
(2006) 05 RAJ CK 0068
In the Rajasthan High Court

Union of India (UOI) and Another	Vs	APPELLANT
Laddu Singh and Others		RESPONDENT

Date of Decision : 24-05-2006

Acts Referred:

Citation : (2007) 2 RLW 1102

Hon'ble Judges : Gyan Sudha Mishra, J; Chatra Ram Jat, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G.S. Misra, J.—This appeal has been preferred against the order dated 7.3.2006 passed by the learned Single Judge, who has been pleased to dismiss the writ petition holding therein that the enquiry held by the appellants-Union of India through the Western Railway against the respondent-workman was vitiated and therefore, an order was passed by the learned Member of the Central Government Industrial Tribunal that the appellants-Union of India and the respondent-workman will adduce evidence before the Tribunal, in order to arrive at a just conclusion, as to whether the termination of the respondent-workman was illegal or not.

2. It appears that the respondent had been appointed in the Western Railway and after his appointment, he is alleged to have quit the job of his own after eight days of service. In this regard a Departmental Enquiry was conducted by the Western Railway against the respondent-workman, after which his services were terminated, the respondent-workman approached the Central Government and a reference was initiated, which was sent to the Industrial Tribunal for adjudication, to consider, as to whether the termination of the respondent-workman could be upheld and in case it was unjustified, the question had to be considered, whether he was entitled to any relief or not.

3. At the stage of adjudication of this reference, the appellants-Union of India took the plea that the termination of the respondent-workman after a full-fledged

domestic enquiry was wholly justified, but the learned Member of the Industrial Tribunal held that the domestic enquiry at the instance of the Union of India was not fair and proper, as the enquiry was ex- parte in nature and no evidence had been adduced by the Union of India in support of the charge levelled against the respondent-workman. In that view of the matter, the Industrial Tribunal passed an award on 8.11.200.1 that both the parties will be at liberty to adduce evidence before the Tribunal in order to consider the justification of the order of termination of the respondent-workman. This has been treated as a thorny issue by the Union of India and it has been vehemently contended by his counsel Mr. Sharma that the domestic enquiry was not vitiated and the termination of the respondent after a full-fledged enquiry was fit to be upheld by the Tribunal. It has further been contended that the term of reference having been indicated, as to whether the termination of the respondent was legal or illegal, it was the duty of the Tribunal to adjudicate on this question independently and should have passed an award finally as to whether the termination was legal or illegal. According to his submission, the impugned award passed by the Tribunal directing the parties to adduce evidence in regard to termination is wholly uncalled for, unjustified and as such illegal.

4. We find absolutely no substance in the arguments advanced by the counsel for the appellants as it is well settled and is "stare-decisis" that once the domestic or departmental enquiry held by the Management or the Employer is held to be vitiated, the delinquent employee and the employer has to adduce evidence in support of its plea to be considered independently by the Tribunal in order to arrive at an independent finding of fact before passing the award. Therefore, the instant case, where the enquiry was ex-parte in nature, if the Tribunal has passed the order directing the parties to adduce evidence before the Tribunal in order to arrive at an independent finding as to whether the plea taken by the Union of India was correct or not, it cannot be faulted at all in our view so as to contend that the Tribunal should have straight away passed the award for if this were to be the correct position, the task of the Tribunal would be mechanical and the reference of the dispute will be rendered an exercise in futility. The position of law is thus settled that if a domestic enquiry is held to be illegal for want of evidence and the Tribunal arrives at a finding that the finding of fact recorded in the domestic enquiry was defective for want of adequate evidence, the Tribunal is well within its legal jurisdiction to direct the parties to adduce evidence to arrive at a just finding thereafter, as has been done in the instant matter. In that event, we fail to understand the assertion of the counsel for the appellants that this was an illegal unjustified and uncalled for order and his insistence; that the Tribunal should have straight away passed the final award. Reference of the dispute before the Tribunal could not have been adjudicated by the Tribunal in a mechanical manner relying upon the domestic enquiry held by the Employer-Union of India, as in that event the whole purpose of reference of the dispute before the Tribunal would be totally futile and would result into an order without seeing its end result. It is no doubt true that if the Tribunal had come to a finding

that the evidence led before the Tribunal was correct, then in that event the final award had to be passed by the Tribunal, but in the wake of the preliminary finding of the Tribunal that the appellant-Union of India had failed to lead adequate evidence before passing an order of the termination, the contention of the counsel that inspite of his lacuna, the final award should have been passed, is absolutely without any legal force.

5. We thus find no merit in this appeal and consequently it stands dismissed at the admission stage itself.

6. It goes without saying that the ultimate finding of fact will be recorded by the Tribunal after appreciating the evidence led by the contesting parties while deciding the reference and shall not be influenced with any of our observation made here-in-above.