

(2006) 04 MAD CK 0107

In the Madras High Court

Case No : Writ Petition No's. 754 and 755 of 2005, W.P.M.P. No's. 822 and 38205 of 2005 and W.V.M.P. No. 2370 of 2006

The Management, Britannia Industries Ltd.

APPELLANT

Vs

The Presiding Officer, Principal Labour Court and Mr. Rajesh Kanna

RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:

Citation : (2006) 04 MAD CK 0107

Hon'ble Judges : K. Suguna, J

Bench : Single Bench

Advocate : Sanjay Mohan, for Ramasubramaniam, Associates, for the Appellant; C. Kanagaraj for R2, for the Respondent

Judgement

K. Suguna, J.—The writ petitions have been filed challenging the orders of the first respondent dated 30.12.2004 made in I.A. Nos. 597 &

598 of 2004 in I.D. No. 545 of 2001.

2. The short facts are :

In the year 1993, the second respondent joined the service of the petitioner Management. With regard to certain lapses, a show cause notice

dated 12.9.2000 was issued to the second respondent. Not satisfied with the reply submitted by him, a domestic enquiry was ordered and by

letter dated 29.12.2000, the second respondent was advised to be present at the time of enquiry scheduled on 6.1.2001. After providing more

than one opportunity to the workman, since the second respondent/workman did not attend the enquiry, the petitioner Management was forced to

conduct an ex parte enquiry and basing on the evidence let in before the Enquiry Officer and the documents marked, the Enquiry Officer submitted

a report holding that the second respondent is guilty of the misconduct alleged against him. Again, a show cause notice dated 27.2.2001 was issued to the second respondent seeking his explanation and after receiving reply from the second respondent, the petitioner Management passed an order dated 23.3.2001 dismissing the second respondent from service. After this, since the conciliation proceedings did not yield any result, the second respondent/workman raised a dispute in I.D. No. 545/2000 before the first respondent wherein the petitioner had also filed a counter justifying the order of dismissal and in the event of the first respondent holding that the enquiry conducted by the petitioner was not fair and proper, the petitioner should be provided with an opportunity to let in fresh evidence on merits before the first respondent. When the I.D. was taken up for trial, the petitioner filed I.A. No. 597 of 2004 praying before the first respondent to render a finding, at the first instance, about the validity of the enquiry and I.A.598/2004 to eschew the evidence let in by the second respondent in the form of proof affidavit and by way of oral evidence. The said applications were resisted by the second respondent. The first respondent, by the impugned orders, dismissed the above said I.As on the assumption that the petitioner is delaying the proceedings by filing the said I.As. Hence, challenging the dismissal of the above said two I.As., the present writ petitions have been filed by the petitioner Management.

3. According to the learned Counsel for the petitioner, since the second respondent has questioned the fairness of the domestic enquiry by alleging that the domestic enquiry was not conducted in accordance with the principles of natural justice, as per the settled law, the first respondent has to decide the preliminary issue whether the domestic enquiry was conducted in a fair and proper manner and in the event of the first respondent coming to the conclusion that the domestic enquiry was not conducted in a fair and proper manner or in the event of the domestic enquiry is held to be vitiated, oral evidence should be let in to substantiate the order of dismissal. According to the learned Counsel, on a wrong assumption, inspite of number of orders in this regard passed by the Honourable Supreme Court as well as by this Court, the first respondent has dismissed the two I.As.

4. On the other hand, learned Counsel appearing for the second respondent has

contended that only to delay the finalisation of the I.D., the petitioner has filed the above said two I.As. According to the learned Counsel, due to an accident, the second respondent availed leave with the permission of the petitioner company and he was undergoing various treatments. Consequence of his health condition, he could not appear before the Enquiry Officer. But, he represented through letter. Further, the workman required the assistance of a lawyer. But the Enquiry Officer appointed by the petitioner Company hurriedly conducted an ex parte enquiry and submitted a report. Basing on this, the dismissal order has been passed. After several adjournments, the matter was posted for trial. When the trial was started, the petitioner filed proof affidavit and started marking certain exhibits on the petitioner's side. Subsequently, again, when the matter was posted, the petitioner had filed I.A. Nos. 597 and 598 of 2004. According to the learned Counsel for the second respondent, the first respondent, as an Appellate Forum, has a right to go on with fresh enquiry on merits and apart from that, just to delay the proceedings alone, the two I.As have been filed. According to the learned Counsel, the Management is asking only for a fresh enquiry. However, if it is allowed under the same Enquiry Officer, then the workman cannot get a free and fair enquiry. In support of his contention, the learned Counsel for the respondent relied on the judgments reported in 1975 L.I.C. 1446 (State of Orissa v. Khageswar Das) 1987 L.I.C. 1854 (Star Paper Mills Ltd. v. Presiding Officer, Labour Court, Meerut) and 1975 L.I.C. 1441 (Cooper Engineering Ltd. v. P.P. Mundhe) and prayed for dismissal of the writ petitions.

5.I have considered the submissions of both the learned Counsel.

6.The 2nd respondent, who was employed as a Stacker Line Checker in the petitioner company was dismissed from service by order dated 23.3.2001 for certain acts of misconduct. Before the issuance of the order of dismissal, admittedly, an ex parte enquiry was conducted and basing on the finding of the Enquiry Officer, the order of dismissal has been passed. When the 2nd respondent raised an industrial dispute before the 1st respondent, the petitioner filed a counter justifying the dismissal order and that in the event of the 1st respondent coming to the conclusion that the enquiry conducted by the petitioner is not fair and proper, the petitioner should be permitted to let in fresh evidence justifying the allegations

levelled against the workman in the order of dismissal. It is true that the dispute is of the year 2001 and after the I.D. was posted for trial on

12.10.2004, on the second day of the trial, the petitioner had filed the I.As praying before the 1st respondent to render a finding, in the first

instance, about the validity of the enquiry and to eschew the evidence let in by the 2nd respondent in the form of proof affidavit and oral evidence.

The said applications were resisted by the 2nd respondent. The 1st respondent, on the ground, that the two I.As have been filed only to protract

the proceedings and as an Appellate Forum, the 1st respondent has got the right to go on with fresh enquiry on merits, dismissed the two I.As.

But, as rightly contended by the learned Counsel for the petitioner, it is settled law, as held by this Honourable Court in the judgment reported in

2003 (2) LLN 629 (K.F.D. F.Co.(P.) Ltd. v. P.O., II Addl. L.C.) that, when a preliminary objection is raised with respect to the fairness of the

domestic enquiry, the Labour Court has to record a finding whether enquiry is fair and proper...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 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.

The Tribunal had to deal with, at the first instance, about the validity of the domestic enquiry and thereafter only, the request of the Management to

let in evidence comes, when the Labour Court comes to the conclusion that there was no valid domestic enquiry. The same view has been

expressed by the Honourable Supreme Court of India in the judgment reported in The Cooper Engineering Limited Vs. Shri P.P. Mundhe, at page

No. 665, paragraph 22,

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.

The same has been followed in the judgment reported in 2000 (2) LLJ 32 (Mad) (Management of Sundaram Industries v. P.O., Labour Court,

Madurai). Since the order of the Labour Court is contrary to the orders of the Honourable Supreme Court and the orders of this Court, the same cannot be sustained. Accordingly, the impugned orders are set aside and the writ petitions are allowed. The Labour Court is directed to decide the preliminary issue expeditiously and in the event of the Labour court deciding the preliminary issue against the petitioner, it is open to the petitioner Management to substantiate the charges by letting in evidence. No costs.