
(2000) 12 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 17222/93A

Pokkan, C.

APPELLANT

Vs

The Manager, Jessie Estate and Others

RESPONDENT

Date of Decision : 11-12-2000

Acts Referred:

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

Citation : (2002) 4 LLJ 589

Hon'ble Judges : K.A. Mohamed Shafi, J

Bench : Single Bench

Advocate : R.K. Venn Nair, for the Appellant; T.D. Rajalakshmi, for the Respondent

Judgement

K.A. Mohamed Shafi, J.—This O. P. is filed by the Petitioner to quash Ext. P-3 Award and direct the first Respondent to take back the Petitioner in service with backwages from the date of suspension till reinstatement.

2. Petitioner was a worker under the first Respondent. Alleging that on some night prior to 23rd May 1987 the Petitioner along with his co-worker one Ramakrishnan trespassed into one of the servants quarters within the compound of Estate Managers bungalow and committed theft of two wooden cots, a memo of charges was issued to the Petitioner. Though the Petitioner denied the allegation, enquiry was initiated against the Petitioner and the co-worker and he was kept under suspension pending enquiry. An enquiry officer was appointed and after enquiry it was found that the charge against the Petitioner was proved. On the basis of and accepting enquiry report, by memo, dated 16th November 1987 the Petitioner was dismissed from service by the first Respondent. As against Ext. P-1 order industrial dispute was raised and it was referred to the Labour Court, Kannur. The Labour Court, Kannur by Ext. P-3 Award finding that the dismissal of the Petitioner is justified held that he is not entitled to be reinstated in service with backwages and continuity of service. Hence the

Petitioner has filed this O.P. seeking necessary relief.

3. Petitioner has contended that the very allegation of theft made against him is false, illegal and based on no evidence. He has also contended that the enquiry conducted in this case is vitiated since the enquiry officer without considering the evidence on record and on mere surmises and conjectures and facts not at all supported by evidence illegally found that the charge levelled against the Petitioner is proved. He has also contended that in spite of specific contention raised by him before the Labour Court that the domestic enquiry conducted by the management in this case was improper, illegal and invalid, the Labour Court without considering that contention and applying its mind found that domestic enquiry conducted is proper and valid by simply stating that it is proper and valid without any consideration of the preliminary point raised by the Petitioner at all as is evident from para 8 of Ext. P-3 Award. Therefore it is contended that the finding arrived at in the enquiry conducted by the enquiry officer and the finding of the Labour Court that the domestic enquiry conducted by the management is proper and valid being absolutely illegal, unsupported by any evidence and on consideration of inadmissible evidence and extraneous matters are liable to be interfered with by this Court by exercising its jurisdiction u/s 226 of the Constitution.

4. It is patent from Ext. P-1 order passed by the management dismissing the Petitioner from service and Ext. P-3 Award passed by the Labour Court that there was absolutely no legal advice adduced by the management before the enquiry officer to connect the Petitioner with the offence of theft alleged in this case. Even though it is alleged that the Petitioner and the co-worker Ramakrishnan committed theft of two cots from the servants quarters of the first Respondent, the Petitioner is implicated on the basis of confession statement given by the co-accused Ramakrishnan to the effect that he along with the Petitioner committed theft of two cots from the servants quarters. The only other material produced before the enquiry officer is the evidence of attesting witnesses for seizure of cots from the residence of Ramakrishnan to the effect that at the time of seizure the Petitioner was also present. There is absolutely nothing on record with regard to the involvement of the Petitioner in the crime except these allegations. The enquiry officer found that as it is not possible for Ramakrishnan alone to remove two cots from the servants quartets to his residence the Petitioner also involved in the crime. It is elementary knowledge that the confession of a co-accused is not admissible in evidence. Unless and until there is cogent and reliable evidence with regard to the involvement of a delinquent in the commission of the alleged theft it is not possible to find him guilty of the offence of theft and for that matter guilty of misconduct. Therefore it is patent that the enquiry officer disregarding the elementary rule of evidence found that the charge levelled against the Petitioner is proved on the basis of no evidence at all and based on matters not admissible in evidence. Therefore the Labour Court should have considered the propriety and validity of the report of enquiry on the basis of the evidence adduced by the management before the enquiry officer and arrived at a

conclusion as to whether the enquiry conducted by the management was proper and valid. Therefore the finding arrived at by the Labour Court in this case that the domestic enquiry conducted by the management in this case is proper and valid without considering the contentions raised by the Petitioner and the evidence adduced before the enquiry officer by the crippled statement in one sentence in para 8 of the Award is vitiated and illegal for non-application of mind and entering the finding based on no legal and valid evidence material at all.

5. Counsel for management submitted that the scope of enquiry by the Labour Court u/s 11(A) of the Industrial Disputes Act is very much limited and it is only after the Labour Court considered whether the enquiry conducted is proper and valid on the basis of the evidence on record and if it is found that the enquiry is improper opportunity should be given to the management to adduce evidence. According to them it is only in cases the domestic enquiry is not properly conducted and principles of natural justice are violated the Labour Court can interfere with the finding of the enquiry officer. In support of this contention, counsel for first Respondent relied upon various decisions. In the decision reported in the *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, the Supreme Court has observed as follows:

We have indicated the changes effected in the law by Section 11A. We should not be understood as laying down that there is no obligation whatsoever on the part of an employer to hold an enquiry before passing an order of discharge or dismissal. This Court has consistently been holding that an employer is expected to hold a proper enquiry according to the standing orders and principles of natural justice. It has also been emphasised that such an enquiry should not be an empty formality. If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusions arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer. Further by holding a proper enquiry, the employer will also escape the charge of having acted arbitrarily or mala fide. It cannot be over-emphasised that conducting of a proper and valid enquiry by an employer will conduce to harmonious and healthy relationship between him and the workmen and it will serve the cause of industrial peace. Further it will also enable an employer to persuade the Tribunal to accept the enquiry as proper and the finding also as correct.

6. In the decision reported in *Udumbanchola Estate Workers Union v. Indian Cardamom Research Institute* 1998 (1) KLT 222 this Court has observed as follows:

After considering the enquiry proceedings, Tribunal agreed with the finding of the enquiry officer. When Tribunal agrees with the enquiry officer, there is no necessity for repeating the evidence and conclusion by the tribunal even though tribunal can differ from the findings of enquiry officer in a properly conducted

enquiry on cogent reasons as held in para 50 of Firestone's case.

7. In the decision reported in Neeta Kaplish Vs. Presiding Officer, Labour Court and Another, the Supreme Court has observed as follows:

The provisions of Section 11A, specially the prohibition contained in the proviso that the Labour Court would not take any fresh evidence, came to be considered by this Court in several cases which we shall shortly notice but even before the introduction of Section 11A, this Court in Ritz Theatre (P) Ltd. v. Workmen laid down that where the management relied upon the domestic enquiry in defending its action, it would be the duty of the Tribunal to first consider the validity of the domestic enquiry and only when it came to the conclusion that the enquiry was improper or invalid, it would itself go into the merits of the case and call upon the parties to lead evidence.

8. Relying upon the above rulings counsel for 1st Respondent vehemently argued that since a proper enquiry was conducted by the management and that enquiry was found proper by the Labour Court, there is no question of the Labour Court proceeding further to consider the matter on merits after giving opportunity to the parties to adduce evidence. Therefore, according to him, the finding of the Labour Court in this case cannot be assailed. Though the principles laid down in the above rulings cannot be challenged they are of no help to the first Respondent--management in this case. It is clear that the findings arrived at in the domestic enquiry against the Petitioner is illegal and improper as it is not based on any legal and acceptable evidence. Therefore the contention of the Petitioner that the Labour Court has not only found that the findings arrived at in the domestic enquiry is proper and valid, but the Labour Court considered the evidence and found that the findings arrived at in the domestic enquiry is proper and acceptable is not at all sustainable. If the Labour Court found that the enquiry conducted was legal and proper the only further question to be considered by the Labour Court is regarding the quantum of punishment and there is no question of consideration of the finding of guilt arrived at by the domestic enquiry on merits. Only in cases wherein the Labour Court finds that the enquiry conducted is improper and illegal it has to proceed further with the enquiry after giving opportunity to adduce further evidence to the parties u/s 11A of the Act.

9. The contention of the Petitioner that as he was acquitted in the criminal case in respect of the very same incident the finding of guilt arrived at in the domestic enquiry is not sustainable cannot be accepted since the acquittal in criminal case has no effect in a domestic enquiry with regard to the misconduct of the employee.

10. In the decision reported in Narayanan v. B.P.L. Systems Pvt. Ltd. 1994 (1) KLT 548 a Division Bench of this Court has observed as follows:

So far as the acquittal in the criminal case is concerned, the same is not of any effect in view of the findings independently arrived at by the Industrial Tribunal.

Therefore the acquittal of the Petitioner in the criminal case in G. G. No. 64/88 by the Judicial First Class Magistrate's Court, Mananthavady as per Ext. P-2 Judgment is of no help to the Petitioner in an independent enquiry regarding the misconduct alleged against him.

11. Relying upon several decisions of the Supreme Court including the decisions reported in Delhi Cloth and General Mills Ltd. v. Kushal Bhan 1960 (1) L.L.J. 520, U.P. State Road Transport Corpn. and Others Vs. A.K. Parul, and Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourara Sangha Etc., counsel for first Respondent submitted that the penalty imposed in this case is only proper whereas the Petitioner contended that the extreme penalty of dismissal from service in this case is not at all commensurate with the offence alleged against him. The right of the management to impose punishment upon the delinquent employee after finding the misconduct alleged is well established. The question whether the misappropriation or theft etc. alleged is in respect of a large amount or small amount is no consideration at all. In cases where the management loses its confidence on the employee the imposition of penalty of dismissal from service for breach of trust, misappropriation, theft, etc. can be justified irrespective of the quantum of the amount involved in the alleged theft, misappropriation or breach of trust. This aspect does not arise for consideration in this O.P. since in view of my finding that the decision of the Labour Court that the enquiry conducted in this case is proper and valid is not sustainable. The matter has to be considered by the Labour Court afresh after giving opportunity to both sides to adduce evidence. Under the circumstances, Ext. P-3 award passed by the Labour Court is set aside and the matter is remanded to the Labour Court for fresh disposal in accordance with law after giving opportunity to both sides to adduce evidence as provided u/s 11A of the Industrial Disputes Act. The parties will appear before the Labour Court on 4th January 2001.

12. Being a very old matter the Labour Court is directed to dispose of the matter very expeditiously, at any rate within three months from the date of receipt of a copy of this Judgment.