
(2002) 05 KAR CK 0029

In the Karnataka High Court

Case No : Writ Petition No. 18849 of 1997

The Management of Siruguppa Sugars and Chemicals Ltd.

APPELLANT

Vs

C.S. Mohan and Another

RESPONDENT

Date of Decision : 28-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10 (4-A), 11 A

Citation : (2003) ILR (Kar) 2701

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : C.M. Nagabhushana, for the Appellant; V.K. Narayanaswamy, HCGP for R2 and K. Subba Rao, for R1, for the Respondent

Final Decision : Allowed

Judgement

Bannurmath, J.—The petitioner/Management of M/s. Siruguppa Sugars & Chemicals Ltd., Gauribidanur, has assailed the correctness of the order dated 17.6.1997 (Annexure T) passed by the II Additional Labour Court, Bangalore, in I.D.No. 90/94 on the preliminary issue holding that the domestic enquiry held is not fair and proper.

2. The brief facts of the case are as follows:

The 1st Respondent who was the workman of the petitioner was by the order dated 1-3-1993, transferred to the Administrative Office, which, it is alleged, has been refused by him. Thereafter, inspite of the transfer (copy of the transfer order has been displayed on the Notice Board) and even the workman has been relieved on 21-6-1993, he did not report for duty at the Administrative Office. This act of refusal to accept and act on the transfer order and in not reporting to duty at the Administrative Office is taken serious note and as such a show cause notice dated 2-7-1993 was issued to the workman. Similarly, it was also alleged that on 12-7-1993 the workman along with other employees entered the chambers of the Deputy General Manager and obstructed the Deputy General

Manager from proceeding to his work and in this regard another show cause notice dated 24-7-1993 was issued to the workman/1st Respondent to which he has sent his explanation. On being found that the explanation offered by the workman was not satisfactory, the petitioner/Management decided to hold a Domestic Enquiry in the charges leveled against the 1st Respondent, as noted in the show cause notices. Accordingly, the notice of enquiry dated 9-10-1993 was issued by appointing an Enquiry Officer and the date of enquiry was fixed as 29-10-1993. According to the petitioner / Management, inspite of receipt of this notice of enquiry fixing the date as 29-10-1993 and inspite of five adjournments till 20-12-1993, the workman did not appear before the Enquiry Officer. Ultimately, on 20-12-1993 he was placed expert. Thereafter on 8.1.1994, 19-1-1994, 20-1-1994 and 1-2-1994 the Management led its evidence. The case was considered on 2-2-1994 and by the report and order dated 13-5-1994 it was held by the Enquiry officer that the charges against the workman were proved and as such the order of dismissal came to be passed. Aggrieved by the same the workman approached the Labour Court u/s 10(4-A) of the Industrial Disputes Act with a prayer that the order of dismissal be set aside and he be reinstated in service with consequential benefits. On issuance of notice the Management entered its appearance.

3. The Labour Court on the basis of the pleadings framed the following issues:

1. Whether the enquiry held is fair and proper?

2. Whether the second party is justified in dismissing the first party?

3. What order?

4. Taking the first issue as preliminary issue, the Labour Court by the impugned order came to the domestic enquiry held is not fair and proper and as such set aside the order of dismissal. As such, aggrieved by the same the Management has filed the present Writ Petition.

5. It is contended on behalf of the petitioner that the Labour Court has without proper application of mind to the facts and circumstances of the case, erroneously and illegally held that the domestic enquiry is neither fair nor proper. Relying upon several pronouncements it is contended that the conclusion arrived at by the Labour Court that there was failure on the part of the Management in not giving sufficient opportunity to the workman and thus there was violation of the principles of natural justice is not correct and as such the impugned finding on the preliminary issue is liable to be quashed.

6. On the other hand, learned Counsel appearing for the workman argued in support of the findings of the Labour Court. The learned Counsel raised a preliminary point as to maintainability of the present Writ Petition. It is contended that, as the Labour Court has given its finding on the preliminary issue which is similar to an interim direction or finding and this Court cannot interfere with such finding while exercising its extraordinary jurisdiction under

Article 226 of the constitution of India. In this regard, the learned Counsel relied upon the following pronouncements of the Apex Court:

1. DP. MAHESHWARI v. DELHI ADMN. AND ORS. AIR 1985 SC 153
2. Sow Chandra Kante and Another Vs. Sheikh Habib, and
3. Vysya Bank Ltd. Vs. General Secretary, All India Vysya Bank Employees" Union, Bangalore and Others, .

7. Referring these, the learned Counsel for the Management has also relied upon the pronouncement of this Court in the case Motor Industries Co. Ltd. Vs. D. Adinarayanappa and Another, and in the case M/s. Triton Valves Limited, Mysore Vs. The Labour Court, Mysore and Another, inter-alia to contend that as the finding on the preliminary issue regarding fairness or properness of domestic enquiry has a serious consequence in view of Section 11-A of the Act and if such a finding is demonstrated to be illegal or erroneous one, it is open for the petitioner/Management to challenge the same and similarly this Court in its writ jurisdiction can interfere with such order.

8. Apart from this technical plea of maintainability, the learned Counsel for the workman also tried to support the finding of the Labour Court on the preliminary issue inter-alia contending that as is demonstrated before the Labour Court and this Court inspite of several requests made by the workman to adjourn the case, no opportunity has been given to him and in fact the workman was placed expert and in his absence the entire proceedings of the domestic enquiry have been completed, thus, depriving the workman of countering the case of the Management. It is further contended that though this is only a finding on a preliminary issue, still no manifest injustice has been caused to the Management, as it is still open to the Management to place all the evidence before the Labour Court to support its order of dismissal made in the domestic enquiry.

9. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondent in detail and perused the records placed before this Court as well as the decisions relied upon by both sides.

10. At the outset, let me consider the preliminary objection raised by the learned Counsel for the workman/respondent regarding the maintainability of the Writ Petition. The contention of the workman is that since the finding on a preliminary issue is similar to an interim finding, this Court exercising the writ jurisdiction should not interfere with such preliminary finding especially when it is still open for the Management to lead evidence before the Labour Court to substantiate its order of dismissal. This Court in the Triton's case cited supra, while considering similar question has observed thus:

"It could thus be seen that, while generally, the tendency to take recourse to Article 226 of the Constitution and to have further proceedings before the Labour Court stalled by an employer who can well afford to approach the higher forums, is to be strongly deprecated as has been done by the Supreme Court in

Maheshwari's case, there would be still be some cases wherein, even on preliminary issue a decision may go to the very root of the matter and the High Court, in appropriate case, may find it necessary to intervene and to pronounce upon the correctness or otherwise of the finding of the Labour Court on the preliminary issue concerned."

11. I have also considered the pronouncements of the Apex Court in the Maheshwari's case (cited supra) and in the Cooper's case (cited supra) and in the case National Council for Cement and Building Materials Vs. State of Haryana and Others, relied upon by the learned Counsel for the workman/respondent. In Maheshwari's case the Apex Court on noting that the Management approaching the High Courts under Article 226 of the Constitution of India on preliminary issue and thus making an attempt to not only prolong the litigation but also cause misery and harassment to the workman observed thus:

"Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of the Supreme Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. (...) Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication in reality necessary and whether it will not lead to other woeful consequences."

12. It is to be noted in that case a preliminary issue was raised as to whether the concerned employee whose services were terminated was a workman within the meaning of Section 2(s) of the Act and on the finding in this regard that he is a workman the Management had challenged the same before the High Court and the Apex Court. In my view, the question whether the delinquent employee is a workman or not being a mixed question of facts and law can very well be adjudicated and substantiated by the Management before the Labour Court when it once again given a chance to lead evidence. But, that is not so in the present case. It is also to be noted that the Apex Court was concerned with the delay of proceedings and the harassment caused to the workmen and as is admitted by both sides in the present case while issuing rule nisi in the present case, this Court had safeguarded the interest of the workman by directing the Management to pay subsistence allowance and as such I do not think any harassment of financial nature would be caused to the workman. Similarly, in the National Council for Cement's case (cited supra) the Apex Court had rejected the Writ Petition filed challenging the interlocutory order made by the Industrial Tribunal, considering the earlier pronouncement of the Apex Court in the Cooper's case (cited supra). In my view, these pronouncements are not applicable to the facts and circumstances of this case. After giving my anxious consideration as to whether this Court should interfere with the order of the Labour Court on a preliminary issue and especially looking into the provisions of Section 11-A of the Act, I have to note that though by introduction of Section 11-A of the Act the

jurisdiction of the Industrial Tribunal and the Labour Court has been widened, still there is a difference between the case in which the domestic enquiry which is held valid and the case in which it is held invalid. As observed by the Apex Court in the case *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, .

"We have indicated the changes effected in the law by Section 11A. We should not be understood as laying down that there is no obligation whatsoever on the part of an employer to hold an enquiry before passing an order of discharge or dismissal."

This Court in *Motor Industries*" case cited supra held thus:

(1) If the domestic enquiry is held valid, the management can persuade the Industrial Tribunal to accept the enquiry and finding as proper and correct and it is open to the Industrial Tribunal to do so. Whereas if the domestic enquiry is held invalid, the management at once loses this benefit and the entire time and money spent on it by the management becomes sheer waste.

(2) If the domestic enquiry is held valid, the management can insist that the same should be accepted and the Industrial Tribunal in order to differ from the conclusion arrived at by the management will have to give very cogent reasons for not accepting the view of the management. But if the domestic enquiry held is invalid the management loses benefit of urging before the Industrial Tribunal for accepting the view taken by it and the Tribunal will be free to ignore the proceedings held by the management completely and to hold fresh enquiry itself.

(3) In a case where a domestic enquiry is held valid, the evidence recorded in the domestic enquiry continues to be a valid piece of evidence against the employee and the management can adduce additional evidence if necessary, in addition to the evidence already adduced before the domestic enquiry. But, if the domestic enquiry, is held invalid, the entire evidence adduced before the domestic enquiry stands vitiated and the management loses the advantage of relying on the said evidence before the Industrial Tribunal.

(4) If the domestic enquiry is held invalid, the management will be open to the attack that it acted illegally, arbitrarily and mala fide, whereas in a case where a domestic enquiry is held valid, the management will not be subject to such an attack.

In view of the above important differences between a case where a domestic enquiry is held valid and a case where a domestic enquiry is held invalid, I hold that the management is entitled to contend that the domestic enquiry held by them in the present case is perfectly legal and valid and as the legal and valid enquiry has been set aside by the Labour Court on the two findings, which are patently illegal and perverse, the order of the Labour Court should be set aside."

Considering these differences, it was observed by this Court that it was perfectly valid for the Management to challenge the order on preliminary issue, I am in

substantial agreement with the findings of this Court in the aforesaid case.

As noted, in the present case the entire argument of the workman and finding given is that the domestic enquiry was not fair and proper and is based on the allegations that while holding such departmental enquiry the Management has failed to give sufficient opportunity to the workman.

If one peruses the impugned order as well as the facts chronologically leading to the impugned order, in my view, it is clear that the finding arrived at by the Labour Court is manifestly erroneous.

The chronological events are as follows:

1. Issue of show cause notice

2-7-93 (first charge) 24-7-93 (second charge)

2. Notice of enquiry date

9-3-93 fixing date of enquiry- 20-10-93

3. Received by workman

15-10-93

4 Dates of enquiry

20-10-93 (workman not present)

8-11-93 (letter of adjournment by workman)

18-11-93 (adjournment at request of workman)

6-12-93 (letter sent to workman for absence intimating if further absent, will be placed ex parte)

20-12-93 (workman placed ex parte)

27-12-93 (documents on behalf of management marked)

08-1-94 Witness examined

19-1-94 (Note: The

20-1-94 Management has

01-2-94 after every adjournment communicated next date of hearing as per Annexure "F" & "D")

2-2-94

Final hearing

1-3-94 intimation to workman Annex G"

21-3-94 request by workman to re-open the case

13-5-94 final order of dismissal passed

These chronological events clearly indicate that the workman was intimated of every of hearing. In spite of such communication if workman remains absent; it is he who is alone to be blamed for the result and not the management.

As such in my view the findings arrived at by the Labour Court that there was no sufficient opportunity given to the workman, is clearly incorrect and illegal one. Hence I am of the view that the impugned order passed by the Labour Court is liable to be quashed.

13. In the result Writ Petition is allowed. Rule is made absolute. The order dated 17-6-97 passed by the Labour Court in I.D. 90/94 vide Annexure-T is quashed. Since the Labour Court has not given any finding on issue No. 2 i.e., whether the management is justified in dismissing the workman, in my view, it would be just and appropriate to remit back the case to the Labour Court to give finding in this regard. It is ordered accordingly. The Labour Court is directed to dispose of the case expeditiously.