
(1988) 09 KL CK 0031
In the High Court Of Kerala
Case No : O.P. No's. 8718

T.C.C. Co-op. Society Ltd.

APPELLANT

Vs

Labour Court

RESPONDENT

Date of Decision : 13-09-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 2

Citation : (1995) 3 LLJ 5

Hon'ble Judges : Sivaraman Nair, J

Bench : Single Bench

Advocate : T.D. Rajalakshmi, for the Appellant; P.F. Thomas, for the Respondent

Final Decision : Dismissed

Judgement

Sivaraman Nair, J.—Is the dispute between a Co-operative Society and its Secretary an industrial dispute ? Is the Secretary a "workman" of the Society ? and is it competent for a Labour Court in a reference : u/s 12 of the Industrial Disputes Act (for short "the I.D. Act") to review the evidence and come to a finding different from that arrived at in the domestic enquiry after holding that the enquiry was fairly and properly conducted? These are the questions which arise for consideration in this Original Petition,

2. The petitioner is the employer society consisting of the employees of the Travan-core Cochin Chemicals Ltd. The 2nd respondent was its Secretary. The statutory audit of the accounts of the Society for the year 1978-79 seems to have revealed some irregularities. These were revealed by the summary of the defects noted by the Auditor. The second respondent was on sick leave in 1979. When he rejoined duty, he was required to discharge the duties of a Clerk and was not allowed to function as Secretary. That provoked a series of correspondence. In a letter dated 1.1.1981 containing allocation of work with effect from 1.7.1980, the 2nd respondent was given the work of cash credit accounts, personal ledger, schedule, etc. The Senior Clerk was shown as the Acting Secretary. The 2nd respondent made an endorsement on the reverse of

that letter that he being the Secretary of the Society at the time when he entered on leave, should be permitted to rejoin duty in that post. He also stated that to his knowledge, there were disciplinary proceedings initiated against him, and therefore, requested that he should be permitted to function as the Secretary of the Society. In reply to the endorsement, the petitioner informed the 2nd respondent that he had been relieved of the duties of the Secretary as per resolution No. 3 of the Board of Directors dated 29.9.1980 and other work was allotted to him. He was also told that there was a criminal case pending against him, and therefore, he would not be permitted to function as the Secretary of the Society. He was advised to work in accordance with the allocation order, referred to above. A series of correspondence followed. In his letter dated 14.10.1981, the 2nd respondent informed the President of the Society that the Criminal Case filed against him was referred and there was no case pending against him. He requested for review of the allocation order and his restoration as Secretary of the Society. In letter dated 29th October, 1981, the President of the Petitioner Society informed the 2nd respondent that he would not be paid wages with effect from 30.10.1981, since he was not complying with the directions in the allocation order. The 2nd respondent then filed Arbitration case No. 584/81. The Registrar passed an interim order dated 15.3.1982 staying the proceedings instituted by the petitioner against the 2nd respondent. Petitioner filed O.P. 4580/82 challenging that interim order. This Court passed a conditional order of stay on 1.7.1982 in C.M.P. 12997/82. In the meantime, the petitioner Society filed Arbitration Case No. 18/82 against the 2nd respondent u/s 69 of the Act. That case was dismissed by order dated 10th January, 1985 holding that the monetary claim made by the petitioner Society against the 2nd respondent was premature, without sufficient cause, and against the principles of natural justice. In the meantime, by letter dated 12.12.1981, the petitioner Society had required the 2nd respondent to remit an amount of Rs. 894.55 within 15 days of receipt thereof. He was also required to furnish necessary explanation, failing which further steps were threatened against him. The 2nd respondent submitted his explanation on 13.1.1982. In his resolution No. 173 dated 14.1.1982, the petitioner Society held that the explanations offered by the 2nd respondent were unsatisfactory. In letter dated 18th January, 1982, he was suspended from service, pending enquiry into the allegations levelled against him. He was also informed that the details regarding the enquiry, etc. will be intimated in due course by the Enquiry Officer. More than six months thereafter, the Enquiry Officer sent a notice dated 21.7.1982 proposing conduct of the enquiry on 31.7.1982. It appears that the Board of Directors had, by resolution dated 4.3.1982, appointed the Enquiry Officer. But intimation of such appointment was given to the 2nd respondent, as noticed above, only four months thereafter. The Enquiry Officer framed charges against the 2nd respondent, conducted an enquiry and submitted his report. On a consideration of the same, the petitioner Society issued a show cause notice proposing to dismiss the 2nd respondent from service. After considering the explanations submitted by the 2nd respondent, the petitioner dismissed him from service by

order dated 1.8.1983. The 2nd respondent disputed the correctness of that order. After unsuccessful attempts at conciliation, the conciliation officer referred the matter to the Government, which referred the dispute to the Labour Court in its order dated 30.7.1984. A copy of the letter of the workman dated 26.7.1983 which was attached to the order of reference was treated as the statement of claims filed by the 2nd respondent. The petitioner Society filed a written statement. The 2nd respondent had urged that the domestic enquiry was only a make-believe, that the enquiry officer was prejudiced against him and the resultant order of dismissal was vitiated by bias and absence of bona fides. He alleged further that the enquiry proceedings were vitiated by absence of a memorandum of charges with statement of allegations drawn up by the employer prior to the reference to the enquiry officer and that the report of the enquiry officer did not disclose any misconduct which should have resulted in the punishment of dismissal.

3. In the written statement, the petitioner contended that what was referred was not an industrial dispute since the 2nd respondent was not a workman as referred to in the Industrial Disputes Act, and that he was entitled to remedies under the Kerala Cooperative Societies Act. It was contended further that the functions of the 2nd respondent were mainly supervisory and that he was drawing a salary of Rs. 500/-, and therefore, he could not be treated as a workman under the Industrial Disputes Act. The petitioner also sought to justify the termination of service on merits.

4. The Labour Court framed four issues for consideration, viz. (1) Whether the domestic enquiry held is valid and proper? (2) Whether the workman is guilty of any misconduct? (3) Whether the punishment imposed is not justifiable? and (4) To what relief, if any, the workman is entitled?

5. On the first point, the Labour Court held that the domestic enquiry was held validly and properly and could not be set aside for the reasons alleged by the delinquent workman. The Court then examined the charges, allegations, and evidence—both oral and documentary—and came to the conclusion that "it is impossible to hold the workman guilty of any misconduct and there was really no scope for initialing disciplinary proceedings against him in this manner."

The Labour Court also found that in the light of his finding that the workman was not guilty of any misconduct which called for disciplinary action, there was no necessity to give the petitioner an opportunity to substantiate the allegations as requested by them in the written statement. In the light of those findings, the Labour Court further held in favour of the second respondent on the 3rd issue. The Labour Court passed an award setting aside the order of dismissal and directed the petitioner to reinstate the 2nd respondent in service with continuity of service and full back wages and other monetary benefits like bonus, annual increments, etc. Petitioner challenges Ext.P1 award of the Labour Court in these proceedings.

6. Section 2(k) of the Industrial Disputes Act defines an "industrial dispute" as meaning any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. The primary question for our consideration here is whether the 2nd respondent was a workman. "Workman" is defined in Section 2(s) of the I.D. Act as meaning any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, or discharge or retrenchment has led to that dispute. Four categories of persons are excluded. The two categories with which alone we are concerned are dealt with in Clauses (iii) and (iv) of Section 2(s). They are:

"(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

If the 2nd respondent fitted either of the above two exclusions, there would not have been an industrial dispute and the Labour Court would not have had jurisdiction to pass an award.

7. It is true that the 2nd respondent was designated as the Secretary of the Petitioner Society. Petitioner urges that he was employed in a managerial or administrative capacity and he was exercising, by the nature of the duties attached to his office and by reason of the powers vested in him, functions mainly of a managerial nature. The Labour Court did not enter into a detailed discussion of the question whether 2nd respondent was a workman. But the facts which were dealt with in detail in Ext.P1 award are sufficient to justify this assumption in favour of the 2nd respondent. While dealing with the facts, I have noted that the 2nd respondent availed of sick leave while he was functioning as a Secretary and on return from such leave, he was required to discharge the duties of a clerk. The petitioner did not allow the 2nd respondent to function as the Secretary. The petitioner allotted him the work of cash credit accounts, personal ledger, schedule, etc. which duties are clerical in nature. The Senior clerk was designated as acting Secretary. The 2nd respondent remonstrated, asserting that he was the Secretary of the Society. That he did so was one of the charges levelled against him. On the materials on record, I am satisfied that the Labour Court was justified in assuming that the 2nd respondent was not employed mainly in managerial or administrative capacity and that either by the nature of the duties attached to his office or by reason of the powers vested in him, his

functions were not mainly of a managerial nature. He was treated as a Clerk for all purposes. The duties which he was required to perform was neither managerial nor supervisory nor administrative. One of the specific charges against him and which ended in his dismissal was that he did not comply with the allocation of work which required him to discharge the duties of a clerical nature.

8. The question whether the designation of a person as Secretary of a Co-operative Society would disentitle him to claim to be a workman u/s 2(s) of the I.D. Act was considered by this Court in Thirurangadi Service Co-op. Bank 1981 KLT 813. Referring to the decisions of the S.C in All India Reserve Bank Employees Association Vs. Reserve Bank of India, and Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others, this Court held that the duties assigned to the Secretary of the Co-operative Society were mostly clerical and to some extent supervisory. It was therefore held that he was a workman coming within the definition contained in Section 2(s) of the I.D. Act. The same view was expressed by my learned brother Khalid, J. in the decision reported in peringottukur-issi Service Co-op. Bank Ltd. v. Balakrishnan 1981 KLT (SN) 57 case No. 107 in respect of an employee of a Co-operative Society who was designated as Manager.

9. Once it is held that the 2nd respondent was workman as defined in Section 2(s) of the I.D. Act, the dispute between him and the Society relating to his dismissal will be an industrial dispute. The question which the Labour Court was to decide in the reference was the validity of the dismissal of the 2nd respondent from the service of the petitioner society. Petitioner urges that having found that the 2nd respondent was dismissed after duly conducted domestic enquiry, it was not open for the Labour Court to consider the propriety of the order of dismissal. It is further submitted that in any case, the petitioner having sought for an opportunity to justify the order of dismissal, it ought to have given an opportunity to lead evidence in support of the dismissal before the Labour Court passed Ext.P1 award. The 2nd respondent submits that it was perfectly competent for the Labour Court in exercise of the powers u/s 11A of the I.D. Act to find that the order of dismissal was not justified and to set aside the order, directing reinstatement of the workman.

10. It is true that the Labour Court found that the enquiry was properly conducted, that the enquiry officer was not biased against the 2nd respondent, that the enquiry officer had given reasons for the findings entered by him and they were supported by documents produced by the management at the enquiry. The Labour Court also found that there was no impropriety in the conduct of the enquiry. It was thereafter that the Labour Court reviewed the evidence, both oral and documentary, which the enquiry officer had before him to see whether the order of dismissal was justified. It was a part of the duty of the Labour Court to consider the propriety of the dismissal of the 2nd respondent since the dispute which was referred for adjudication was, "dismissal of Sri K.V. Sreenivasan from the service of T.C.C. Co-op. Society Ltd. No. R-23". I am not impressed by the

submission that it was not within the competence of the Labour Court to consider whether the dismissal of the workman was justified or not.

11. It is true that the Labour Court had a duty to take a decision on the question of the validity of the domestic enquiry as a preliminary issue. It decided that in favour of the petitioner. I am not persuaded to accept me submission that once the Labour Court found in favour of the employer on this preliminary issue, the Labour Court did not have the jurisdiction to consider the question whether there was legally acceptable evidence before the enquiry officer to sustain the conclusion which he reached. As a matter of fact, it was the obligation of the Labour Court to satisfy itself whether the dismissal was justified or not. The Supreme Court in the decision in *Firestone Tyre and Rubber Co. (P) Ltd. v. Workmen* : 1967 ii LLJ 715 had held that the Labour Court was obliged to consider the propriety and justifiability of the penalty of discharge or dismissal imposed by the employer on the concerned employee. Referring to the scope of Section 11A of the I.D. Act the S.C. held in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, that the Tribunal or Labour Court was clothed with the power to reappraise the evidence and satisfy itself whether the evidence established a misconduct. The question whether the Labour Court or an Industrial Tribunal can go into the question of the propriety of the punishment was considered in the decision reported in *Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.*, In *Rama Kant Misra Vs. The State of Uttar Pradesh and Others*, it was held that the Labour Court had jurisdiction and power to substitute its measure of punishment in the place of that awarded by the employer. Even in a case where the Tribunal or Labour Court found that the alleged misconduct was proved, the Tribunal was still within his jurisdiction in holding that the punishment was not justified. It can set aside the order of dismissal, award a lesser punishment, or even direct reinstatement subject to conditions which may be imposed. The proposition that the Labour Court has jurisdiction to consider the propriety and justifiability of the findings entered against the workman as also the punishment are fully supported by the decisions reported in *Management of Arya Vaidya Pharmacy (Coimbatore) Ltd. Vs. Secretary, Arya Vaidya Pharmacy Employees Union and Another*, *Gen. Sec., Kerala Times Non-Journalists Staff Union v. Labour Court, Ernakulam* ILR 1984 Ker 306 and *Joseph v. Labour Court* 1987 KLT 24 S.N.

12. Petitioner submitted that it has pleaded in its written statement before the Labour Court that if the Labour Court was not satisfied that a proper enquiry was conducted, it may be given an opportunity to substantiate the punishment by adducing evidence before the Labour Court itself. Counsel submits that denial of such opportunity amounted to a manifest error vitiating the proceedings, and refusal to exercise the jurisdiction which the Labour Court had.

13. In the decision reported in *Management of Arya Vaidya Pharmacy (Coimbatore) Ltd. Vs. Secretary, Arya Vaidya Pharmacy Employees Union and Another*, an almost identical situation arose for consideration. The argument on

behalf of the employer was that when the Labour Court found that termination of service could not be sustained on the basis of the domestic enquiry, it was not open for the management, as a matter of right, to insist that the Labour Court should not proceed further without affording it a fresh opportunity of adducing evidence. In the General Secretary, Kerala Times Non-Journalists Staff Union v. Labour Court, Ernakulam ILR 1984 Ker 306 my learned brother Kochu Thommen, J. dealing with the same question held:

"..... After coming to a finding tha the domestic enquiry was proper, the court must necessarily confine itself to the evidence already recorded at the domestic enquiry. It is open to the court by virtue of its power u/s 11A of the Industrial Disputes Act, 1947 to re-appreciate the evidence and come to a finding on the charges independently. But a finding on the charges on the basis of the evidence recorded by the enquiry officer can become to only after holding that the domestic enquiry was proper".

Reliance was placed on the decisions reported in Meenglas Tea Estate Vs. Its Workmen, and Associated Cement Co. Ltd. Vs. The Workmen and Another, . In Writ Appeal 835 of 1986 Joseph v. Labour Court 1987 (1) KLT 11 Case No. 24 a Division Bench of this Court with reference to Section 11A of the I.D. Act, held as follows:

"The jurisdiction exercised by it is not really an appellate power. It is realty a rehearing of the case by an independent body constituted by the statute. It has a wide or comprehensive power to hear the matter afresh even without reference to the original decision. The power to hear or appraise the matter afresh under the "de nova" proceeding, by the first respondent is not trammelled by anything said or done by the employer as an original authority. In such cases, even assuming that the employer-original authority-passed the order of dismissal, as to whether it is vitiated by bias, can be independently gone into by the first respondent".

I do not understand the decisions referred to by counsel for the petitioner to cast an obligation on the Labour Court to give a fresh opportunity to the management to lead evidence before he can exercise his power u/s 11A of the I.D. Act. What the Industrial Tribunal or Labour Court is ordinarily expected to do in exercise of the powers u/s 11A is to satisfy itself as to whether the order of discharge or dismissal was not justified and if its finding be in the negative, to set aside the order of dismissal and direct reinstatement of the workman. It is true that in cases whether the Labour Court found that the enquiry was not properly conducted, or that no enquiry at all was conducted preceding the order of dismissal, the employer may have a right to adduce fresh evidence if he had sought such opportunity at the earliest possible moment. That position is clear from the decision of the S.C. in Shambhu Nath Goyal Vs. Bank of Baroda and Others, That decision does not however, entitle the employer to insist that even in a case where the Labour Court found that the enquiry was properly conducted, the Tribunal or Labour Court shall call upon the management to adduce fresh

evidence before it proceeded to re-appreciate the evidence available, before the enquiry officer, to consider whether the order of dismissal or discharge was justified or not.

14. In this view, I am not inclined to agree with the submission urged on behalf of the petitioner that it was not open for the Labour Court to review the evidence which the enquiry officer had before him to come to a different finding.

15. In the result. I hold that on the facts and circumstances of this case, the 2nd respondent, though designated as a Secretary, of the petitioner Co-operative Society, was a workman as defined in Section 2(s) of the I.D. Act, Consequently, the dispute relating to the dismissal of the 2nd respondent from service was an industrial dispute as defined in Section 2(k) of that Act. The Labour Court, therefore, did have jurisdiction to decide the dispute. I also hold that it was competent for the Labour Court under the Industrial Disputes Act to review the evidence to satisfy itself as to whether the dismissal of the 2nd respondent was not justified. I hold further that the Labour Court was right in directing reinstatement of the 2nd respondent with continuity of service, full back wages, and other service benefits.

The Original Petition, therefore, fails and is hereby dismissed, with costs.