
(2008) 03 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 12127 of 2006

Titan Industries Limited

APPELLANT

Vs

A.S. Nagesh Kumar

RESPONDENT

Date of Decision : 19-03-2008

Acts Referred:

Citation : (2009) 1 KarLJ 391 : (2008) 4 KCCR 2906

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : Kasturi Associates, K. Mohan Kumar, Subha Ananthi and Bhoomi Yesaswani, for the Appellant; Mahesha, for K.R. Lakshminarayan Rao, for the Respondent

Final Decision : Allowed

Judgement

Subhash B. Adi, J.—This writ petition is directed against the award dated 15.5.2006 in ID No. 63/2005. The respondent was working as a driver. Ha was charge sheeted for unauthorisedly removing the Co. Car at about 8.45 P.M on 31.12.1994 and thereafter got 50 Liters of Petrol filled for the vehicle and using the said vehicle unauthorisedly for about 100 Kms. consuming 40 Liters of Petrol till 2.1.1995. In this regard, the inquiry officer submitted a detailed report as per Annexure-C inter-alias holding that in terms of the admission made by the respondent that, ha was on duty and he had taken the vehicle at about 4.30 P.M at the direction of one Kamalapathy and got filled 50 Liters of Petrol held that the charges are proved. The Disciplinary Authority based on the findings of the Enquiry Officer and also on consideration of the reply given by the respondent found that the respondent is guilty of misconduct and imposed an order of dismissal.

2. The respondent raised a dispute before the Labour Court. The Labour Court held that the inquiry is fair and proper by its order dated 8.6.2000. However, on re-appreciation of the evidence found that there is contradiction between the evidence of Kamalapathy and Joseph Mariadass and in the light of the

contradiction, the Labour Court end held that, the charge is not proved and directed the management to reinstate the respondent with full backwages and consequential benefits and also imposed cost of Rs. 1,500/-.

3. Sri. Kasthuri, learned Senior counsel appearing for the petitioner-Management submitted that the respondent has admitted that, he had taken the Car from the premises of the Company and has also admitted that he got filled 50 Liters of Petrol. The only defence of the respondent is that, he had kept back the Car in the Company premises at about 6.15 P.M. In this regard, he relied on the statement of the respondent given before the inquiry officer wherein the respondent has stated that he had removed the Car at the direction of Kamalapathy. Learned senior counsel referred to the evidence of Kamalapathy and submitted that the respondent though has cross-examined Kamalapathy, but did not make any suggestion, as to whether the Kamalapathy had asked him to remove the Car. Relying on the evidence of Kamalapathy as well as the evidence of the respondent, he further submitted that, removing the car from the premises is admitted by the respondent. In this regard, he also relied on the Daily Duty Register and referred to the Register dated 31.12.1994 and pointed out that, the name of the respondent is not mentioned in the Duty Register. If the respondent was not on duty, he had no right to remove the Car from the premises of the Company. The fact remains that the respondent has removed the Car and got the Petrol filled, than the burden was on him to show, as to how he removed the Car. He also submitted that the case of the respondent is that he was on emergency duty but no such material is produced before the Enquiry officer to show that the respondent was on emergency duty. Despite of the admission of the respondent that he had taken the car from the Company premises and got the Petrol filled in the Car, the Labour Court has committed an error in reversing the punishment. If the respondent has taken a stand that he was on emergency duty, the respondent should have proved the same. He further submitted that there is no material to show that after the respondent any other person has removed the Car.

4. In so far as the contradictions are concerned, learned Senior counsel further submitted that, Joseph Mariadass has stated that he was on duty on the said date from Morning 7.00 A.M. to Night 10.00 P.M. Merely because there is a discrepancy in the Attendance Register, that by itself will not vitiate the entire evidence given by Joseph Mariadass. He being on duty till 10.00 P.M. on 31.12.1994, has stated that, the respondent had taken the vehicle from the premises. He also submitted that the respondent being the driver had allowed him to remove the Car from the Company Premises.

5. He also submitted that, once the employer loses confidence on the employee, even assuming that the charge is not proved, the Labour Court was not justified in directing reinstatement of the respondent. In this regard, he relied on the judgment reported in the case of Francis Klein and Co. (P) Ltd. Vs. Their Workmen and Another, , in the case of Air-India Corporation, Bombay Vs. V.A.

Rebellow and Another, and in the case of L. Michael and Another Vs. Johnson Pumps Ltd., . Relying on these judgments, he further submitted that, if the employer loses confidence on the employee, the Labour Court exercising its power u/s 11-A should not have directed reinstatement of the respondent. If the decision is in good faith and bona fide, even otherwise also the direction of reinstatement should not have been passed.

6. He also pointed out that, the enquiry is held as fair and proper. Once the enquiry held is fair and proper, the scope of interference with the findings of Enquiry Officer is limited. He further submitted that, the Labour Court ordinarily will not interfere with the findings of the inquiry officer unless it is pointed out that the findings are perverse or the action is taken to victimise the employee. By referring to the award, he further submitted that the Labour court has proceeded to interfere with the findings of the enquiry officer on the question of victimisation. But the entire evidence of the respondent does not, show any ground of victimisation.

7. Sri. Mahale, learned Counsel for the respondent submitted that the charge for removing the Car at about 8.45 P.M. by the respondent is not proved. If the charge is not proved, the Labour Court was justified in interfering with the punishment. He relied on the evidence of Joseph Mariadass and pointed out that, his duty is for 12 hours and it commences at 7.00 A.M. If his statement is correct, then the duty comes to an end at 7.00 P.M. He further relied on the duty roster and pointed out that, according to the duty roster, the duty of Joseph Mariadass started at 10. P.M. on 31.12.1994. If that is so, Joseph Mariadass was not on duty. He also relied on the evidence of Joseph Mariadass and submitted that Joseph Mariadass states that the Car, which was removed from the Garage is Contessa and not Maruthi. He further submitted that there are serious contradictions in the evidence of Joseph Mariadass and Kamalapathy. In such circumstances, the Labour Court considering both the evidence has found that, there is no evidence to support the charge and as such the findings of the Enquiry Officer are perverse. He also submitted that, the vehicle was removed by the respondent is not in dispute. He also submitted that the vehicle was removed at the instance of Kamalapathy and after filling the Petrol, the same was parked in the Co. premises at about 6.15 P.M. and there is no evidence to show that the vehicle was removed by the respondent at 8.45 P.M. Even as regards Ex.M.15, he submitted that, the said letter shows that there is interpolation and the word "evening" is corrected as at about 9.30 P.M, and the same cannot be accepted. If the evidence on record do not support the charge, the question of imposing punishment does not arise. When the charge of removing the Car at 8.45 P.M. is not proved, the whole case fails and the order of punishment was rightly interfered by the Labour Court.

8. The facts, which are not in dispute, are:

That the Car was removed on 31.12.1994 and 50 Liters of petrol was filled, is evidenced by documents such as Ex. M. 7 a Bill for Rs. 991.50 Ps. issued by one

D.M. & Sons towards purchase of 50 Liters of Petrol on credit in respect of the said vehicle. This is also supported by the admission made by the respondent. The respondent in his evidence has stated that he removed the vehicle at about 4.30 P.M. at the instance of Kamalapathy. Removing the vehicle is admitted but whether it is at the instance of Kamalapathy or not is not proved by the respondent. However, the evidence of Joseph Mariadass shows that he was on duty on the said date and he saw the respondent removing the car. The dispute is, as to what time the vehicle was removed. According to the case of the petitioner, it was at about 8.45 P.M. whereas the respondent claims that he has removed the vehicle at 4.30 P.M. and kept it back at 6.15 P.M. Joseph Mariadass evidence shows that the car which was removed was a Maruthi Car but there is no evidence on record whether there was a Maruthi Car in the garage. The labour Court has attached much importance to the contradiction in mentioning the type of car. In my opinion, whether it is a contessa car or Maruthi car, the fact remains that the car is removed. The Labour Court should not have given much importance to the type of car. The Labour Court has relied on the statement of Joseph Mariadass to point out that, according to him, his duty starts at 7.00 F.M. for 12 hours and it should end at 7.00 P.M. But the duty roster shows that his duty starts at 10.00 P.M. on the said date. The statement of Joseph Mariadass on this aspect shows that his duty though starts at 7.00 A.M. he remains till 10.00 P.M. and he saw the vehicle being removed by the respondent.

9. There is no dispute that, that Saturday was a Holiday for the Company and unless there is special duty or emergency duty, the employees are on Holidays. In order to substantiate the case of the respondent, the respondent has taken a stand that, he was on emergency duty. In this regard, it is necessary to look into the documents, which are produced by the petitioner, such as the duty register, which is produced at Annexure M.1. Annexure-M.1 particularly dated 31.12.1994, does not show the name of the respondent being on duty and even the second shift which starts from 3.00 P.M. to 10.00 P.M. also does not show the name of the respondent. To this extent, the Labour court should have considered, as to how the respondent attended to duty on the said date and at whose instance he attended the said duty. The Labour Court has taken in to account the contradiction in order to hold that the finding by the Enquiry officer is perverse. When the respondent admits that, he was on duty and had taken the vehicle from the premises, the minimum that was necessary on the part of the respondent was to show, as to how he was on duty and why he removed the said vehicle. The attendance register which was marked as Annexure. M.1 discloses that the respondent was not on duty on the said date. If the respondent was not on duty on the said date and if the respondent alleges that he took the Car at the instance of Kamalapathy, then necessarily, this aspect should have been proved by the respondent, though the Kamalapathy is cross-examined by the respondent, but no suggestion is made to him regarding the removal of Car by the respondent at the instance of Kamalapathy.

10. Joseph Mariadass is one of the witnesses who has been examined by the

Management. Nodoubt, Joseph Mariadass evidence goes contrary to the evidence of Kamalapathy as regards to the time is concerned. Nodoubt, the duty register of Joseph Mariadass does not show that his duty starts from 7.00 A.M to 10.00 P.M or 7.00 A.M to 7.00 P.M. what is necessary to be seen here is according to the duty register which is produced at Annexure-M.1 which shows that Joseph Mariadass was on duty for the third shift commencing from 10.00 P.M of 31.12.1994 to 1.1.1995 and the said duty register also bears the signature of Joseph Mariadass having signed the same at about 9.50 P.M. If this evidence is taken into account, it only shows that Joseph Mariadass came to duty at 10.00 P.M and he cannot have the knowledge about the alleged incident at 8.45 P.M. Insofar as Kamalapathy is concerned, who has been examined in this case has no personal knowledge of removing the vehicle at 8.45 P.M. The document which speaks about the vehicle being taken to the petrol bunk after 9.45 P.M. is Ex.M.15, the letter alleged to have been written by one R. Narayana the Manager (Administration) stating that the vehicle had come to the bunk at 9.30 P.M. The said parson is not examined in support of the same. In so far as consumption of petrol of 40 Liters from the vehicle, which was noticed on 2.1.1995 is not seriously disputed by the parties. From the evidence on record and the findings by the Enquiry officer, it is clear that the vehicle was removed on 31.12.1994 and 50 Liters of Petrol was filled in the said vehicle and it was kept back, only on 2.1.1995, the date on which the office re-opened and it was found that, 40 Liters of petrol was consumed. To this extent, the parties are not seriously disputing.

11. In such circumstance, whether the Labour Court was justified in ordering reinstatement of the respondent, when the serious allegation in the nature of theft is alleged against the respondent. Nodoubt the evidence fully does not support the case of the management to prove the charge. But nevertheless, there is no malafide alleged against the management. When the Labour Court wants to consider the finding of the Enquiry officer on the question of victimisation, it necessarily requires to consider as to what is the nature of evidence available on record in proof of victimisation. In the evidence of the respondent, the respondent has not alleged any malafide against the petitioner. Even assuming that the finding lacks evidence to prove the charge, however, that by itself is not a ground for the Labour Court to set aside the punishment. The enquiry has been found as fair and proper, in the light of the admission by the respondent that, he had taken the vehicle on that date, and having failed to prove that he was on duty, and he had removed the vehicle without proper permission. At the same time, it is not known as to how Joseph Mariadass who was the security officer permitted the respondent.

12. In the light of serious charge having been alleged and evidence being insufficient from both side and the respondent having admitted that he removed the vehicle and not having proved the permission from Kamalapathy to this extent, the alleged unauthorised removal of the vehicle can be inferred. In such circumstances, the employer losing confidence on the employee is but natural. No malafide is alleged in initiation of enquiry and if the enquiry is in good faith

based on the circumstance, the Labour Court should have considered as to whether the direction for reinstatement could have been passed or not. In this regard, learned Counsel for the petitioner had relied on the judgement reported in the case of Francis Klein and Co. (P) Ltd. Vs. Their Workmen and Another, , wherein the Apex Court has observed as follows:

Even if the Management considers that Nayan Singh should not be given guard duty because of the Co. loss of confidence in him, as claimed by them, he may be allotted some other Job nature as found suitable. Even this direction is not a valid direction before if once the Co. has lost confidence in its employee, it is ideal to ask them to employ such a person in another job. What job can there be in a Co. the person can be entrusted with and which does not entail reposing of confidence in that person. He are informed that Nayan Singh has been receiving half of his salary until now which works out to be Rs. 9,000/-. While setting aside the award of the Tribunal by allowing this appeal, we maintain the order terminating Nayan Singh and direct the appellant to pay Rs. 5,000 within two months as compensation for termination on account of loss of confidence which circumstance will meet the ends of justice.

13. In the said judgment the order passed by the High Court, placing the employee to a lower post in the light of loss of confidence was set aside by the Apex court. In a similar circumstance, even the Apex court in a judgment reported in the case of L. Michael and Anr. v. Johnson Pumps India Ltd. reported in 1975 (I) LLJ 252, has observed that:

Loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and motivations. The court is concerned with that latter and not the former, although circumstances, may exist which justify a genuine exercise of the power of simple termination. In a reasonable case of a confidential or a responsible post being misused or a sensitive or a strategic position being abused, it may be a high risk to keep the employee, once suspicion has started and a disciplinary enquiry cannot be forced on the matter. There, a termination simpliciter may be bonafide, not colourable, and loss of confidence may be evidentiary of good faith of the employer.

14. In the said case it is observed that even when on enquiry, a termination order is passed on the ground of loss of confidence and which risk employer to keep the employee under suspicious circumstances, the Apex Court has upheld the termination simplicity nodoubt such case relates to high risk of suspicion on account of position held by the employee. In this case, the respondent being the driver and if the management has suspected the misuse of vehicle or use of vehicle unauthorisedly, nothing wrong on the part of the management to lose confidence on the said parson. In the same line, even the Apex Court in the judgement reported in Air-India Corporation, Bombay Vs. V.A. Rebellow and Another, in para-15 has observed:

...It may be conceded that an employer must always have some reason for

terminating the services of his employee. Such reason apart from misconduct may inter alia, be want of full satisfaction with his overall suitability in the Job assigned to the employee concerned. The fact that the employer is not fully satisfied with the overall result of the performance of his duties by his employee does not necessarily imply misconduct on his part. The only thing that remains to be seen is if in this case the impugned order is mala fide. The record merely discloses that the appellant had suspicion about the complainant's suitability for the job in which he was employed and this led to loss of confidence in him with the result that his services were terminated under Regulation 46. In our view, loss of confidence in such circumstances cannot be considered to be mala fide. We are unable to conceive of any rational challenge to the bona fides of the employer in making the impugned order in the above background. The complainant it may be remembered had to deal with Air Hostesses in the performances of his duties and if the appellant was not fully satisfied beyond suspicion about his general conduct and behaviour while dealing with them it cannot be said that loss of confidence was not bona fide. Once bona fide loss of confidence is affirmed the impugned order must be considered to be immune from challenge. The opinion formed by the employer about the suitability of his employee for the Job assigned to him even though erroneous if bona fide, is in our opinion final and not subject to review by the industrial adjudication. Such opinion may legitimately induce the employer to terminate the employee's services; but such termination can on no rational grounds be considered to be for misconduct and must therefore, be held to be permissible and immune from challenge.

15. Though the Apex Court under the facts and circumstances of the said case, has held that, if the decision of the employer losing confidence in employee is bona fide, the Industrial Tribunal should not interfere with the punishment. In this case, the fact that the respondent had removed the vehicle is not disputed and the fact that the respondent is the driver is not disputed. The respondent did fill 50 Liters of Petrol is also not in dispute. Whether he used the vehicle whole of the night on 31.12.1994 or night not have been proved but there is nothing wrong, for the employer losing confidence on such employee. This aspect of the matter is totally ignored by the Labour Court. The Labour Court has falsely thrown burden on the Management to prove that the respondent was not a faithful employee. The approach by the Labour Court appears to be not justified. Even assuming that the charge is not fully proved but, the fact as to whether the employer should keep the employee in the employment or not is also the matter which should have been considered by the Labour Court and this fact have not been considered.

16. In the light of the above finding, I pass the following order;

17. The writ petition is allowed and the award is quashed, the Labour court is directed to consider the matter on the question of reinstatement in the light of the decision of the Apex Court and also the evidence on record and also the

circumstance stated above. The Labour Court is directed to dispose of the matter within three months from the date of receipt of a copy of this order.