

(2010) 10 MAD CK 0401
In the Madras High Court
Case No : Writ Appeal No. 42 of 2010

The Management, North Arcot Ad-Dravidar Welfare School
Teachers Co-operative Thrift and Credit Society

APPELLANT

Vs

The Presiding Officer, Labour Court and R. Kumar

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33(2)
Tamil Nadu Co-operative Societies Act, 1983 — Section 156

Citation : (2010) 10 MAD CK 0401

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : C.K. Chandrasekaran, for P.S. Sivashanmugasundaram, for the Appellant; V.V. Chandrasekar, for Respondent 2, for the Respondent

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—This appeal filed by the appellant-management is directed against the judgment dated 8th April, 2009 passed in W.P. No. 28457 of 2004 whereby the learned single Judge dismissed the writ petition and affirmed the award passed by the Presiding Officer, Labour Court, Vellore. By the said award, the Labour Court set aside the order of dismissal of the second respondent and directed reinstatement with full backwages.

2. The facts of the case lie in a narrow compass:

The second respondent was working as a clerk in the appellant society since April, 1990. On 30th August, 1993, a charge memo was issued alleging that the second respondent caused certain loss to the appellant society by failing to update the accounts maintained by him. An enquiry was ordered. But, immediately thereafter, a second charge memo was issued on 27th December, 1993 alleging that the second respondent had misappropriated a sum of Rs. 44,491/-. Again another charge memo dated 7th January, 1994 was issued to the second respondent alleging that he had caused the loss of certain articles during shifting of the office of the appellant society. While an enquiry was

ordered, in the meantime, the second respondent was directed to deposit a sum of Rs. 3493.95/- for the missing articles, and further he was ordered to pay a sum of Rs. 44,491/- to the appellant society for the alleged loss said to have been caused to the society. After holding the enquiry ex-parte, a report was submitted on 17th August, 1994 by which the Enquiry Officer held that the charges leveled against the second respondent were proved. Consequently, the second respondent was dismissed from service.

3. Aggrieved by the order of dismissal, the second respondent raised an industrial dispute, which was referred to the Labour Court for adjudication. The Labour Court, after examining the entire facts of the case, and on analyzing the evidence adduced by the parties, set aside the order of dismissal and directed reinstatement of the second respondent along with continuity in service and backwages. The appellant society challenged the said award by filing the aforementioned writ petition before this Court mainly on the ground that the Labour Court has no jurisdiction to pass an award in the Industrial Dispute raised by the second respondent in view of Section 156 of the Tamil Nadu Cooperative Societies Act, 1983 and further on the ground that since the second respondent had voluntarily abstained himself from the departmental enquiry conducted against him, it cannot be held that the enquiry was not conducted in a fair and proper manner and that the principles of natural justice have been violated.

4. The learned single Judge affirmed the award and held that the appellant society has failed to show that the domestic enquiry conducted against the second respondent was legal and valid and does not violate the principles of natural justice. The learned single Judge, therefore, dismissed the writ petition. Hence, this appeal.

5. Mr. C.K. Chandrasekaran, learned Counsel appearing for the appellant-society assailed the impugned judgment passed by the learned single Judge as being contrary to law. The main contention of the learned Counsel is that the learned single Judge ought to have interfered and set aside the award on the ground that the Labour Court failed to call upon the appellant to adduce additional evidence to substantiate the charges levelled against the delinquent. It is contended by the learned Counsel that both the Labour Court and the learned single Judge have committed error of law in holding that the principles of natural justice have not been followed in the domestic enquiry. According to the learned Counsel, though the second respondent was given ample opportunity to take part in the domestic enquiry, he did not take part in the same. Consequently, the order of dismissal was passed on the basis of the report submitted by the Enquiry Officer. Lastly, the learned Counsel submitted that the principles laid down by the Constitution Bench of the Supreme Court in the case of *Karnataka State Road Transport Corpn. Vs. Smt. Lakshmidewamma and Another*, has not been followed by the Labour Court, and on that account, the learned single Judge ought to have set aside the award passed by the Labour Court.

6. Before going into the merits of the contention of the learned Counsel

appearing for the appellant, we would like to discuss the ratio decided by the Supreme Court in the case of Karnataka State Road Transport Corporation (supra). In the case before the Supreme Court, the employee was dismissed from service after holding a domestic enquiry. In the reference case u/s 10 of the Industrial Disputes Act, the Labour Court held the domestic enquiry to be bad. The appellant-employer sought permission to adduce evidence to prove the charges against the employee. But the Labour Court following the decision in Shambhu Nath Goyal Vs. Bank of Baroda and Others, , refused the prayer on the ground that the employer did not seek such permission in its counter statement filed in the reference case. The High Court upheld the decision of the Labour Court. The matter came before the Supreme Court. The Supreme Court referred the matter to a Larger Bench with an observation that there are conflicting views in the two decision namely, Shambhu Nath Goyal Vs. Bank of Baroda and Others, and Rajendra Jha Vs. Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad and Another, .

7. In the said Constitution Bench judgment, the Supreme Court made it clear that the right of the management to lead evidence before the Labour Court or the Industrial Tribunal to justify the punishment is not a statutory right, rather it is a procedure laid down by the Supreme Court to avoid delay and multiplicity of proceedings in the disposal of disputes raised before the Supreme Court. After considering all the earlier decision, the Supreme Court held: (para 17, page 442)

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 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 workmen 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 case is just and fair.

8. The Supreme Court approved the ratio decided in the case of Shambu Nath Goyal (supra) that the employer has a right to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal under Sections 10 or 33(2) of the Industrial Disputes Act by making a proper request at the time when it files statement of claim or making an application seeking permission to lead evidence.

9. In the light of the ratio decided by the Supreme Court, we would like to consider the reasons given by the Labour Court in the impugned award.

10. While deciding the issue as to whether the domestic enquiry was conducted in accordance with the principles of natural justice, the Labour Court was fully conscience of the principles laid down by the Supreme Court, and in para-12 of the award held as under:

12. When it has been held that the domestic enquiry was not conducted in accordance with the principles of natural justice, it is the duty of the Court to give the respondent opportunity to prove the charges against the petitioner. But in so far as this case is concerned, when we examine whether it is necessary to give such an opportunity we come across the following stand taken by the respondent through their written arguments.

If for any reasons this Court finds that the enquiry was not conducted in accordance with law, the respondent has every right under law to be permitted to let in evidence in support of the charges.

In support of the charges, several documents have been produced during the enquiry and at the instance of the petitioner, several documents have been produced before this Court. The respondent has stated that if for any reason this Court decides that the domestic enquiry was conducted in violation of the principles of natural justice it has got a right to let in oral evidence and claimed that it has filed several documents before this Court in its written arguments. It can be seen that respondent on his own voluntarily has adduced oral evidence. Further in the written arguments it has been stated on what evidence each and every charge has been proved. In view of the above the respondent has voluntarily opted to let in oral evidence to prove the charges against the petitioner. Under such circumstances, I am of the view it is not necessary to give another chance and I decide accordingly.

11. It is, therefore, clear that after filing statement of claim before the Labour Court, the appellant-management filed an affidavit for summoning of the witnesses and pursuant thereto, the witnesses were examined by the appellant, and various documents were exhibited to prove the charges levelled against the second respondent and to show that the impugned order of punishment is liable to be sustained in law. The management witnesses were examined in chief and cross-examined at length before the Labour Court on the merit of the case to support that the punishment, as imposed upon the second respondent, is fully justified. In that view of the matter, in our considered opinion the principle and the object laid down by the Supreme Court in the Constitutional Bench decision has been fully complied with by the Labour Court while passing the award. Hence, the impugned award of reinstatement cannot be interfered with on that ground.

12. However, while deciding Issue No. 3 as to whether the second respondent is entitled to reinstatement with back-wages, the Labour Court has not discussed the reasons as to why the employee is entitled to full back-wages while passing the award of reinstatement. It is well settled that no straight-jacket formula can

be evolved while directing payment of back-wages in its entirety. It depends upon the facts and circumstances of each case.

13. In the case of U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, the Supreme Court discussed the issue as to whether the entitlement of back-wages would be automatic or mechanical while granting the relief of reinstatement. The Supreme Court observed in paragraph - 22 as follows:

22. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act.

14. Similar was the view taken by the Supreme Court in the case of Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another, wherein it was observed in paragraphs 6 and 16 as follows:

6. A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that Respondent 1 herein was appointed on an ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24.01.1987. Respondent 1 had filed a written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned Counsel for the appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. In the instant case, the respondent herein had been reinstated from 27.02.2001.

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16. We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations.

However, no just solution can be offered but the golden mean may be arrived at.

15. In the instant case, as noticed above, after the second respondent was placed under suspension he has not contributed anything for the appellant-society. Moreover, no affidavit was filed or evidence was adduced by the second respondent to the effect that he was not gainfully employed anywhere during the period of his suspension. That apart, there was some laches on the part of the second respondent in not participating in the domestic enquiry. In this background, we are of the considered view that the award of 50% backwages will meet the ends of justice and the same would be fully justified. Hence, we modify the award accordingly so far as the backwages is concerned.

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16. After giving our anxious consideration to the entire facts and the reasons given by the Labour Court in the impugned award, we are of the considered view that the same needs no interference by this Court, except with the modification as indicated above. The learned single Judge, therefore, rightly refused to interfere with the award passed by the Labour Court, which, in our view, is based on consideration of entire facts and re-appraisal of the evidence, and further evidence adduced by the appellant-management. The award passed by the Labour Court is affirmed with the modification that the second respondent shall be entitled to 50% backwages.

17. For the reasons aforesaid, the writ appeal stands disposed of. No costs.