

(1995) 12 PAT CK 0034
In the Patna High Court
Case No : C.W.J.C. No. 118 of 1991

Tata Iron and Steel Co. Ltd.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 08-12-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 44 BLJR 408 : (1996) 2 LLJ 874

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Advocate : K.D. Chatterjee and K. Bhadur, for the Appellant; Jai Krishna Prasad and Sumir Prasad, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Sahay, J.—By this application under Articles 226 and 227 of the Constitution of India, the petitioner, M/s. Tata Iron & Steel Co. Ltd., seeks a writ of certiorari to quash the award of the Labour Court, Jamshedpur dated June 28, 1990 whereby the Court held the termination of services of respondent S.S. Prasad to be not justified. The Labour Court accordingly directed the petitioner to reinstate the respondent No. 2 in service with full back wages and continuity of services and other benefits.

2. The award has been impugned on the following grounds:-

1. The Labour Court committed illegality in holding that the charge of misconduct against the respondent had not been proved when his predecessor in office had earlier held that the findings arrived at the domestic enquiry against the workman concerned were not perverse;

2. In view of the materials on record, the Labour Court was not justified in arriving at the conclusion that the certificate produced by the workman for securing promotion to higher post was not forged and fabricated document;

3. In the facts and circumstances and in view of the evidence on record, the Labour court was not justified in holding that punishment inflicted upon the second respondent was an act of victimisation on the part of the petitioner;

4. The award is vitiated by error apparent on the face of the record and is perverse.

3. In order to appreciate the grounds on which the award has been challenged, it would be necessary to state the material fact which led to adjudication by the Labour Court.

4. The second respondent joined the services of the petitioner company as a temporary Mill Wright on August 23, 1960. The respondent No. 2 at the time of his appointment disclosed his date of birth to be July 20, 1936. On April 15, 1978, respondent- workman applied for promotion as Foreman (Electrical) against employment notification dated April 6, 1978. For promotion to the post of Foreman (Electrical) a diploma in Electrical Engineering was an essential requirement. The respondent filed diploma certificate in Engineering purportedly granted by the Bihar College of Engineering. The certificate was signed by Mr. Kailash, who was once the Principal of the Bihar Engineering College. This certificate was issued on March 20, 1950. This certificate was suspected to be fake by the concerned officer because in his opinion it was not possible for the respondents to obtain diploma certificate at the age of 14 years. As stated earlier the petitioner's date of birth is July 20, 1936 and the certificate was issued in 1950.

5. On January 27/28, 1981, the management of the petitioner company issued a charge-sheet to respondent No. 2 which reads as follows:

"You had applied on April 15, 1978 against the employment notification No. 71-D/78 of April 6, 1978, for the post of Foreman (Electrical O.P) and disclosed that you have completed 5 years course in Mathematics, Drawing, Mechanical and Electrical Engineering, Basic English and Accounts from Bihar College of Engineering, Patna in the year 1950. On verification from the Principal Bihar College of Engineering, the Industrial Diploma Certificate dated March 20, 1950 as declared by you in the above application is found to be fake one.

Thus you made false declaration about Your minimum qualification (Diploma in Electrical Engineering 5 years course in Mathematics, drawing, mechanical and electrical engineering, basic English and accounts from Bihar College of Engineering, Patna dated March 20, 1950) and tried to defraud the company dishonestly with the intention to get promotion as foreman, which is a misconduct under Order 23 XXIX(C) of TISCO WORKS Standing Order."

6. On January 29, 1981, second respondent submitted his explanation/reply to the aforesaid charge-sheet stating as follows:

"i. the charge-sheet is time barred;

ii. The allegations made in the charge-sheet are unwarranted, baseless and concocted and smacks of hatred and ill-feelings harbouring against me since 1967 as a result of which a number of charge-sheets were issued to me but with no actions."

iii. The institution which issued Industrial Diploma has not been abolished;

iv. The Diploma (in original) certificate in question was produced as far as in 1977 for scrutiny by the Personnel Department;

v. The presentation of the management is a result of the vindictiveness and bias the then Electrical Engineer, Sri B.K. Dey had towards respondent No. 2".

7. The show cause filed by the respondent-workman was not found to be acceptable by petitioner-company and consequently it was decided to hold an enquiry into the charges of misconduct alleged against the 2nd respondent. The Enquiry Officer conducted an enquiry on June 22, 1981 in presence of the workman and submitted a report that the respondent had produced fake diploma certificate in Electrical Engineering for securing promotion to the post of Foreman.

8. Accepting the report of the Enquiry Officer, the petitioner issued show cause notice dated August 17, 1981 asking the respondents to show cause why he should not be visited with punishment of discharge from service for the act of misconduct proved to have been committed by him in the domestic enquiry. The 2nd respondent submitted his representation dated August 25, 1981 against the punishment sought to be inflicted upon him. The respondent No. 2 complained that the letter of the Principal of the Engineering College, on the basis of which his diploma certificate was held to be fake, was not shown to him before issuing the charge-sheet and it was also not explained to him how the letter of the Principal was obtained. He further alleged bias against the authorities concerned. He prayed for being exonerated from the charge-sheet. Petitioner however, not being satisfied with the show cause, terminated the services of the 2nd respondent with effect from October 17, 1981 vide letter of discharge (Annexure-5).

9. Being aggrieved, the 2nd respondent raised an industrial dispute which led to a Reference to the Labour Court for adjudication. The Labour Court was called upon to decide whether termination of the services of the 2nd respondent was justified and proper and if not whether he is entitled to reinstatement or/and any other relief. Both the parties filed their written statements before the Labour Court. The petitioner filed a petition for deciding the question of fairness and propriety of the domestic enquiry as a preliminary issue.

10. On October 11, 1986, the Labour Court passed order holding that the domestic enquiry was fair and proper conducted in accordance with principles of natural justice. Labour Court further held that the findings of the enquiry officer are not perverse. On February 10, 1987 respondent No. 2 filed a petition before the Labour Court for allowing him to lead evidence on the point of victimisation.

By order dated September 28, 1987, Labour Court allowed the said petition and allowed the 2nd respondent to lead evidence on the question of victimisation.

11. The Labour Court considering the entire evidence came to the conclusion that it had not been proved that the diploma certificate submitted by the workman was not genuine. Consequently charge of misconduct alleged against the said respondent was found to be not proved and accordingly the Labour Court held the action of the petitioner terminating the services of the respondent to be not justified. The respondent was given all consequential benefits.

12. Mr. K.K. Chatterjee, learned senior counsel appearing in support of this application submitted that it was not open to the Labour Court to reverse its previous decision holding the diploma certificate produced by respondent No. 2 to be fake specially in view of the findings arrived at in the domestic enquiry which has been held to be fair and proper. It was further stated that respondent was appointed in the year 1960; confirmed in the year 1963 and was promoted in the year 1967 and throughout this period, he did not mention that he had passed Industrial Diploma course. Secondly, it was difficult to believe how a person can obtain a diploma at the age of 13 years and thirdly it is difficult to understand why respondent No. 2 while away his time for 10 long years before he secured a job. Learned counsel submitted that the Labour Court committed error in not accepting the letter issued by the Principal of the college that it was not possible for any student to be awarded a diploma at the age of 13 and half years and that further the diploma was not signed by the then principal. Mr. Chatterjee further submitted that the Labour Court ignored the vital and telling circumstances against the respondent-workman. For instance, at the time of employment in the petitioner company while furnishing the full particulars of his educational qualification and training in the prescribed form, respondent No. 2 has simply stated that he had studied upto Class XI with no mention of the said industrial diploma certificate.

13. It was contended by Mr. Chatterjee that the Labour Court has also given a finding that the punishment of termination of service of the respondent was an act of victimisation. He submitted that this plea is wholly untenable and cannot be sustained. The counsel next submitted that the Labour Court did not appreciate the legal position that victimisation is a serious charge which ought to be pleaded in all its material particulars and proved by convincing evidence. There has been no pleading on this score and as such the finding is vitiated.

14. Sri J. Krishna senior counsel appearing for the second respondent has vehemently argued that there is absolutely no scope to interfere with the award of the Labour Court which is based on proper appreciation of material evidence. Sri Krishna submitted that if finding on the preliminary issue was only a tentative opinion, it was not binding on the successor-Labour Court which decided the matter after taking into consideration the entire material.

15. Sri Krishna is perfectly right in his submission that while deciding the

preliminary issue about the fairness of the domestic enquiry, the Labour Court was not supposed to give finding on the merit of the dispute. Therefore, the finding touching the merit of the dispute was impermissible. Labour Court which finally decided the dispute was not bound by the said finding. Sri Krishna has submitted that facts brought on record by the workman clearly go to show that it was patently an act of victimisation. The respondent was issued charge-sheet several times on frivolous grounds. Sri Krishna submitted that Sri B.K. Dey, Electrical Engineer, who had issued the charge-sheet, took undue interest in the proceeding so much so that he had himself went to Patna and procured two letters which were marked exhibits during the enquiry proceeding. It was pointed out that the domestic enquiry was held only one day i.e. June 22, 1991. The Enquiry Officer had expelled the respondent from the venue of enquiry for half an hour and thereafter he was called in the enquiry. The respondent protested against the conduct of the enquiry officer. Sri Krishna has submitted that the Enquiry Officer holding a charge proved against this respondent relied on two letters Nos. 1293 and 1296 dated October 29, 1980. The copies of these letters were not given to the respondent even on demand nor they were shown to him. There has been, therefore, serious infringement of principle of natural justice. It was submitted that since the charge-sheet was issued on the basis of above two letters the document should have been supplied along with the charge-sheet.

16. Learned counsel for the respondent has strongly submitted that without production of the original certificate at the time of enquiry, it could never be established whether the certificate was fake or genuine. The original certificate was submitted by the respondent to management, Electrical Engineer, but the certificate was not returned to the respondent. It was submitted that the photocopy of the certificate was a fabricated document. There appears to be strong force in this submission of the learned counsel for the respondent. It was incumbent on the petitioner to produce the original certificate. At least the respondent should have been given the letters sent by the Principal of Bihar Engineering College stating that the photocopy of the certificate appeared to be fake. The Principal of the College should have been examined in the domestic enquiry or before the Labour Court to prove that the certificate was not genuine.

17. Sri Krishna has submitted that the finding recorded in the domestic enquiry is of no consequence in view of Section 11A of the Industrial Disputes Act, 1947. Labour Court is not bound by finding of the Enquiry Officer. Labour Court u/s 11A of the Act has very wide power to appreciate the whole evidence on record and to come to its independent conclusion. The Labour Court has given a categorical finding that the diploma certificate produced by the respondent is not forged which finding being a finding of fact cannot be questioned. It is submitted that the Labour Court has discussed evidence on the point and gave its finding.

18. Sri Krishna has submitted that it is not a fact that respondent did not produce a diploma certificate at the time of his initial appointment in the post of Mill-wright in the year 1960. As a matter of fact, the certificate was produced

before the Assistant Chief Personnel Manager (Employment) and also before Electrical Superintendent. The certificate was returned after putting initials by the said authorities. No certificate of diploma was required for the post of Millwright fitter.

19. The petitioner has relied on two documents which are annexed as Annexure-10 and 11 to demonstrate that at the time of his employment, respondent had not stated that he also possessed an industrial diploma certificate. Annexure-10 is the photocopy of the service card of the respondent and Annexure-11 is photocopy of medical report. These two documents were not produced before the Labour Court. The petitioner submitted since the diploma certificate was not necessary for the post of Millwright fitter, as such the authority who had filled up the column did not mention about the industrial diploma. Sri Krishna submitted that the respondent was not asked to fill up the column. He was only called to put his signature.

20. On April 8, 1991, the petitioner filed an amendment application which was allowed. The following facts are stated in the amendment application :-

1. During the pendency of the reference Case No. 3/83 respondent No. 2 was discharged from service on October 17, 1981. He registered his claim with the Accounts Division Settlement section for payment of his settlement dues. This was duly intimated by the settlement section to the provident fund section. The fact that reference case was pending was not brought to the notice of the Accounts Deptt. by the Personnel Deptt. Consequently there was no occasion for the Accounts Deptt. Settlement Section to inform the Personnel Deptt. that Sri Prasad has registered a claim for his settlement of dues. It has resulted in a communication gap.

2. It was the duty of the respondent No. 2 to bring this fact to the knowledge of the Labour Court where the reference case was pending that he had applied for and taken settlement dues including the retirement gratuity.

3. The fact that he had taken settlement of retirement gratuity, provident fund etc. in August 1984 came to the knowledge of the Personnel Deptt. only after reference was disposed of.

21. In the light of the aforesaid facts, it was contended by Sri Chatterjee that second respondent obtained award by playing fraud on the Labour Court. Respondent No. 2 was bound to disclose that he had taken settlement of all claims to the Labour Court. He submitted that if this fact was brought to the notice of the Labour Court, result would have been otherwise.

22. Sri Krishna counsel for the respondent-workman submitted that it is not a fact that the Personnel Deptt. was ignorant of the fact that the petitioner had received the retirement benefits. He submitted that only because the petitioner was given retirement benefits, he is not estopped from pursuing the legal remedies under the Industrial Disputes Act. Learned counsel submitted that it

was due to compelling circumstances that the respondent applied for grant of retirement benefits. His family was on the verge of starvation and for this reason the second respondent had to take the retirement benefits without waiving his claim of reinstatement with back wages. Learned counsel further submitted that water supply connection was disconnected and he was evicted from quarter in July, 1984. His ration card was also seized. In my considered opinion, no relief can be given to the petitioner on the basis of the allegation made in the writ application. This question was not before the Labour Court and it is not permissible for this court under Article 226 of the Constitution to consider a new fact. I would, however, observe that only because the workman due to compelling circumstances applied and got retirement benefits would not defeat his claim under the Industrial Disputes Act.

23. The facts stated in the amendment petition should have been brought to the notice of the Labour Court by the Management. The petitioner cannot be allowed to take advantage of its own laches. Moreover, the workman in his rejoinder has asserted that all these facts were within the knowledge of the Personnel Department

24. On consideration of all the legal and factual aspects of the matter, I have come to the conclusion that the award under challenge is unassailable and must be affirmed.

25. This application is accordingly dismissed with costs which is assessed at Rs. 2,000/-.