
(1982) 08 AHC CK 0044
In the Allahabad High Court

Sheo Sampat Lal	Vs	APPELLANT
State of Uttar Pradesh and Others		RESPONDENT

Date of Decision : 31-08-1982

Acts Referred:

Citation : (1983) 1 LLJ 489

Hon'ble Judges : T.S. Misra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T.S. Misra, J.—This petition is directed against an award of the Labour Court made in Adjudication case No. 1 of 1970. The present petitioner Sampat Lal was appointed as an hourly rated workman in the year 1958 in the Engineering Department of Messrs. Eveready Flash Light Company, Lucknow. Three charge-sheets dated 11th December 1967, 20th December, 1967 and 22nd December, 1967 were served on him and a domestic enquiry, on the basis of the said charge-sheets, was made. Firstly, Sampat Lal had avoided to take delivery of the said charge-sheets. Then on 5th January 1968 the charge sheets, along with their Hindi translation, were published in Swatantra Bharat newspaper. Sampat Lal submitted his explanation with respect to first charge-sheet on 6th January, 1968, and with respect to the other charge-sheets on 7th January, 1966. Having found that the explanation furnished by Sampat Lal was not satisfactory, it was considered necessary to hold a domestic enquiry. Hence, the Works Manager of the company appointed Sri J.M. Kishan to hold the enquiry. Sampat Lal was informed of it and was told that the enquiry would be hold on 11th January, 1968 by Sri J.M. Kishan at 9 A.M. in Carlton Hotel. He, along with his two representatives attended the enquiry on 11th January 1968 and prayed that the venue of the enquiry may be shifted to the factory premises. 27th January 1968 was then fixed for holding the enquiry in the factory. Sampatlal Lal appeared on 27th January 1968 before the Enquiry Officer and handed over a letter to him requesting that there should be no enquiry in regard to the charge-sheets dated

20th December, 1967 and 22nd November, 1967 as the matter was sub-judice. He also prayed that the enquiry with respect of charge-sheets dated 11th December 1967 be postponed to 29th January, 1968 to enable him to arrange his defence. Sampat Lal was informed in writing that the enquiry would be held in regard to all the three charge-sheets on 29th January, 1968. He, however, did not attend the proceedings on that date, nor did he furnish any information about his inability to attend the enquiry. The enquiry was, therefore, made against him ex parte. 12 witnesses were examined on behalf of the management in regard to the first charge-sheet. Similarly, 5 witnesses were examined in regard to the second charge-sheet and 11 witnesses were examined in regard to the third charge-sheet. The Enquiry Officer submitted his report to the Works Manager on 15th February 1968 holding that all the charges had been established against Sampat Lal. The Local Works Manager then forwarded the report of the enquiry officer to the Central Works Manager at Calcutta requesting him that the orders on the enquiry report may be passed by the latter because the former had appeared as a witness during the course of the enquiry. The Central Works Manager found the charges against Sampat Lal proved and passed an order dismissing Sampat Lal from service with effect from 23rd February 1968. Approval of the Industrial Tribunal at Lucknow, sought by the employers, for taking that action, was accorded on 18th April 1968. The workman Sampat Lal, on the other hand, asserted that he was a permanent employee in that concern, Eveready Flash Light Company, Lucknow, and that he was a trade-union worker and had been in his village on leave from 11th to 16th December, 1967. While he was on leave, he was intimated that certain allegations had been made against him and that he was placed under suspension for six days with effect from the date of the expiry of the leave. That suspension was extended from time to time and ultimately his services were terminated. His contention was that he had been victimised for his trade union activities, that he was paid no wages for suspension period, and that the suspension order itself was illegal being violative of standing orders of the concern. He also contended that the dismissal order was passed by a person not authorised to pass it.

2. As many as five issues were framed by the Labour Court on the pleadings of the parties. Issue 1 was not pressed. The tribunal held that Sampat Lal was issued proper charge-sheets, that the employers had conducted domestic enquiry fairly and properly, and that Sampat Lal had not been victimised. It was also held that Sri M.F. Murry, General Works Manager was competent under the provisions of the Certified Standing Orders of the concern to issue dismissal order to Sampat Lal. The Labour Court found no merits in the reference and held that Sampat Lal was not entitled to any relief whatsoever. It made its award accordingly.

3. The petitioner, Sampat Lal, has now come to this Court.

4. Learned Counsel for the petitioner submitted that a local officer should have been appointed for the purposes of taking disciplinary action against Sampat Lal

and that there was no justifiable reason for appointing an officer from Calcutta for the said purpose. It was sought to be made out that the enquiry officer was prejudiced against Sampat Lal and, therefore, the whole proceeding was vitiated. Further, it was submitted that the management was biased against the petitioner because of his trade union activities and they wanted to get rid of him on one reason or the other. I find no merit in this contention. J.M. Kishan was no doubt then serving in the concern at Calcutta. He was not a stranger to the company. There is no provision in the Standing Orders requiring that only a local officer of the company could be appointed as an enquiry officer, The Labour Court was right in observing that Sri J.M.Kishan, who was working in the Calcutta Office, could be expected to take a more detached and impartial view of things in comparison with a local officer. That apart, Sampat Lal did not raise any objection to the appointment of Sri J.M. Kishan at the initial stage and in fact appeared before him in the course of enquiry and submitted to his jurisdiction. It could not be made out that Sampat Lal was in any way prejudiced on account of appointment of Sri J.M. Kishan as enquiry officer.

5. The Labour Court had found that the petitioner did not go to attend the enquiry on 29 January, 1968. The petitioner challenges this finding by saying that he did go to participate in the enquiry on that date, but was told by the enquiry officer that no enquiry would be held on that date and the next date will be intimated. The finding reached by the Labour Court on this point is a finding of fact based on appreciation of evidence and the surrounding circumstances and I see no reason to disagree with it.

6. Learned Counsel for the petitioner then submitted that Sampat Lal was not informed that the enquiry would be made on 30 and 31 January, 1968 also and that had it been so hinted even indirectly, he Would have gone on 30 and 31 January, 1968 also for attending the enquiry. The submission was that on adjournment of earlier dates of enquiry, the next dates were never fixed for holding an enquiry in session. Hence, it was quite unjustified for the enquiry officer to have held enquiry on 30 and 31 January, 1968 in the absence of the petitioner. I see no merit in this contention. The petitioner did not attend the enquiry on 29 January, 1968, The proceedings had, therefore, to be taken ex parte against him. The proceedings could, therefore, be held on the subsequent dates as well without giving any further notice to the petitioner and the enquiry officer did not commit any illegality in conducting the enquiry on 30 and 31 January, 1968 as well.

7. It was next urged on behalf of the petitioner that under the provisions of Clauses 18(a) and 22 read with Clause 24 of the Standing Orders of the Company, it was only the Manager or the Local Management alone who could dismiss the petitioner. However, the order of dismissal was passed by the General Works Manager, Calcutta, who had no authority to pass that order. The appointing authority was no doubt the Work's Manager, Lucknow, but he did not pass the order of dismissal on the ground that he had himself appeared as a

witness in the domestic enquiry against Sampat Lal. He, therefore, referred the enquiry report to the General Works Manager, Calcutta, who is a superior authority, for necessary orders. The Board of Directors of the Union Carbide India Limited, of which the Eveready Flashlight Company, Lucknow, is a Division, authorised the General Works Manager by a resolution to pass an appropriate order. In these circumstances, it is difficult to accept the contention that the dismissal order was passed by a person who had no authority to do so. The requisite authority having been conferred on him, he was fully competent to pass the said order.

8. Learned Counsel for the petitioner then urged that the Labour Court should have ignored the existence of the ex parte enquiry and should have asked both the parties to lead evidence before it. The submission was that the petitioner should have been asked to prove his innocence and the Company should have been asked to lead evidence to justify the dismissal order. It was submitted that a request was made before the Labour Court on behalf of the petitioner that he should be given an opportunity to prove his innocence, but the Labour Court did not allow him to do so. The argument was that in case of defective enquiry the employers are given a right to justify the dismissal order by leading evidence before the Labour Court, hence the workman should also have been given an opportunity to lead evidence before the Labour Court to prove his innocence even when he had not participated in the domestic enquiry and the enquiry was taken ex parte against him. In the case of *Delhi Cloth and General Mills Co. v. Ludh Budh Singh* 1972-I L.L.J. 180 an application was moved on behalf of the management seeking permission to adduce evidence and satisfy the tribunal about the justification for the action taken against the workman concerned. Referring to its various decisions made in the past on the point the Supreme Court laid down the following principles (at Page 198):

(1) If no domestic enquiry had been held by management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relied on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the

first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding of the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be that the management is deprived of the benefit of having the finding of the Domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The Management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management would avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference u/s 10 or by way of an application u/s 33 of the Act.

From para 6, quoted above, it would appear that if an employer relied only on the domestic enquiry and did not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce evidence the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. The Supreme Court pointed out that if the Tribunal decided that the domestic enquiry had not been held properly, it was not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it. The Tribunal in fact will have before it only enquiry proceedings and it has to decide whether those proceedings have been held properly and the findings recorded therein are also proper. Moreover, if the Tribunal comes to the conclusion that the domestic enquiry was not validly held, the Tribunal will have to give the employer an opportunity to lead additional evidence and also to the employee to lead evidence in support of his version. The management in that event will be deprived of the benefit of the findings of the domestic enquiry as prima facie proof of the alleged misconduct. It will have to prove then that the workman was guilty of misconduct and the action taken by it was proper. The Supreme Court, therefore, laid down that it will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct. In the case in hand the Tribunal did not hold that the domestic enquiry was not validly held. The management could, therefore, take advantage of relying on the findings of the domestic tribunal as prima facie proof of the alleged misconduct. The Labour Court had, therefore, before it only the enquiry proceedings and it had to decide whether the proceedings had been held properly and the findings recorded therein were proper. No prejudice was, therefore, caused to the petitioner. The petitioner did not appear before the enquiry officer in the domestic enquiry on 29th January, 1968 and the proceedings had, therefore, to be taken ex parte against him. There is no provision which entitled the petitioner to lead evidence before the Labour court to show that the charges levelled against him were false and baseless. That he should have done before the enquiry officer.

9. It was then submitted on behalf of the petitioner that his ten years" record was absolutely clean and there was no reason for terminating his employment. This contention has also no force. The three charge sheets were served on him and a domestic enquiry was made against him on the basis of those charge-sheets. The dismissal order was passed thereafter. The fact that his record for last ten years was clean would, in the circumstances, be of no consequence.

10. No other point was pressed.