

(1992) 03 KL CK 0036
In the High Court Of Kerala
Case No : W.A. No. 1451 of 1991

Raveendra Kamath

APPELLANT

Vs

V.A. Dholakia and Another

RESPONDENT

Date of Decision : 06-03-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1992) 65 FLR 479 : (1992) 2 ILR (Ker) 814 : (1992) 2 LLJ 555

Hon'ble Judges : K.T. Thomas, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : K.S. Madhusoodanan, for the Appellant; B.S. Krishnan, for the Respondent

Final Decision : Dismissed

Judgement

K.S. PARIPOORNAN, J.—Second respondent in Original Petition No. 6923 of 1991 is the appellant in this writ petition. The petitioner and first respondent in the original petition are the respondents herein. The appellant is an ex-workman of the first respondent herein (petitioner in the original petition—a company). The second respondent herein (first respondent in the original petition) is the Labour Court. The appellant was charge-sheeted by the petitioner for various items of misconduct. A domestic enquiry was conducted. Finding that the explanation of the appellant is unsatisfactory, and based on the enquiry report, the appellant was dismissed from service on December 16, 1987. The appellant raised an industrial dispute. It was referred to the Labour Court, Emakulam. By Exhibit P-4, dated September 18, 1990, published in the Kerala Gazette, dated March 19, 1991, the Labour Court directed the company to reinstate the appellant with back-wages, continuity in service and other attendant benefits. In the original petition, the management challenged Exhibit P-4 award as illegal, unauthorised and unreasonable. Padmanabhan, J., by judgment dated October 15, 1991, quashed Exhibit P-4 and directed the Labour Court to take back the case to file. It was further made clear that the parties will be given an opportunity to adduce

evidence. It is from the aforesaid judgment the second respondent in the original petition (appellant) has come up in writ appeal.

2. The learned single Judge found that the parties-the management as well as the workman-were agreed on the following:

When the reference was made to the Labour Court, it stood posted for evidence on May 21, 1990. Counsel for the management could not appear on that day, since he could not climb the steps (stairs) due to cardiac trouble. He entrusted the files, containing the entire papers, to another advocate for being produced in the Labour Court. The company, as well as its advocate were under the impression that the files must have been so produced before the Labour Court. But it turned out that it was not so done and the advocate, to whom the matter was entrusted, did not even appear before the Labour Court. The company and its advocate were not aware of it. The matter stood posted on May 28, 1990. No orders were passed on that day. It is common ground that Exhibit P-4 was passed on September 18, 1990. But the company came to know of the award only when the advocate on behalf of the appellant (workman) wrote a letter to the company on May 9, 1991. The company (management) did not get an opportunity of adducing evidence to substantiate the charges. These are uncontradicted facts and circumstances before the learned single Judge.

3. The learned single Judge on facts found that Exhibit P-4 award is one passed on merits. The appellant took up the plea that the management never claimed an opportunity to adduce evidence to substantiate the charge and so it was not afforded an opportunity. The learned single Judge held that the Labour Court, acting u/s 11A of the Industrial Disputes Act, should be satisfied that the order of discharge or dismissal was not justified before interfering with the same and for that purpose it should find preliminarily whether the enquiry was fair and proper and the findings are in accordance with law. It is only when on these questions the findings are in favour of the worker, it is open to the employer or management of adduce evidence for the first time in the Labour Court justifying the order of discharge or dismissal. In the instant case, the employer did not admit that the enquiry was in any way tainted or otherwise defective. The plea was raised that there was a proper enquiry. That was a matter in controversy between the parties. The learned single Judge adverted to the above facts and held that when the question as to whether there was a proper enquiry or it was otherwise illegal or defective itself was in issue, that matter should be decided as a preliminary issue and only after pronouncing a decision thereon, the occasion will arise for the management to decide whether it will adduce evidence before the Labour Court. If thereafter the management chose not to adduce evidence, it will not be permissible for it to raise the issue thereafter. But the above crucial aspects were totally ignored by the Labour Court and the Labour Court failed to decide as a preliminary issue whether the domestic enquiry violated the principles of natural justice or the enquiry is otherwise defective or illegal. In the instant case the dismissal was on the basis of a domestic enquiry. The sole dispute was

regarding the correctness of the enquiry and the report. The learned single Judge adverted to this aspect and held that it was so admitted before the Labour Court. The enquiry report was not and could not be produced before the Labour Court due to unforeseen circumstances. But in spite of that the Labour Court came to the conclusion that the enquiry conducted by the management was not legal and proper. Even so the Labour Court did not give an opportunity to the management to adduce evidence. It was so done on the basis that the management made no such prayer in the written statement. The learned single Judge adverted to the above aspect and held that Exhibit P-4 award was passed without notice on a date on which there was no posting and the action of the Labour Court was unauthorised. Even if there was no specific plea in the written statement, it would have been open to the management to make an amendment by an application for including such a prayer and an opportunity was not given in that behalf to the management. There was no occasion for such an opportunity. In the way the award was passed, the Labour Court did not act fairly. The management should be given an opportunity to produce the entire report and substantiate the correctness of that enquiry before the Labour Court. On the above findings, Exhibit P-4 award was quashed, the Labour Court was directed to take the case back to its file and dispose of the matter afresh after affording an opportunity to both parties to adduce evidence.

4. We heard counsel. Counsel for the appellant stressed two aspects. It was first argued that the management did not plead in the written statement, nor did it file an application for an opportunity to lead evidence. In such circumstances, the learned single Judge was in error in holding that the management should be given an opportunity to lead evidence to substantiate the enquiry report. The only other argument advanced before us was that, in any view, the learned single Judge should have ordered payment of back wages even if the remit to the Labour Court was legal and proper. We find no substance in the above pleas.

5. In reinforcing the submissions made, the appellant's counsel brought to our notice the following decisions:

The Cooper Engineering Limited Vs. Shri P.P. Mundhe, ; Shambhu Nath Goyal Vs. Bank of Baroda and Others, and Desh Raj Gupta Vs. Industrial Tribunal IV, U.P., Lucknow and another,

6. In the context of Section 11-A of the Industrial Disputes Act, the matter has been adverted to in detail by the Supreme Court and the High Courts in various decisions. The gravamen of the complaint is that the management did not ask for an opportunity to adduce evidence to substantiate the charge before the Labour Court. But it has to be remembered that the Labour Court, in exercising its jurisdiction u/s 11-A of the Industrial Disputes Act, has to be satisfied that the order of discharge or dismissal was not justified before interfering with the same. In that behalf the Labour Court will have to find preliminarily whether the enquiry was fair and proper and the findings are tainted or perverse or not. Only if these findings are in favour of the workman, the question or the stage arises as to

whether the employer could adduce evidence for the first time before the Labour Court justifying the order of discharge or dismissal. Unless that stage is reached, the further questions as to whether U is for the employer to ask for an opportunity to lead evidence and even so at what stage of the proceedings such a request should be made, will not arise. Padmanabhan J., after referring to the decisions in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, and *Cooper Engineering Limited's case (supra)*, definitely found that the enquiry report was not produced before the Labour Court and even without perusal thereof the Labour Court came to the conclusion that the enquiry conducted by the management was not legal and proper and the management was not given an opportunity to adduce evidence on the ground that no such prayer was made in the written statement and the facts disclose that Exhibit P-4 award was passed without notice on a date on which there was no posting and the overall facts and circumstances disclose that the stage or situation which behove the management to decide and pray for adducing evidence before the Labour Court did not arise. No occasion or opportunity for praying for adducing evidence arose for the management. On the facts we are unable to say that the above view of the learned single Judge can be characterised as perverse or arbitrary. In the writ appeal no sufficient materials are available before us to take a different view. We concur with the said view expressed by the learned single Judge. We hold that only if the stage or situation warranting or behoving the management to avail itself of an opportunity for praying to adduce additional evidence arises, the question will arise whether the management asked for an opportunity to lead evidence at the earliest stage. The fact that such a plea was not taken in the pleadings will not be fatal. The permission to adduce additional evidence can be prayed for even orally and even at a stage before the hearing of the application comes to a close. These aspects are well brought out in a detailed discussion of the subject by reference to decided cases in the book *The Law of Industrial Disputes*, by O.P. Malhotra, 4th Edition Volume 2, pages 918 to 926. We would stress the fact that the appropriate stage at which the management should pray for an opportunity to adduce additional evidence did not reach in this case. Only then the further question arises, whether the opportunity should be availed of by making a request in the pleadings (by amendment) or is it sufficient if a plea is made either in writing or even orally before the hearing of the application comes to a close. These aspects, exhaustively refereed to in the *Law of Industrial Disputes*, by O.P. Malhotra, 4th Edition, Volume 2, pages 918 to 926, point out that the permission can be granted by the Labour Court to the employer to adduce evidence to sustain the action even on an oral request made before the application comes to a close relying on the decision of the Supreme Court.

7. In view of the above, we concur with the learned single Judge and hold that Exhibit P-4 deserves to be annulled. The Labour Court should pass a fresh order after giving an opportunity to the management to produce the enquiry report and the parties should be given an opportunity to adduce evidence. We further

hold on the second point that the plea for back-wages is without basis. This is not a case where the punishment passed by the management was declared to be illegal. The entire thing is at large. The legality of the punishment imposed is pending for consideration. In such a situation where the legality of the action itself is pending in adjudication by the Labour Court, the prayer for awarding back-wages at this stage is ill-conceived. We reject the plea.

8. We decline to interfere with the judgment of the learned single judge. The appeal is without merit. It is dismissed.