

(1997) 08 KL CK 0039

In the High Court Of Kerala

Case No : O.P. No's. 10100 and 11754/93 Y

Raveendranath Kamath

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 11, 11A

Citation : (1997) 08 KL CK 0039

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : A.X. Varghese, for the Appellant; P.R. Raman, for the Respondent

Judgement

J.B. Koshy, J.—In both the Original Petitions the award in I.D. No. 78/1988 of Labour Court, Ernakulam is challenged. O.P. No. 10100/1993 is filed by the concerned workman and O.P. No. 11754/1993 is filed by the Management. The workman was employed as a Typist in the Management Company. It is engaged in the business of export of tea and spices. Workman was charge sheeted for his late comings, dereliction of duties, negligence in discharging duties, insubordination and indecent behaviour with the Director of the Company and filing vexatious and frivolous complaints against the Management. An enquiry was conducted regarding the above charges. The Enquiry Officer found him guilty. Punishment of dismissal was imposed on him. The above dismissal order was referred to adjudication before Labour Court which resulted in award in I.D. No. 78/88. Labour Court considered the enquiry and found that the enquiry was conducted in accordance with the principles of natural justice. The enquiry was conducted by an outsider, an advocate. The workman demanded to get legal assistance, or to be assisted by an office bearer of his trade union and that was refused by the Enquiry Officer. There was no presenting officer at the enquiry. On a perusal of the procedure of the enquiry, the Labour Court found that workman was given full and fair opportunity in participating the enquiry. The workman was allowed to examine the management witnesses. The workman has also relied on

the documents produced by the management and on the basis of those documents the workman cross-examined the witnesses. Therefore procedure adopted in the enquiry was held to be correct. All challenges against the enquiry was rejected. Labour Court found that the Enquiry Officer correctly appreciated the evidence. Findings of the Enquiry Officer is not perverse and it was based on legal evidence. Therefore, findings was upheld. Thereafter Labour Court considered the seriousness of the punishment and found that barring of 2 increments with cumulative effect and denial of back-wages would be sufficient punishment. Therefore, workman was directed to be reinstated with punishment of barring of 2 increments with cumulative effect and without backwages. According to the Labour Court the misconducts were, even though proved, did not warrant punishment of dismissal and the circumstances of the case the denial of backwages with barring of two increments can be treated as sufficient and adequate punishment.

2. The award of the Labour Court is challenged by the workman for mainly on two reasons. According to the workman, the enquiry should have been set aside as legal assistance was denied. The question whether enquiry should be set aside for the reason that he was not allowed to participate in the enquiry was considered by the Labour Court in para 12 of the award. Labour Court found that no prejudice was caused to the workman in procedure adopted in the enquiry. Workman fully participated in the enquiry and cross-examined the witnesses. The workman himself was examined in the enquiry. Witnesses were examined on the side of the management and 10 documents were marked and there was full and effective enquiry. Workman was also not an illiterate worker. He was also a diploma holder in specialised Company Secretary Course and he fully participated in the enquiry.

3. The Enquiry Officer allowed the workman to be represented by a co-worker. According to the workman a legal practitioner should have been allowed in the enquiry. Workman relied on decision of *Pett v. Greyhound Racing Association* 1968 (2) All E.R. 545, 549 (C.A.). Workman also relied on decision of the *Bombay Port Trust Case* as well as *J.K. Agarwal v. Haryana Seeds Development Corporation Ltd.* 1991 (79) F.J.R. 214. However in the above decisions it is also stated that in the last analysis, a decision has to be reached on a case-to-case basis on the situational particularities and the special requirements of justice of the case. This question of allowing a legal representative came up before the larger Bench of Supreme Court in *Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi*, . It was held by the Apex Court as follows:

A delinquent appearing before a Tribunal may feel that the right to representation is implied in the larger entitlement of a fair hearing based on the rule of natural justice. He may, therefore, feel that refusal to be represented by an agent of his choice would tantamount to denial of natural justice. Ordinarily, it is considered desirable not to restrict this right of representation by Counsel or an agent of one's choice, but it is a different thing to say that such a right is an

element of the principles of natural justice and denial thereof would invalidate the enquiry.

Later in the same paragraph, after analysing various English authorities, their Lordships stated as hereunder:

From the above decisions of the English Courts, it seems clear to us that the right to be represented by a Counsel or agent of one's own choice is not an absolute right and can be controlled, restricted or regulated by law, rules and regulations. However, if the charge is of a serious and complex nature, the delinquent's request to be represented through Counsel or an agent could be conceded.

As regards the law in India, after a detailed survey of leading decisions, their Lordships concluded as hereunder (at page 915):

It is, therefore, clear from the above case-law that the right to be represented through Counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or standing orders. A delinquent has no right to be represented through Counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice in so far as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through Counsel or agent....

Thus it is clear that the right to be represented by a Counsel cannot be claimed as a matter of right.

In this case it was found by the Labour Court that workman had cross-examined the management witnesses and participated in the enquiry. No prejudice has been caused to him by disallowing a lawyer. Co-worker was allowed to represent him. But he did not utilise the opportunity. On the facts and circumstances of the case it can be seen that no prejudice has been caused and workman cannot insist that he should have been given legal assistance. Therefore, on this ground enquiry cannot be set aside.

4. It is also argued that copies of the documents were not given to the workman and therefore, enquiry is liable to be set aside. It is also relied on the decision of the Supreme Court in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, . In this case copies of documents are marked as Exts. M-1 to M-10 in the enquiry. Labour Court found that workman had relied on these documents and witnesses were cross-examined on the basis of these documents. The documents other than Ext. M-2 memos were issued to the workman by the management and reply given by the workman. Ext. M-2 is the only statement which was not given to the workman. It was found by the Labour Court that M-2 statement was gone through by the workman and the witnesses were cross-examined on the basis of Ext. M-2 statement given by other employees of the establishment. Therefore, no prejudice has been caused. In para 14 of the preliminary order incorporated in the award Labour Court has considered this

contention and found that no prejudice is caused to the workman. The enquiry cannot be set aside on mere abstract doctrine. If no prejudice caused by the procedure adopted in the enquiry it cannot be set aside. In this, connection I refer to the decisions in State Bank of Patiala and others Vs. S.K. Sharma, and C.I. Poulose Vs. Labour Court and Another, . All documents other than Ext. M-2 were letters exchanged with the workman and workman had copies of the same. Hence I agree with the findings of the Labour Court that enquiry cannot be set aside, merely because copies of the documents were not given to the workman by the management, as no prejudice has been caused.

5. The last objection raised by the workman against the award is that he should have been given full back-wages when it was found that dismissal was excessive punishment. The Petitioner cited the decision in Jitendra Singh Rawthor v. Shri Baidynatha Ayurved Bhavan Ltd. and Anr. 1984 (3) S.C.C. In that case reinstatement with backwages was awarded. Employer challenged the same. Supreme Court held that it is for the Labour Court or the Tribunal to mould the relief. u/s 11-A wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The next case cited by the Petitioner in Rama Kant Misra Vs. The State of Uttar Pradesh and Others, . Considering the circumstances and nature of the case it was found that the dismissal was disproportionate and excessive. Therefore, Supreme Court held that withholding of two increments with cumulative effect will be adequate punishment for such low paid employee. Here also the dismissal of the workman from the service was found to be disproportionate and excessive. But facts are different. On the facts of this case and considering the nature of the case Labour Court found that misconducts were proved and that according to the Labour Court denial of backwages and barring of two increments with cumulative effect is sufficient punishment. The next case cited on behalf of workman is Shri Ishwarbhai B. Vhandra Vs. Union of India (UOI) and Others, . It was held that backwages cannot be denied without valid reasons. In that case no misconducts were proved. Here misconducts alleged were proved in the enquiry and facts are entirely different.

6. If the workman questions the award in so far as it denies backwages, management questions the relief of reinstatement awarded by the Labour Court. It is contended that when enquiry was held to be fair and proper, and findings was also held to be correct, only on very compelling reasons Labour Court should have interfered with the punishment. In any event the nature of misconduct, plea of loss of confidence etc. were not considered while awarding the relief of reinstatement. According to the management misconducts were found in the preliminary order, but while considering the question of punishment a different view was taken by the Labour Court and this is not permissible. Management relied on the decision of this Court in Haileyburia Tea Estate Ltd. v. Estate Staff Union of South India 1990 (1) KLT 7 Case No. 8. In that case Labour Court looked into the correctness of the findings/conclusions of the Enquiry Officer while considering the preliminary issue regarding validity of the enquiry. Findings

of the Enquiry Officer were held to be correct on reconsidering evidence. It was held that Labour Court cannot take a different view while considering the punishment also. Facts of the case are different. Labour Court did not find that misconducts were not proved while considering the reinstatement. It was held that the dismissal was not justified on the facts of the case even though misconducts were proved. This can be done by the Labour Court because of the powers given to the Labour Court and Tribunal u/s 11A of the Industrial Disputes Act as held by the Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, Even after the findings that the enquiry is correct and misconducts were proved u/s 11 Labour Court considered the nature of misconducts and held that punishment of dismissal is not justified. I agree with the findings of the Labour Court that considering the misconducts proved in the case punishment of dismissal was excessive.

7. Even when punishment of dismissal is held to be excessive, relief of reinstatement need not be granted automatically in all cases. If dismissal is not correct, even though normal rule is reinstatement, plea of loss of confidence, nature of misconducts committed, possible effect of reinstatement of the worker in the establishment also should be considered by the Labour Court in moulding the relief. Labour Court has granted protection against the wrongful dismissal and at the same time it has to see that smooth working of the industry is not hampered. The Labour Court or Tribunal should also consider whether in the interest of industry, it would be expected or desirable to direct reinstatement as held by the Supreme Court in *The Punjab National Bank Ltd. Vs. Its Workmen*, , *Hindustan Steel Ltd. v. A.K. Roy* 1970 (II) L.L.J. 228 at P. 232 Supreme Court in *United Commercial Bank Ltd. v. U.P. Bank Employees Union* 1952 (XI) LLJ 577 held that whether reinstatement is to be given or compensation is to be given is a matter of discretion of the Tribunal but that discretion should be exercised "with great responsibility in the matter as it is no light matter to force an employee on an unwilling employer on the plea of industrial harmony". It was held by the Division Bench of Bombay High Court in *Lalit Gopal Berry Vs. M.V. Hirway*, that grant of relief of reinstatement is subject to judicial review. In *Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another*, it was held that if there is bitterness between the parties or if it is not equitable, relief of reinstatement need not be granted. For deciding whether relief of reinstatement or compensation shall be given, the Labour Court has to consider the circumstances of each case as held by the Supreme Court in *Ruby General Insurance Co. Ltd. Vs. Shri P.P. Chopra*, and *Assam Oil Company Vs. Its Workmen*, .

8. Considering the fact that establishment is very small with only 5 employees and clerk in such an establishment has to do confidential work and he abused the Director etc., management pleaded loss of confidence to deny reinstatement of that employee. Supreme Court repeatedly held that, if plea of loss of confidence is established, even if dismissal is invalid, relief of reinstatement should not be

granted rendering is insecure or undesirable to retain such employee in service or it would be detrimental to the interest of discipline or security of the establishment. Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, , Francis Klein and Co. (P) Ltd. Vs. Their Workmen and Another, , The The Workmen of Sudder Office, Cinnamara Vs. Management of Sudder Office and Another, , Binny Ltd. and their Workmen 1972 (I) L.L.J. 470 and Chembur Cooperative Industrial Estate Ltd. Vs. M.K. Chhatre and Another, . In Hindustan Steel case referred earlier Supreme Court also held that the decision to grant reinstatement is amenable to judicial review and the revision court cannot conduct itself by simply saying that since Tribunal exercised the jurisdiction, it will not examine whether such exercise is in accordance with well established principles. If it were to do so, it would be a refusal on its part to exercise its own jurisdiction.

9. In this case management establishment is a small establishment wherein only 5 employees are working. The workman has filed criminal cases against the management. One of the allegations proved is that he behaved indecently and abused the Director in his chamber. With regard to Other misconducts also binding in the preliminary order is that memos issued to him was that worker was not amenable to correct himself. In a small establishment like, this reinstatement of such a workman like this entirely upset the working of the establishment itself. Therefore instead of granting the relief of reinstatement Labour Court should have moulded the relief by way of compensation. What is the amount of compensation can be decided by the Labour Court. In such a small establishment where the Director js abused and criminal cases are filed against the management by the workman, and even according to the Labour Court he is not amenable to correct himself. Continuation of his employment will be impossible for smooth running of the establishment. Therefore, for moulding the relief the award should go back.

10. Since the award was not stayed, management should pay full backwages at the rate of last drawn wage from the date of the award till today to the workman. It is submitted by the Counsel for the management that the amount as ordered can be deposited before the Labour Court for disbursement to the workman. Wages as directed from the date of publication of the award till today should be deposited by the management before the Labour Court, Ernakulam within one month from today. It can be withdrawn by the workman. Whether he is entitled to full or part of backwages from the date of dismissal till the date of award as contended by the workman has also be reconsidered by the Labour Court while considering the quantum of compensation payable to the workman. Labour Court should consider and fix the amount of compensation payable to the workman in lieu of reinstatement. I am not accepting the contention of the workman in O.P. No. 10100/93 against the findings of the Labour Court that enquiry was held in accordance with the principles of the natural justice and findings of the Enquiry Officer are correct. I am also not accepting the contention of the management in O.P. No. 11754/93 regarding the correctness of punishment and agree with the Labour Court that dismissal imposed by the management was excessive. But for

the misconduct done adequate punishment also should be imposed. I am allowing both the Original Petitions regarding the question of relief granted. Whether the Petitioner is entitled to full or part of backwages from the date of dismissal to the date of award and what is the amount of compensation to be granted in lieu of the reinstatement, [considering the total amount paid or payable as backwages and other relevant circumstances including the fact that misconducts alleged against the workman were proved in a properly constituted enquiry and findings were upheld, etc.] should be reconsidered by the Labour Court. Therefore, I set aside the award of the Labour Court, only regarding the relief portion granted in the award and remand the case back to the Labour Court. Both the Original Petitions are partly allowed to the above extent indicated herein.