
(1991) 09 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10004 of 1988

T. Raja Reddy

APPELLANT

Vs

The Labour Court and Others

RESPONDENT

Date of Decision : 24-09-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 ALT 424

Hon'ble Judges : A. Venkatarami Reddy, J

Bench : Single Bench

Advocate : G. Ramachandra Rao, for the Appellant; The Govt. Pleader for the Respondent No. 1 and Mohan Rao, for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

A. Venkatarami Reddy, J.—The case of the petitioner is that he was appointed in M/s. Ampro Food Products Private Limited, Uppal, Hyderabad, 2nd respondent herein as Supervisor in the year 1976 and although he was designated as Supervisor, he is workmen for all purpose. The 2nd respondent did not like the trade union activities of the petitioner and with a view to victimise him transferred him from the factory at Uppal to the head office at Caman Shahi. But the said order of transfer was not served on the petitioner. The petitioner fall sick on 15-12-1983 and was undergoing treatment from that date at the E.S.I. Hospital as an out patient and was not in a position to attend to the normal duties. While so, according to the petitioner, on 26-12-1983 one D. Ramesh, a co-worker in the 2nd respondent factory came to his residence and informed him that one P. Vasudev, the then president of T.N.T.U.C and the management of the 2nd respondent company required his presence and asked him to go over to the factory. Though he was not keeping good health, he attended the factory on 26-12-1983 and the management without any just cause kept him in the factory premises till late mid-night and ultimately handed him over to the police. Thereafter in case in C.C.No. 282/84 on the file of the Judicial Additional First

Class Magistrate, Hyderabad East was filed against the petitioner which ultimately ended in his acquittal. The 2nd respondent-management did not allow him to join duty, but published a notice in the local Telugu daily, Eenadu calling upon him to attend to the enquiry in the premises of the 2nd respondent at Gowliguda on 16-1-1984 to defend certain charges alleged to have been framed against him. The petitioner attended before the enquiry officer, Sri I.L.N. Sastry, advocate, on 16-1-1984 and requested him to furnish with a copy of the charge sheet and on the same day he was furnished with a copy of order of transfer dated: 14-12-1983 and also the charge-sheet. The petitioner submitted his explanation on 23-1-1984. He contended that the order of transfer was never communicated to him and he was not aware of the same and he came to know of it for the first time only on 16-1-1984 when he attended the enquiry. After the submission of the explanation the enquiry was conducted on 25-1-1984 by Sri I.L.N. Sastry, Advocate. The petitioner's request to engage an advocate to defend his case was rejected by the enquiry officer and on 25-1-1984 some witnesses were examined for the management and he could not cross-examine them in the absence of any of his representative. The petitioner is therefore denied the reasonable opportunity to defend himself. It was also submitted that the enquiry officer is no other than the standing counsel of the 2nd respondent herein and was paid for holding the enquiry and was totally biased against him. On a report submitted by the enquiry officer that he was guilty of the charges, the petitioner was removed from the service of the 2nd respondent on 11-2-1984.

2. Against the order of removal by the 2nd respondent, the petitioner raised industrial dispute before the Labour Court, 1st respondent, in I.D.No. 26/86. He raised preliminary objection before the 1st respondent that the domestic enquiry was vitiated on the ground that he was not permitted to engage an advocate and that no reasonable opportunity was given to him to cross-examine the witnesses and also to produce his evidence.. The Labour Court by its findings dated :3-3-1987. On a consideration of the material produced before it, held that the enquiry conducted by the enquiry officer is not vitiated by any stretch of imagination. After the findings given on the preliminary issue, the Labour Court conducted the enquiry and by its order, on consideration of oral and documentary evidence, held that the petitioner is a workman within the meaning of Section 2(5) of the Industrial Disputes Act and that the misconducts as alleged in the charge-sheet are proved beyond reasonable doubt. The Labour Court further considered Section 11A of the Industrial Disputes Act whether the punishment of termination imposed is herein or disproportionate to the misconducts and held that the punishment of termination from service cannot be said to be herein. In the result the Labour Court upheld the order of the management terminating-the services of the petitioner. Questioning the said award passed by the Labour Court, the above writ petition is filed by the petitioner.

3. Sri G. Ramachandra Rao, learned counsel for the petitioner firstly attacked the finding given by the Labour Court on 3-3-87 with regard to the validity of the

domestic enquiry. According to the learned counsel for the petitioner the enquiry is vitiated inasmuch as the enquiry officer is an advocate and standing counsel of the 2nd respondent and he was paid remuneration for conducting the enquiry and that the" very said advocate appeared as advocate for the management before the Labour Court; that the request of the petitioner for engaging an advocate to defend his case was refused and that the entire enquiry was completed on 25-4-1984. Secondly the punishment imposed is disproportionate and harsh and thirdly that subsequent to the award of the Labour Court the petitioner was acquitted on merits by the criminal court with regard to the same charges and that therefore this court must take into consideration the said order of acquittal in deciding the case.

4. With regard to the first contention the learned counsel referred to a decision of the Supreme Court in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, and contended that the preliminary finding can be attacked at the time of questioning of final award. In the said case it was observed that "When a case of dismissal or discharge of an employees is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage."

5. The learned counsel for the 2nd respondent did not seriously dispute that at the time of canvassing the correctness of the final award the preliminary findings also can be questioned. Then it is submitted that the preliminary finding of the tribunal is wrong. It is contended that the entire enquiry is vitiated by the fact that Sri I.L.N. Sastry who conducted the enquiry is an advocate and well-versed in industrial law and should have permitted the petitioner to engage an advocate to defend his case. The learned counsel relied upon a decision of the Supreme Court in *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, and contended that the denial of request of the petitioner to engage an advocate amount to denial of reasonable opportunity of being heard. In that case it was held by their Lordships of the Supreme Court that where the employer was represented by a legally trained officer in the enquiry and when the request of the employee to represent his case by lawyer was refused, there was denial of opportunity of hearing the employee. But in the instant case the employer was not represented by an expert in

Industrial law. It is only the presiding officer that can be said to be a person who knows the Industrial or Labour Law. It is an equal advantage or disadvantage to both the management and the employee if the enquiry officer is a lawyer who knows industrial law. Hence the aforesaid decision of the Supreme Court has no application. It also cannot be said that an advocate cannot be appointed as an enquiry officer and cannot receive any remuneration. That by itself does not vitiate the enquiry proceedings. In *Dalmia Dadri Cement, Ltd. Vs. Shri Murari Lal Bikaneria*, the Supreme Court held that "merely because the Enquiry Officer was a Junior Advocate and that he had on occasions been engaged by the appellant, it is not possible to take the view that he would necessarily be biased against the workmen". The learned counsel for the petitioner submitted that in the proceedings before the Labour court Sri I.L.N. Sastry, appeared for the management and it shows that he was biased at the time of conducting the enquiry. No doubt Sri I.L.N. Sastry should not have appeared for the management in the same case in which he conducted the enquiry, before the Labour Court, but there is nothing to indicate that there was any reasonable apprehension in the mind of the employee that Sri I.L.N. Sastry was biased in the enquiry.

6. Reliance is placed on a decision in *H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others*, . In that cases Judge of a High Court had earlier appeared on behalf of the writ petitioner, while being at the bar, in an earlier writ proceeding with respect to self same subject matter under consideration. It was contended that the decision rendered by him was violative of principles of natural justice. Accepting the above contention a Division Bench of the Calcutta High Court observed that "one of the principles of natural justice universally recognised is *nemo debet esse iudex in propria causa*: no man shall be a judge in his own cause, or the deciding authority must be impartial and without bias. The principle has regard not so much perhaps to the motive which might be supposed to bias a judge, as to the susceptibilities of the litigants parties. The underlying object is to clear away everything which might engender suspicion and distrust of the adjudicator and to promote the feeling of confidence in the administration of justice which so essential to the rule of law. The question to be asked in the context of the applicability of the principle always is whether a particular situated or factor present in the case is likely to produce in the mind of the litigant or the public at large a reasonable apprehension about the fairness of the administration of justice. It hardly matters that the adjudicator acted in good faith. The test is not whether in fact a bias has effected the judgment, the test always is and must be whether is a litigant could reasonably apprehended that a bias attributable to the adjudicator might have operated against him in the final decision."

7. But in the instant case although Sri I.L.N. Sastry, Advocate, had appeared subsequently in the proceedings before the Labour Court, there is no material to show that he was engaged by the management in any case at the time of his holding enquiry. The learned counsel for the petitioner also relied upon a decision in *S. Parthasarathi v. State of Andhra Pradesh* 1974 (1) S.L.R. 427 wherein their

Lordships of the Supreme Court observed that "whether is reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seem to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry, nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable man would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision." In the case on hand the petitioner himself in his claim statement did not mention that the enquiry officer was prejudiced or biased against him.

8. It is further submitted by the learned counsel for the petitioner that no reasonable opportunity was given to the petitioner to represent his case. The tribunal found that the copy of the charge-sheet was issued to the petitioner on 27-12-1983 by post. Since the petitioner refused to receive the same, a publication was made in Eenadu, Telugu daily on 14-1-1984 informing the petitioner with regard to the conducting of inquiry against him on 16-1-1984. The petitioner was present on 16-1-1984 and received a copy of the charge-sheet. However, he was given time to submit his explanation and in fact he submitted the same on 23-1-1984. On 25-1-1984 four witnesses were examined for the management in the presence of the petitioner. When he was asked for cross examination of witnesses, he did not choose to cross-examine P.Ws.1 to 3 and said that he would make a statement. However, he cross-examined P.W.4. After the completion of the evidence of P.Ws.1 to 4, the petitioner gave a statement before the inquiry officer on 25-1-1984. He also stated, as could be seen from the enquiry proceedings, that he would not produce any witness on his behalf as he was not present in the factory from 15-12-1983. After submission of the inquiry report, a final show-cause notice was also issued to the petitioner and in view of the complaint M-7, M-8 and M-9 and having regard to the circumstances of the case. I am inclined to agree with the preliminary finding of the Labour Court that the domestic inquiry held against the petitioner is not vitiated, and the petitioner was given reasonable opportunity to represent his case.

9. The second contention that the punishment imposed on the petitioner is disproportionate and excessive is, in my opinion, not tenable. The misconducts alleged against the petitioner viz., that he incited the workers to stop working and disobeyed the transfer orders and that he prevented the Managing Director and others from moving out of the factory from 2-00 p.m. to 4-00 a.m. on the next day until police came to the rescue of the Managing Director and others, are grave in nature and the tribunal on an appreciation of oral and documentary evidence before it, came to the conclusion that the misconducts alleged in the

charge-sheet are all proved beyond reasonable doubt. Having regard to the facts and circumstances of the case and also the grave misconducts of the petitioner, I do not consider that the punishment awarded against the petitioner is harsh and excessive.

10. It is lastly contended by the learned counsel for the petitioner that the petitioner has been acquitted of the same charges and almost on the basis of the same evidence in C.C.No. 282/84 on the file of the Additional Judicial First Class Magistrate, Hyderabad East on 23-11-1987 and as on the petitioner was acquitted of the same charges on merits, he should have been exonerated in the domestic enquiry. In a decision rendered by a Division Bench consisting of Sardar Ali Khan and v. Sivaraman Nair, JJ., of this court in W.A.No. 1018/87, dated 23-12-1990, it was held, after the review of the entire case law of the Supreme Court as well as various High Courts, that "the conclusion deducible from the precedents is that even if the charges were the same in a criminal proceeding and in a disciplinary proceedings and the former ends in acquittal by the Criminal Court, it is open to the disciplinary authority to continue departmental proceedings if the authority is satisfied that there is sufficient evidence and good grounds" to proceed with the inquiry. The authorities are, however, to be governed by the Rule of Caution that they shall advert to and take into account the fact of acquittal; but they are not precluded from initiating or continuing the disciplinary proceedings, if that course is warranted by the circumstances of the case.

11. It is evident that the judgment of the criminal court was rendered on 23-11-1987 and the same was not available for being considered by the Labour Court at the time of passing of the award. In *Md. Shabeer Ali v. Managing Director A.P.S.R.T.C., Hyderabad* 1989 (2) ALT 560 K. Ramaswamy, J., (as he then was) held that "the High Court while considering the case of the petitioner under Article 226 of the Constitution cannot brush aside the acquittal recorded by the criminal court. The acquittal recorded should be taken note of in moulding the relief."

12. A reading of the judgment in C.C.No. 282/84 shows that P.Ws.1 and 2 who were also examined in the domestic enquiry did not submit themselves for cross-examination in the criminal case. P.Ws.3 and 4, who are also the workers of the same factory turned hostile. P.W.5, the Assistant Sub-Inspector of Police, did not speak anything against the accused though it is the case of the prosecution that in the stone pelting some of the police constables were injured. In the circumstances, the criminal court for want of evidence acquitted the accused. Thus it is evident that in the absence of any other evidence and also in the absence of any identification, the criminal court acquitted the accused. But on the material available in the domestic inquiry, I am satisfied that the tribunal has rightly come to the conclusion that the petitioner was guilty of the charges framed against him. Even taking into consideration the subsequent acquittal of the petitioner by a criminal court, I am satisfied that this is not a case for

interference with the order of the Labour Court under 226 of the Constitution of India.

13. The writ petition is accordingly dismissed. No order as to costs. Advocate's fee Rs. 250/-