
(2014) 08 OHC CK 0057
In the Orissa High Court
Case No : W.A. No. 81 of 2005

Sankar Parida

APPELLANT

Vs

Konark Jute Limited

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12

Citation : (2014) 08 OHC CK 0057

Hon'ble Judges : Amitava Roy, C.J.;B.R. Sarangi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Roy, C.J.—This appeal challenges the judgment and order dated 20.04.2005 passed in W.P. (C) No. 4885/2005 affirming the award dated 27.04.2000 rendered by the learned Labour Court, Bhubaneswar in Industrial Dispute Case No. 78 of 1992 maintaining the dismissal of the appellant/writ petitioner from service as a disciplinary measure.

2. We have heard Mr. M.K. Sahoo, learned counsel for the appellant and Mr. P.K. Lenka, learned counsel for respondent Nos. 1 & 2.

3. Briefly stated, the facts necessary for the disposal of the instant appeal, are that the appellant/writ petitioner at the relevant point of time was an employee of the respondent No. 1 (Konark Jute Limited). A disciplinary proceeding was initiated against him (appellant) and an enquiry in connection therewith followed on the following charge:

"1. That you have illegally entered into the Company's Qtrs. No. WD-16 (Workers Colony) by breaking open the lock of the said quarters and remaining in unauthorised occupation of the said qtrs. from 6.11.1986 without prior permission from the competent authority.

Yours above acts amount to gross misconduct as per Clause-XVIII 9(c) & (ag) of

the Certified Standing Orders of the Company.

The said charge memo dated 18.11.1986 was issued by the General Manager (Works) of respondent No. 1. The appellant/writ petitioner was called upon to submit his explanation to the imputation as to why disciplinary action would not be taken against him. By the said communication, referring to the seriousness of the charge, he was also placed under suspension.

4. In the written explanation submitted by the appellant/writ petitioner, he in substance claimed that he had occupied the Company's Qtrs. No. WD-16 (Workers Colony) on the oral permission granted by the concerned authority. He therefore denied the charge.

5. In the domestic enquiry, the management as well as the workman adduced evidence and on the basis thereof, by order dated 13.6.1987, he was discharged from service. An industrial dispute was raised on the failure of the conciliation proceeding, which was eventually referred by the Government to the learned Labour Court, Bhubaneswar under Sections 10 and 12 of the Industrial Disputes Act, for adjudication. The term of reference was as follows:

" Whether the termination of services of Sri Sankar Parida with effect from 13.06.1987 by the management of Konark Jute Ltd., Dhammandal is legal and/or justified ? If not what relief he is entitled to?"

6. In the reference, which was registered as ID Case No. 78 of 1992, both the parties submitted their written statements in support of their respective stands. Whereas the appellant/writ petitioner reiterated his plea that he had been permitted to occupy the quarter involved orally and the charge of unauthorised occupation thereof was false and he was sought to be victimized for human activities, the management (respondent No. 1) asserted affirming the charge levelled. According to it, the appellant/writ petitioner had illegally entered into the quarter by breaking the lock and had forcibly occupied the same without obtaining any prior permission. It was also alleged that the workman, on being asked to vacate the quarter, refused to do so whereafter a domestic enquiry was initiated against him. The appellant/writ petitioner did also take the plea that the punishment imposed on the basis of charge was grossly disproportionate to the charge levelled.

7. The management, in course of evidence, examined the Enquiry Officer and also six other witnesses. The Enquiry Officer (MW-1) testified that he had conducted the domestic enquiry in compliance of the principles of natural justice. He stated further that in the enquiry, the management had examined other six witnesses in support of the charge, who were duly cross-examined by the workman. The Enquiry Officer stated further that on evaluation of evidence adduced in the domestic enquiry, he concluded that the workman had occupied the quarter unauthorisedly and that the same amounted to gross misconduct. The other six witnesses examined by the management also reiterated and supported the charge.

8. Learned Labour Court on an analysis of the evidence on record came to the following findings:

(1) The delinquent had failed to explain anything during the course of enquiry against the charge.

(2) Enquiry Officer had examined witnesses in presence of the delinquent and his representative.

(3) Copies of the statement of witnesses had been furnished to the delinquent and he also had acknowledged the receipts thereof.

(4) The delinquent had duly cross-examined/examined the witnesses of the management.

(5) The delinquent/workman could not produce any written order permitting him to occupy the quarter in question.

(6) The delinquent knew English and signed the proceedings of domestic enquiry in English.

(7) The delinquent/workman did not complain in course of the enquiry that he was prejudiced for not being furnished statement of witnesses and the ordersheet in Oriya language.

(8) The workman did not complain about any irregularity in the enquiry.

9. On a conjoint consideration of the above findings, the learned Labour Court held that the domestic enquiry was valid. Vis-a-vis the penalty award, the learned Labour Court noticed that the charge had been framed as per the relevant clause of the Standing Order of the Company and that the penalty imposed was also commensurate to the misconduct, as contemplated in Rule XIX Clause (h) of the Standing Order prescribing dismissal or discharge from service. Learned Labour Court thus was of the view that the charge levelled against the appellant/workman had been proved and that the management was competent and justified in awarding punishment of discharge and the reference was thus answered in negative.

10. The appellant/writ petitioner being dissatisfied, challenged the award before the learned Single Judge. Learned Single Judge vide impugned order dated 20.04.2005, after due scrutiny of the pleaded facts and the documents on record, at the threshold noticed that institution of the writ petition was inexplicably delayed, reckoned from the date of the award i.e. 27.04.2000. It was recorded further that the Industrial Dispute was raised in the year 1992 and the above award was passed in 2000, where after the writ petition was instituted on 7.4.2005. Aside this aspect, the learned Single Judge held that the conclusions recorded by the learned Labour Court were based on an exhaustive consideration of materials on records including both oral and documentary which did not warrant any interference in the exercise of writ jurisdiction.

11. Learned Single Judge affirmed the view of the learned Labour Court that the domestic enquiry held against the appellant/writ petitioner was in conformity with the principles of natural justice and was thus valid. It was held that the disciplinary authority could not be criticized to have committed any abuse of power and that having regard to the seriousness of the charge proved, there was no convincing reason to interfere with the award.

12. Mr. Sahoo argued that not only the charge leveled against the appellant/writ petitioner is frivolous and unfounded, even assuming that the same had been proved, the penalty of dismissal from service is shockingly disproportionate, calling for an interference in the present appeal. Learned counsel urged that the domestic enquiry, in fact, was a farce having been held in total violation of all notions of fairness. On the basis of the evidence adduced by the parties, the appellant/writ petitioner could not have been held to be in unauthorized occupation of the quarter involved.

Mr. Sahoo has further argued that on the face of the record it is clear that the appellant/writ petitioner has been victimized for pursuing the cause of the workmen in general on the issue of reduction of their wages of the employees of the spinning section of the Company and thus, the order of discharge being an act of unfair labour practice, learned Labour Court as well as learned Single Judge ought to have interfered therewith.

13. Mr. Lenka, on the contrary, has stated that not only the evidence on record unassailably demonstrates that the domestic enquiry was valid, but also the charge leveled against the appellant/writ petitioner had been proved. Apart from that, he contended that this Court in the instant appeal should not interfere the concurrent finding of facts. Learned counsel insisted as well that those being based on unimpeachable materials on record, the plea of perversity is wholly misconceived. According to the learned counsel, the appeal ought to be dismissed in limine.

14. Upon hearing the learned counsel for the parties and on consideration of the materials available on record we are inclined to sustain the contentions raised on behalf of respondent. In course of arguments, in response to our query, it has been submitted at the Bar that as on date the respondent No. 1 does not exist. Be that as it may, on a careful scrutiny of the pleaded facts and the evidence adduced, we see no persuasive reason to differ from the consistent findings that the domestic enquiry into the charge culminating in the discharge of the appellant/writ petitioner is valid and that the impugned decision of the learned Tribunal does not suffer from any perversity warranting interference in the present appeal. The evidence on records supports the conclusion that the charge against the appellant/writ petitioner has been proved on merit. It cannot be gainsaid that the charge is sufficiently serious warranting major punishment. As adverted to hereinabove, in the Standing Order of the company, the penalty of discharge/dismissal has been envisaged for such kind of misconduct. The plea that the domestic enquiry had been unfair, to reiterate, does not commend for

acceptance. The appellant/writ petitioner had participated in the enquiry without any demur and at no point of time he either expressed any reservation with regard to fairness of the proceedings or raised any protest. As it is, it is normally within the domain and discretion of the disciplinary authority to decide on the penalty to be awarded on a proved charge as it is the best judge to assess the bearing of the proved misconduct on the institutional discipline and probity.

15. In the above facts and circumstances, having regard to the charge proved, we are not inclined to hold that the penalty of dismissal from service had been excessive or shockingly disproportionate so as to justify interference on that count as well in the exercise of the power of judicial review. We are thus disinclined to overturn the orders impugned.

The appeal stands dismissed.