
(1986) 10 AHC CK 0060
In the Allahabad High Court
Case No : C.M.W.P. No. 4921 of 1974

Ramsey Pharma Pvt. Ltd.

APPELLANT

Vs

Sant Lal and Others

RESPONDENT

Date of Decision : 27-10-1986

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6(2), 6(2A)

Citation : (1987) 54 FLR 37 : (1993) 3 LLJ 577

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : B.C. Dey, for the Appellant; G.C. Bhattacharya, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—The present petition under Article 226 of the Constitution of India is directed against the award of the Labour Court, Allahabad made in adjudication Case No. 301 of 1972 published in the U.P. Gazette dated 1.6.74. Under Notification No. 1565 (HI) XXXVI-3-171 (SM)-72 dated 23.3.1974.

2. Shorn of detail the facts of the case are these. The petitioner is a company registered under the Companies Act and carries on the business of manufacturing and selling Absorbent Cotton and Medicines. The works of the petitioner are situate in a portion of the building owned by M/s. Shri Baidya Nath Ayurved Bhavan Pvt. Ltd. The respondent No. 1 is a workman working in the petitioner's factory. On 18.11.1971 at the time of making a search at the main gate, the workman was suspected carrying some "Dardona" tablets packed in a cellophane packet and the same was kept in a towel concealed in the under wear. He was stopped at the gate for search and was taken inside the room of the Security Officer for search. It was revealed that the workman was carrying a large number of phials of Dardona tablets. The charge-sheet (Annexure No. 1 to the petition) was issued and a domestic inquiry was held.

3. The workman, the respondent No. 1, submitted a reply to the charges. His

stand mainly was that false charges were levelled against him on account of his trade union activities. The inquiry Officer in his report (Annexure "6" to the writ petition) held the charges to have been proved. The Management of the petitioner company after considering the report of the Inquiry Officer and other evidence agreed with the findings of the Inquiry Officer and dismissed the workman from service by order dated 12.1.1972 (Annexure "7" to the writ petition). The workman through the Union of the workers, the respondent No. 2, raised an industrial dispute.

4. The State Government made a reference u/s 4-k of the Industrial Disputes Act (for short the Act) Annexure "8" to the writ petition which was referred to the Labour Court was that the Security Officer was prejudiced against him on account of his trade union activities and he was falsely implicated. In fact he was an innocent workman. Before the Labour Court, on behalf of the petitioner, the employer, Sri B.P. Misra, Inquiry Officer and Capt. Brij Pal Sharma, Chief Security Officer were examined as witnesses. On behalf of the workman respondent No. 1 himself was examined. The Labour Court after considering the evidence and the points urged made the impugned award setting aside the order of dismissal and passing an order reinstating him with back wages.

5. It was urged by the learned counsel for the petitioner that the Labour Court has exceeded its jurisdiction in as much as it cannot sit in appeal over the findings recorded in the Domestic Inquiry. In case it was found that the result of the Domestic Inquiry vitiated or there was some irregularity in that event the employer must have been afforded an opportunity to lead evidence to prove charges against the workman. The Management has lost confidence in the workman. The workman cannot be retained in service against the wishes of the Management. He placed reliance on *Khardah Co. Ltd. Vs. Their Workmen*, *Indian Iron and Steel Co. Ltd. and Anr. v. Their Workmen* 1958 II Lab LJ 60 and *Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others*, .

6. The learned counsel for the respondents, on the other hand, relied upon Section (2-A), as added by U.P. Act, No. 34 of 1978 and urged that it has been held by the Labour Court that the Domestic Inquiry was vitiated and a number of irregularities were committed in conducting the Domestic Inquiry. The employer was given opportunity to lead evidence before the Labour Court and Sri B.P. Misra, Inquiry Officer (E.W. 1) and Sri Brij Pal Sharma Security Officer (E.W. 2) were examined in support of the charges against respondent No. 1. The cases cited on behalf of the petitioner are on different facts and had no bearing to the facts of the present case and do not help the petitioner. The principles, in any case, explained in these cases help the workman. There was no illegality in the award.

7. Having regard to the submissions of the learned counsel for the parties, the first point for determination is as to whether the Labour Court has exceeded its jurisdiction and the second is as to whether the opportunity was given to the employer to lead evidence after holding Domestic Inquiry to be vitiated and the

third point is whether under the facts and the circumstances of the case can it be said that the workman has lost the confidence of the employer and if so can he be retained in service. In the last it has to be considered as to what is effect of Sub-section 6(2-A) added by U.P. Act No. 34 of 1978 to the U.P. Industrial Disputes Act.

8. It is convenient to dispose of the first two points together. The amendment of Section 6 of the Act No. 34 of 1978 by adding Sub-section (2-A) to Section 6 of the Act has enlarged the jurisdiction of the Labour Court immensely, qualitatively as regards the appraisal of the evidence and quantitatively as regards the quantum of punishment to be awarded to the workman. But in the instant case the Labour Court has given the award on 22.2.1974 prior to the amendment of Section 6 of the Act by U.P. Act No. 34 of 1978, hence the amended Section 6(2-A) of the Act would not apply. But even before the provisions of Section 6(2-A) of the Act the Labour Court could look into the findings recorded by the Inquiry Officer in the Domestic Inquiry and ascertain as to whether the same was vitiated on account of certain irregularities being committed or whether the workman was deprived of the principles of natural justice or whether the findings of the Inquiry Officer were perverse or whether the workman has been punished on account of his trade-union activities, if so, the Labour Court can certainly grant an opportunity to the employer to lead evidence to substantiate the charges against the workman. In the instant case the Labour Court has scrutinised the findings of the Inquiry Officer in the Domestic Inquiry and has come to the conclusion that a number of irregularities were committed in as much as Dardona tablets which were alleged to have been stolen by the workman were not scaled nor counted nor weighed but the same were just kept in the towel and produced before the Labour Court. Further it was held that the workman was taking active part in the Labour Union and he was its treasurer (vide page 112 of the paper book). In this view of the matter the employer was actuated in its action on account of workman's trade union activities. The search conducted against the workman was not made at the main gate rather it was made in the room of Capt. Brij Pal Sharma and the search was conducted by one Rami Tiwari of the Security Department. It must have been usually made at the main gate for exit. It has also been held that the Dardona tablets contained in the towel were given in the hands of the workman. He was given a beating and when he cried out some persons came in the room. Apart from these, other irregularities have also been found out by the Labour Court and the opportunity was given to the employer but no positive evidence was led to prove the charges against the workman. Only the Inquiry Officer Sri B.P. Misra and the security Officer Sri Brij Pal Sharma were examined. The Statements have been duly considered by the Labour Court and the findings have been recorded that the charges were not proved against the workman. These are findings of fact based on evidence on record. The Labour Court recorded the findings that the services of the workman were illegally terminated. I am of the view that the inquiry against the workman was not fair and the order of the retrenchment was

correctly set aside and the workman was correctly reinstated with full back wages and Rs. 100/- as costs.

9. In *Khardah and Co. Ltd. v. The Workmen* (Supra) their Lordships of the Supreme Court have laid down the guide-lines for the jurisdiction of the Industrial Tribunal or the Labour Court. It is better to quote the observations in paragraph no. 9 as follows :-

"In this connection, it is necessary to point out that unlike domestic enquiries against public servants to which Article 311 of the Constitution applies, in industrial enquiries, the question of the bona fides or mala fides of the employer is often at issue. If it is shown that the employer was actuated by a desire to victimise a workman for his trade union activities, that itself may, in some cases, introduce an infirmity in the order of dismissal pressed against such a workman. The question of motive is hardly relevant in inquiries held against public servant"". Again in paragraph 11 it is relevant to quote as follows:-

"It is well settled that if the enquiry is held to be unfair, the employer can lead evidence before the Tribunal and justify his action, but in such a case, the question as to whether the dismissal of the employee is justified or not, would be open before the Tribunal and Tribunal will consider the merits of the dispute and come to its own conclusion without having any regard for the view taken by the management in dismissing the employee.....".

10. These observations indicate the guidelines for the exercise of the jurisdiction by Labour Court. I am of the view that the aforesaid case of *Khardah and Co. v. The Workmen*, is of no assistance to the petitioner. Consistent with the principles laid down about the jurisdiction of the Labour Court, in the instant case a number of irregularities were pointed out by the Labour Court and that the workman was an active member of the trade union and he was treasurer and on that account the Management has incorrectly implicated the workman in the alleged case and illegally terminated his services. In this view of the matter considering the infirmities pointed out in the Domestic Inquiry the Labour Court has correctly exercised its jurisdiction in setting aside the order of dismissal and in making interference with the findings and conclusions arrived at by the Inquiry officer in the Domestic Inquiry. The Labour Court has held that the opportunity was given to the employer to lead evidence to prove the charges against the workman who examined the Inquiry Officer and the Security Officer. There must have been some other positive and convincing evidence to prove the charge of theft and in order to support the order of dismissal passed against the workman, but no such evidence was led. I am of the view that the findings recorded and the conclusions reached by the Labour Court could not be said to be erroneous or perverse.

11. *Indian Iron and Steel Co. Ltd. and Anr. v. Their Workmen*, (supra) was a case under the Industrial Disputes Act, 1947 (Central) and the findings recorded by their Lordships of the Supreme Court would be helpful in the present case. In

paragraph 18 the following dictum has been laid down :-

"... .In cases of dismissal on misconduct, the Tribunal does not however, act as a Court of appeal and substitute its own judgment for the management. It will interfere (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error violation of a principle of natural justice, and (iv) when on the materials, the finding is completely baseless or perverse...."

12. Similarly in *Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others*, it is fruitful to refer to the observations as follows :-

".. .In the same case i. e. where there is no failure of the principles of natural justice in the course of domestic enquiry, if the Tribunal finds that dismissal of an employee is by way of victimisation or unfair labour practice, it will then have complete jurisdiction to interfere with the order of dismissal passed in the domestic enquiry. In that event the fact that there is no violation of the principles of natural justice in the course of the domestic enquiry will absolutely lose its importance or efficacy".

13. Applying the aforesaid ratio of the cases referred to above to the facts of the present case I am of the opinion that the cumulative effect of the number of irregularities and infirmities pointed out in the Domestic Inquiry particularly that the workman was treasurer of the trade union on the relevant date it appears that the Management was in search of some opportunity to retrench him and consequently he was victimised for his trade union activities. It further appears that the search against the workman in respect of the Dardona tablets was not carried out at the main gate which should have been proper against a workman. He was taken in the room of the security officer, when there was a curtain on the door and there Sri Ramji, an employee of the Security Department and Capt. Sharma were present and the Dardona tablets folded in a towel were given in the hands of the workman but he refused. Thereafter he was given beating and some other persons collected there. The Labour Court has correctly reached the conclusion that the charge of the alleged theft of Dardona tablets against the workman was not proved. The Labour Court did not act as a Court of Appeal against the findings of the Domestic Inquiry. After pointing out the infirmities and after affording sufficient opportunity to the employer to lead evidence to prove the charges against the workman, the findings in the Award were recorded. The employer availed of that opportunity to lead evidence before the Labour Court and examined Sri. B.P. Misra, the Inquiry Officer and Capt. Brij Pal Sharma, Chief Security Officer. No other witnesses were examined on behalf of the employer. The only inescapable conclusion was that the retrenchment order passed was found to be illegal and the reinstatement was ordered. I am of the view that the order of reinstatement has correctly been passed. The findings are findings of fact and they do not suffer from any infirmity.

14. Under these circumstances it cannot be said that the employer was denied

any opportunity to lead evidence in support of the charges against the workman. Rather inspite of opportunity only Security Officer and the Inquiry Officer were examined, as observed by the Labour Court (pages 114 and 115 of the paper book).

15. As regards the last limb of the argument that the workman had lost the confidence of the employer, hence he was not liable to remain in service. Suffice it to say that it was not the case of the petitioner. There does not appear to be any positive evidence led on the point. Nor this appears to be a case of the employer before the Labour Court. Except the present incident there was no other incident in which the workman could be said to have been implicated nor there was any such other activity of the workman which may lead to the inference that the employer has lost confidence. The workman was in service for the last several years and has been working quite satisfactorily. I am of the view that a case for loss of confidence was not made out against the workman.

16. In view of the discussions made hereinbefore, I do not find any merits in the writ petition which deserves to be dismissed.

17. In the result, the petition fails and is accordingly dismissed with costs.