

(2014) 02 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 4327 and 4473 of 2003

RSRTC, Ajmer and Another

APPELLANT

Vs

Prabhat Acharaya and Another
 RSRTC, Ajmer Vs
Mahesh Chand Sharma and Another

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 11A, 15

Citation : (2014) 2 CDR 608 : (2014) 141 FLR 264 : (2014) 2 LLJ 344 : (2014) 3 WLN 330

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Ashok Bansal, Advocate for the Appellant; Resham Bhargava, Advocate for the Respondent

Judgement

Veerendra Singh Siradhana, J.—Since the writ applications raise a common question of law and facts, therefore, are being adjudicated upon by this common order. In all the writ applications, the petitioner Rajasthan State Road Transport Corporation (hereinafter referred to as the Corporation, for short), is aggrieved of the order dt. 2.05.2003 whereby the Labour Court & Industrial Tribunal, Ajmer (hereinafter referred to as the Labour Court", for short) declined to frame preliminary issue as regard to the fairness of the enquiry in view of the opinion of the Hon"ble Supreme Court in the case of The Cooper Engineering Limited Vs. Shri P.P. Mundhe, ; Shambhu Nath Goyal Vs. Bank of Baroda and Others, , and Bharat Forge Company Ltd. Vs. A.B. Zodge and another, , as the case was not one under Sec. 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act of 1947, for short) inserted by Act 45 of 1971 with effect from 15.12.1971. The provisions of Sec. 11A of the Act of 1947 are attracted in cases of discharge and dismissal alone and not in the matters where other penalties have been imposed.

2. The learned counsel for the petitioner Corporation reiterating the contents of

the writ application emphasized that since the respondent-workman questioned the fairness of the domestic enquiry and if the learned Labour Court arrived at the finding holding the domestic enquiry to be unfair, in that event the Corporation would be deprived to prove the charge(s) by leading evidence supporting the fairness of the enquiry and therefore, the preliminary issue on the fairness of the enquiry ought to be framed by the learned Labour Court.

3. The learned counsel would further urge that framing of preliminary issue with regard to the fairness of the enquiry is necessary for the reason that the enquiry has been conducted strictly in accordance with the provisions of the Standing Orders of the Corporation. The learned counsel also contended that the Standing Orders of the Corporation, do not bifurcate for major or minor punishment with regard to the penalty of stoppage of one annual grade increment. However, stoppage of annual grade increment with cumulative effect bears on the entire career of the workman and therefore, it was imperative for the learned Labour Court & Industrial Tribunal, Ajmer to have framed preliminary issue as regards to fairness of the inquiry, even if the punishment imposed may not have been discharge or dismissal, attracting the provisions of Sec. 11A of the Act of 1947.

4. It is further insisted that the Hon"ble Supreme Court has not expressed opinion in any case that it is not necessary to frame any issue with regard to the fairness of the enquiry except in the case of dismissal or discharge.

5. Per contra, the learned counsel for the respondent/workman supporting the impugned order argued referring to the opinion of the Hon"ble Supreme Court in the case of Cooper Engineering Ltd. (supra) that since the reference involves determination of larger issue of discharge or dismissal and not merely inquiry into correct procedure adopted by the Management, it will be most unnatural and unpractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be reached by the Labour Court prior to embarking upon an enquiry to decide the dispute on its merits. The learned counsel for the respondent/workman referring to the opinion of the Division Bench of this Court in the case of Rajasthan State Road Transport Corporation and Another Vs. Judge, Industrial Tribunal and Others, , contended that discharge or dismissal was not a penalty imposed in any of the cases by the petitioner Corporation and therefore, the cases of penalty at hand in the instant writ applications could be examined and even the penalty could be reduced on one or more of the following grounds: (i) want of good faith"; (ii) victimization; (iii) unfair labour practice; (iv) violation of principles of natural justice and (v) perversity of the finding of guilt.

6. I have heard the learned counsel for the petitioner Corporation and the learned counsel for the respondent/workman and with their assistance, perused the material available on record.

7. In the case of Cooper Engineering Ltd. (supra), the Hon"ble Supreme Court held thus:--

19. In *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, this Court stated the law laid down by this Court as on December 15, 1971. For our purpose we will extract from that decision only propositions 4, 6, 7 and 8:

(4) Even if no enquiry has been held, by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action.

(6) The Tribunal sets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognized that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

20. We are particularly concerned with proposition (8). What is the appropriate stage was specifically adverted to in the *Delhi Cloth and General Mills case* (supra) which we are now required to seriously consider whether this conclusion is correct and ensures justice to all concerned in an industrial adjudication.

21. Propositions (4), (6) and (7) set out above are well- recognised. Is it, however, fair and in accordance with the principles of natural justice for the Labour Court to withhold its decision on a jurisdictional point at the appropriate stage and visit a party with evil consequences of a default on its part in not asking, the Court to give an opportunity to adduce additional evidence at the commencement of the proceedings or at any rate, in advance of the pronouncement of the order in that behalf? In our considered opinion it will be most unnatural and unpractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be reached by the Labour Court prior to embarking upon an enquiry to decide the dispute on its merits. The reference involves determination of the larger issue of discharge or dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal. Besides, even if the order of dismissal is set aside on the ground of defect of enquiry, a second enquiry after reinstatement is not ruled out nor in all probability a second reference. Where

will this lead to? This is neither going to achieve the paramount object of the Act, namely, industrial peace, since the award in that case will not lead to a settlement of the dispute. The dispute, being eclipsed, pro tempore, as a result of such an award, will be revived and industrial peace will again be ruptured: Again another object of expeditious disposal of an industrial dispute (see Sec. 15) will be clearly defeated resulting in duplication of proceedings. This position has to be avoided in the interest of labour as well as of the employer and in furtherance of the ultimate aim of the Act to foster industrial peace.

22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.

8. In the case of D.P. Maheshwari Vs. Delhi Administration and Others, , the Hon"ble Supreme Court dealing with the issue of decision on preliminary issue first, observed that it was a time for reversal of the policy of decision on a preliminary issue first, for the reason that the matters in the first instance were taken to the High Court under Article 226 of Constitution and thereafter, to the Hon"ble Supreme Court under Article 136 of the Constitution, which resulted into delay of the real dispute for years together and at times over a decade. The Hon"ble Supreme Court in the case of D.P. Maheshwari (supra) held thus:--

1. It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 if of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the

time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes. Where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them, Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunal and Courts who are requested to decide preliminary questions must therefore ask them selves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeying up and down. It is also worth while remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues.

9. Deprecating the practice of interference with the order of the learned Labour Court under Article 226 of the Constitution, the Hon"ble Supreme Court further held thus:

7. We are clearly of the opinion that the High Court was totally unjustified in interfering with the order of the Labour Court under Article 226 of the Constitution. We set aside the judgments of the Learned Single Judge and the Division Bench of the Delhi High Court, restore the order of the Additional Labour Court and direct the Additional Labour Court to dispose of the reference within a period of three months from the date of communication of this order to that Court. That appellant is entitled to his costs which we stipulate at Rupees five thousand.

10. It is not in dispute between the parties that provisions of Sec. 11A of the Act of 1947 are not attracted in the instant writ applications and therefore, the law as applicable prior to insertion of Sec. 11A of the Act of 1947 would operate. The Hon"ble Supreme Court in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, held thus:

Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute

arises, Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the Tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of 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 or violation of a principle of natural justice, and (iv) when on the materials, the findings is completely baseless or perverse.

11. Similarly, the Hon''ble Apex Court of the land in the case of The Punjab National Bank Ltd. Vs. Its Workmen, observed thus:

In cases where an industrial dispute is raised on the ground of dismissal and it is referred to the tribunal for adjudication, the tribunal naturally wants to know whether the impugned dismissal was preceded by a proper enquiry or not. Where such a proper enquiry has been held in accordance with the processions of the relevant standing orders and it does not appear that the employer was guilty of victimisation or any unfair labour practice, that tribunal is generally reluctant to interfere with the impugned order. The limits of the tribunal's jurisdiction in dealing with such industrial disputes have been recently considered by this Court in the Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, , and it has been held that the powers of the tribunal to interfere with cases of dismissal are not unlimited because the tribunal does not act as a Court of appeal and substitute its own judgment for that of the management. In this judgment this Court has indicated the classes of cases in which the tribunal would be justified in interfering with the impugned order of dismissal. It would and should interfere when there is want of good faith, when there is victimisation or unfair labour practice, when the management has been guilty of a basic error or violation of the principle of natural justice, or when, on the materials, the finding of the management is completely baseless or perverse. The same view has been again expressed by this Court in Mckenzie and Co. Ltd. Vs. Its Workmen and Others, .

12. It is trite law that the power and jurisdiction to impose punishment is entirely vested in the employer. It is only in very rare and exceptional cases where the punishment is so shocking or grossly out of proportion, which may lead to an inference of victimization or unfair labour practice. Thus, the Labour Court cannot act as a Court of appeal in order to substitute its own judgment in place of the employer. The interference is limited only to the cases of want of good faith; victimization; unfair labour practice; violation of principles of natural justice and perversity of the finding of guilt.

13. The learned counsel for the petitioner Corporation apprehending that the Corporation would be deprived of its right to adduce evidence, in the event the Labour Court & Industrial Tribunal, Ajmer, arrived at a finding holding the domestic enquiry to be bad. In my opinion, the apprehension is without any factual foundation in view of what has been opined by the Hon''ble Supreme Court in the case of Karnataka State Road Transport Corpn. Vs. Smt.

Lakshmiddevamma and Another, , wherein the Hon''ble Supreme Court accepting the procedure laid down by it in the case of Shambhu Nath Goyal (supra) held that the procedure for exercising the right of leading evidence by the Management is neither oppressive nor contrary to the objects and Scheme of the Act of 1947. However, to avail of the opportunity, the employer should make a proper request at the time when it filed its statement of claim or written statement or makes an application seeking either permission to take certain action or seeking approval of the action taken by it and if it fails to do so, it will be precluded to do it at any later stage of the proceedings by moving an application as well. In case of Karnataka State Road Transport Corpn. (supra), the Hon''ble Supreme Court observed thus:--

23. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before labour Court/tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/tribunal have 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 the year concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice.

14. For the reasons and discussions herein above, it can safely be concluded that imposing of penalty is totally within the power and the jurisdiction of the employer and the Labour Court or the Tribunal cannot act as a Court of appeal to substitute its own opinion for that of the employer except in cases of want of good faith; victimization; unfair labour practice; violation of principles of natural justice and perversity of the finding of guilt. Therefore, to avail of the opportunity, the employer should make a proper request at the time when it filed its statement of claim or written statement or makes an application seeking either permission to take certain action or seeking approval of the action taken by it and if it fails to do so, it will be precluded to do it at any later stage of the proceedings by moving an application as well. Thus, the writ applications are devoid of any substance and deserve to be dismissed.

15. Ordered accordingly.

16. In view of the final adjudication on the writ applications, the interim order dt. 17.01.2005 granted in SBCWP No. 234/2005 and confirmed vide order dt. 16.12.2013 stands vacated.

17. Accordingly, the stay applications, are closed. However, in the facts and

circumstances of the case, there shall be no order as to costs.