

(1970) 10 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Appeal No. 31D of 1961

Raj Enginbering Works Private Ltd., Ajmere Gate, Delhi

APPELLANT

Vs

E. Krishna Murti, Industrial Tribunal, Delhi and Others

RESPONDENT

Date of Decision : 16-10-1970

Acts Referred:

Citation : (1972) 8 DLT 121

Hon'ble Judges : S. Ranganathan, J

Bench : Single Bench

Advocate : D.K. Kapur, for the Appellant;

Judgement

Rangarajan, J.

(1) In spite of service the respondents 2 & 3 (the workman and the Engineering work's Union) did not file any return, the first respondent being the Industrial Tribunal, Delhi, actual date notice having been sent for the hearing on 18th September 1970 and the case having appeared on the cause list since then.

(2) The workman concerned (Om Parkash) was dismissed after the inquiry by the management on a charge of having deceived the company by charging Rs. 10 50 paise for four pitchers purchased from the bazar though he had paid a lesser amount. The workman had also submitted original bill of Rs. 10.50 paise as the cost of the pitchers and fifty paise for cartage. When an Industrial dispute was raised and the matter was referred to the Industrial Tribunal Delhi, an award (copy of which is Annexure H to the petition) was passed setting aside his dismissal and directing his reinstatement, but without an emoluments or compensation for the period between the date of dismissal and date of reinstatement. The finding at the domestic inquiry, that four pitchers had been purchased for only Rs. 7.00 at the rate of Rs. 1/12.00 per pitcher and that he had submitted a false bill claiming an amount in excess of what he had paid for four pitchers was, however, upheld by the Tribunal which observed:

I am unable to hold that there is any breach of the natural justice in the matter

of the inquiry Neither can it be held, that the findings of the management on the material before them can be held to be perverse, or baseless."

Non-the-less the Tribunal persuaded itself to order reinstatement on the ground that the punishment, of dismissal, was harsh. The Tribunal referred to the decision of the Supreme Court in *Lakshmi Devi Sugar Mills Ltd. v. Pt. Ram Sarup*. Though it noticed the observations of the Supreme Court that once the Tribunal came to the conclusion that a prima facie case had been made out against the workman in question it was not concerned with the measure of the punishment nor with the harshness or otherwise of the action proposed to be taken by the employer, except perhaps to the extent that it might bear on the question whether the action of the management was bona fide, still though that the observations in that case enabled the Tribunal, in a proper case, to find out whether having regard to all the circumstances of the case the punishment dealt out by the employer was harsh or excessive. I am unable to find any support for this view taken by the Tribunal from the observations made by the Supreme Court in the above said case. This aspect of the matter was also considered by the Supreme Court in later case *M/s. Indian Iron and Steel Co. Ltd. and another v. The Workmen*. S.K. Das J. observing as follows :-

"IF, the Tribunal proceeded on the footing that the company had decided to terminate the services of Chatteraj on the ground of his prejudicial and subversive activities then on being satisfied that Chatteraj was guilty of such activities the proper order would have been to give the company permission to dismiss Chatteraj."

In a later case *M/s. G. McKenize & Co. v. Its. Workman J.L. Kapur J.* observed that in the absence of circumstances vitiating the finding concerning the misconduct of the workman at a domestic inquiry, the subsequent dismissal could not be interfered with by Labour Appellate Tribunal in the appeal before it arising out of a reference made by the Government u/s 10 ; the question of harshness of the sentence, once the charge was proved, was not a matter for the Tribunal. There is nothing in the present case to warrant inference that any unfair labour practice had been adopted or the punishment of dismissal made for any oblique reason.

(3) In the circumstances I am unable to sustain the order of the Industrial Tribunal. The said order of the Industrial Tribunal, reinstating the workman is quashed. The writ petition is accepted accordingly. There will be no order as to costs, the other side not even having entered appearance.