
(1965) 02 AHC CK 0021
In the Allahabad High Court
Case No : Civil Misc. Writ No. 1369 of 1959

The New Victoria Mills Co. Ltd.

APPELLANT

Vs

Rohini Kumar and Others

RESPONDENT

Date of Decision : 11-02-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Industrial Disputes Act, 1947 — Section 11A, 15, 4K

Citation : AIR 1966 All 130 : (1965) 10 FLR 256

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : T.N. Sapru, for the Appellant; K.P. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—This is a petition under Article 226 of the Constitution. The main prayer is that the award, dated 16-3-1959 be quashed and for consequential reliefs.

2. The petitioner is a company carrying on the business of manufacture and sale of cotton goods.

3. For an incident which happened in the evening of 4th July 1958 Rohini Kumar, the first respondent, who was at that time working as gate clerk in the petitioner company, was charge-sheeted for misconduct. Under Standing Order 23 (c) which applied to the clerks employed by the petitioner company, taking or giving bribe or any illegal gratification was a misconduct for which the workmen could be dismissed. One of the charges related to the taking of bribe. The charge-sheet was served on Sri Rohini Kumar on 10th July 1958. On 14th July 1958, Sri Rohini Kumar submitted his explanation denying the allegation. The explanation was considered unsatisfactory and an enquiry was directed to be instituted.

The enquiry was conducted by the Assistant Labour Officer of the petitioner company. He recorded evidence of several witnesses and gave an opportunity to

Sri Rohini Kumar to cross-examine these witnesses as also to adduce his own evidence. Sri Rohini Kumar cross-examined some of the witnesses but did not cross-examine the others. Sri Rohini Kumar examined himself in his defence but produced no other witness. The Inquiring Officer found that Sri Rohini Kumar was guilty of the various acts of misconduct for which he was charged. On 25th July 1958 the Mill Manager after having perused the enquiry report and evidence led in the case, passed an order dismissing Sri Rohini Kumar with effect from that date.

4. An industrial dispute with respect to the dismissal of Sri Rohini Kumar was raised and referred to the Regional Conciliation Officer, Kanpur. No amicable settlement was arrived at. Ultimately, the dispute was referred to the labour Court, Kanpur, for adjudication.

5. The Labour Court overruled the employers objection relating to the validity of the reference. It, thereafter, reviewed the evidence led by the parties before the Inquiring Officer, and came to the conclusion that the dismissal of Sri Rohini Kumar was wrongful and unjustified. It directed that he be reinstated with continuity of service and it further directed that Sri Rohini Kumar be given compensation at the rate of one fourth of his average wages from 16th July 1958 to the date of his reinstatement.

6. Being aggrieved, the petitioner company has come to this Court, Of the many points raised in the petition, one is that the State Government has acted in excess of the provisions of Section 11-A of the U. P. Industrial Disputes Act in delegating the function of making reference u/s 4-K of the Act to the Deputy Labour Commissioner. This point has been answered in the negative by several benches of this Court and I have also not been impressed by it. I, therefore, overruled this objection.

7. The next point urged is that Labour Court has exceeded the jurisdiction vested in it in setting aside the finding of the Inquiring Officer and directing that the workman be reinstated. Sri T. N. Sapru, learned counsel for the petitioner, has urged that the Labour Court has no jurisdiction to sit as a Court of Appeal over the report of the Inquiring Officer and to substitute its own judgment of the evidence. It has now been settled by several decisions of the Supreme Court that the Labour Court can interfere with an order of dismissal if it found that the order of dismissal was actuated by any mala fides or by victimisation or was an act of unfair labour practice. See *Caltex (India) Ltd. Vs. E. Fernandes and Another*, and *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, . It can also interfere if the enquiry held by the management was not proper or fair, i.e., if the principles of natural justice were not observed. But if the enquiry was proper, it is not open to the Labour Court to review the evidence and give its own conclusion as to the guilt of the workman. In *India General Navigation and Railway Co. Ltd. and Another Vs. Their Workmen*, B. P. Sinha, C. J. speaking for the Court observed in paragraph 17:

"In our opinion, the Tribunal misdirected itself in looking into the sufficiency of proof led before the enquiring officer, as if it was sitting in appeal on the decision of the employers."

8. In *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, , P. B. Gajendragadkar, C. J., ruled that the finding of the domestic enquiry must be accepted unless it is based on no evidence or is otherwise perverse. It was also held therein that

"since the enquiry has been fairly conducted, and the findings recorded therein are based on evidence which is believed there would be no justification for the Industrial Tribunal to consider the same facts for itself. Findings properly recorded at such enquiries are binding on the parties, unless, of course, it is known that the said findings are perverse, or are not based on any evidence."

9. It is thus clear that the Labour Court has to approach a challenge to the validity of an order of dismissal of a workman from this point of view. It has to see if the enquiry held by the management was fair and proper. It can see whether the order of dismissal was an act of victimisation or an unfair labour practice or was mala fide. If any of these grounds are established, the Labour Court would be justified in ignoring the domestic enquiry and to examine the matter itself and come to the conclusion, whether there was any justification for the order¹ of dismissal. For this purpose it can entertain evidence from the parties, and decide on the balance of it. But if no such ground is established, then it is no business of the Labour Court to review the evidence and to come to its own conclusion on the various factual facets of the involved questions or to conclude that the findings of the domestic enquiry were erroneous. It can interfere with the findings of the domestic enquiry only if those findings either are based on no evidence at all or are perverse. From this point of view, it will not be within the competence of the Labour Court to enquire whether a particular witness has been rightly believed or not, or whether a particular finding was supported by sufficient evidence. It cannot interfere with the conclusions of facts recorded in the domestic enquiry, however erroneous those conclusions may appear to be to the Labour Court. The evidence may be unsatisfactory; the decision may appear doubtful because the appreciation and analysis of the evidence is not proper. The process of reasoning in arriving at a conclusion of a question of fact may on investigation or examination appear unappealing. On these or similar grounds an authority having power to hear an appeal on facts alone can interfere. These grounds do not make the decision perverse. A decision can be condemned as perverse if it is impelled by arbitrariness or prejudice or if it is such, that to a judicial mind it appears that no rational or reasonable person could demonstrably reach that conclusion. Perversity in a recorded finding is a matter of objective determination. If a tribunal holds a finding perverse, this Court can, on being approached under Article 226 of the Constitution, examine the matter. If it is found that the concept of perversity has been misapprehended and misapplied, the decision will betray a manifest error on the face of the record and will be liable to be set aside.

10. The first charge against Sri Rohini Kumar was that in disregard of his duties to check the outgoing drums against the entry in the gate pass, he asked Sri Raja Ham Gupta, a watch and ward sepoy, to allow the extra drums laden in the thela of the contractor to pass out thereby trying to put the company to financial loss which was a misconduct. Sri Rohini Kumar's case was that it was not his duty to check the outgoing material against gate passes. The domestic enquiry had found that it was the duty of Sri Rohini Kumar to so check the outgoing goods and then to enter them in the ledger provided for it. In its award the Labour Court states that the first important question to be determined in connection with the aforesaid charge is whether it was the duty of Sri Rohini Kumar to make a physical checking of the drums. The award then goes on to consider the evidence on this point and ultimately it came to the conclusion that it was not the responsibility of Sri Rohini Kumar to make a physical checking of the outgoing goods. It then held that this charge

"was not proved against Sri Rohini Kumar and the finding of the management holding the charge as proved against him is perverse and erroneous, as it is not supported by the evidence, recorded during the enquiry."

11. The Labour Court has virtually reassessed the evidence. The conclusion is that the charge was not proved on the evidence and the management's finding was not supported by the evidence as such the finding was erroneous and perverse. The word "perverse" has been used by the Tribunal in the sense of the finding being against the weight of the evidence. This is virtually sitting in appeals: some thing which is beyond the competence of the Labour Court.

12. The second charge was that Sri Rohini Kumar has accepted Rs. 20 from the contractor Sri Vinosh Chandra as an illegal gratification for letting those extra drums pass out of the gate. The domestic enquiry had found this charge established. The Labour Court while discussing this charge observed that "the evidence recorded during the enquiry against Sri Rohini Kumar bearing on this charge, did not establish the misconduct alleged against him." It then discussed the evidence on this point and found that it was difficult to believe the evidence.

The award observed "Leaving aside the fact that Sri Vinosh Chandra was a guilty party in the matter and as such his evidence is not reliable, the further fact is that his evidence is not at all convincing." The Labour Court also observed that "It is still more surprising that the Management took no action against Sri Ganga Prasad and Sri Vinosh Chandra, who were the main conspirators in the matter of the illegal gratification." Annexure "E" to the writ petition is a copy of the preliminary report of the Labour Officer. It states that "the whole affairs needs full and further investigation and in my opinion the employees Sarvsri Rohini Kumar and Ganga Prasad Clerk Cotton Godown be asked to explain as provided under the provisions of the Standing Order." Annexure "F" is the order of the Mill Manager. It states "Please charge-sheet Sri Rohini Kumar and Sri Ganga Prasad, Clerks, Cotton Godown under the provisions of the Standing Orders and hold a full domestic enquiry."

These documents were placed on record before the Labour Court, The Labour Court, it appears, fell into an error in ignoring these documents and believing that the Management took no action against Sri Ganga Prasad. Learned counsel for Sri Rohini Kumar has not invited my attention to any material on the record or any part of Sri Vinosh Chandra's statement to the effect that no action was taken against these people. The domestic enquiry had believed the statement of Sri Vinosh Chandra when he stated that he had given Rs. 20 as illegal gratification to Sri Rohini Kumar, The finding of the domestic enquiry is based on evidence and the conclusion of the Labour Court that the finding of guilty recorded against Sri Rohini Kumar is perverse and erroneous finding, as it is not supported by any reliable evidence, cannot constitute a valid ground for interference.

13. As to the third charge, the Labour Court observed that it was general one and much importance cannot be attached to it. Whether the finding on this charge is worthy of interference or not, need not be gone into as it will not make any difference in the result. The view taken by the Tribunal on the main charges was not open to it in law. The Labour Court virtually sat as a Court of Appeal on facts. It was not open to it to do so. The award is in excess of the jurisdiction of the Labour Court and deserves to be set aside.

14. The petition succeeds. The award, dated 16th March 1959 given in Reference No. 110 of 1958 is quashed. The respondents are directed not to enforce the said award or to act in virtue thereof. The petitioner will be entitled to its costs.