
(2013) 07 OHC CK 0048

In the Orissa High Court

Case No : Writ Petition (C) No. 18133 of 2010

Orissa State Handloom Weavers' Co-operative Society Ltd.

APPELLANT

Vs

Bhagaban Rout

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2013) 116 CLT 1152 : (2014) LabIC 1082

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : Santosh Ku. Pattnaik, U.C. Mohanty, D.P. Das, P.K. Pattnaik, D. Pattnaik and S. Pattnaik, for the Appellant; S.K. Sahoo, M. Mohapatra and B.B. Biswal, for the Respondent

Judgement

Sanju Panda, J.—The Petitioner has filed this Writ Petition challenging the Order Dated 15.9.2010 passed by the Member, Cooperative Tribunal, Orissa, Bhubaneswar in Service Dispute No. 10 of 2008. The brief facts of the case are as follows:

The Petitioner, a Cooperative Society, is registered under the Orissa Co-operative Societies Act, 1962. The basic function of the Society is to supply raw materials, provide assistance to the poor weavers of the State of Odisha through Primary Weavers' Cooperative Societies and market the handloom products of the weavers through sales centres established in Odisha and other places in the country. Opp. Party was an employee of the Society in the cadre of Branch Manager. During the period 1998 to 2003, he was posted as the Officer-in-charge, Stock Dispatch. He was in charge of Legal Cell from 18.12.2001. Opp. Party was transferred from that post vide Order Dated 6.11.2003 and did not hand over the complete charge to the reliever and remained absent unauthorisedly from 21.11.2003 for which the reliever had to take over charge in the presence of Executive Magistrate by breaking open the almirah during December, 2003. During inventory, it was detected that the Opp. Party, while working in the capacity as in-charge of stock dispatch and legal cell, failed to

discharge the onerous duty. It is also pertinent to mention here that vigilance cases are pending against the Opp. Party for misappropriation of the fund which is also revealed from the special audit. The Petitioner-Society initiated a disciplinary proceeding vide Order Dated 24.1.2004 on the allegation of misappropriation by unauthorized and illegal revaluation of stock at Kolkata Sales Depot and Durgapur Sales Depot. Miss Sumitra Behera, Special Officer in the office of the Director of Textiles was appointed as the enquiry officer who took up the enquiry on 22.12.2004 on which date the Marshalling Officer submitted a list of documents and a list of witnesses. In course of enquiry, the witnesses of the Petitioner-Society were examined and cross-examined. The documents which were proved by the witnesses were marked as Exts. 1 to 47. During cross examination of the witnesses of the Petitioner-Society, Opp. Party used unparliamentary language and disrupted the enquiry for which an FIR was lodged against the Opp. Party before Kharavel Nagar Police Station on 4.2.2006 by the Managing Director of the Petitioner-Society. G.R. Case No. 493 of 2006 is registered under Sections 294 /448 IPC and the same is pending before the Learned S.D.J.M., Bhubaneswar. On 19.4.2006, the Petitioner-Society called upon the Opp. Party to appear before the Disciplinary Authority for personal hearing on 4.4.2006 and 28.4.2006 and submit his reply within fifteen days. The Opp. Party though received the said letter did not submit any report within the stipulated period. Therefore, the Managing Director of the Society passed the order on 22.6.2006 dismissing the Opp. Party from service and directed to recover a sum of Rs. 2,20,260.60 from him individually and Rs. 5,24,502.70 from him and one Sapan Kumar Kundu jointly. On receiving the Order Dated 22.6.2006, Opp. Party preferred an appeal before the Appellate authority. The Appellate authority after considering the appeal rejected the appeal by Order Dated 15.2.2007. Being aggrieved by the said order, the Opp. Party filed Service Dispute Case No. 10 of 2008 before the Co-operative Tribunal Orissa challenging the disciplinary action taken against him on the ground that the reasonable opportunity of hearing was not given to him to defend the charges and that the enquiry report was not signed by the enquiry officer. The Tribunal, in order to decide the disputes between the parties, framed as many as five issues which are as follows:

1. Whether the Plaintiff was provided opportunity to verify the relevant documents regarding Charge before submission of his show cause?
2. Whether during enquiry adequate opportunity was provided to the Plaintiff to cross-examine the witnesses examined by the Department and to adduce his own evidence?
3. Whether without supplying enquiry report the punishment was inflicted?
4. Whether the Plaintiff in any manner was prejudiced during the enquiry?
5. To what relief?

The Petitioner-society, in order to establish its case, examined eight witnesses and exhibited a number of documents which were marked Exts. A to Z/3. Opp.

Party, in support of his case, examined himself as P.W. 1 and exhibited the documents which were marked Exts. 1 to 17. The Tribunal, on analyzing the evidence adduced by the parties, set aside the order of the disciplinary authority imposing punishment. The Tribunal also set aside the order passed by the Appellate authority dismissing the appeal of the Opp. Party and directed for fresh inquiry from the stage it was closed by appointing another inquiry officer and giving opportunity to the Opp. Party and the management to adduce further evidence. Hence this Writ Petition.

2. Learned Counsel for Petitioner submitted that in view of non-cooperation of the Opp. Party during disciplinary proceeding an ex parte inquiry was completed from 4.2.2006. Thereafter, though an inquiry report was supplied to the delinquent, he did not file his reply. The disciplinary authority following due procedure imposed the penalty which was not considered by the Tribunal. Therefore, the impugned order is liable to be set aside. In support of his submissions, he has cited the decisions of the Apex Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, and Satyavir Singh and Others Vs. Union of India (UOI) and Others,

3. Learned Counsel for the Opp. Party, however, supporting the order passed by the Tribunal submitted that the disciplinary authority had taken a vindictive attitude towards its employee and framed charges which were vague and baseless and some of the documents were also not supplied to the delinquent. Taking into consideration the same, the Tribunal has passed the order which need not be interfered with and the Tribunal has rightly directed to continue the inquiry from the stage it was closed. In support of his contention, he has cited a decision of the Apex Court in that case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,

4. From the rival submissions of the parties and after going through the record, it appears that the disciplinary proceeding was initiated against the Opp. Party and during the said inquiry the Opp. Party did not allow the inquiry officer to proceed with the inquiry and tried to create disturbances. A discipline employee should have cooperated with the inquiry officer and if he has not received any document, he should have filed an application to get those document(s) to file his reply to the show cause.

5. In the present case, the Opp. Party has filed his reply to the show cause. At any point of time, he has not filed any application to get some documents which are necessary for his defence; rather during disciplinary proceeding, he created disturbances without following the procedure and threatened the witnesses for dire consequences. He also did not allow the inquiry officer to proceed with the inquiry and due to his non-cooperative altitude and overt act, the Managing Director filed an FIR for which a G.R. Case is bending.

6. This Court has to consider whether under such circumstances, a further opportunity will be given to the Petitioner to complete the disciplinary inquiry

from the stage when the Opp. Party committed the overt act and whether being a wrong doer the Opp. Party is entitled to get that benefit.

7. The Apex Court in *Tulsiram Patel*'s case has held as follows:

It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed *ex parte* and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).

It was next submitted that though clause (b) of the second proviso excludes an inquiry into the charges made against a government servant, it does not exclude an inquiry preceding it, namely, an inquiry into whether the disciplinary inquiry should be dispensed with or not, and that in such a preliminary inquiry the government servant should be given an opportunity of a hearing by issuing to him a notice to show cause why the inquiry should not be dispensed with so as to enable him to satisfy the disciplinary authority that it would be reasonably practicable to hold the inquiry. This argument is illogical and is a contradiction in terms. If an inquiry into the charges against a government servant is not reasonably practicable, it stands to reason that an inquiry into the question whether the disciplinary inquiry should be dispensed with or not is equally not reasonably practicable. Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32, the Court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the Court. The Court will also examine the charge of *mala fides*, if any, made in the Writ Petition.

In examining the relevancy of the reasons, the Court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the Court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the page out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the Court will not, however, sit in Judgment over them like a Court of first appeal. In order to decide whether the reasons are germane to clause (b), the Court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a Court room, removed in time from the situation in question. Where two views are possible, the Court will decline to interfere.

8. The Apex Court in Satyavir Singh's case (supra) has held as follows:

The next point was that it was not alleged by the authorities that anyone was physically injured in the agitation. This is another argument which is difficult to understand. As held in Union of India and Another Vs. Tulsiram Patel and Others, it will not be reasonably practicable to hold an inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails. It is, therefore, not necessary that the disciplinary authority should wait until incidents take place in which physical injury is caused to others before dispensing with the inquiry.

9. In view of the above position of law, since the disciplinary inquiry has been completed after following the prescribed procedure, the Opp. Party, being a wrong doer, is not entitled to get any benefit for his overt act. Accordingly, this Court sets aside the impugned Order Dated 15.9.2010 passed by the Member, Cooperative Tribunal, Orissa, Bhubaneswar in Service Dispute No. 10 of 2008. The Writ Petition is allowed.