
(2012) 01 MP CK 0120
In the Madhya Pradesh High Court
Case No : Writ Petition No. 20620 of 2011

Ramesh Kumar Patel

APPELLANT

Vs

Managing Director and Others

RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Constitution of India, 1950 — Article 136
Industrial Disputes Act, 1947 — Section 10

Citation : (2012) ILR (MP) 710

Hon'ble Judges : Vimla Jain, J; Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : Shailesh Mishra, for the Appellant; Akash Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.—Petitioner has challenged order dated 23.8.2011 and order dated 16.11.2011 passed by the Labour Court, Jabalpur in case No. 126/05/ IDR by which the Labour Court while declaring the departmental enquiry as illegal, directed the respondents herein to lead evidence in respect of misconduct on the part of the petitioner and by subsequent order allowed an application seeking amendment to the similar affect. These orders are challenged by the petitioner on the following grounds

- i) That the Labour Court erred in permitting the respondents to lead evidence in respect of the misconduct on the part of the petitioner.
- ii) That the respondents failed to plead in the original written statement in respect of seeking permission to lead evidence in respect of misconduct then such prayer could not be allowed by an amendment.
- iii) In the case the departmental enquiry was found illegal, so subsequently allowing the same prayer is against the settled law. Reliance is placed by the petitioner to the Apex Court judgment in Shambhu Nath Goyal Vs. Bank of

Baroda and Others, and submitted that not only the application filed by the respondents seeking amendment may be dismissed but the order dated 23.8.2011 passed by the Labour Court permitting the respondents to lead evidence in respect of misconduct of the petitioner may also be set aside.

Learned counsel appearing for the respondents submitted that a larger Bench of the Apex Court reconsidered the matter in Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, and thereafter a bench of the Apex Court in Rajasthan State Road Transport Corpn. &Anr. vs. Charan Singh [(2007) 15 SCC 789] held that the Tribunal was having wide powers to permit parties to lead evidence in respect of misconduct and if the Labour Court allowed an opportunity to the respondents to lead evidence in respect of misconduct of the petitioner, the aforesaid order needs no interference of this Court.

2. We have heard the parties.

3. Facts of the case are that the petitioner herein was an employee of the respondents M/S Sahara India Pariwar. There were certain allegations against the petitioner in respect of short time embezzlement of money leading a departmental enquiry and after departmental enquiry the petitioner's services were terminated by the respondents. The petitioner sought a reference u/s 10 of the Industrial Disputes Act and the competent government referred the matter to the Labour Court for adjudication. Before the Labour Court, the petitioner herein submitted his statement of case and the respondents also filed reply of the claim raised by the petitioner. The Labour Court framed the issues and while deciding issue No. 1 in respect of departmental enquiry, the Labour Court by an order dated 23.8.2011 found that the departmental enquiry conducted against the petitioner by the respondents was bad in law. While passing such an order, the Labour Court on the same day permitted the respondents to lead evidence in respect of misconduct of the petitioner and for this purpose the case was adjourned for 30.9.2011. On 30.9.2011, petitioner herein moved an application for passing an award as the departmental enquiry was held to be illegal. The respondents also moved an application seeking review of the earlier order. For consideration of these applications, case was adjourned for 16.11.2011. On 16.11.2011 another application for amendment was filed. The Labour Court firstly considered the application seeking amendment in the reply and allowed the same. The petitioner herein, because of allowing the amendment application, had not pressed his application accordingly it was rejected and the case was adjourned for recording evidence in respect of misconduct of the petitioner. This order is under challenge in this petition.

4. The judgment of Shambhu Nath (supra) was considered by a larger Bench of 5 Judges of the Apex Court in Laxmiddevamma (supra) and two Judges of the Apex Court held in para 18, 19, and 20 of the judgment, which reads as under :-

18. There is one other reason why we should accept the procedure laid down by this Court in Shambhu Nath Goyal case. It is to be noted that this judgment was

delivered on 27-9-1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion the doctrine of stare decisis requires us to approve the said judgment to see that a longstanding decision is not unsettled without a strong cause.

19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambhu Nath Goyal v. Bank of Baroda is the correct law on the point

20. In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated. Applying the aforesaid principles to these facts, we are of the opinion that the High Court has rightly dismissed the writ petition of the appellant, hence, this appeal has to fail. The same is dismissed with costs.

5. Thereafter one learned Judge of the Apex Court descending the judgment of two judges held thus :-

41. In view of the above, I am of the opinion that Shambhu Nath Goyal case does not lay down correct law. The law has been correctly laid in Shankar Chakravarti case and Rajendra Jha case. The correct procedure is as stated in Shankar Chakravarti case subject to further safeguards for workman as already indicated above.

42. Despite the above conclusions, insofar as the present appeal is concerned, considering that the award was made by the Labour Court more than 16 years back and also that the employee has already retired as we are informed, it would not be appropriate to interfere in exercise of power under Article 136 of the Constitution. In this view, I would dismiss the appeal leaving the parties to bear their own costs.

6. Thereafter the matter was placed before the remaining two Judges and the Judges considering the aforesaid held thus :-

45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/Tribunals have the power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the court/tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the court/tribunal requiring or directing parties to lead additional evidence including

production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice.

7. Thereafter the matter was considered by the Apex Court in Divyash Pandit Vs. Management, NCCBM [(2007) 15 SCC 787] in which the Apex Court held thus:-

8. The appellant has challenged this decision of the High Court before us. We are of the view that the order of the High Court dated 2-12-2002 as clarified on 3-3-2003 does not need any interference, It is true no doubt that the respondent may not have made any prayer for (sic submitting) additional evidence in its written statement but, as held by this Court in Karnataka SRTC v. Lakshmiddevamma this did not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the enquiry was nonest, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an award in favour of the workman.

8. In view of the aforesaid settled position, there is no doubt that the Labour Court was having power to permit the parties to lead evidence/ additional evidence including production of documents at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondents to establish the charges before passing an award in favour of the workman. In view of the settled law by the Apex Court, if the Labour Court vide order dated 23.8.2011 permitted the respondents to lead evidence in respect of the misconduct on the part of the petitioner, no fault is found. Now the question remains whether such amendment could have been allowed by the Labour Court or not. From the perusal of the amendment application, it is apparent that by the aforesaid application, the respondents made a prayer before the Labour Court that in the case of departmental enquiry has been found to be illegal then respondents be allowed an opportunity to lead evidence in respect of misconduct on the part of the petitioner and to produce evidence before the Labour Court. Such amendment was allowed by the Labour Court. Once the Labour Court had allowed opportunity to the respondents to lead evidence by order dated 23.8.2011 then merely there was no such pleadings in the written statement, would not affect the case of the respondents. In these circumstances the amendment application remains formal in nature and if the Labour Court had allowed such an amendment, no fault is found. For the complete adjudication of the dispute, if the Labour Court has permitted the respondents to lead evidence in respect of misconduct, no error of jurisdiction has been committed by the Labour Court. Apart from this it was a case of temporary embezzlement of money on the part of the petitioner, in which a departmental enquiry was conducted which was held to be illegal by the Labour

Court vide order dated 23.8.2011 and if the Labour Court has permitted the petitioner to lead evidence, then by allowing the amendment, such prayer has been permitted to be inserted in the reply, no error of jurisdiction is found. For doing complete justification in the matter if the Labour Court permitted the respondents to lead evidence, the Labour Court has done justice in the matter in which no interference is required. This petition is found without merit and is dismissed with no order as to costs.