
(2016) 10 MP CK 0009
In the Madhya Pradesh High Court
Case No : WP No. 8800 of 2014

Senior Superintendent of Post Office	Vs	APPELLANT
Krishan Lal Mehra		RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) LabLR 376 : (2017) 1 MPLJ 292

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : Shri S.K. Mishra, Advocate, for the Petitioner; Shri Uttam Maheshwari, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

1. The parties are at logger heads on the validity of order dated 11/11/2013 (Annexure P-8) passed by the Central Government Industrial Tribunal-cum-Labour Court (hereinafter referred as Tribunal) in Case No. CGIT/L.C/R/151/2000. The workman in the said dispute challenged his termination from service. The Tribunal framed issue no.1 regarding the legality and validity of domestic enquiry. By impugned order, the domestic enquiry was held to be illegal. This interlocutory order is assailed in this petition.
2. Shri S.K. Mishra, learned counsel for the petitioner/employer submits that the Tribunal has erred in deciding the issue no.1 against the Management. The singular contention advanced by Shri Mishra is that the issue no.1 is decided against the employer without recording evidence of the parties. In support of this contention, he relied on judgment of Delhi High Court in the case of UCO Bank v. Presiding Officer & anr reported in (2000) ILLJ 1187 Del.
3. The prayer is opposed by Shri Uttam Maheshwari, learned counsel for the respondent. He submits that record of the domestic enquiry was produced before the Tribunal. The parties did not dispute the genuineness and correctness of the

record of disciplinary proceedings. The order of the Tribunal is based on admitted documents, hence, no evidence was required to be produced in this regard. The Management is free to lead evidence before the Tribunal to establish the alleged misconduct. He relied on (1975) 2 SCC 661 (The Cooper Engineering Limited v. Shri P.P. Mundhe) and submits that at this stage no interference is warranted by this Court. The petitioner if finally aggrieved by final outcome/award of the Tribunal, he may assail it in appropriate proceedings. No other point is pressed by the parties.

4. I have heard parties at length and perused the record.

5. The Tribunal passed a reasoned order and held that the enquiry was not legal and proper. The core issue is whether at this stage when main industrial dispute/reference is pending before the Tribunal, any interference is justifiable. In the case of UCO Bank (supra) the order of Tribunal was challenged whereby the employer/Bank was directed to first lead evidence in the proceedings of industrial dispute raised by the workman. The Delhi High Court considered Allahabad High Court's judgment, wherein it was held that where workman is challenging the action of the employer, it is for him to adduce evidence first to establish the illegality in the action of employer. Thus in that context, it was held that workman is required to lead evidence. The said judgment has no application in the peculiar facts and circumstances of this case. In Cooper Engineering Ltd (supra) the Apex Court held that the Tribunal should decide the question of legality and validity of the disciplinary enquiry as Issue No.1. The Apex Court opined as under:-

"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."

(Emphasis Supplied)

6. The underlined portion makes it clear that High Court should be reluctant to intervene at this interlocutory stage. The same view is taken by Division Bench of

this Court in the case of Naval Kishore v. M.P Road Transport Corporation reported in 1975(1) LLN 149 (M.P). The Division Bench held that even assuming that the view of the Labour Court is wrong and it is possible on the facts and circumstances of the case to hold a view different than the Labour Court, the jurisdiction of the Industrial Tribunal under section 67 of the M.P Industrial Relation Act cannot be said to confer on the industrial court the power to interfere on the finding of Labour Court on the question of propriety of the enquiry held by Tribunal. In the same judgment, it is held that it cannot be doubted that power of superintendence under section 67 of the MP Industrial Relation Act are more or less similar to the power of High Court under Article 227 of the Constitution. In view of the aforesaid legal position, no interference is warranted at this stage. Consequently, at this stage interference is declined. Liberty is reserved to petitioner to challenge the impugned order if ultimately award is passed against the petitioner/employer. The petition is dismissed with aforesaid observation. No cost. Certified copy as per rules.