
(2011) 03 MP CK 0018
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3418 of 2001

Senior Regional Manager

APPELLANT

Vs

C.G.I.T. Jabalpur and Another

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 106

Citation : (2011) ILR (MP) 1231 : (2011) LLR 941 : (2011) 3 MPJR 281

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sanjay Yadav, J.—This petition under Article 226/227 of the Constitution of the India is directed against the award dated 9.1.01, passed by Central Government Industrial Tribunal" cum Labour Court, Jabalpur, (hereinafter to be referred as "the Tribunal"), whereby, the reference as to "whether the action of the management of Senior Regional Manager, Food Corporation of India, Bhopal, in removing from service of Shri S.L. Bakoria, A.G.I. (D) vide order No. V&S/4(6/83) dated 12.4.84, is justified ? If not, what relief the workman concerned is entitled to ?", has been answered in favour of the Respondent/workman who is being directed to be reinstated with entire back wages and monetary benefits attached to his post.

2. Facts which lead to raising of industrial dispute briefly are that, Respondent No. 2 while working as Assistant Grade-I (D) and as a Depot In charge at Itarsi, was charge sheeted for alleged shortage of sugar from the store. Denial of charges led to holding of a departmental enquiry wherein after considering the material and the evidence brought on record by the workmen and the management, the enquiry officer exonerated Respondent No. 2 from the charges. The disciplinary authority however, while disagreeing with the finding recorded by the enquiry officer passed an order of dismissal on 12.4.84.

3. Being aggrieved Respondent No. 2 herein raised the industrial dispute and after failure of conciliation, the same was referred to for adjudication to the Tribunal vide Government of India, Ministry of Labour Order No. L-22012(310)/F-90 dated 19.2.90. The Tribunal on the basis of statement of claim by the workman and the denial thereof, by the management framed five issues namely-

- (1)- whether the inquiry is just, proper and legal?
- (2)- whether the management is entitled to lead evidence before this Tribunal ?
- (3)- whether the charges of mis-conduct proved on the facts of the case?
- (4)- whether the punishment award is a proper or illegal?
- (5)- Relief and costs?

4. While dwelling upon issue No. 1 and 2 the Tribunal recorded a finding that the Respondent No. 2 workman was dismissed from service on the basis of a finding recorded by the disciplinary authority, who dissented with the finding of exoneration by the enquiry officer. The Tribunal, relying upon; the judgment in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, ; held that since no opportunity of hearing was given to the Respondent No. 2 before passing of order of dismissal by Disciplinary Authority, entire departmental enquiry got vitiated. The tribunal further held that, since the order of punishment passed by disciplinary authority was illegal and not sustainable in the eyes of law, the management was not entitled to prove the alleged mis-conduct of the workman. The Tribunal after recording such a finding observed that, the punishment of dismissal awarded to the Respondent workman was unjust and illegal and accordingly, directed his reinstatement with all back wages and monetary benefits attached to his post.

5. Assailing the award it is urged by Learned Counsel for the Petitioner that the Tribunal was not justified in holding that the enquiry was vitiated because the disciplinary authority has not extended any opportunity of hearing after recording the dissenting finding. It is contended that there were ample material on record which could justify the dismissal of Respondent No. 2, as, the charges leveled against him were found proved. It is further submitted that, the Tribunal erred in directing the workman with all back wages and other consequential benefits. Instead it is urged that, the Tribunal ought to have remitted the matter to the stage at which the enquiry was found to be vitiated.

6. To substantiate the aforesaid proposition has placed reliance is placed on the judgment rendered in Kunj Behari (supra).

7. It is further contended that the Tribunal also grossly erred in granting full back wages to Respondent No. 2/workman without there being any evidence on record by him regarding the fact that after 1984 he was not gainfully employed. It is urged that there is no iota of evidence on record to substantiate the grant of full back wages and other monetary benefit. In substance it is urged on behalf of the

Petitioner that the award passed by the Tribunal is liable to be set aside.

8. The Respondent No. 2 on his turn supports the award. It is urged that since the enquiry was vitiated for non adherence to principle of natural justice, the Tribunal was justified in quashing the dismissal order and directing the reinstatement with full back wages and other consequential benefits.

9. Heard Learned Counsel for the parties at length and gave thoughtful consideration to the submissions put forth.

10. The issue which crops up for consideration, is as to whether the Tribunal was justified in holding that the departmental enquiry was vitiated for non-compliance of principle of natural justice because no notice was issued to the Respondent/workman by disciplinary authority who dissented with the finding of exoneration recorded by the enquiry officer.

11. With the catena of judgments in row since Kunj Behari (supra), above issue has come to settle that "it will, therefore, not stand to reason that when the finding in favour of delinquent officers is proposed to be over turned by the disciplinary authority then no opportunity should be granted. "[Kunj Behari Mishra (supra)]. It was further observed therein that-

19.... whenever the disciplinary authority itself disagrees with the enquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officers an opportunity to represent before it records its finding." absence whereof, the entire proceeding gets vitiated.

(Also please see State Bank of India and Others Vs. K.P. Narayanan Kutty, ; and in Ranjit Singh Vs. Union of India (UOI) and Others,

12. In view of above we do not perceive any illegality in the finding recorded by the Tribunal that the absence of a notice by the disciplinary authority tantamounts to vitiating of decision of dismissal from service.

13. Question at this stage arises as to whether the matter ought to have been remitted to the stage at which the departmental enquiry was found to be vitiated. In our opinion the proposition of law as laid down in Kunj Behari Mishra (spura), supports the contention of the Petitioner that the matter ought to have been remitted. Whether the case as the present one warrants such remitting? In the instant case the Respondent No. 2 was dismissed from service way back in the year 1984 by order dated 12.4.84 and it is stated at bar that during pendency of the proceedings, Respondent No. 2 has retired on attaining the age of superannuation.

14. In the context we are guided by the observation in Kunj Behari Mishra (supra) wherein it was held-

21- Both the Respondents superannuated on 31st December, 1983. During the pendency of these appeals Misra died on 6th January, 1995 and his legal

representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings. We, therefore, do not issue any such directions and while dismissing these appeals we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the Appellants to release the retirement benefits to the Respondents. There will, however, be no order as to costs.

15. Therefore, taking into consideration the entire facts as analyzed and while not disputing the proposition of law as laid down in Kunj Behari Mishra (supra) and the contention of Learned Counsel for the Petitioner that the Tribunal ought to have remitted the matter for fresh consideration by the disciplinary authority to the stage at which the enquiry was found being vitiated, we are not inclined to remand the matter.

16. Instead, keeping in view the fact that there is no iota of evidence on record as would justify the award of full back wages and other monetary benefits of the post (in the context that it is the workman who has to prove that he was not gainfully employed reference can be had of the judgment in M.D., Balasaheb Desai Sahakari S.K. Ltd. Vs. Kashinath Ganapati Kambale, wherein it is observed in paragraph 13 that-

17. 13- It is now well settled by catena of decisions of this Court that having regard to the principles contained in Section 106 of the Evidence Act, the burden of proof to show that the workman was not gainfully employed is not on the employer), we therefore, modify the award to the extent that the Respondent No. 2/ workman is reinstated and the entire service period from 12.4.84 till his age of superannuation shall be treated as duty for the purpose of pension. He will however, not be entitled for any back wages or monetary benefits of the said period.

18. The petition is allowed to the extent above. However, there shall be no costs.