

(2012) 08 GAU CK 0101
In the Gauhati High Court
Case No : Writ Petition (C) No. 8222 of 2003

Subodh Chandra Routh (Deceased) By Lrs.	APPELLANT
Vs	
Management Monabari Tea Estate, Assam and Another	RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1)
Penal Code, 1860 (IPC) — Section 379, 420

Citation : (2012) 135 FLR 721 : (2013) 1 LLN 158 : (2013) LLR 86

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : B. Chakraborty, for the Appellant; S. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

Ujjal Bhuyan, J.—This is an application under Article 226 of the Constitution of India challenging the award of the Labour Court, Assam at Guwahati dated 21.2.2003 in Reference Case No. 19/1998 upholding the dismissal of the workman from service. Further challenge made is to the dismissal order dated 20.3.1995.

Initially the writ petition was filed by the workman. But during the pendency of the writ petition, the workman died on 6.11.2003. On an application filed by his widow Smti. Maya Rani Routh, she was substituted as legal heir of the workman. Thereafter, she has pursued the case. Subhash Ch. Routh was a workman of Monabari Tea Estate, district-Sonitpur. At the relevant point of time, he was serving as Head Mechanic. He was subjected to a domestic enquiry. The charge against him was that on 26.9.1994 one new tyre from the vehicle No. AMD-4867 which belonged to the Tea Estate, was removed under instruction of the workman which amounted to theft of the company property, thus committing an offence under the Standing order in force. The workman submitted written statement wherein he took the stand that he was unaware of the said incident.

The workman was placed under suspension w.e.f. 31.10.1994.

2. The workman participated in the enquiry proceeding. The Enquiry Officer was an independent person, being a lawyer. In the course of the inquiry proceeding, the management side examined four witnesses, who were also cross-examined by the workman. The workman did not adduce any evidence. However, two independent witnesses were also examined.

3. The Enquiry Officer after examining the evidence adduced found and held that the charge against the workman stood proved vide his report dated 19.12.1994.

4. Thereafter, the management passed order dated 20.3.1995 dismissing the workman from service w.e.f. 31.3.1995.

5. On an industrial dispute being raised, the State Government made a reference to the Labour Court u/s 10(1) of the Industrial Disputes Act, 1947. The following questions were referred to the Labour Court for decision:--

(1) Whether the management of Monabari Tea Estate was justified in dismissing the workman or not?

(2) If not, was the workman entitled to reinstatement with full back wages and benefits or any other relief in lieu thereof?

On receipt of the said reference, the Labour Court registered Reference Case No. 19/1998.

6. Both the workman and the management side filed written statements as well as additional written statements.

7. The management had also lodged an FIR against the workman, which gave rise to G.R. Case No. 539/1994 u/s 379/ 420 of the Indian Penal Code in the Court of Sub-Divisional Judicial Magistrate, Biswanath Chariali. During the pendency of the reference before the Labour Court, the above criminal case was heard and decided on 14.9.1999. The workman was acquitted on benefit of doubt as the prosecution failed to prove the charge beyond all reasonable doubt.

8. The Labour Court by its award dated 21.2.2003, which was notified on 20.8.1998, after holding that the Labour Court was not bound by the findings of the Criminal Court, held that the case of theft of the new tyre stood proved against the workman and answered the reference against the workman.

9. Aggrieved, the workman filed the writ petition as indicated above.

10. The management filed a counter affidavit. In the counter affidavit, the management has stated that the workman was charged for an act of gross misconduct. His reply was considered but found not satisfactory. Thereafter, domestic enquiry was ordered where the workman was provided full opportunity of hearing. The charge was established in the enquiry whereafter the workman was dismissed from service. Before dismissal, further opportunity was granted by the management to the workman but he failed to avail the opportunity. The

action of the management was upheld by the Labour Court. Therefore, the management has sought for dismissal of the writ petition.

11. Heard Mr. B. Chakraborty, learned Counsel for the petitioner as well as Mr. S. Chakraborty, learned Counsel for the respondent management.

12. Learned Counsel for the petitioner submits that after the acquittal of the petitioner in the Criminal Case, the Labour Court ought to have exonerated the petitioner. The Labour Court failed to consider the judgment of the Criminal Court in the proper perspective and the same has vitiated its findings. He has also drawn the attention of the Court to certain short comings in the domestic inquiry as well as in the proceeding before the Labour Court According to the learned Counsel, the factum of theft of the tyre from the company's vehicle was never proved and, therefore, punishment of dismissal is harsh and disproportionate. He, therefore, prays for setting aside of the dismissal order and for release of all the dues of the workman till the date of his death to his widow. In support of his submissions, learned Counsel for the petitioner refers to and relies on the following decisions:--

(Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another,).

Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, .

13. Learned Counsel for the respondent management on the other hand submits that the workman was given all reasonable opportunity both in the domestic enquiry and in the proceeding before the Labour Court. He submits that the disciplinary authority had considered all aspects of the matter before imposing the punishment. As a matter of fact, the disciplinary authority had called the petitioner to meet him but the workman failed to avail the said opportunity. Stating that the employer had lost faith in the workman, therefore, he could not have retained him in service. In support of the said submission, learned Counsel for the respondent management relied on a decision of the Apex Court rendered in the case of State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya 2011 (129) FLR 937.

14. The submissions made have been considered.

15. As has already been noticed above, the charge against the petitioner was theft of a new tyre of a vehicle belonging to the Tea Estate.

16. The Enquiry Officer held as follows :--

From the evidence of the prosecution witnesses it is found that P.W. 1, P.W. 2 and P.W. 4 have corroborated each other on all material points. P.W. 1 and P.W. 2 were eye witnesses to the alleged occurrence. Both of them were present at the time of occurrence. From their evidence the following points are proved:--

(a) that the accused took out the vehicle No. AMD-4867 driving the same by himself, from Monabari T.E. to a Garage at Baghmari.

(b) that it was in the month of September, 1994.

(c) that the accused instructed P.W. 1 to unload the spare wheel of the vehicle at the said Garage.

(d) that the new tyre of the spare wheel, so unloaded, was replaced with an old tyre by the person working in the Garage (i.e. P.W. 3) as per instructions of the accused.

(e) that the accused intentionally left the new tyre so removed at the said Garage.

From the evidence of P.W. 4 following points are proved:--

(a) that on 26.9.1994 the accused asked him for permission to have a trial run of the vehicle.

(b) that he saw P.W. 1 and P.W. 2 in the vehicle while the said vehicle was taken out for trial run by the accused from the Monabari T.E. to the outside of the garden premises.

(c) that P.W. 3 Shri Bisu Ghose was working in the Garage at Baghmari.

After careful appreciation of evidence of the witnesses, the statement of the accused and the Appendix-A, B, C, N, S and P in the Enquiry I find that the prosecution side has proved the charge as alleged in the charge sheet beyond any doubt against the accused person and the accused has missed the point to disprove the same and also has failed to create any doubt in my mind. The charge, as alleged in the charge sheet, under Clause (a) (2) of Rule 10 of the Standing orders is proved. The evidence led by the prosecution are conclusive and consistent and are not explainable in any other hypothesis except the guilt of the accused.

In the result, I hold the charge sheeted employee Shri Subhas Routh guilty under Clause (a) (2) of Rule 10 of the Standing orders, more particularly to say The Assam Industrial Employment (Standing Orders) Rules, 1947.

17. In the reference, the Labour Court held as follows:--

None of the contentions for the workman stand to reason, inter alia, on the following grounds.

Domestic enquiry is not a judicial proceeding. A delinquent workman cannot urge with a lawyer as a matter of right. Domestic enquiry is held by the management and not by any independent authority. Holding of domestic enquiry with an experienced lawyer adds to its credibility.

Mukti Sharma is a hearsay witness. Non-examination of him in the domestic enquiry did not cause any prejudice to the workman. However, he has been examined during enquiry before this Court.

Shri D. Choudury, Asst. Manager, in his statement to the Enquiry Officer did not say that he gave any written permission to the workman for trial run. For a trial run of a vehicle normally no written orders are issued. Non-production of documents regarding issuance of a new tyre for the mine truck does not prove that no tyre was there in the track as against the oral evidence of the helpers and mechanic Mukti Sarmah. Nor during domestic enquiry the workman did insist for production of such documents. He rather stated that he made the trial run within the garden premises and did not go to Bagmari. It is in evidence that the truck was not loaded with goods. The gate chowkidar as such, did not find it necessary to have entries in the gate book. The enquiry officer discarded the evidence of Bishu Ghosh. Bishu Ghosh was an employee in the garage run by Sankar Rauth, a brother of the workman. The garage is within the homestead land of the workman. Bishu himself participated in the incident. As such, he will, naturally, not implicate the workman. The enquiry officer rightly discarded the evidence of Bishu.

Quality of evidence has to be taken in appreciation of evidence. Quantity is of little importance. Non-production of garden chowkidar did not affect the enquiry.

This Labour Court is not bound by the findings of the Criminal Court. This has been discussed at length in this Court's order dated 1.11.2002.

The case of theft of new tyre has been proved to the hilt against the workman. It has been gross misconduct.

The issues are answered against the workman. He is not entitled to any relief.

18. From a close perusal of the enquiry report as well as the order of the Labour Court, this Court is of the view that the domestic enquiry did not suffer from such procedural lapse having the effect of nullifying the proceeding itself. The Labour Court also considered the relevant aspects and thereafter came to the conclusion that the workman was not entitled to any relief.

19. In the factual context of the present case, the reliance placed by the petitioner on the decisions in the case of Capt. M. Paul Anthony and Narinder Mohan Arya appears to be misplaced. In the criminal case, the workman was acquitted on benefit of doubt as the prosecution had failed to prove the charge beyond all reasonable doubt. It is well settled that the approach and standard of proof in a criminal trial and in a domestic enquiry are different. The Labour Court considered the judgment of the Criminal Court but in the facts and circumstances of the case, decided not to give benefit of such acquittal to the workman. No fault can be found with the approach of the Labour Court.

20. Considering the fact that the charge related to the theft of company's property and that the management had lost confidence in the workman, the management was perhaps justified in deciding not to retain him in service. For the aforesaid reasons, this Court finds no merit in the writ petition. The same is accordingly dismissed but without any order as to cost.