

(1978) 03 KL CK 0035
In the High Court Of Kerala
Case No : W.A. No. 320 of 1975

Thomas

APPELLANT

Vs

The Mutholi Corporative Society Ltd. and Others

RESPONDENT

Date of Decision : 02-03-1978

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1978) 03 KL CK 0035

Hon'ble Judges : Gopalan Nambiyar, C.J.; Balagangadharan Nair, J

Bench : Division Bench

Advocate : M.P. Menon and M. Ramachandran, for the Appellant; A.K. Avirah, for 1st Respondent and Government Pleader for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, C.J.—The Appellant was the Secretary of the Mutholi, Co-operative Society Ltd., the 1st Respondent herein, represented by its President. Six charges were levelled against him in respect of certain irregularities and misappropriation committed while he was the Secretary of the Society. A sub committee of the Society went into the six charges and found charges 1 and 4 proved, and the rest not proved. The Charge No. 1 related to misappropriation of a sum of Rs. 200 and Charge No. 4 to a misappropriation of a sum of Rs. 20. In the light of the finding on these charges, the Committee of the Society directed dismissal from service of the Appellant. That gave rise to Industrial Dispute No. 20 of 1968 which was referred for adjudication to the Labour Court, Quilon. By Ext. P-1 Award, the Labour Court, found that the dismissal was unjustified and unsustainable. It set aside the same and directed reinstatement of the Appellant, but denied him backwages on the ground that there was a certain carelessness on his part in writing up the accounts which was responsible for the charges of misappropriation found against him. To quash the award of the Labour Court directing reinstatement, the Society filed O.P. No. 3016 of 1973 and the

Appellant filed O.P. No. 4337 of 1973 against the denial of backwages to him. The latter O.P. was dismissed and there is no further appeal against the same. The former was allowed by the learned Judge and the Labour Court's award directing reinstatement of the Appellant was quashed, with the result that the Appellant's order of dismissal stood. Aggrieved by this order of the learned Judge the Appellant has preferred this appeal.

2. The Labour Court took the view that the finding of misappropriation on Charge No. 1 in respect of the amount of Rs. 200 cannot be sustained; and that, if at all, it was only a case of mistake or negligence on the part of the Appellant and not a case in regard to which a charge of misappropriation could be found against him. In regard to Charge No. 4 again, the Labour Court was of the view that it was not proved. It was in these circumstances, that it directed reinstatement of the workman. The learned Judge of this Court was of the view that the Labour Court had exceeded its jurisdiction in setting aside the finding at the domestic enquiry that the 3rd Respondent was guilty of Charge No. 1. The learned Judge took the view that Charge No. 1 had been proved; and that, that by itself was sufficient to sustain the penalty of dismissal visited on the Appellant. The Labour Court had taken the view that as the penalty of dismissal had been proposed and inflicted on the Appellant, in view of the six charges framed and two found against him, and as all of them except No. 4 had been found unsustainable by the Labour Court the resultant penalty also should fail. In support of this view, the Tribunal had relied on the decision of the Madras High Court in *Royal Printing Works Vs. Industrial Tribunal and Others*, learned Judge in our opinion rightly pointed out that the reliance placed on this decision was wrong, and there was the authority of the Supreme Court ruling in *Burn and Co. Ltd. v. Workman* 1970 (II) L.L.J. 56 to the effect that if, among a number of charges, one or more of a substantial nature have been proved, the proved, charge or charges by themselves would be sufficient to sustain the penalty inflicted, even if, on an analysis, the other charge or charges is or are found to be unsustainable. The proposition may be accepted as well-settled, and as supported by more than one decision of the Supreme Court; and were the position disclosed what it has been stated to be by the learned Judge, we would have little difficulty in sustaining the order of the learned Judge and dismissing the Appellant's appeal. But counsel for the Appellant very rightly directed his attack on a more fundamental aspect of the case. He argued that in this case there had been no enquiry at all, and therefore the proceedings were vitiated and completely opposed to the principles of natural justice. That there had been no enquiry in the proper or legal sense of the term was pleaded by the Appellant in the counter-affidavit. We notice that the plea has been referred to in paragraph 4 of the judgment of the learned Judge, but it had not been discussed or dealt with by the learned Judge.

3. Counsel for the Appellant referred us to the decision of the Supreme Court in *Meenglas Tea Estate Vs. Its Workmen*, . The relevant passage is as follows:

The tribunal held that the enquiry was vitiated because it was not held in

accordance with the principles of natural justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statement made by any witness tendered in evidence. The enquiry" such as it was, was made by Mr. Marshall or Mr. Nichols who were not only in the position of Judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the tribunal was justified in rejecting the findings and asking the company to prove the allegation against each workman de novo before it.

It is plain from the above passage that the requirement and concept of an enquiry would not be satisfied by merely putting a few questions to the workman without examining any witness in support of the charge or without marking any documents or records to prove the charge. The complaint of the Appellant is that nothing further had happened in this case. In *Punjab National Bank Ltd. v. Their workmen* 1959 (XI) L.L.J. 666 the Supreme Court observed:

There is one more point which still remains to be considered and that is the effect of the bank's default in not holding an enquiry in the present case. If the bank has not held any enquiry, it cannot obviously contend before the tribunal that it has bona fide exercised its managerial functions and authority in passing the orders of dismissal and that the tribunal should be slow to interfere with the said orders. It is true as we have already pointed out that if the employer holds a proper enquiry, making a finding in respect of the alleged misconduct of the employee and then passes an order of dismissal the tribunal would be slow to interfere with such an order and would exercise its jurisdiction within the limits prescribed by the Court in the case of *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, .

But it follows that if no enquiry has in fact been held by the employer, the issue about the merits of the impugned order of dismissal is at large before the tribunal and, on the evidence adduced before it, the tribunal has to decide for itself, whether the misconduct alleged is proved, and if yes, what would be

proper order to make in such a case the point about the exercise of managerial functions does not arise at all. This answers the argument which Mr. Sanyal has raised before us in his appeal.

Our attention was also called to the decision in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, . The principles are stated as follows:

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the standing orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fides.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. Case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only if no enquiry has been held or after the enquiry conducted by an employer is found to be defective

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before the Tribunal for the first time punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workmen should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate v. The Workmen* (supra within the judicial decision of a Labour Court or Tribunal. The above was the law as laid down by this Court as on 15th December 1971 applicable to all industrial adjudication arising out of orders of dismissal or discharge.

We would emphasise, in particular, principle No. 5. It is unnecessary for us to notice the provisions of Section 11A of the Industrial Disputes Act, inserted by an amendment in 1971, as, in the last-noticed ruling of the Supreme Court it was ruled that the section has no retrospective operation; and we are concerned in this case with the enquiry conducted prior to the section having been introduced in the Act. We should therefore turn our attention to the question whether there had been any enquiry in this case, and if so, whether it was a fair and proper enquiry which conforms to the principles of natural justice. We have been informed on this question by the learned Government Pleader with reference to the files, that there was no examination of witnesses, no marking of exhibits or records, and no enquiry in the proper or legal sense of the term. All that happened was this. The charge was dated 12th June 1967, the Appellant replied to the charge on 27th July 1967, he was given notice on 2nd August 1967 to produce his evidence and documents if any in support of his defence; but even in the notice, there has no indication of the gist or substance of the evidence that is proposed to be adduced at the enquiry in support of the charge. In pursuance of the notice, the matter was posted to 6th August 1967, when certain questions were put to the Appellant, at the end of which the order of dismissal followed. We are satisfied that this cannot constitute the minimum requirements of an enquiry, in conformity with the principles of natural justice, as expounded by the Supreme Court. The result is that the proceedings of dismissal are vitiated. On this ground, the labour court's award Ext. P-1 has to be sustained, and the learned Judge's judgment has to be vacated.

We allow this appeal, and set aside the judgment of the learned Judge. The result is that O.P. No. 3106/ 973 will stand dismissed. There will be no order as to costs.