
(1978) 08 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No. 4993 of 1976 J

Surendran

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 23-08-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 258(1)
Industrial Disputes Act, 1947 — Section 11A
Penal Code, 1860 (IPC) — Section 406, 408, 477A

Citation : (1978) 08 KL CK 0012

Hon'ble Judges : R. Bhaskaran, J

Bench : Single Bench

Advocate : M. Ramachandran, for the Appellant; Abdul Salam, Government Pleader for 1st Respondent, P.V. Ayyappan, N.K. Sreedharan, M.A.T. Pai, M.C. Gopi and P.K. Venugopal for 2nd Respondent, for the Respondent

Judgement

R. Bhaskaran, J.—This writ petition is for quashing Ext. P-3 award dated 31st May 1976 in Industrial Dispute No. 26 of 1974 passed by the first Respondent, Industrial Tribunal, Calicut, hereinafter referred to as the Tribunal. The Petitioner who entered service as a clerk under the second Respondent the Karayayattom Service Co-operative Society Ltd., No. F. 793, Karayayattom P.O., Trichur District, later became its Secretary in 1967. On 27th January 1973 the President of the second Respondent Society passed an order suspending the Petitioner from service; later a charge sheet was also issued to him on 27th February 1973. The specific charge reads as follows:

Thus Sri Surendran committed the offence of misappropriating rationed articles, of cheating the Society of its normal business profit, of causing ill-name to the Society, his employer and the committee of management, of cheating the public holding ration cards of their legitimate quota of rationed sugar, of misusing his official position as the Secretary of the Society for his private ends, of submitting false returns to the Supply Department regarding the distribution of sugar purchased, and of concealing the real position of the transaction from his

superiors.

The main charge was that during March, 1972 the Petitioner had purchased 9 quintals of ration sugar from the wholesaler for distribution among the card-holders of two of the Society's ration shops, but had not brought it on to the books of the Society or into the ration shops, and had disposed it of for personal profit. On a private complaint filed by the President of the second Respondent society, the Petitioner was acquitted giving the benefit of doubt while the co-accused Koran who was the authorised transporting agent of the Society was convicted. The concluding portion of Ext. P-1 judgment dated 29th January 1975 in C.C. No. 151 of 1974 on the file of the Chief Judicial Magistrate, Trichur, reads as follows:

In the result I find that the prosecution was not able to prove beyond that the 1st accused is guilty of having committed offence punishable u/s 408 and 477-A of the I.P.C. In all probability he must also have been a party to the offences. But in the absence of clear evidence regarding entrustment in his favour the 1st accused is given the benefit of doubt and he is acquitted u/s 258(1) Code of Criminal Procedure. His bail bonds are cancelled and he is set at liberty forthwith. But the 2nd accused is found guilty of having committed an offence punishable u/s 406, of the I.P.C. He is convicted under that section and sentenced to undergo rigorous imprisonment for a period of six months.

Simultaneously with the criminal proceedings a domestic enquiry was caused to be held by a retired Deputy Registrar of Co-operative Societies, he having been appointed the Enquiry Officer. The Enquiry Officer having found that the charge against the Petitioner was made out, the second Respondent Society dismissed the Petitioner from service. It is aggrieved by that order that the Petitioner approached the Government for reference of the dispute for adjudication to the Tribunal, and reference happened to be made. Ext. P-3 is the award given by the first Respondent Tribunal.

2. The counsel for the Petitioner submitted that the Tribunal did not exercise the jurisdiction vested in it u/s 11-A of the Industrial Disputes Act, 1947, which reads as follows:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen -- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied, that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:.

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

This is a case which was taken on the file of the Industrial Tribunal area in the incorporation of Section 11-A in the (sic)tute by the Amending Act 45 of 1971 which came into force on 15th December 1971. It is well-settled that the function of the Tribunal before the engrafting of Section 11-A of the Act, in the given circumstances, was confined to ascertaining whether a proper enquiry had been held by the employer and the finding of misconduct was plausible from the evidence adduced at the enquiry; the Tribunal had no jurisdiction to sit in judgment over the decision of the employer as an appellate body; and interference with the decision of the employer could have been justified only when the findings arrived at in the enquiry were perverse or the management was guilty of victimisation, unfair labour practices or mala fides. The position has substantially changed after the amendment of the Act by Amending Act 45 of 1971, and the distinction has been lucidly stated by the Supreme Court in *Workmen of Firestone Tyre and Rubber Co. v. Management* 1973 (1) L.L.J. 278, wherein, in paragraph 33, it has been observed as follows:

We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in *India Iron and Steel Co., Ltd. (Supra)* existed. The conduct of disciplinary proceeding and - the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. This position, in our view, has now been changed by Section 11-A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in *Indian Iron and Steel Co., Ltd., case (supra)*, can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so, and now it is the satisfaction of the Tribunal that finally decides the matter.

3. Now turning to the facts of the case, the Tribunal has not accepted the case of

the Petitioner that a proper enquiry was not conducted on the basis of his plea that he did not get reasonable opportunity to adduce evidence or to cross-examine the witnesses examined on the side of the second Respondent. Placing reliance on Exts. M-1 and M-1(a) endorsement, the Tribunal took the view that the Petitioner voluntarily abstained from the enquiry proceedings, and after the enquiry, even when the management issued notice to show cause why action should not be taken on the basis of the finding of the enquiry, he did not raise the contention that he did not get sufficient opportunity to adduce evidence. On those reasonings the Tribunal came to the conclusion that there was no substance in the contention that no proper enquiry was conducted. The submission made by the counsel for the Petitioner is that even when the Tribunal was satisfied that a proper enquiry was conducted by the enquiry officer, it had also a statutory duty to satisfy itself as to whether the conclusions reached by the enquiry officer were supported by legal evidence, and in that regard it failed to exercise the jurisdiction vested in it. I find force in this contention raised by the counsel as there is no indication that it had applied its mind to decide the question as to whether there was evidence to support the finding entered by the enquiry officer. The counsel for the Petitioner would contend that Ext. M-6 report marked before the Tribunal did not contain the Statement have been recorded from the witnesses examined on the side of the management. The counsel or the second Respondent has submitted that the statements recorded from the witnesses were really before the Tribunal. Even assuming that to be so, the contention of the counsel for the Petitioner has to be upheld as it is fairly clear that the Tribunal did not attempt to satisfy itself whether, on the materials placed before the enquiry officer, he (the enquiry officer) was justified in concluding that the charge against the Petitioner was proved.

4. Under the Act, even before the relevant amendment, it was for the Tribunal to consider, as a preliminary point, as to whether the enquiry was conducted properly, and to record a finding thereon. It was only where no enquiry was held, or the enquiry held was not properly conducted, the Tribunal could exercise its jurisdiction to ascertain whether in the light of the evidence adduced before it by the management, the charge against the delinquent workman could be held to have been proved; and the order of dismissal or discharge passed by it sustained on that basis. In this case, having recorded a finding that an enquiry was properly held, instead of ascertaining whether the conclusion reached by the enquiry officer was supported by any legal evidence available before him, what the Tribunal actually did was to see whether the conclusion reached by it could be sustained by the evidence adduced before it. This does not appear to be the correct position in terms of the proviso to Section 11-A of the Act. Where the enquiry was found to have been properly held, as already noticed, the Tribunal has a further, and if I may say so, an equally Important, duty to satisfy itself whether there was legally acceptable evidence before the enquiry officer to sustain the conclusion reached by him (the enquiry officer).

5. In the light of the foregoing discussion I hold that in the part of the Tribunal

there was a failure to exercise the jurisdiction vested in it u/s 11-A of the Act, and that the matter requires reconsideration by the Tribunal. Ext. P-3 award is therefore quashed, and the Tribunal is directed to consider and dispose of the matter in accordance with Section 11-A of the Act, and in the light of the observations contained in this judgment. The counsel for the second Respondent submitted that the second Respondent Society may be permitted to produce and prove the annexure to Ext. M-6 (enquiry report referred to in Ext. P-3 award) before the Tribunal during the course of the enquiry that might be held as a result of this remand. This request is granted. The writ petition is disposed of as above. There will be no order as to costs.