

(1999) 06 AP CK 0011
In the Andhra Pradesh High Court
Case No : WA No. 494 of 1999

Voltas Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court-II and Another

RESPONDENT

Date of Decision : 16-06-1999

Acts Referred:

Citation : (1999) 4 ALD 145 : (1999) 4 ALT 141 : (1999) 2 APLJ 199 : (1999) 2 LLJ 1296

Hon'ble Judges : M.S. Liberhan, C.J;G. Raghuram, J

Bench : Division Bench

Advocate : Mr. C.R. Sridharan, for the Appellant; Government Pleader for Labour and Mr. A.K. Jayaprakash Rao, for the Respondent

Judgement

M.S. Liberhan, C.J.—This appeal arises out of an order of the learned single Judge dismissing the writ petition filed by the appellant-management against the order of the labour Court whereunder the order of dismissal passed by the appellant-management against the 2nd respondent-employee has been set aside and directed reinstatement of the employee in service with full backwages and other attendant benefits, however, with an opportunity to the management to lead further evidence in the matter in support of its decision of imposing punishment as against the 2nd respondent.

2. The facts of the case are that the 2nd respondent has been proceeded in a disciplinary proceeding on the charge that he assaulted a co-worker and the domestic enquiry resulted in his dismissal from service which was challenged before the Labour Court. The Labour Court, on a consideration of the material on record, come to the conclusion that principles of natural justice were violated during the course of enquiry, the copy of the enquiry report was not supplied to the delinquent before his explanation was called for with respect to the proposed punishment, the co-employee of the management was not present on the date when the matter was posted for enquiry and the Enquiry Officer instead of granting an opportunity to the respondent, proceeded with the enquiry without

granting any adjournment, the workman was deprived of the assistance of an advocate as desired by him as well as the assistance of a co- employee and it was conducted by the Enquiry Officer himself. However, the Labour Court has granted opportunity to the appellant to lead evidence afresh in order to prove the charge against the delinquent. The learned single Judge came to the conclusion that these findings are findings of fact arrived at by the Labour Court and do not suffer from any infirmity and accordingly declined to interfere in the matter. The appellant has impugned the said order in these proceedings.

3. The learned Counsel for the appellant vehemently argued that no request for assistance of a co-owner or a union leader was made by the respondent-employee and the employee wanted an observer which was agreed to by the Enquiry Officer. Thus, the finding of the Labour Court to the effect that assistance of a co-owner was denied to the employee which violated the principles of natural justice cannot be sustained. It is submitted that a copy of the findings though on facts was served in the present case along with the proposed punishment, yet, the same cannot be set aside even if the copy of the enquiry report was not served on the respondent unless prejudice is shown to have been caused to the respondent. The learned Counsel for the appellant in support of his contention relied upon the decision of the Supreme Court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,* . At this stage, we may hasten to add that the learned single Judge observed that since no final order has been passed against the appellant, consequently, the order does not call for any interference at the ad interim stage. The learned Counsel for the appellant further contended that the question whether the respondent is a workman or not should be decided as a preliminary issue before going into the merits.

4. The factual matrix of the case is not in dispute. We have gone through with the assistance of the learned Counsel for the appellant the proceedings dated 26-9-1995 produced, wherein the request of the delinquent officer has been recorded to be asking for the Production Supervisor to act as an observer on his behalf in the enquiry and permission was granted to bring the Supervisor to assist the employee and to act as an observer in the enquiry. A reading of the said proceedings makes it discernible that the enquiry proceedings were recorded in English and being explained to the delinquent in Telugu. Thus, it could be assumed that the delinquent was not well conversant with the language in order to defend himself properly. Be that as it is, from a reading of the proceedings, and sharing the ordinary human course of conduct, it would appear that the assistance of a co-worker was sought and in the alternative of an advocate and the only facility made available to the respondent-employee as per the record was that he was only provided with an observer. However, there is nothing on record to show that Mr. Manik Reddy who was appointed as an observer had participated in the enquiry by assisting the delinquent. At this stage, the learned Counsel for the appellant by referring to the proceedings recorded by the Enquiry Officer submitted that the delinquent wanted to cross-examine the witnesses himself as the assistance of a co-worker was not available. The learned Labour

Court taking the totality of the facts and circumstances of the case into consideration came to the conclusion that the principles of natural justice have been violated and a proper opportunity has not been given to the delinquent to defend himself properly in the facts and circumstances of the case and therefore a further opportunity has been given to the appellant to lead evidence to prove the charge before the Labour Court. The learned single Judge has affirmed the said finding of the Labour Court. On a consideration of the material on record, we find no error in the finding of the learned single Judge that the respondent-employee was not given a proper opportunity to defend his case and that the enquiry is vitiated for violation of the principles of natural justice.

5. The learned Counsel for the appellant vehemently argued that even if the findings of the Labour Court that principles of natural justice have been violated and the enquiry report was not supplied to the delinquent on the proposed punishment are presumed to be correct, the respondent has not shown that any prejudice has been caused to him. The learned Counsel for the appellant has relied upon the decision of the Supreme Court in *State Bank of Patiala and others Vs. S.K. Sharma*, .

6. We find no force in the submission of the learned Counsel for the appellant. The observations of the Supreme Court on which reliance was made by the learned Counsel for the appellant were made in the text and context of the facts of that case. It is well established law that where principles of natural justice have been violated in matters involving civil consequences, that would per se constitute prejudice to the party against whom an order is passed and the law is consistent from *Binapani Dei's case State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , till date on the issue. Be that as it may the appellant does not suffer any prejudice if appropriate witnesses are examined before the Labour Court which is an independent authority to come to a just conclusion with respect to the charges levelled against the appellant and it is consistent with the well established principle that justice should not only be done but appear to have been done. In a social welfare legislation, satisfaction of the worker that he has been dealt with fairly with a fair procedure is more important for industrial peace rather than relying on technicalities of law. The entire industrial law is based on the need to achieve industrial harmony and to denude the technicalities of law from its procedural law or otherwise.

7. So far as the supply of copy of the findings of the enquiry before a notice against the proposed punishment is issued is concerned, we leave that question open and the same need not be determined at this stage, once we have come to the conclusion that the proceedings violate the principles of natural justice. In order to finally determine the issue raised, reference may be made to Model Standing Order No.21(4)(c) issued under the Industrial Employment (Standing Orders) Act, 1946, wherein it is provided that if on the conclusion of disciplinary proceedings, the workman has been found guilty of the charges framed against him and it is considered after giving him a reasonable opportunity of making

representation of the proposed penalty, the employer shall pass an order accordingly. Though it is stated at the bar that a copy of the findings of the enquiry has been furnished to the employee, but, from the record, it appears that the procedure of supplying copy of the enquiry report in terms of the Model Standing Order 21(4)(c) was not followed and the report was not furnished. Without expressing any opinion on this issue, which was not the final conclusion of the Labour Court and especially when it was found by the learned single Judge that was not the consideration which influenced the Labour Court while setting aside the order, we find no force in the submission of the learned Counsel for the appellant.

8. The question whether the respondent No.2 is a workman or not is purely a question of fact and requires a finding on it on the equitable principle envisaged by the CPC to the effect that which issue is to be treated as preliminary issue or whether any evidence is required to be adduced or whether the question can be determined on the pleadings alone. Normally, it is only in cases where the issue relates to the jurisdiction of the Court or where a bar is created by law for instituting the claim, such issues are treated as preliminary issues. Where the evidence is required to be recorded on the issue, it is always desirable that the case is finally disposed of on all the issues in order to shorten the agony of the litigant public. Since the issue whether the respondent No.2 is a workman or not is purely a question of fact requiring evidence to be recorded by both sides, it is desirable that the case is finally disposed of on all the issues in the interest of justice.

9. The learned single Judge in exercise of his discretionary jurisdiction declined to interfere in the impugned order as no substantial injustice has been shown to have been caused to the appellant especially when no final adverse order is passed against the appellant by the Labour Court. We find no error in the observations made by the learned single Judge. The appellant will be at liberty to raise all questions and objections against the final order that may be passed, in accordance with law.

10. In view of the observations made above, we find no merit in the appeal and it is accordingly dismissed. No costs.