
(1996) 12 AP CK 0083
In the Andhra Pradesh High Court
Case No : W.A. No. 1331 of 1996

Pandu A.N.	Vs	APPELLANT
Management of Bharat Heavy Electricals Ltd. and Others		RESPONDENT

Date of Decision : 06-12-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (1997) 2 ALT 296 : (1998) 3 LLJ 842

Hon'ble Judges : P.S. Mishra, C.J.;V. Raja Gopal Reddy, J

Bench : Division Bench

Advocate : G. Vidyasagar, for the Appellant; E. Kalyanaram, S.C., for the Respondent

Judgement

V. Raja Gopal Reddy, J.—The order of the learned Single Judge in W.P. No. 1442 of 1989, quashing the award of the 1st Respondent, Labour Court, and holding the 3rd Respondent-appellant guilty for the misconduct of theft of cement and awarding punishment of stoppage of one increment with (sic. without) cumulative effect for three years, is under challenge in this Writ Appeal.

2. Few facts need to be stated :

The 3rd Respondent-appellant was the store-Keeper in the petitioner-1 st Respondent Management viz., Bharat Heavy Electricals Ltd., Hyderabad. There was some theft of cement bags on January 5, 1992. The appellant was suspected of the theft and was proceeded against by the Management. Accepting the enquiry officer's report, the disciplinary authority awarded punishment of withholding one annual increment with cumulative effect. The appellant moved the Labour Court by filing LD. No. 130 of 1983. The Labour Court allowed both the parties to produce their evidence and on appreciation of the evidence, thus recorded on, the side of the appellant/petitioner that there was no evidence to fasten any liability on the appellant for the alleged loss of cement and accordingly set aside the punishment imposed. Aggrieved by the above award,

the 1st Respondent-Management moved this Court under Article 226 of the Constitution of India. The learned single Judge held that the Labour Court fell in error in letting in fresh evidence in the enquiry before it, which was contrary to Section 11A of the Industrial Disputes Act (for short "Act") and also (in holding) that there was no sufficient evidence to support the guilt of the appellant. In that view, the learned single Judge set aside the award and held that the petitioner was guilty of theft of cement. Learned single Judge, however, awarded punishment of stoppage of one increment without cumulative effect.

3. Learned counsel for the appellant contends that the learned single Judge fell into serious error in setting aside the finding of the Tribunal holding that letting in fresh evidence by the Tribunal was contrary to Section 11A of the Act. It is further contended that the learned single Judge ought not to have entered into the merits of the case and appreciated the evidence. We are constrained to interfere with the impugned order, however, on different grounds.

4. The main contention of the petitioner-respondent in the writ petition was that the 1st Respondent-Labour Court (R-2 herein) made a fresh enquiry by recording the evidence notwithstanding the fact that the domestic enquiry had already been held by the petitioner-Management, without holding such enquiry was vitiated by reason of its being perverse or that there was no evidence to support the finding of guilt. Such a course was not open to the Labour Court when a dispute was referred for its adjudication. Only when the disciplinary enquiry was found to be vitiated for the reasons stated above, then the Labour Court will permit the Management to adduce the evidence to justify the order of punishment against the workman. If the Labour Court finds that the domestic enquiry was properly held, no further question arises as to the misconduct of the workman. It may, however, interfere with the order of punishment, if the punishment was wholly disproportionate to the misconduct established. In the instant case, without such a preliminary enquiry the workman was given opportunity to adduce evidence. This is also not a case where the Management wants to justify the order of punishment. Such a course was not permissible under law.

5. The Apex Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, analysing the powers of the Labour Court prior to insertion of Section 11A of the Act and thereafter, and after elaborate discussion of the case law in this regard, held as follows :

" 33. 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 proceeding 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. This 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 a satisfaction being arrived at 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)*, case 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.

34. If there has been no enquiry held by the employer or if the enquiry is held by the employer or if the enquiry is held to be defective, it is open to the employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognised by this Court in its various decisions, has been taken away. There is no indication in the Section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier, the Section would have been differently worded. Admittedly there are no express words to that effect, and there is no indication that the Section has impliedly changed the law in that respect. Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no enquiry or the enquiry held by him is found to be defective. Of course, an opportunity will have to be given to the workman to lead evidence contra. The stage at which the employer has to ask for such an opportunity, has been pointed out by this Court in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh*, . No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just referred to above, it is open to the Tribunal to deal with the validity of the domestic enquiry, if one has been held as preliminary issue, ff its finding on the subject is in favour of the management then there will be no occasion for additional evidence being cited by the management. But if the finding on this issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence justifying his action. This right in the management to sustain its order by adducing independent evidence before the Tribunal, if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years.

35. 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.

36. Having held that the right of the employer to adduce evidence continues even under the new Section, it is needless to state that, when such evidence is adduced for the first time, it is the Tribunal which has to be satisfied on such evidence about the guilt or otherwise of the workman concerned. The law, as laid down by this Court that under such circumstances, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and that it has to decide for itself whether the misconduct alleged is proved, continues to have full effect. In such a case, as laid down by this Court, the exercise of managerial functions does not arise at all.

37. 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.

38. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference u/s 11A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise 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 reappraise the evidence and come to its conclusion enures 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."

6. Considering the question whether the Labour Court was right in examining a Police Constable and taking his evidence into account in an enquiry before it without holding that the domestic enquiry was vitiated, the Apex Court in *Ruston and Hornsby (I) Ltd. Vs. T.B. Kadam*, summarising the principles that emerged

out of the earlier decisions on this aspect that deal with the jurisdiction to be exercised by the Labour Court/Industrial Tribunal in respect of domestic enquiry held by the Management against a worker observed as follows:

"The question regarding the Jurisdiction exercised by an Industrial Tribunal in respect of a domestic enquiry held by the management against a Worker has been elaborately considered by this Court in its decision in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, and the principles that emerge out of the earlier decisions of this Court have been set out in that decision. The decision of this Court in The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, also sets out the principles that emerge from the earlier decisions, in Tata Oil Mills Co. Ltd. Vs. Its Workmen, it was argued that where the employee is unable to lead his evidence before the domestic Tribunal for no fault of his own, an opportunity should be given to him to prove his case in proceedings before the Industrial Tribunal. This Court held that this contention was not well founded. It was pointed out that the Enquiry Officer gave the employee ample opportunity to lead his evidence and the enquiry had been fair. It was also pointed out that merely because the witnesses did not appear to give evidence in support of the employee's case it could not be held that he should be allowed to lead such evidence before the Industrial Tribunal and if such a plea was to be upheld no domestic enquiry would be effective and in every case the matter would have to be tried afresh by the Industrial Tribunal. It was pointed out that findings properly recorded at the enquiries fairly conducted were binding on the parties, unless it was known that the said findings were perverse, or were not based on any evidence."

7. A Division Bench of this Court in W.A. No. 918 of 1995, in which one of us is a party (Sri P.S. Mishra, C.J.), in its order dated August 22, 1995 Bio-chemical and Synthetic Products Ltd. Vs. Somiah and Another, has also considered the nature and ambit of the jurisdiction of Labour Court/Industrial Tribunal in a domestic enquiry u/s 11A of the Act.

8. The Labour Court, therefore, committed an error of jurisdiction in allowing the appellant-Respondent to lead evidence in the enquiry before it and come to a decision, after considering such evidence. The award is, therefore, liable to be quashed.

9. The learned single Judge without noticing the serious error of jurisdiction committed by the Labour Court, however, observed that the Labour Court committed an error in letting in fresh evidence contrary to Section 11A of the Act. There is no difficulty in accepting this conclusion of the learned single Judge since it accords with what we have stated above following the judgments of the Supreme Court. The next step would have been for the learned single Judge to direct the Labour Court to determine whether the domestic enquiry was conducted properly or not and to follow the procedure as stated in accordance with the principles in the decisions mentioned above. The learned single Judge without doing so, had himself entered into the merits of the case, reappraised

and reappreciated the evidence including the evidence that was let in before the Labour Court and ultimately held that the findings of the enquiry officer in the domestic enquiry were properly reached. Learned single Judge has exercised the jurisdiction, which is not available under Article 226 of the Constitution of India.

10. It is settled law, as held in *State of T.N. and Anr. v. S. Subramaniam* 1996 (7) SCC 509 that in writ proceedings under Article 226 of the Constitution of India, the High Court will be exercising judicial review jurisdiction and will not appreciate the evidence as a Court of appeal to arrive at its own conclusions and judicial review is not an appeal from a decision, but a review of the manner in which the decision was made. The only consideration for the Court in its judicial review is whether the conclusion was based upon evidence supporting the finding or whether it was a case of no evidence or whether procedural law was violated or whether there was any violation of principles of natural justice.

11. In view of the above the only course open for us would be to direct the Labour Court to consider whether the domestic enquiry was properly held and if it was found to be held properly the order of punishment should be affirmed; if the enquiry was not proper, the employer and the employee have to be given an opportunity to examine their witnesses, thereupon the Labour Court considering the entire evidence on record (shall) find whether the order of punishment was justified or not. We, therefore, direct the Labour Court, respondent herein, accordingly. The entire enquiry should be completed within two months from the date of receipt of a copy of this order.

12. The order under appeal is set aside and the writ petition is disposed of with the above direction. In the circumstances, no costs.