was indulging in selling cinema tickets in black market. Consequently, the management gave a charge-sheet to him and appointed Mr. K.K. Gulati, as an Enquiry Officer, who found him guilty of the charges. It is next stated that the

enquiry was conducted in violation of principles of natural justice and was a farce. In view of the enquiry report, he was dismissed by the Managing Director of respondent No. 3 without complying with the provisions of Section 33(2)(b) of the Act as neither one month's notice nor salary in lieu thereof was given to him nor approval had been obtained by the employer from the Tribunal. He filed a complaint u/s 33A before the Tribunal requesting for setting aside the order of his dismissal passed by the employer which was dismissed without going into the question of non-compliance of the provisions of Section 33(2)(b) read with Section 11A of the Act. The petitioner has challenged the award of the Tribunal, *inter alia*, on the ground that it has committed an error apparent on the face of the record in not considering the case in the light of Section 11A. The writ petition has been contested by the employer who, *inter alia*, stated that the impugned award was legal and valid.

4. It is contended by the learned Counsel for the petitioner that in the complaint filed by the petitioner before the Industrial Tribunal it was the duty of the Industrial Tribunal to go into the circumstances which led to his dismissal and to give a finding as to whether the charge of misconduct was proved against him or not. She submits that the learned Tribunal decided the complaint without taking into consideration the provisions of Section 11A.

5. I have Heard the learned Counsel for the parties at considerable length and find force in the contention of the learned Counsel for the petitioner. There is no dispute regarding the facts of the case. Admittedly, the industrial dispute between the union and employer was pending before the Tribunal when the order of dismissal against the petitioner was passed. He filed a complaint u/s 33A before the Tribunal that the employer contravened the provisions of Section 33 during the pendency of the proceedings before it. The Tribunal dismissed the complaint on the ground that it could not act as a Court of appeal and make an assessment of evidence which had been recorded during the enquiry by the enquiry officer in the domestic enquiry. It further held that the enquiry officer had no bias and gave full opportunity to the complainant to cross-examine the prosecution witnesses and lead evidence in defence.

6. The main question that arises for determination is as to whether the Tribunal could go into the evidence and decide the matter as to whether the dismissal of the petitioner was valid or not. Section 33A provides that where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a Tribunal, any employee aggrieved by such contravention may make a complaint in writing in the prescribed manner to such Tribunal and on receipt of such complaint in the Tribunal shall adjudicate on the complaint as if it was the dispute referred to or pending before it in accordance with the provision of this Act and shall submit its award to the appropriate Government and the provisions of the Act shall apply accordingly.

7. Admittedly, there is a breach of Section 33 in the present case as the employer did not take the approval of the Tribunal before taking action against

the petitioner. The consequence of not following the provisions of Section 33 is that the Tribunal was required to decide the complaint as if it was a dispute referred to it in accordance with the provisions of the Act. Section 10 relates to reference of disputes to Tribunals et cetera, Section 11 to procedure and powers of the Tribunal, et cetera, and Section 11A to powers of the Tribunal, et cetera, to give appropriate relief in case of discharge or dismissal of workman. Section 11A, inter alia, says that where an industrial dispute relating to the discharge or dismissal of a workman had been referred to a Tribunal for adjudication and in the course of the adjudication proceedings the Tribunal is satisfied that the order of discharge or dismissal was not justified it may by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. A proviso has been added to this section which says that in any proceedings in this section, the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. From a perusal of the section, it is evident that very wide powers have been conferred by the Legislature on the Tribunals to decide the questions between the workmen and the employer. They can even re-appraise the evidence led before the enquiry officer and examine the correctness of his finding, The section even empowers the Tribunal to alter the punishment.

8. The scope of Section 11A came up for interpretation before the Supreme Court in *Workmen of Firestone Tyre & Rubber Co. of India P. Ltd. v. The Management* 1973-I L.L.J. 278 and *Vaidialingam, J.*, speaking for the Court, observed (at p. 295):

We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, existed. The conduct of disciplinary proceedings and the punishment to be imposed were all considered to be a managerial function which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. The position, in our view, has now been changed by Section 11A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to satisfaction being arrived by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in *Indian Iron*

Steel Co. Ltd., (supra) can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so, and now it is the satisfaction of the Tribunal that finally decides the matter.

...All parties are agreed that even after Section 11A the employer and employee can adduce evidence regarding the legality or validity of the domestic enquiry, if one had been held by an employer.

...Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction u/s 11A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

...To come to a conclusion either way, the Tribunal will have to re-appraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to re-appraise the evidence and come to its conclusion ensures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11A.

9. Section 11A had been enacted at the time when the matter came up before the Tribunal but it appears that it was not brought to its notice and the matter was decided on the basis of the law as it existed prior to the enactment of the section. The Tribunal, in my opinion, could not dismiss the complaint on the ground that it could not assess the evidence led before the enquiry officer. Rather, a duty lay on it to see after taking into consideration the evidence as to whether the petitioner was victimized or not. The learned Counsel for the employer placed reliance on the observations of the Supreme Court in *The East India Hotels Vs. Their Workmen and Others*, wherein it was held that when a proper enquiry had been held by an employer and the finding of misconduct had support from the evidence adduced at the said enquiry, the Tribunal had no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the enquiry was unfair or the findings arrived at in the enquiry were

perverse or had no basis in evidence or the management was guilty of victimisation, unfair labour practice or mala fides or the punishment was harsh and oppressive. It further held that the Tribunal could not reappraise the evidence and arrive at a conclusion different from that arrived at by the domestic Tribunal. The above observations were made by their Lordships while interpreting the provisions of the Act before Section 11A was introduced. There cannot be any challenge to the law laid down by their Lordships in view of the earlier provisions. The observations, however, do not apply to the present case in view of the amendment of the Act and introduction of Section 11A in it. In the aforesaid circumstances, the award of the Tribunal is not a proper one and is liable to be set aside. It may, however, decide the matter afresh after taking into consideration the above observations.

10. For the reasons recorded above, I accept the writ petition with costs and quash the impugned award. Counsel fee Rs. 150. The parties are directed to appear before the Industrial Tribunal, Punjab, Chandigarh, on October 26, 1979.