
(1999) 08 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 11590 of 1991

Sennampatty Milk Producers' Co-operative Society Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 24-08-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2000) 84 FLR 315 : (2001) 3 LLJ 165

Hon'ble Judges : T. Meenakumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T. Meenakumari, J.—This writ petition is for the issue of writ of certiorari to call for the records and quash the award dated May 6, 1991

made in I.D.No. 73 of 1985 on the file of the first respondent.

2. Learned counsel for the petitioner has argued that the second respondent herein was employed as Secretary of the petitioner Society. The

second respondent was suspended for misconduct on September 27, 1983. Show cause notice was issued on June 21, 1984 alleging

misappropriation of sum of Rs. 1,429. The second respondent has submitted his explanation on July 2, 1984. Enquiry was conducted and in

pursuance of the enquiry, the second respondent was dismissed from service on August 23, 1984. The second respondent raised a dispute before

the Labour Court, Coimbatore challenging the order of termination passed by the society which was taken on file as I.D.No. 73 of 1985. Learned

counsel for the petitioner has argued that the petitioner herein has filed a counter and documents relating to the charges levelled against the second

respondent. The issue with regard to the validity of the domestic enquiry was taken up as a preliminary issue by the Labour Court and the documents in the enquiry were marked as exhibits. The first respondent heard the matter on September 5, 1990. Learned counsel has argued that as the permission of the Labour Court to lead additional evidence in support of the misconduct in the event of the preliminary issue being decided against them has not been sought for in the counter statement filed before the first respondent, before the orders were pronounced by the first respondent on the preliminary issue regarding the validity of the domestic enquiry, an application was filed by the petitioner to reopen the preliminary enquiry. The first respondent-Labour Court by order dated September 18, 1991 reopened the enquiry. The petitioner filed I.A.No. 258 of 1990 on October 20, 1990 seeking permission of the Court to file an additional counter statement. In the additional counter statement, the petitioner sought for an opportunity to let in further oral and documentary evidence against the second respondent. The second respondent filed counter in I.A.No. 258 of 1990 on November 7, 1990. By order dated November 28, 1990, the Labour Court dismissed the application I.A.No. 258 of 1990 holding that the petitioner having failed to seek permission while filing counter, the same cannot be sought at a later stage by means of an additional counter statement. The award was passed by the Labour Court on May 6, 1991 holding that the domestic enquiry conducted by the petitioner against the second respondent was vitiated and since the petitioner has not filed any application seeking permission of the Court to lead additional evidence in support of the charges, the second respondent was ordered to be reinstated with continuity of service and full back wages. Learned counsel for the petitioner has argued that the Labour Court erred in holding that no application was filed by the petitioner seeking I permission of the Court to lead additional evidence to prove the charges against the second respondent before the orders were passed in the preliminary issue. Learned counsel has argued that the award has been passed without considering the fact that the prayer has already been made in the additional counter statement to let in additional evidence. Learned counsel has argued that the Labour Court should have allowed the petitioner to let in additional evidence to prove the charges against the second respondent.

3. Learned counsel for the petitioner has relied upon the following decisions:

1. Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, ; 2. Raveendra Kamath Vs. V.A. Dholakia and Another, ; 3. N. Gurumurthy

v. Second Additional Labour Court and Anr. 1995 I L.L.J. 1022; 4. Bharat Forge Company Ltd. Vs. A.B. Zodge and another, .

4. In Raveendra Kamath's case, (supra) the Kerala High Court has held that if findings are in favour of workman, employer can ask for permission

to adduce evidence to justify the " order of dismissal or discharge even though such a plea was not taken in the pleadings.

5. Learned counsel for the petitioner has relied upon the decision in N. Gurumurthy's case, (supra) to substantiate his contention that the petitioner

is entitled to question the orders passed in interlocutory applications. A Division Bench of this Court in the above case has held that if findings are

recorded without notice to any one of the parties or recorded without any reason, it is open to the workman or management to question the same

after the final award is passed.

6. In Bharat Forge Company Limited v. A.B. Zodge and Anr. (supra) the Supreme Court has held that if the prayer to lead evidence in support of

the order of dismissal was made by the employer before the closure of the proceedings in the Tribunal, denial of the opportunity to the employer to

lead evidence before the Tribunal in support of the order of dismissal cannot be justified.

7. Learned counsel for the petitioner has argued that even though no request was made at the initial stage, subsequently permission was sought for

during the pendency of the proceedings to lead additional evidence. Hence, the Labour Court should have allowed the Management to adduce the

oral and documentary evidence.

8. Learned senior counsel for, the second respondent has argued that instead of seeking permission to lead evidence in the event of the Labour

Court coming to the conclusion that the domestic enquiry was not fair and proper while deciding the preliminary issue, the management has

preferred the interlocutory application at a later stage. Learned senior counsel has argued that the petitioner Management did not specify the

reason for the omission to seek permission in the initial pleading. Learned senior counsel has further argued that the reasons were not explained for

the delay in making such request and motivation for the delayed action. Learned Senior counsel has further argued that the petitioner-Management

has chosen to question only the award passed in I.D.No. 73 of 1985 by the Labour Court on May 6, 1991 and the petitioner Management did not

choose to question the orders passed in I. A. No. 258 of 1990, which was dismissed by the Labour Court. He has further argued that a separate

Writ petition should have been preferred by the petitioner-Management questioning the orders passed in I.A.No. 258 of 1990. Basing on the

above, learned senior Counsel has argued that as the Management did not prefer any other writ petition questioning the orders passed in I.D.No.

258 of 1990, the same has become final and it is binding on the parties.

9. Learned senior counsel for the second respondent relied upon the decision in Shambhu Nath Goyal Vs. Bank of Baroda and Others, and also

the decision of this Court in The Management of Sri Rama Vilas Bus Service v. Presiding Officer and Anr. W.P.No. 5731 of 1990, dated March

11, 1999 to substantiate his contentions.

10. A counter has been filed in I.D.No. 73 of 1985. The issue with regard to the validity of the domestic enquiry was taken up as a preliminary

issue by the first respondent-Labour Court and the documents in the enquiry were marked as exhibits and arguments were advanced by both the

parties on the preliminary issue. The first respondent reserved orders on September 5, 1990. It is not in dispute that in the counter the petitioner

herein has not prayed for letting in of additional evidence in case the Labour Court comes to the conclusion that the enquiry is vitiated for any

reason. Therefore even before the orders were pronounced by the Labour Court on the preliminary issue regarding the validity of the domestic

enquiry, an application was filed by the petitioner to reopen the preliminary enquiry. The said application was numbered as I.A.No. 233 of 1990.

The Labour Court reopened the enquiry by order dated September 18, 1991. The matter was adjourned for further arguments. The petitioner

herein filed another I.A.No. 258 of 1990 on October 20, 1990 seeking permission to file an additional counter statement. In the additional counter

statement, the petitioner pleaded for an opportunity to let in oral and documentary evidence in support of the charges levelled against the second

respondent. The second respondent has also filed counter in I.A.No. 258 of 1990.

The said I.A.No. 258 of 1990 was dismissed by the Labour Court on November 28, 1990 holding that the petitioner having failed to seek permission while filing the counter, the same cannot be sought at a later stage by means of an additional counter statement. The Labour Court relied on the decision in Shambu Nath Goyal v. Bank of Baroda, (supra), wherein the Supreme Court has held that if the management had failed to seek an opportunity to let in evidence in their counter statement, it cannot raise the same issue at a later stage. The Labour Court has also relied upon the decision in Shankar Chakravarty v. Britannia Biscuit Company Limited (supra), wherein it was held by the Supreme Court that if the Management want to let in evidence, it has to give sufficient reasonings for the same and in the absence of the same, the Court should not allow the management to do so. The Labour Court observed that though I.A.No. 258 of 1990 filed by the management for filing additional counter statement the same was dismissed on November 28, 1990, thereafter the case was reopened and stood for consideration for almost six months. At that stage also, the Management has not filed an application seeking permission to let in evidence. The Labour Court observed that at the final hearing the management argued that they did -not want the services of the workman-second respondent herein. Since the Management did not request for examination of witnesses on their behalf and had further not chosen to file an application, the matter was heard finally. The Management has marked Ex. R-22. In the said document the workman has submitted that, ""if any mistakes were found in the accounts prior to September 23, 1983, then the full responsibility for the same were on him."" Relying upon the above statement in Ex.R-22, learned counsel for the petitioner has argued that the second respondent had accepted the charges alleged against him. The Labour Court relied upon the decision of the Gujarat High Court in Natavarbhai S. Makwana Vs. Union Bank of India and Others, wherein the Gujarat High Court has held that merely because the workman has accepted a fact, it does not mean that the charges levelled against him have been proved. Following the decision of the Gujarat High Court above cited, the Labour Court has held that merely because of the fact that the workman had remitted back the amount, it cannot be construed that the charges levelled against him were

proved. The Labour Court has come to the conclusion that the Management had failed to let in oral or documentary evidence to prove its charges.

The workman was ordered to be reinstated with continuity of service and back wages.

11. In *Shri Shambu Nath Goyal v. Bank of Baroda and Ors.* (supra), the Supreme Court has held as follows:

If application is made during the pendency of the proceedings, it does not mean that some independent right to make an application at any time is

conferred on the employer. If a separate application is made, it would be open to the Labour Court/Industrial Tribunal to examine the question

whether it should be granted or not depending upon the stage when it is made, the omission to claim the relief in the initial pleading, the delay and

the motivation for such delayed action. The Supreme Court has also held that the observation was not made to lay down a proposition of law that

as and when it suits the convenience of the employer at any stage of the proceedings, it may make an application seeking such opportunity and the

Labour Court/Industrial Tribunal was obliged to grant the same..... If the request is made before the proceedings are concluded, the Labour

Court/Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. If such a pleading is raised and an opportunity is sought, it is

to be given, but if there is no such pleading either in the original application or in the statement of claim or written statement or by way of an

application during the pendency of the proceedings, there is no duty cast in law or by the rules of justice, reason and fair play that a quasi-judicial

Tribunal like the Industrial Tribunal or the Labour Court should adopt an advisory role by informing the employer of its rights....

12. In *Neeta Kaplish Vs. Presiding Officer, Labour Court and Another*, , the Apex Court has held that even though the Management refused to

avail opportunity to lead evidence to justify dismissal of workman and the workman did not lead any evidence since the Management did not lead

evidence to justify dismissal on merits, the jurisdiction of the Labour Court or Tribunal to itself decide merits on fresh evidence remains unilateral

even after introduction of Section 11A of the Industrial Disputes Act, The Apex Court has further held that the Tribunal had not only power to set

aside the order of dismissal and direct reinstatement but also power to award lesser punishment u/s 11A. The proceedings of defective domestic

enquiry would not constitute ""fresh evidence"" and ""material on record"". The Apex Court has also held that the defective enquiry proceedings had to be ignored altogether and the workman is entitled to relief as claimed.

13. In this case, the Labour Court found that the domestic enquiry was vitiated and the charges were not proved. The Labour Court was perfectly

right in ordering reinstatement of the second respondent herein. I fully agree with th contention of the learned senior counsel for the second

respondent that the petitioner Management has not chosen to question the order passed by the Labour Court in I.A.No. 258 of 1990 by filing a

separate writ petition. As the petitioner Management has failed to do so, the order in LA.No. 258 of 1990 has become final and it is binding on the

petitioner- Management. No attempt has been made on the part of the Management to file an application seeking permission of the Labour Court

to let in oral or documentary evidence.

14. Following the decisions of the supreme Court in Shri Shambu Nath Goyal 's case (supra), Neeta Kaplish 's case (supra), I see no ground to

interfere with the award passed by the Labour Court. The writ petition is dismissed. No costs. Consequently W.M.P.No. 17485 of 1991 is

dismissed.