
(2014) 09 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No. 743 of 2013

The Divisional Traffic Supdt.	Vs	APPELLANT
Ramkrishna		RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33, 33(2)(b)

Citation : (2014) 09 BOM CK 0012

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : B.S. Deshmukh, Advocate for the Appellant; S.P. Urgunde and V.S. Bedre, Advocate for the Respondent

Judgement

R.V. Ghuge, J.—Rule. Rule made returnable forthwith by consent of the parties and heard finally.

2. The petitioner M.S.R.T.C. had levelled allegations against the respondent employee, who was a conductor. Charges pertain to non - issuance of tickets or re-issuance of tickets, allowing passengers to travel ticketless or having issued tickets with lesser fare etc. After conducting a domestic enquiry, the charges were proved under Clause 7(d), 12(b) and 28 of The Discipline and Appeal Procedure Rules. An order of dismissal dated 25/03/2003 was issued.

3. The respondent challenged his dismissal order dated 25/03/2003 by filing complaint ULP No. 3/2005 before the Labour Court at Nanded. Written statement was filed by the petitioner on 08/09/2005. In paragraph No. 8 of the written statement, the petitioner had stated as under, "In case this Hon"ble Court comes to the conclusion that the enquiry is not fair and proper, the respondents may be allowed to lead fresh evidence before this Hon"ble Court, to prove the charges levelled against the complainant".

4. Contention of the petitioners, therefore, is that the right to conduct a de-novo enquiry was reserved by the petitioner employer in light of the judgment of the

Apex Court (3 Judges) in the case of Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, .

5. The Labour Court had framed following issues in the complaint :-

6. The petitioners, therefore, submit that issue Nos. 1 and 2 had to be decided as preliminary issues in light of the settled position of Law. Instead of dealing with the first two issues, the Labour Court proceeded to decide the complaint in one stroke and while doing so, it has held issue No. 2 against the petitioners. The said conclusion is based on a mis-conception. To buttress their submissions, the petitioners draw my attention to paragraph No. 9 of the impugned judgment of the Labour Court dated 20/11/2009.

7. Paragraph No. 9 of the impugned judgment of the Labour Court reads as under :-

"As per the settled law as observed by the Hon"ble Lordships in the case of, Vinod Vishnu Wani and Others Vs. Permanent Magnets Ltd., that, "it was the bounden duty of the respondents to reserve their rights to adduce the evidence to prove the charges before the Court." However, in the present case at hand, no such rights have been reserved by the respondents at the filing of the written statement, Exh.C-8. Hence, the question does not arise to give an opportunity to the respondents to prove the charges levelled against the complainant before the Court. Hence, I answer Issue No. 3 accordingly."

8. The petitioners, therefore, submit that the Labour Court has disallowed the petitioners from conducting a de-novo enquiry on the misconception that it had not reserved its right to conduct a de-novo enquiry. He, therefore, submits that the contents of paragraph No. 8 of the written statement have been totally lost sight of by the Labour Court.

9. The petitioners have set out several other submissions, which need not be adverted to and need not be considered at this stage in light of the order that I propose to pass.

10. Learned Advocate for the respondent employee strenuously supports the judgment of the Labour Court. It is not in dispute that the judgment of the Industrial Court in Revision ULP No. 5/2010, preferred by the petitioners, is on the same lines as that of the Labour Court judgment. The said judgment dated 16/07/2012 is also impugned in this petition.

11. The respondent submits that the petitioners could have moved a separate application bringing it to the notice of the Labour Court that the right to conduct a de-novo enquiry was reserved. No such steps were taken. The Labour Court was allowed by the litigating parties to proceed to decide the complaint in one stroke. As such, the grievance of the petitioners cannot be entertained in view of its conduct visible from the face of the record.

12. So far as the mis-conduct alleged against the respondent is concerned, the

same pertains to misappropriation and causing a loss to the M.S.R.T.C. The other contentions of the respective sides are considered by me in view of the Law settled by the Apex Court in the case of (a) Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, , (b) Shambu Nath Goyal Vs. Bank of Baroda, , (c) Bharat Forge Company Ltd. Vs. A.B. Zodge and another, , (d) Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, and the view taken by the Single Judge of this Court in the case of Permanent Magnets Ltd., Mumbai Vs. Vinod Vishnu Wani, and the judgment of the L.P.A. Bench in the case of Vinod Vishnu Wani and Others Vs. Permanent Magnets Ltd., .

13. It is trite Law that firstly, an employer ought to reserve its right to conduct a de-novo enquiry at the earliest. In the KSRTC's case(supra), the Apex Court has laid down that after receiving a copy of the complaint filed by an employee, the employer is made aware as regards the areas of challenge set out by the employee. Therefore, it is concluded that the first available opportunity to reserve a right to conduct a de-novo enquiry, is in the form of the written statement. Secondly, when such a right is reserved and the enquiry has been set-aside for any reason, the Labour Court has to permit the employer to conduct a de-novo enquiry.

14. In the Permanent Magnets Case (supra), a virtually identical situation was brought before this Court, as follows :-

(a) Right to conduct a de-novo enquiry was reserved by the Company Permanent Magnets Limited. All issues were framed. Evidence was led by the parties in relation to issue Nos. 1 and 2. However, the Labour Court, by its common judgment, decided all 5 cases and concluded that the enquiry was vitiated and in the same judgment, directed the employer to reinstate the workers in employment with continuity.

(b) These cases were brought to the Industrial Court, which rejected all the revision petitions. The learned Single Judge of this Court (Coram : R.M.S.Khandeparkar, J.) concluded that the right to conduct a de-novo enquiry is born for the first time after the Labour Court sets aside the domestic enquiry. It was, therefore, laid down that once a right to conduct a de-novo enquiry was reserved in the written statement and the enquiry was set aside in view of the conclusions below issue Nos. 1 and 2, the Labour Court ought to permit the employer to conduct a de-novo enquiry and could not have proceeded to decide the complaint in one stroke. The L.P.A. Bench upheld the findings of the Single Judge and dismissed all the appeals.

15. The Apex Court, in the Shambhu Nath judgment (supra) has held in paragraph No. 2 as under :-

"We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee 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 90 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."

Relying on this statement of law in Cooper Engineering Ltd. case, it was contended in Shankar Chakravarti's case that it is the obligatory duty of the Labour Court/Industrial Tribunal to frame a preliminary issue whether the domestic enquiry is valid or vitiated ? After answering the issue, one way or the other if it is held that the domestic enquiry was vitiated, the employer has to be given an opportunity to lead evidence to substantiate the charge of misconduct. And that is how the extracted passage was interpreted by the Division Bench of the Calcutta High Court in Shankar Chakravarti's case. It was further contended that it is the obligatory duty of the Labour Court/Industrial Tribunal after deciding the preliminary issue in favour of the workman and against the management to call upon the employer to lead his evidence to substantiate the charge of misconduct. It is in this context that this Court observed that the employer must plead in the statement of defence filed before the Labour Court/Industrial Tribunal that in the event domestic enquiry which led to the termination of service is held to be vitiated or invalid, he must be given opportunity to lead evidence to substantiate the charge of misconduct. Explaining how the pleading can be raised this Court observed that if such a relief is claimed in the statement of claim, application for approval of its action or written statement of defence, the Labour Court/Industrial Tribunal must give such an opportunity. The Court further observed that if the request is made before the proceedings are concluded, the Labour Court/Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. It was further observed that if such a pleading is raised and an opportunity is sought, it is to be given, but if there is no such pleading either in the original application or in the statement of claim or written statement or by way of an application during the pendency of the proceedings, there is no duty cast in law or by the rules of justice, reason and fair play that a quasi judicial Tribunal like the Industrial Tribunal or the Labour Court should adopt an advisory role by 91 informing the employer of its rights." The statement that if an application is made during the pendency of the proceedings does not mean that some independent right to make an application at any time is conferred on the employer. Ordinarily, where a party claims relief, it must plead for the same. The pleading can be incorporated in a statement of claim or a written statement of defence. It was not for a moment suggested that an application at any stage of the proceedings without explaining why the relief was not claimed in the original pleading has to be granted. If a separate application is made, it would be open to the Labour Court/Industrial Tribunal to examine the question whether it should be granted or not depending upon the stage when it is made, the omission to claim the relief in the initial pleading, the delay and the

motivation for such delayed action ? Without being specific, it can be said that such an application has to be examined as if it is an application for amendment of original pleadings keeping in view all the aforementioned considerations and if it does not appear to be bona fide or has been made after a long unexplained delay or the explanation for the omission of claiming the relief in the initial pleading is unconvincing, the Labour Court/Industrial Tribunal would be perfectly justified in rejecting the same. The observation was not made to lay down a proposition of law that as and when it suits the convenience of the employer at any stage of the proceedings, it may make an application seeking such opportunity and the Labour Court/Industrial Tribunal was obliged to grant the same."

16. The Apex Court, in the Delhi Cloth judgment (supra) has concluded in paragraph Nos.19, 20, 21, 22 and 24 as under :-

"19. In support of his first contention Mr. Anand urged that the appreciation of the evidence adduced in a domestic enquiry, as well as the weight to be given to that evidence are all matters falling primarily within the jurisdiction of the Enquiry Officer, over which the Industrial Tribunal has no right to sit in appeal. The counsel further urged that the conclusion arrived at by the Enquiry Officer is a possible view, which could be taken on the evidence on record. The Industrial Tribunal has no jurisdiction to consider whether the evidence available before the Enquiry Officer was adequate, or sufficient or of a satisfactory character. Mr. Anand pointed out that these are matters that an appellate court may be entitled to consider, but not an Industrial Tribunal, whose jurisdiction is very limited. He further pointed out that the findings recorded by the Enquiry Officer cannot be considered to be perverse, as characterised by the Industrial Tribunal, in the sense that it is not justified by any legal evidence.

20. The counsel further contended that the jurisdiction of the Tribunal, as laid down "by this Court in several decisions, was only to satisfy itself whether a prima facie case has been made out by the employer and that the employer has not acted mala fide and that the enquiry has been held in accordance with the principles of natural justice and the procedure indicated in the Standing Orders, if any. If once the Tribunal comes to the conclusion that the management has not acted mala fide and that there has been a proper enquiry and that the conclusion arrived at by the Enquiry Officer is a possible one on the evidence led before it, the Tribunal cannot substitute its own judgment for the judgment of the Enquiry Officer, though it may have come to a different conclusion on the evidence adduced before the Enquiry Officer.

21. We do agree, as abstract propositions of law, the contentions of the learned counsel regarding the scope of a Tribunal's jurisdiction, in such matters, are correct. But the question for consideration by us is whether the Industrial Tribunal, when it declined to grant the permission asked for by the appellant, has in any manner acted contrary to the principles "referred to by Mr. Anand and set out above.

22. Before we proceed to deal with the contentions of Mr. Anand, it is necessary to state the law regarding the nature of the jurisdiction exercised by a Tribunal in dealing with an application under s. 33 of the Act. We had occasion to deal with a similar aspect in *Delhi Cloth and General Mills Co. v. Ganesh Dutt and others*. It was observed therein :

"The nature of the jurisdiction exercised by an Industrial Tribunal in such circumstances is a very limited one and it has been laid down by several decisions of this Court. The legal position is that where a proper enquiry has been held by the management, the Tribunal has to accept the finding arrived at in that enquiry unless it is perverse or unreasonable and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair labour practice or is acting mala fide. (Vide *Punjab National Bank, Ltd. v. Its Workmen* , *Bharat Sugar Mills Ltd. v. Jai Singh*, *Management of Ritz Theatre (P) Ltd. v. Its Workmen*, and *Mysore Steel Works v. Jitender Chandra Kar and others*)"

24. It has been further laid down in *The Lord Krishna Textile Mills v. Its Workmen* as follows :

"It is well known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall to be considered an appellate court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the court is limited as under s. 33(2)(b). It is conceivable that even in holding an enquiry under s. 33(2)(b) if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be accorded to the employer or not; but it is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence."

17. This Court, in the case of *A.H. Wadia Charity Trust and Others Vs. Neville Jathan and Others*, , has held in paragraph Nos. 6 and 7, as under :-

"6.The learned member of the Industrial Court by his order dated 6-6-2001 in his well written and reasoned order confirmed the order of the Labour Court. In principle he agreed with the contention of the Trust that when enquiry is set aside the employer should be given an opportunity to prove the misconducts and justify the act of dismissal/termination before the Labour Court by adducing fresh evidence/material on record of the labour Court. The Industrial Court however has approved the course adopted by the Labour Court of not giving any opportunity of adducing any evidence before the Labour Court to prove the misconduct and to justify the action of dismissal on the ground that the charge of late coming was not disputed or denied by the employee but was admitted by him in his replies to the Memos served upon him by the Trust. In these

circumstances the Industrial Court agreed with the order of the Labour Court to interfere with the punishment of dismissal and granting the employee reinstatement without backwages for a period of about 6 years. The Industrial Court has considered the prayer of remand to the Labour Court made on behalf of the Trust. The learned member of the Industrial Court has rightly considered the remand of the complaint absolutely unnecessary as the result would be the same. There could have been no further evidence in respect of the late coming of the employee. The Trust had clearly mentioned in its Memos that in the month of September, October, and December and April and May how many days the employee was late in attending the office. In reply to the said Memos and the show cause notice the employee has agreed to the said charge and had admitted that he was late and that his attendance was not exemplary on account of his travel by train which were always late and that it was a daily affair. According to me, even if the petitioners were not to hold any formal enquiry the order of punishment would not have suffered from any infirmity as they were acting on the admissions of guilty or charge by the employee. Merely because a formal enquiry was held in spite of clear admissions and acceptance of the charges levelled against the employee it can be said to be a redundant and unnecessary exercise of enquiry. If such an enquiry is held to be unfair and improper it makes hardly any difference and it would be sheer waste of time requiring the parties to undergo the ordeal of enquiry before the Court as the charges which are required to be proved before the Labour Court were already admitted by the employee and nothing was left to be proved in the given circumstances. What more is required to be proved in a formal domestic enquiry? And even if such a formal enquiry is held by the employer and if such a formal enquiry is quashed and set aside by the Labour Court in such circumstances what employer would prove before the Labour Court? In my opinion both the Labour Court and the Industrial Court have acted properly and have taken a pragmatic view of the matter and both rightly did not enter into time wasting procedure of proving the so called misconduct before the Labour Court which was already admitted by the delinquent respondent employee.

7. There is one more crucial aspect in respect of the grievance made by Shri Singh for the petitioner that the Labour Court ought to have granted the petitioners to lead evidence before the Labour Court to prove the misconduct and to justify its action of dismissal of the employee. He has also made similar grievance against the order of the Industrial Court. Though Shri Singh was vociferous as usual against the Lower Courts on this issue I find absolutely no substance in his submissions even on this issue. Firstly, as I have already held that it was not all necessary to give a so-called opportunity to lead evidence before the Labour Court in view of clear and unambiguous admissions of late coming by the employee. Secondly, no such opportunity could be given as the petitioners did not pray for such opportunity at the first earliest point of time to pray for such opportunity which was when they filed their affidavit in reply in July/August, 1994 to the affidavit filed by the employee in support of his application

for interim relief application. The petitioners had not filed any Written Statement or reply to the main Complaint filed by the employee. They appear to have wholly relied on the said affidavit in reply to the interim relief application and their reply is in detail dealing with the merits of the main complaint also. In this reply the petitioners have not prayed for such opportunity to lead evidence before the Labour Court in case the enquiry was held to be not fair and proper. This was the first and the earliest point of time available to the petitioners. By another application dated 25-8-1995 they had prayed for framing of an additional issue about their being not an "industry". Even in this application no permission was sought by the petitioners to prove the misconduct and to justify the dismissal. They have made such an application as late as on 26-7-1999, at the fag end of the proceedings as the final order of the Labour Court is dated 29-11-1999. Even in normal circumstances such an application could not have been entertained in view of the latest judgment of the Supreme Court in the case of Karnataka State Road Transport Corporation v. Smt. Laxmidevamma and Anr., 2001 AIR SCW 1981. After considering the entire case law the Supreme Court has observed as under :--

16. While considering the decision in Shambhu Nath Goyals" case , we should bear in mind that the judgment of Vardarajan, 5, therein does not refer to the case of Cooper Engineering, AIR 1995 SC 1900 : 1975 Lab 1C 1441 (supra). However, the concurring judgment of D. A. Desai, J. specifically considers this case. By the judgment in Goyal's case the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under Section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under Section 10 of the Act, meaning thereby the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in Shambhu Nath Goyal's case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workman inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal's case is just and fair.

18. There is one other reason why we should accept the procedure laid down by

this Court in Shambhu Nath Goyal's case. It is to be noted that this judgment was delivered on 27th of September, 1986. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis require us to approve the said judgment to see that a long standing decision is not unsettled without strong cause.

19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambhu Nath Goyal v. Bank of Baroda, , is the correct law on the point.

20. In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated. Applying the aforesaid principles to these facts, we are of the opinion that the High Court has rightly dismissed the writ petition of the appellant, hence, this appeal has to fail. The same is dismissed with costs.

This point is hopefully finally concluded, at least as far as this Court is concerned. There is absolutely no merit in this trump card of Shri Singh for the petitioners."

18. In the present case as well, despite the right to conduct a de - novo enquiry was reserved, the Labour Court, in one single stroke, decided the whole complaint and that too on the misconception that the petitioner employer had not reserved its right to conduct a de - novo enquiry.

19. It is, thus, clear that the impugned judgment has led to a serious miscarriage of justice. It reflects non-application of mind by the Labour Court. In the light of the crystallized position of Law, the Labour Court's judgment is rendered perverse and unsustainable. Needless to state, the impugned judgment of the Industrial Court, upholding the judgment of the Labour Court, is equally perverse.

20. The first issue was put to rest by the respondent employee, who has stated before the Labour Court that the fairness of the enquiry is not being questioned. However, since the findings of the Enquiry Officer have been held to be perverse, the entire enquiry is watered down. It is at that stage that the petitioners acquire a right to conduct a de-novo enquiry.

21. I am, therefore, convinced that the matter needs to be relegated to that stage at which the petitioner employer can conduct a de-novo enquiry before the Labour Court, if it so desires, to prove the charges levelled against the respondent / complainant.

22. In the light of the above, the impugned judgment of the Labour Court dated 20/11/2009 in complaint ULP No. 3/2005 is quashed and set aside to the extent of issue Nos. 3 to 7. Without getting into the merits of the matter, the complaint is relegated back to the Labour Court at the stage of permitting the petitioner to conduct a de-novo enquiry.

23. It needs mention that in the event, the complaint is finally allowed, the petitioners' right to challenge the Part I order, as well as the final judgment, shall remain undisturbed. Judgment of the Industrial Court dated 16/07/2012 in Revision ULP No. 5/2010, is also quashed and set aside.

24. Since the complaint pertains to the year 2005, the Labour Court shall endeavour to decide the same, as expeditiously as possible, and preferably on or before 31/03/2015. The litigating parties are expected to co-operate with the Labour Court and avoid adjournments on trifle or frivolous grounds.

25. Writ petition is, therefore, partly allowed with the above directions. Rule is made partly absolute accordingly.