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In the Calcutta High Court

Case No : F.M.A.T. No. 2050 of 1985

Peerless Employees'' Union and Others — APPELLANT

Vs

The Peerless General Insurance and Investment Co. Ltd. — RESPONDENT

Date of Decision : 27-08-1990

Acts Referred:
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11, 15

Citation : (1991) 1 CALLT 86

Hon'ble Judges : Sachi Kanta Hazari, J;Ganendra Narayan Ray, J

Bench : Division Bench

Advocate : Indrajit Sen, for the Appellant;Tapas Kumar Banerjee and Partha Sen Gupta, for the Respondent

Judgement

Ganendra Narayan Ray, J.—This appeal is directed against the: judgment dated June 7, 1985 passed by the learned trial Judge in Civil Order No. 8109(W) of 1985. By the aforesaid judgment, the learned trial Judge directed the Industrial Tribunal in case No. 8/326/78 to treat the preliminary enquiry and the reports submitted on conclusion thereof to be fair and proper and thereafter to proceed with the reference in accordance with law. Sri Sujit Ghatak was an employee of the Peerless General Insurance and Investment Co. Ltd. (hereinafter referred to as the Company). A disciplinary proceeding was initiated against Sri Ghatak and pursuant to such disciplinary proceeding, the service of Sri Ghatak was terminated on August 27, 1975, The Government of West Bengal by memo dated September 21, 1978 made a reference to the Industrial Tribunal, West Bengal concerning 14 employees of the Company including Sri Sujit Ghatak. It appears that out of 14 persons, the cases of dismissal of three employees including Sri Ghatak was taken up by the Tribunal. The validity of the domestic enquiry resulting in the order of dismissal was taken into consideration as a preliminary issue by the Industrial Tribunal by consent of parties. It appears that the Company and the Union submitted their statements and relevant documents were produced and marked as exhibits before the Tribunal. Three enquiry officers

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in respect of the said three employees had deposed and the concerned workmen against whom orders of dismissal were passed had also deposed. The domestic enquiry in case of Ratan Dey and Ashoke Chakraborty were held to be in accordance with principles of natural justice but in respect of Sri Sujit Ghatak the Tribunal held, inter alia, that "the enquiry officer did not consider or did not go into the question whether superior officer could pass the order which the worker is said to have violated. In this view of the matter, I do not think that the enquiry and the finding arrive at in the same are proper and justified. The order of dismissal therefore is set aside and the Company is allowed opportunity to prove its case for the first time before this Tribunal as the whole thing is at large". Such order was challenged by the Company in a writ petition before this Court. Such writ petition was disposed of by the learned trial Judge on April 25, 1984 and the Company preferred an appeal against the decision of the learned trial Judge before a Division Bench of this Court in F.M.A.T. No. 1721 of 1984. The Court of appeal quashed the impugned order of the Tribunal so far as it related to Sri Sujit Ghatak and directed the Tribunal to consider the question of validity of the domestic enquiry in the light of the observations made in the judgment of the appeal Court. The said question was thereafter taken for consideration by the Tribunal and the parties advanced fresh arguments. The Tribunal by its or- der No. 74 dated 6.11.1984 held, inter alia, that service rules nowhere provided that the Assistant Secretary was clothed with the authority to advice the workmen not to sign the attendance register and the Assistant Secretary could not advise or order the workmen not to sign the attendance register and the workmen therefore did not disobey lawful or reasonable order of any superior and it was bounden duty of the enquiry officer to consider whether any lawful or reasonable order consistent with the memorandum of settlement have been passed and whether there was, any inspection of the same. As the enquiry officer did not at all advert to such aspect and mechanically arrived at a finding the enquiry was not concluded in accordance with the principles of natural justice and in that view of the matter set aside the enquiry held by the Company and called upon the Company to prove its case before the Tribunal.

2. The Company thereafter challenged the legality and validity of the said order No. 74 dated 6.11.1984 in another writ petition before this Court whereupon Civil Order No. 8109(W) of 1985 arose. The learned trial Judge disposed of such writ petition in the manner indicated hereinbefore and the instant appeal has been preferred by the Peerless Employees Union and the concerned workman namely Sri Sujit Ghatak.

3. To say the least, it is really unfortunate that the reference case relating to dismissal of the workmen in still pending before the Tribunal since 1978 to serious prejudice of the concerned workmen. Despite the anxiety expressed by the Supreme Court in the decision made in the case of D. P. Meheswari v. Delhi Administration reported in AIR 1984 SC 153 that the reference case should be disposed of expeditiously and interference with any preliminary issue should not be made so that final adjudication is delayed, such interference has been made

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in the previous writ proceeding and also in the instant writ proceeding. Be that as it may, since interference has been made and the decision has been given by the learned trial Judge in the writ petition, it is necessary to consider the said decision for disposing of this appeal.

4. Mr. Indrajit Sen, the learned Counsel appearing for the appellants has very strongly contended that in order to find out whether the domestic enquiry was aimed at unfair victimisation of labour thereby rendering the enquiry malafide and unlawful, it was necessary for the Tribunal to consider whether a disciplinary proceeding in the facts of the case was at all warranted. If the very basis of chargesheet is absent but the domestic enquiry is intended to be proceeded with for the sole purpose to make a finding of misconduct of the concerned workman so that the workman is victimised, the Tribunal within the scope and ambit of preliminary enquiry may look into relevant facts and come to the finding that the domestic enquiry having been held on an untenable chargesheet was vitiated. Mr. Sen has further contended that the scope of the decision of the preliminary issue should not be unnecessarily restricted thereby prolonging the reference case to the suffering of the workman. He has submitted that the Supreme Court in the decision made in the case of The Cooper Engineering Limited Vs. Shri P.P. Mundhe, has specially held that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by quashing its decision with regard to the preliminary issue, when, the matter, if worthy, can be agitated even after the final award and it will be legitimate for the High Court to refuse intervention at the stage of preliminary issue. The writ petition in the facts of the case, should not have been entertained and on the face of the decisions of the Supreme Court in D. P. Maheswari''s case and Cooper Engineering Works'' case, the learned trial Judge should not have gone into the merits of the decision of the preliminary issue. The appeal Court should therefore set aside the decision of the learned trial Judge and direct for immediate disposal of the reference case so far as Sri Ghatak is concerned. Mr. Sen has also submitted that if the Company is of the view that the preliminary issue has been wrongly decided and it is not necessary to lead further evidence before the Tribunal to justify the order of dismissal, it may not lead evidence and ask the Tribunal to give its award. The Company may get opportunity to challenge the award if such challenge is possible in law. But in order to tire out the poor victimised workman, attempts have been made on each occasions to forestall final disposal of the reference case and it is only unfortunate that the Company has been successful in prolonging the reference case to the utmost misery and agony of the workman.

5. Mr. Sen has also submitted that the Tribunal has also held that the enquiry report did not contain full reasons in support of the order of the enquiry officer and copy of the report made against the concerned workman was not supplied along with the chargesheet. The learned trial Judge has not accepted the said findings, as according to the learned trial Judge same reasonings had been given and the learned trial Judge has also held that as in the domestic enquiry no reliance on any report was made and the workman also did not ask for any such

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report, there had not been violation of the principles of natural justice. Mr. Sen has contended that the domestic enquiry is quasi-judicial in nature. Any decision in such enquiry must be backed by reason. If proper reasonings are not given and only semblance of some reasonings is given, the same does not fulfil the requirement of a quasi-judicial adjudication. He has also submitted that before issuing a chargesheet, some adverse reports against the workmen were made by the Assistant Manager and/or other officer or employee of the Company and obviously on the basis of such adverse -report, the chargesheet was issued and domestic enquiry was held. Such report and preliminary enquiry, if any, being the initial basis of the domestic enquiry are required to be furnished to the workman. It is immaterial if the department has not made such reports as exhibits in the domestic enquiry but attempted to establish the charge independently without any reference to preliminary report or enquiry. It is quite likely that the case sought to be made out may not fully tally with the preliminary report or in some respects, the preliminary reports may be contradictory to the evidences led in the domestic enquiry, In order to give effective and reasonable opportunity of being heard, such report should have been furnished and non-production of the report has obviously violated the principles of natural justice. Mr. Sen has submitted that the learned -trial Judge has failed to appreciate the true import and importance of the preliminary report. He has, therefore, submitted that the impugned order of the Tribunal should be upheld after setting aside the judgment passed by the learned trial Judge.

6. Dr. Banerjee, appearing for the respondent Company has, however, submitted that the scope of enquiry in a preliminary issue before the Tribunal is very limited. It is not necessary to decide at that stage as to whether the decision in the domestic enquiry is wrong on a question of law or service rules or conditions of service or the finding made in the domestic enquiry is against the weight of the evidence. For the disposal of preliminary issue, the Tribunal should see as to whether or not reasonable opportunity of being heard was given to the workmen and principles of natural justice had been followed and the domestic enquiry was conducted in a fair manner. In the instant case, the Tribunal out stepped its jurisdiction for deciding the preliminary issue and has purported to decide the correctness of the finding of the enquiry officer and/or the decision made by the disciplinary authority. The learned trial Judge has, therefore, rightly held that the Tribunal has nor decided the question involved in the preliminary issue properly and has remitted the matter for proper adjudication in accordance with law. Dr. Banerjee has also contended that in the departmental proceeding, the delinquent workmen was charge sheeted and witnesses were examined in his presence and cross-examination of the witnesses were allowed. Even if there was initial report against the delinquent workman ultimately leading to the departmental proceeding no reliance was made to any preliminary report for establishing the charges levelled against the workman. By leading evidence in the departmental proceeding, the charge was established without reference to any report. Hence for non-furnishing of any such report it cannot be held that any prejudice was

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caused to the workman. Even if it is assumed that the workman intended to utilise any preliminary report for his defence, he had never asked for such report. Hence, question of supplying the same did not arise, at all. In support of this contention, Dr. Banerjee has referred to a decision of the Supreme Court made in the case of Krishna Chandra Tandon Vs. The Union of India (UOI), Dr. Banerjee has said that in the enquiry report sufficient reasons have been indicated. Even if some more grounds or reasons to uphold the report could be given, for not giving some of such grounds can not make the report arbitrary and unreasonable. He has submitted that the learned trial Judge has rightly held that the enquiry report was not vitiated for want of any reason or on account of violation of principles of natural justice. Dr. Banerjee has submitted that although interference at intermediate stage by the Writ Court in a reference proceeding pending before the Labour Court or Industrial Tribunal has been deprecated by the Supreme Court, it has not been held that in no case such interference should be made. He has submitted that if decision of the preliminary issue is patently wrong and the ultimate decision in the award is likely to fail for such erroneous decision at the preliminary stage, it is only desirable that such error. should be corrected at the earliest possible opportunity so that the poor workman does not suffer in the long run.

7. Dr. Banerjee has also submitted that Supreme Court in D. P. Maheswari''s case and also in Cooper Engineering Ltd''s case (supra) expressed its concern and anxiety because until final disposal of the reference case culminating in an award, the unfortunate workman even if victim of unfair labour practice could not get any relief. It was in this context, the Supreme Court indicated that at the preliminary stage the High Court should refuse to interfere otherwise the poor workman will suffer by prolonging the course of the reference case. Such position however has undergone a change. He has referred to the amendment of Section 15 of the Industrial Disputes Act as effected in West Bengal on November 30, 1981. Provisions have been made to give interim relief to the workman during the pendency of the reference case. The workman has also been protected during the pendency of writ or other legal proceeding challenging the award of reinstatement. u/s 178 of the Industrial Disputes Act, irrespective of the ultimate decision in the writ or other proceeding for a challenge of the legality of the award of re-instatement, the workman is entitled to receive payment at the rate of wage last drawn before dismissal. Dr. Banerjee has, therefore, submitted that the expediency in not entertaining the writ petition at an intermediate stage of the reference case has undergone considerable change and Court should interfere against the decision on preliminary issue if such decision is patently wrong and is likely to affect the award to be passed later on. Dr. Banerjee has submitted that the learned trial Judge was justified in setting aside the order made on preliminary issue and remitting the matter for proper adjudication in accordance with law.

8. After considering the respective contentions of the learned Counsels appearing for the parties, it appears to us that the High Court should be extremely

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reluctant to entertain the writ petition for challenging the decision of the Tribunal on preliminary issue. Such challenge cannot but delay final adjudication in the reference case to serious prejudice of the workmen. Interim relief cannot be a substitute for a final award and culmination of the dispute involved in the reference case. It is always expedient to resolve the dispute by passing a final award in the reference case even at the risk of erroneous award resulting from the erroneous decision on the preliminary issue. In our view, the learned trial Judge should not have entertained the writ petition and dismissed the same on the ground that interference at that stage was not called for. We have, however, indicated that since the writ petition has been disposed of after a contested hearing, no useful purpose will be served by making a post-mortem analysis on the question of interference by the Writ Court against a decision on the preliminary issue. It, however, appears to us that the scope of preliminary issue is quite limited. It is not necessary to consider the correctness of the decision made in the domestic enquiry on merits at that stage. The Tribunal is required to decide whether the domestic enquiry was fairly conducted or not by giving reasonable opportunity to the workmen to defend in the domestic enquiry. If the Tribunal comes to the finding that the domestic enquiry was not fairly conducted and principles of natural justice were violated and the domestic enquiry was conducted malafide with an intention to victimise the workmen, the Tribunal should hold that the domestic enquiry was vitiated. In that event, the employer may opt to establish the correctness of the charge by leading evidence before the Tribunal. In our view, the learned Counsel for the Company is justified in his submission that for deciding the preliminary issue the correctness of the ultimate decision made in the domestic enquiry was not required to be considered. The Tribunal even if it holds that the domestic enquiry was not otherwise vitiated, may consider the evidence and materials on record in the domestic enquiry and on such consideration may hold that the decision on merits was erroneous or the punishment imposed was unjustified. In the instant case, we do not think that non-supply of any preliminary report to the charge sheeted workman amounted to violation of natural justice. Such preliminary report, if any, was not relied for establishing the charge levelled against the workman and the workman before the conclusion of the enquiry proceeding did not ask for such report if any. It may, however, be indicated that if there was a preliminary or probing enquiry and/or report and on consideration of such report and/or such enquiry the departmental proceeding is initiated, the charge sheeted employee will be entitled to ask for such report even though such report was not relied on by the department. The charge-sheeted employee may gainfully utilise such-report in demolishing the case of the department. There is no set rule for the principle of natural justice and the question as to whether or not the principles of natural justice have been violated will depend on the facts and circumstances in each case. The learned trial Judge, in our view, has correctly held that the enquiry report contained reasons. It is not necessary that all possible reasons must be indicated in a quasi-judicial or judicial adjudication. The decision must indicate reasons to establish that conscious application of mind was made to the relevant

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facts so that it inspires confidence in the adjudicatory process. We, therefore, dispose of this appeal by directing the Tribunal not to proceed on the footing that there had been violation of the principle of natural justice in holding the domestic enquiry or the same was conducted in a malafide manner with an intention to victimise the concerned workman. The Tribunal will take into consideration the materials and evidences adduced in the domestic enquiry and consider whether the charge levelled against the workman was justified and/or the such charge has been established or can be sustained on the materials on record. The Tribunal will also be entitled to consider as to whether or not the punishment imposed on the workmen was justified in the facts and circumstances of the case. Even if the charge is held to have been established in the domestic enquiry and such charge can lawfully be brought against the workman, the Tribunal will be entitled to consider about the quantum of punishment to be imposed on the workman. As the matter is pending for a very long time, the Tribunal should dispose of the matter as early as practicable preferably within three months from today.

There will be no order as to costs in this appeal.

S.K. Hazari, J.

9. I agree.

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