

(2015) 08 GAU CK 0007
In the Gauhati High Court
Case No : WP(C) No. 4897 of 2015

Pertabghur Tea Estate

APPELLANT

Vs

Hiren Bhumij and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10(1), 33

Citation : (2015) 147 FLR 1016 : (2015) 4 LLN 367 : (2015) LLR 1166

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : K. Goswami, Learned Counsel, for the Appellant; A. Dasgupta, Learned Senior Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ujjal Bhuyan, J—Heard Mr. K. Goswami, learned counsel for the petitioner/management and Mr. A. Dasgupta, learned Senior Counsel for the respondent/workman.

2. This petition under Article 226 of the Constitution of India has been filed by the management for quashing of the award on preliminary issue, passed by the learned Labour Court, Guwahati, on 30.03.2015, in Ref. Case No. 1/2010.

3. By the award on preliminary issue, dated 30.03.2015, the learned Labour Court held that the domestic inquiry conducted by the management against the workman (respondent No. 1 herein) was not valid and accordingly, decided to hear the management by adducing of evidence to justify its action of dismissal of the workman.

4. Basic facts relevant for adjudication of the case may be briefly noted.

5. Petitioner is the management of a tea estate, called "Pertabghur Tea Estate". Respondent No. 1 was a workman of the petitioner. On 31.05.2003, a show cause notice was issued to him by the management charging him with

committing misconduct inasmuch as he had prevented workers of the petitioner from discharging their duties for which verbal and written complaints were lodged by a group of workers before the management. Respondent No. 1 was also placed under suspension. Explanation furnished by respondent No. 1 was found to be unsatisfactory and accordingly management decided to hold a domestic inquiry against the respondent No. 1 on the charges mentioned in the show cause notice.

6. In the meanwhile, another show-cause notice was issued to the respondent No. 1 on the charge that he tried to incite the workers against the management for deduction of union subscription from wages of the workers. Written explanation furnished by the respondent No. 1 was found to be not satisfactory. It was, therefore, decided to hold inquiry against respondent No. 1.

7. Inquiry was conducted by appointing independent Enquiry Officer. Witnesses of both the sides were examined and cross-examined. On conclusion of the enquiry, Enquiry Officer submitted his report to the management on 22.03.2004 holding respondent No. 1 guilty of misconduct as charged. Though copy of the inquiry report was forwarded to respondent No. 1, he did not submit any representation. Thereafter, management passed order dated 04.05.2004 dismissing respondent No. 1 from service.

8. Respondent No. 1 raised an industrial dispute before the Labour Officer seeking reinstatement in service. Assistant Labour Commissioner held conciliation proceeding between the management and the workman. However, the conciliation proceeding failed. Matter was referred to the appropriate government. Ultimately, the appropriate government i.e., the Govt. of Assam in the Labour & Employment Department, issued notification dated 01.04.2010, under section 10(1) of the Industrial Disputes Act, 1947 making a reference to the Labour Court for adjudication of the following issues:--

"i) Whether the management of Pertabghur Tea Estate was justified in dismissing the services of Sri Hiren Bhumij w.e.f. 04.05.2004?

ii) If not, whether the workman Sri Hiren Bhumij is entitled for reinstatement with back wages or any other benefits in lieu thereof?"

9. On notices being issued, both the sides appeared and filed their written statements.

10. Management in their written statement has justified the punishment imposed on the workman as well as the validity of the domestic inquiry. Management relied on the domestic inquiry and requested the learned Labour Court to decide validity of the domestic inquiry as a preliminary issue. It was stated that if the decision went against the management on the preliminary issue, opportunity may be given to the management to adduce evidence in support of the charge against the workman and his dismissal. Management also filed a petition for framing of preliminary issue. Accordingly, the following preliminary issue was

framed:--

"Whether domestic inquiry held by the management is valid or not?"

11. On due consideration, the learned Labour Court held that the inquiry conducted by the Enquiry Officer against respondent No. 1 was not valid. Therefore, the preliminary issue has been decided against the management and in favour of the workman. Management has been given liberty to adduce evidence to justify its action of dismissal of the workman.

12. It is against this order that present writ petition has been filed by the management.

13. Learned counsel for the petitioner/management submits that the findings arrived at by the learned Labour Court in support of the conclusion that the domestic inquiry conducted against respondent No. 1 is not valid, are wholly untenable. On the reasonings given by the learned Labour Court, the domestic inquiry could not have been held to be invalid. If the preliminary issue is answered in favour of the management, no occasion would arise for adducing of further evidence by the management to justify the charge against respondent No. 1. Finding of the learned Labour Court being wholly unsustainable, the same is required to be interfered with at this stage itself, as any further prolongation of the reference proceeding would be a waste of judicial time. In support of his submissions, learned counsel for the petitioner has placed reliance on the following decisions:--

"i) Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd., AIR 1960 SC 914 : (1960) 1 FLR 23 : (1960) 2 LLJ 228 : (1960) 3 SCR 407 .

ii) Goodyear (India) Ltd. and Another Vs. Industrial Tribunal and Others, (1969) 1 LLJ 153

iii) M. Rama Warriar and Others Vs. Coir Board, (1989) 59 FLR 198 : (1989) 1 ILR (Ker) 596 : (1990) 1 LLJ 544 ."

14. On the other hand, Mr. Dasgupta, learned Senior Counsel appearing for the workman submits that the writ petition is not at all maintainable, since the reference proceeding has not yet been finally concluded. The learned Labour Court is in the process of adjudicating the reference referred to it by the appropriate government under section 10(1) of the Industrial Disputes Act, 1947. At the instance of the management, a preliminary issue was framed regarding validity of the domestic inquiry conducted against the workman. That issue has been decided by the impugned preliminary award by holding the domestic inquiry as invalid. Since in the written statement, management had made an alternative prayer at the very beginning that in the event of the preliminary issue being decided against it, it would adduce evidence to substantiate the charge against the workman, the learned Labour Court after deciding the preliminary issue against the management and in favour of the workman has granted opportunity to the management to adduce evidence in

support of the charge against the workman. The approach of the learned Labour Court is absolutely correct and no interference is called for at this interlocutory stage when the reference is yet to be finally decided. Writ petition is premature, he submits. In support of his submission, learned Senior Counsel has placed reliance on a Constitution Bench decision of the Apex Court in Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, AIR 2001 SC 2090 : (2001) 90 FLR 35 : (2001) 1 JT 461 Supp : (2001) LabIC 1777 : (2001) 2 LLJ 199 : (2001) 3 SCALE 600 : (2001) 5 SCC 433 : (2001) 3 SCR 284 : (2001) 2 SCT 1041 .

15. Submissions made by learned counsel for the parties have received the due consideration of the Court. Citations referred to and relied upon at the Bar have also been perused.

16. Facts, upto this stage, are not in dispute.

17. As has already been noticed, management in their written statement have justified the validity of the domestic inquiry conducted against respondent No. 1 and accordingly, sought adjudication on validity of the domestic inquiry as a preliminary issue. It was, however, stated that if the preliminary issue was decided against the management, opportunity may be given to the management to adduce evidence to support the charge against the workman. Management had also filed a petition for framing of preliminary issue and accordingly, a preliminary issue was framed as to whether domestic inquiry was valid or not. By the impugned award dated 30.03.2015, the preliminary issue has been decided against the management and in favour of the workman by holding that the inquiry conducted against the workman was not valid. After holding so, the learned Labour Court noted that since the management had already taken the plea at the earliest possible opportunity to adduce fresh evidence to justify the charge against the workman leading to his dismissal, management has been granted liberty to adduce evidence to justify dismissal of the workman.

18. At this stage, it may not be necessary to make a detailed reference to the reasons and findings given by the learned Labour Court while deciding the preliminary issue. This is because of the deliberations unfolding in the succeeding paragraphs.

19. In Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, AIR 1965 SC 1803 : (1965) 11 FLR 112 : (1965) 2 LLJ 162 : (1965) 3 SCR 588 , the Apex Court observed as follows:--

"If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the Industrial Tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the

employer to claim the benefit of the domestic enquiry given. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits, the employee has the advantage to having the merits of his case being considered by the Tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the Tribunal may give an opportunity to the employer to prove his case and in doing so the Tribunal tries the merits itself."

20. Following the above decision, in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh*, AIR 1972 SC 1031 : (1972) 1 LLJ 180 : (1972) 1 SCC 595 : (1972) 3 SCR 29 , the Apex Court held that when a domestic inquiry has been held by the management and the management relies on it, the management may request the Industrial Tribunal to try the validity of the domestic inquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal if the finding on the preliminary issue is against the management. In such a case, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to adduce additional evidence and also give a similar opportunity to the employee to lead contra evidence. It was held that the management should avail the said opportunity by making suitable request to the Tribunal before the proceedings are closed. If such a request is not made before closure of proceedings, no grievance can be raised later on by the employer that it did not have such an opportunity.

21. This issue was again examined in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, AIR 1975 SC 1900 : (1975) 31 FLR 188 : (1975) LabIC 1441 : (1975) 2 LLJ 379 : (1975) 2 SCC 661 : (1976) 1 SCR 361 , wherein the Apex Court held that the Labour Court should first decide as a preliminary issue whether the domestic inquiry is valid or not. Once the decision is given on the preliminary issue, it will be for the management to decide whether to adduce any evidence before the Labour Court or not. Thus, in *Cooper Engineering Ltd.* (supra), the Apex Court held that when the Tribunal/Labour Court was called upon to decide validity of a domestic inquiry, the same had to be tried as a preliminary issue and thereafter, if necessary, management was to be given an option to adduce fresh evidence if sought for. But if the management chooses not to adduce any evidence, it will be precluded from raising this issue in any subsequent proceeding.

22. However, in *Shambhu Nath Goyal Vs. Bank of Baroda and Others*, AIR 1984 SC 289 : (1983) 2 LLJ 415 : (1983) 2 SCALE 931 : (1983) 4 SCC 491 : (1984) 1 SCR 85 : (1983) 2 SLJ 607 , the Hon"ble Supreme Court laid down the following principles:--

"16. We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workman referred to in the above passage is the application which may be filed by the

management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission under Section 33 of the Industrial Disputes Act, 1947 to take a certain action or grant approval of the action taken by it. The management is made aware of the workman's contention regarding the defect in the domestic enquiry by the written statement of defence filed by him in the application filed by the management under Section 33 of the Act. Then, if the management chooses to exercise its right, it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference under Section 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry, there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do."

23. Thus in *Sambhu Nath Goyal* (supra), the view taken by the Apex Court was that the management should make the request for opportunity to adduce evidence in case the domestic inquiry was held to be invalid in the written statement itself. If such a request was not made at the initial stage, it cannot be allowed to do so at any later stage of the proceeding by filing application which would inevitably delay adjudication of the proceeding thereby frustrating the very purpose and object of the Industrial Disputes Act, 1947.

24. The Hon'ble Supreme Court in *Karnataka State Road Transport Corporation* (supra), considered all the above decisions as well as other decisions, and summed up the position by holding that by the judgment in *Sambhu Nath Goyal* (supra), the management was given the right to adduce evidence to justify its domestic inquiry only if it had reserved its right to do so in the objection filed to the reference made under section 10 of the Industrial Disputes Act, 1947 or in the application made by it under section 33 of the said Act, meaning thereby that the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Industrial Tribunal/Labour Court. The Constitution Bench opined that the procedure laid down in *Sambhu Nath Goyal* (supra) is just and fair and that the law laid down therein is the correct law on the point.

25. The Apex Court observed that the right of the management to lead evidence

before the Labour Court or the Industrial Tribunal in justification of its decision under consideration by such Tribunal or Court is not a statutory right, but is actually a procedure laid down by the Supreme Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the workman.

26. At this stage, the decision in *Cooper Engineering Ltd.* (supra) may once again be adverted to. In the said decision, the Apex Court made it abundantly clear that there would be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. The Apex Court further clarified that it would also be legitimate for the High Court to refuse to intervene at this stage.

27. There are weighty reasons behind the aforesaid clarification of the Apex Court. Provisions of the Industrial Disputes Act, 1947 are intended for resolution of industrial disputes in a fair, peaceful and judicious manner so that industrial peace is maintained and industrial production is not hampered. Therefore, there should not be any undue delay in adjudication of industrial disputes. Interference with the decision of the Labour Court on the preliminary issue of validity of the domestic enquiry when the management had exercised its right of leading fresh evidence (at the first available opportunity) in the event of the preliminary issue being decided against it may not be justified. In the circumstances of the case, no fault can be found with the view taken by the Labour Court giving liberty to the management to adduce evidence to justify its action of dismissal of the workman after deciding the preliminary issue regarding validity of the domestic inquiry leading to dismissal of the workman against the management.

28. In the light of the above, particularly the clarification of the Apex Court in *Cooper Engineering Ltd.* (supra), this Court is not inclined to invoke its writ jurisdiction under Article 226 of the Constitution of India at this stage with regard to the decision of the learned Labour Court on the preliminary issue when the reference is yet to be finally adjudicated.

29. Accordingly and in the light of the above, this Court finds no merit in the writ petition, which is dismissed. No costs.