
(1998) 03 CAL CK 0007
In the Calcutta High Court
Case No : M.A.T. No. 2652 of 1997

Steel Authority of India Ltd.

APPELLANT

Vs

Bela Ghosh and Others

RESPONDENT

Date of Decision : 09-03-1998

Acts Referred:

Citation : (1999) 3 LLJ 944

Hon'ble Judges : Satyabrata Sinha, J; Dibyendu Bhusan Dutta, J

Bench : Division Bench

Advocate : Arijit Chowdhury, Tapas Kumar Banerjee and Kanchan Roy, for the Appellant; Hiral Kumar Mitra and Joytosh Mazumdar, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—This appeal is directed against a judgment and order dated June 11, 1997 passed in C.O. No. 8575 (W)/96 whereby and where under the writ application filed by the petitioner had been allowed.

2. The fact of the matter lies in a very narrow compass.

3. The petitioner was appointed as Junior Teacher in the Education Department of the Durgapur Steel Plant by a letter dated March 9, 1964. The petitioner's grievance was that she had not been promoted as a Head Teacher to which she was entitled to. She was charge-sheeted in terms of a letter dated November 22, 1993 and was also placed under suspension. The said letter is contained in Annexure "C" to the writ application. By a letter dated November 22, 1993 the petitioner was informed that she had committed the following misconduct :

"You are therefore charged with having committed the following acts of misconduct.

i) Negligence of duty. (Clause-5(ii) of Discipline and Appeal Rules of the Company).

ii) Habitual indiscipline and wilful insubordination and disobedience to lawful and

reasonable orders of higher authority. (Clause-5 (ix) of Discipline and Appeal Rules of the Company."

4. A statement of allegation had also been annexed with the said charge sheet. The petitioner was charged under the Conduct, Discipline and Appeal Rules, 1977, the relevant provision whereof reads thus :

"Where it is proposed to hold an enquiry, the disciplinary authority shall frame definite charge on the basis of the imputations of misconduct or misbehaviour against the employees. The charges together with a statement of the imputations of misconduct as misbehaviour on which they are based, a list of documents by which and a list of witness by whom the articles of charge are proposed to be sustained shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the disciplinary authority (not exceeding 15 days) a written statement whether he admits or denies any of or all the charges."

5. The petitioner contended in paragraph 11 of the writ application that a copy of the report, name or list of the witnesses and other materials and relevant documents had not been supplied. The petitioner filed several representations in this regard. The disciplinary authority, however, by a letter dated March 15, 1994 appointed an enquiry officer. It is stated that although at the relevant point of time, the Conduct, Discipline and Appeal Rules, 1977 were applicable, the disciplinary authority proceeded on the basis of 1962 Rules which ceased to have any effect. The petitioner has also alleged that in the enquiry proceedings, her prayer to allow her to be represented by Sri A.N. Mitra, retired employee, had not been acceded to.

6. On June 17, 1994 when the enquiry proceeding was adjourned she could not attend because her husband was ill, which was intimated to the enquiry authority. The petitioner had also not been paid her subsistence allowance for which she filed a writ application in this Court and a learned single Judge of this Court by an order dated April 13, 1995 directed to complete the enquiry proceedings within two months and directed the respondents to pay and go on paying the subsistence allowance as admissible under the law. The said order, according to the petitioner, had not been complied with. The enquiry officer submitted a report and by an order dated November 9, 1995 the disciplinary authority passed an order of punishment purported to be in terms of Clause 4 (ii) (a) of Discipline & Appeal Rules, 1992 by imposing a punishment or reduction to a lower post. The petitioner filed a writ application but the same was dismissed on the ground of availability of an alternative remedy. She thereafter preferred an appeal.

7. The petitioner was thereafter communicated that her appeal has been dismissed by the appellate authority by a letter dated March 30, 1996. Along with the said letter a copy of the enquiry report was annexed. The petitioner thereafter filed the aforementioned writ application praying inter alia, for the

following reliefs :

"a) A writ in the nature of Mandamus do issue commanding the respondent authorities particularly the respondent No. 5 to cancel, 1 rescind or withdraw the impugned and purported order passed by Manager (Personnel/ Legal) Durgapur Steel Plant, Durgapur District Burdwan in the appeal preferred by your petitioner against Order No. PL : TA/02.00/ 57744/698 dated November 9, 1995 being No. PL-Legal/08.321/248 dated March 30, 1996.

b) A writ in the nature of Mandamus do issue commanding the respondent authorities to make payment of subsistence allowance and arrears salaries with immediate effect;

c) A writ in the nature of Mandamus do issue commanding the respondent authorities particularly the respondent Nos. 2 and 5 to make and/or pass an order reverting your petitioner to her original post;"

8. The learned trial Judge in his judgement noticed :

"It appears that the charge-sheet was issued against the petitioner on November 22, 1993. The charge-sheet along with statement of allegations have been annexed to the writ petition. Thereafter several writ petitions were filed challenging the chargesheet and the allegations. It appears on perusal of the charges, that the charges were vague and not specific and no particulars have been furnished on the basis of which the petitioner can be taken to task. The records also indicate that there is irregularity in the proceeding initiated against the petitioner. It is also an admitted position that copy of the enquiry report although relied upon by the Disciplinary Authority, has not been supplied to the petitioner. List of witnesses also have not been supplied. Mr. Gupta, learned Advocate for the respondent Company fairly accepts the said position."

9. The learned trial Judge directed:

"The petitioner is entitled to get all benefits including the retiral benefits. Since however, the petitioner could not join and has not actually worked in the post of Head Teacher during the period of her suspension, she will be entitled to get full wages by adjusting the period against her credited earned leave. For the remaining balance period, if any, she will be entitled to the benefit of 75% of the admissible benefits of the Head Teacher until the date of her superannuation, and receive all payments accordingly after adjustment of the amount already received by her in the tune of suspension allowance."

10. Mr. Choudhury, the learned Counsel appearing on behalf of the appellant submitted that keeping in view the fact that the learned trial Judge has merely found violation of principles of natural justice, the impugned direction could not have been issued. According to the learned Counsel, the petitioner having not joined her duties after the final order dated November 9, 1995 till she attained the age of superannuation, she cannot be said to have been entitled to get any benefit on the basis of the doctrine of "no work no pay".

11. The learned Counsel submitted that the principles of natural justice, keeping in view the fact that an *ex parte* enquiry had been held against the petitioner, cannot have any application in this case. In support of his aforementioned contention reliance has been placed on *State of Mysore and Ors. v. Shivabasappa Shivappa Makapur* in (1964-I-LLJ-24) (SC), *K.L. Tripathi v. State Bank of India and Ors.* reported in (1984-I-LLJ-2) (SC), in *Jussor & Co. Ltd. v. Industrial Tribunal and Ors.* reported in 1974 Lab. I.C. 522, in *Amar Dye-Chem Limited v. R, Shape and Anr.* reported in 1994 Lab. & I.C. 1248 and *Managing Director ECIL, Hyderabad and Ors. v. B. Karunakar and Ors.* reported in (1994-I-LLJ-162) (SC). The learned counsel submits that there cannot be any assumption regarding prejudices and such prejudice has to be pleaded and proved, as in a given case a delinquent officer may not have anything to say relating to the procedures adopted in the enquiry proceedings.

12. Mr. Chowdhury would urge that from paragraph 14 of the affidavit-in-opposition it would appear that no illegality has been committed in conducting the enquiry in terms of 1962 Rules inasmuch as the 1977 Rules apply only to nonexecutive and non-industrial workmen.

13. It was further submitted that by reason of the impugned order of punishment the petitioner was reverted back and in view of the fact that this Court had allowed the petitioner to join the services in the post of Assistant Teacher without prejudice to her rights and contentions and as the petitioner having not joined, she is not entitled to the salary for the said period. According to the learned Counsel, in such a situation the doctrine of] mitigation of damages would be attracted and in support of his aforementioned contention reliance has been placed on *Brace v. Colder and Ors.*, 1895 (2)Q.B. 253.

14. Mr. Hirak Mitra, the learned Counsel appearing on behalf of the respondents submits that the impugned order is wholly illegal and bad in law. According to the learned Counsel, it has been accepted that the petitioner had been denied the minimum requirement of the principles of natural justice and thus, the order is bad in law. The learned Counsel in support of the said contention has placed strong reliance upon a decision of this Court in *Sujit Kumar Das v. West Bengal Board of Revenue*, reported in 1997 (2) CLJ 497. The learned Counsel further submits that the entire charge sheet and all proceedings subsequent thereto must also be held to be bad in law inasmuch as the 1962 Rules were not in operation. The learned Counsel submits that the, respondents cannot be allowed to play fast and loose and to approbate and reprobate. Reliance in this connection has been placed on a judgment reported in 39 Calcutta Law Journal 40 and HALSBURY'S LAWS OF ENGLAND, 4th Edn. Vol. 3, paragraph 1180. The learned Counsel submits that as the judgment has been passed on concession, the appeal is not maintainable.

15. Mr. Mitra, the learned Counsel appearing on behalf of the respondent, however, produced before us a copy of the 1977 Rules, a bare perusal whereof would show that the same applied to all the employees. The said 1977 Rules

contains a saving clause and this 1962 Rules must be deemed to have been impliedly repealed and in support of his aforementioned contention reliance has been placed on Dr. Ramulu and another, etc. Vs. Dr. S. Suryaprakash Rao and others, . The learned Counsel contends that in that view of the matter all notices having been given under 1962 Rules, the entire procedure must be held to be vitiated as both 1962 Rules and 1977 Rules cannot co-exist.

16. This Court's attention was further drawn to the representation made to the appellate authority by the writ petitioner for the purpose of showing that no notice and no hearing was given to the petitioner and as such the prejudice suffered by her is apparent on the face of the record. It was further submitted that from a perusal of the order passed by the appellate authority it would appear that the copy of the enquiry report had been served along with the said order and thus, the purpose therefore was frustrated. It was submitted that when the petitioner wanted a copy of the said Rules, under which the disciplinary proceedings were to be conducted, copy of the 1962 Rules had been sent as would appear from the order dated March 30, 1996 as contained in Annexure H to the writ application. Even the letter with which the same was sent, admittedly returned unserved. It was submitted that the authorities concerned had all along the knowledge that the petitioner had to stay at Calcutta because of her husband's prolonged illness wherefore necessary intimation had been given and despite the fact that some notices were served at Calcutta, no notice of the adjourned proceedings had been served upon the petitioner.

17. Having heard the learned Counsel for the parties we find force in the submission of Mr. Mitra. The petitioner was a teacher. She was, admittedly, an employee of the appellant. The 1962 Rules were replaced by 1977 Rules. The definition of employee and the applicability of the said Rules clearly go to show that the same apply to all employees concerned. In this view of the matter, the statement made in paragraph 14 of the affidavit-in-opposition to the effect that the said Rules do not apply does not have any basis. Thus, it is evident that the appellant had deliberately tried to mislead this Court.

18. The provision of 1997 Rules as has been quoted at page 2 *infra* clearly goes to show that the requirements contained therein are in consonance with the principles of natural justice. It is, therefore, not a case where the requirements of the rules are not to be complied with at all. They admittedly have not been complied with and it is in this context the learned trial Judge has found irregularities in the decision making process by the disciplinary authority. Before the learned trial Judge all through the records of the disciplinary proceedings had not been produced nor the same have been produced before us, Mr. Chowdhury, the learned Counsel when asked to produce a copy of the 1962 Rules could not even produce the same.

19. This Court, therefore, had been kept in the dark as regards the procedures to be followed in the disciplinary proceedings. In any event, keeping in view the fact that we are of the opinion that 1977 Rules apply, and the requirement thereof

having admittedly not been complied with the entire disciplinary proceeding became vitiated in law.

20. The decision relied upon by Mr. Chowdhury, thus, in the facts and circumstances of this case, cannot have any application whatsoever. In *State of Mysore and Ors., v. Shivabasappa Shivappa Makapur* (supra), the Apex Court was considering a matter relating to adjudication of a dispute before a tribunal and in the fact of that case held that the requirements of natural justice had been complied with. It was held :

"The sole point for determination in this appeal therefore is whether the procedure adopted by the Deputy Superintendent of Police in admitting the statements of witnesses examined before Mr. Majumdar in evidence is opposed to the rules of natural justice. The question is one of importance, because as appears from the cases which have come before us the procedure followed by the Deputy Superintendent of Police in this case is the one followed by many Tribunals exercising quasi-judicial powers. For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising quasi-judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in Courts. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts."

21. In *K.L. Tripathi v. State Bank* (supra) the Apex Court was considering a matter where the delinquent officer was not permitted to cross examine a witness on an issue which had been admitted by him. It was (sic.) in that fact situation it was held that in view of his admission he was not prejudiced.

22. In *Jessop & Co. Ltd. v. 5th Industrial Tribunal and Ors.* reported in 1974 LIC 522, the question which arose for consideration was as to whether all the copies of the documents had been supplied or not. In fact in that case it was held :

"The principles of natural justice require that before a person is asked to show-cause he should be told fairly and clearly what is the offence charged against him and he should be given reasonable opportunity to adduce such evidence that he chooses in his defence and to cross-examine or demolish any evidence that is produced against him. All materials relied against the delinquent workmen in coming to the conclusion by the enquiry body should be made known to the workmen concerned."

23. In that case supply of copies of the documents was not the requirement of law. In *Amar Dye-Chem Ltd. v. R. Shape and Anr.* (supra) copies of the documents sought for situation, it was held :

"To the same effect is the decision of the Supreme Court in *Chandrama Tewari Vs. Union of India (UOI)* (through General Manager, Eastern Railways), where also it was held that non-supply of copies of some of the documents which were not relevant or material did not amount to violation of principles of natural justice as no prejudice was caused to the delinquent in cross-examining the concerned officer.

Applying the ratio of the above decisions to the facts of the present case, it is clear that non-furnishing of list of witnesses along with charge-sheet and supply of day-to-day proceedings to the representatives of the charge-sheeted workmen, who were conducting the enquiry on behalf of all of them, having not in any way prejudiced the charge-sheeted workmen do not amount to violation of principles of natural justice."

The said decisions, in the admitted fact of this case are, therefore, not applicable.

24. The prejudice suffered by the petitioner is apparent on the face of the record. The enquiry proceedings had been conducted *ex parte* on six days, viz. on May 31, 1994, August 8, 1994, August 28, 1994, September 16, 1994, November 11, 1994 and June 17, 1994 the writ petitioner filed an application for adjournment on the ground of her husband's illness although had sent the letter to the disciplinary authority as also the appellate authority, but despite the same the proceeding had not been adjourned.

25. Although in paragraph 10 of the affidavit-in-opposition it has been alleged that notices had been sent in respect of the enquiry held on subsequent four days, viz., August 8, 1994, August 28, 1994, September 16, 1994 and November 15, 1994, neither services of such notice had been proved nor copies of the said notices had been annexed to the affidavit-in-opposition, No attempt has been made to show that the enquiry proceeding which was admittedly held *ex parte* was so held with notice to the writ petitioner to the effect that in the event she fails and/or neglects to appear on the date fixed, the enquiry proceedings would proceed *ex-parte*. As the *ex-parte* disciplinary proceedings had been held, it was obligatory on the part of the disciplinary authority to supply a copy of an enquiry report in view of the fact that in absence of such report it was not possible for her to file an effective representation or prefer an appeal as admittedly she was not aware of the materials on the basis whereof the enquiry officer is said to have satisfied himself as regard commission of misconduct by the petitioner. It was only in the situation, the learned Counsel appearing on behalf of the appellant had conceded before the learned trial Judge that there had been procedural irregularities in holding the disciplinary enquiry. In fact, the appellant in the Memorandum of Appeal filed before this Court, even had not taken most of the points raised by Mr. Chowdhury.

26. It is now well settled that a party cannot be permitted to approbate and reprobate as reported in 39 C.L.J. 40. It has been held that nobody should be permitted to play fast and lose.

27. In HALSBURY'S LAWS OF ENGLAND, 4th, Edn. Vol.3 paragraph 1120, it is stated that if a judgment is passed on concession, no appeal lies there against.

28. The case of Managing Director, ECIL, Hyderabad and Ors. v. B. Karwakar and Ors. (supra) also shows that supply of copy of the enquiry report is essential, subject of course to the fact that the Court has to arrive at a finding that non-service of such a report has caused prejudice. In the instant case, copy of the report had not been served. The disciplinary authority although alleged that with the order impugned in the writ application a copy thereof had been annexed but writ petitioner at the first opportunity denied the receipt of the same and from a perusal of the order passed by the appellate authority it would appear that the same had been sent along with the copy of the appellate order. The same does not subserve the requirement of law and in this situation, the prejudice suffered by the writ petitioner-respondent is apparent on the face of the records. So far as the second contention raised by Mr. Chowdhury is concerned, the same has also no substance. The case at hand is not a case of pure master and servant. As nothing has been placed to show that as the school in question is not a recognised school; a presumption may be raised in this regard. The service of an Assistant Teacher is protected under the Statute. The Statute itself provides for the manner in which the disciplinary proceeding against a teaching staff is to be conducted. What are the requirements of principles of natural justice has been elaborated by this Court in its decision in Sujit Das v. West Bengal Board of Secondary Education and Ors, reported in 1997 (2) CLJ 497. Even assuming that the services of the petitioner was not protected under a statute, the Appellant being a State, was bound to act fairly. As a "State" it was required to act as model employer. *Brace v. Colder and Ors.* 1895 (2) Q. B. 253 was a case of pure master and servant. In the instant case, the writ petitioner was entitled to enforce her fundamental right as against any arbitrary action of the State.

29. The writ petitioner has served under a "State", she could not have been deprived of her livelihood without complying with the procedure laid down under law and/or the procedure evolved by the appellant itself. It is now well known "he who takes the procedural sword must perish with it."

30. Furthermore, the learned trial Judge himself has exercised his discretion in granting only 75% back wages to the writ petitioner-respondent. Nothing has been shown before us that exercise of such discretion should be interfered with. It is now well known that a Court of appeal normally does not interfere with the discretion exercised by a trial Court unless it is shown to be clearly wrong. See *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor, Sabha and Ors.* reported in (1980-I-LLJ-137)(SC).

31. For the reasons aforementioned there is no merit in this appeal which is

accordingly dismissed with cost. Counsel's fee assessed at 200 gms.

Xeroxed certified copy if applied for, be supplied on priority basis.

D.B. Dutta, J.

32. I agree.