

(1989) 05 P&H CK 0121
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 622 of 1986

The General Manager, Panipat Woollen Mills, Kharar	APPELLANT
Vs	
The Presiding Officer, Labour Court, Patiala and another	RESPONDENT

Date of Decision : 30-05-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1989) 05 P&H CK 0121

Hon'ble Judges : J.S. Sekhon, J

Bench : Single Bench

Advocate : O.P. Hoshiarpuri, for the Appellant; Lekh Raj Suri, in person for the Respondents, for the Respondent

Final Decision : Dismissed

Judgement

Jai Singh Sekhon, J.—The main controversy in this writ petition preferred under Articles 226/227 of the Constitution of India is, "whether the Labour Court was bound to afford an opportunity to the Management for leading evidence in order to prove the charges against the workman after it has found the domestic enquiry to be defective for non-compliance with the rules of natural justice."

The factual matrix of the case is that Shri Lekh Raj Suri-Respondent No. 2 used to work as Receipt Clerk in the Stores Department of the Petitioner-Mill. His services were terminated after holding domestic enquiry on the following charges:

- (i) That on or about 1-8-1979, Shri Suri approached M/s. Ravsons, Mani Majra at his residence asking him to meet him personally outside the Mills to obtain undue favour or advantage from him.
- (ii) That Shri Suri demanded Rs. 1,000/- from the above party on the point of holding his bills or rejecting his supply of wood to the Mills.
- (iii) That on 9-8-1979, Shri Suri in connivance with Shri Ishar Singh, Gate Clerk manipulated the weightment Slip by changing the weight from 116.70 Quintals

to 146.70 Quintals.

(iv) That on 3rd August, 1979 and 6th August, 1979 Shri Suri obtained fictitious bills on threat from the above party for a truck each of fire wood alleged to have been received in the Mills on the same day and for this purpose he in connivance with Shri Ishar Singh fabricated the necessary entries in the bills.

The second charge was found to have not been proved by the Enquiry Officer, Aggrieved against the said order, the workman successfully sought reference to the Labour Court u/s 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The Presiding Officer Labour Court, Patiala, vide its order dated 24th July, 1985 ordered the reinstatement of the workman with continuity of service and full back wages on the ground that the principles of natural justice were not followed while conducting the domestic enquiry inasmuch as the workman was not supplied with a copy of confessional statement made by Ishar Singh Gate Clerk during the enquiry proceedings and that not to speak of producing Ishar Singh as a witness against him he was not allowed to cross-examine any witness.

3. It appears that the Management did not press the application dated 26/27th March, 1984 moved earlier to lead evidence on the merits of the case, if it was found that the enquiry was defective. That is why the Presiding Officer Labour Court had passed the above referred order without referring to this application.

4. Subsequently, on 14th August, 1985 the Management filed another application before the Labour Court for permission to lead evidence on merits of the case. The application was rejected by the Labour Court vide its order dated 7th January, 1986 (copy Annexure P--6) by holding that the application for leading evidence on merits of the case having been made after a lapse of four years and such right having not been reserved in the written statement would result in great miscarriage of justice. It was further held that this application was not pressed by the Management during the course of argument when the award was given on 24th July, 1985. The Presiding Officer of the Labour Court also came to the conclusion that it has no jurisdiction to entertain such application after giving the award, as apparently he has become functus officio. The observations of the Supreme Court in *Bali Ahir and Others Vs. State of Bihar*, were relied upon in support of the proposition that the Management cannot file an application to lead evidence on merits of the case if it has not reserved its rights to do so in the written statement.

5. Shri O.P. Hoshiarpuri the learned Counsel for the Petitioner Mill by relying upon the findings of the Supreme Court in *Cooper Engineering Limited v. P.P. Mundhe* 1975 (2) L.L.J. S.C. 379, and *Shankar Chakravarti v. Britannia Biscuit Co. and Anr.* 1979 (2) L.L.J. S.C. 194, contended that the Labour Court was bound to give an opportunity to the Management to adduce evidence after finding that the domestic enquiry was defective.

6. Respondent No. 2 in person contended that the Management had waived its

right to lead evidence before the Labour Court by not pressing the application dated 27th March 1984 in this regard. It is also maintained that his services were terminated on 26th September, 1978 and the Management did not reserve any right to lead evidence on the merits of the case in the written statement filed before the Labour Court and that the application having been filed after a lapse of four years of the pendency of the proceedings before the Labour Court, clearly shows that the Management was out to delay the proceedings and harass the workman. The conduct of the Management in filing the application on 14th August, 1985, i.e. after pronouncement of the award was also stressed in order to persuade the Court that the Management was only interested in harassing and prolonging the agony of the workman. Reliance in this regard was placed on the findings of the Supreme Court in *Shri Shambhu Nath Goyal's case* (supra) and *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, .

7. In *Cooper Engineering Ltd's case* (Supra) the Supreme Court laid down 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 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. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.

8. The above observations were made by the Supreme Court in its anxiety that there should be no undue delay in industrial adjudication. Similar controversy again came up under scrutiny of the Supreme Court in a dispute in *Shankar Chakravarti's case* (supra), wherein Hon"ble Mr. Justice D.A. Desai who delivered the judgment had referred to the earlier decision of the Supreme Court in *Cooper Engineering Ltd's case* (supra) as under:

Further the decision in *Cooper Engineering Ltd. case* (supra) does not propose to depart from the ratio of the earlier decisions because this Court merely posed a question to itself as to what is the appropriate stage at which the opportunity has to be given to the employer to adduce additional evidence, if it so chooses to do. Merely the stage is indicated, namely, the stage after decision on the preliminary

issue about the validity of the enquiry. Cooper Engineering Ltd. case (supra) is not an authority for the proposition in every case coming before the Labour Court or Industrial Tribunal u/s 10 or Section 33 of the Act complaining about the punitive termination of service following a domestic enquiry that the Court or Tribunal as a matter of law must first frame a preliminary issue and proceed to decide the validity or otherwise of the enquiry and then serve a fresh notice on the employer by calling upon the employer to adduce further evidence to sustain the charges if it so chooses to do. No section of the Act or the Rules framed thereunder was read to pin-point such an obligatory duty in law upon the Labour Court or the Industrial Tribunal. No decision was relied upon to show that such is the duty of the Labour Court or the Industrial Tribunal. This Court merely indicated the stage where such opportunity should be given meaning thereby if and when it is sought.

Again Hon''ble Mr. Justice D.A. Desai was one of Judges of the Bench of the Supreme Court which decided similar controversy between Bali Ahir and Others Vs. State of Bihar, . Hon''ble Mr. Justice D.A. Desai, concurred with the observations of Hon''ble Mr. Justice A. Varadarajan except to the extent that the employer should be given an opportunity to lead evidence if he so desires after the Labour Court had decided the preliminary issue and come to a conclusion that the domestic enquiry was defective. Hon''ble Mr. Justice Desai again dealt with the import of the earlier decisions of the Supreme Court in Sambhu Nath Goyal's case (supra) and Cooper Engineering Ltd. case (supra) and ultimately came to a conclusion as under:

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.

9. The perusal of the above referred findings of the Supreme Court clearly show that the allowing the employer to lead evidence before the Labour Court after the finding on the preliminary issue that the domestic enquiry was defective, depends upon the stage at which the request is made. It was further explained

that the Labour Court should not adopt an advisory role by informing the employer of its right to lead evidence. In the light of the above referred guidelines laid down by the Supreme Court, it transpires that in the case in hand as the management or the employer did not press its application dated 27th March, 1984 to lead evidence on merits of the case during the course of arguments, the Labour Court was not expected to deal with such an application while giving award dated 24th July, 1985. Moreover, the above referred application dated 27th March, 1984 was given after a lapse of four years of the commencement of the dispute before the Labour Court. No such right was ever reserved by the Management or the employer in its written statement filed on 24th July, 1980. Thus, there is considerable force in the contention of the Respondent workman that the Management was trying to harass the workman by prolonging the proceedings. This conclusion is further supported from the conduct of the Management in moving another application before the Labour Court on 14th October, 1985, i.e. after two months of the pronouncement of the award for allowing it to lead evidence on the merits of the case because if at all the Management was aggrieved against the impugned award given on 24th July, 1985, it could have moved the application just thereafter. Under these circumstances, it can be well stated that the Management had waited of its right to lead evidence on the merits of the case during the pendency of the proceedings before the Labour Court, and was interested in prolonging the proceedings in order to harass the workmen.

10. For the foregoing reasons, there being no merit in this petition, it is hereby dismissed with costs which are assessed at Rs. 1,000/-. The management is directed to comply with the order of the Labour Court forthwith and pay to the Respondent-workman all the arrears of pay and allowances and also grant all other consequential benefits within two months from the date of this order.