The Cooper Engineering Limited

Vs

Shri P. P. Mundhe

Civil Appeal No. 1716 of 1969

(A.Alagiriswami, P.K. Goswami, N.L. Untwalia JJ)

20.08.1975

JUDGMENT

GOSWAMI, J. -

1. The important question which has been pinpointed in this appeal by special leave is whether when a domestic inquiry held by an employer is found by the labour court as violative of the principles of natural justice there is any duty cast upon that court to be give an opportunity to the employer to adduce evidence afresh before it and whether failure to do so would vitiate its award.

2. In the present case the workman concerned was charged under the standing orders of the company for soliciting or collecting from the employees contribution for some purpose (allegedly purchase of microphone and loudspeaker arrangements) within the factory premises. The workman denied the charge of soliciting or collecting contribution within the factory premises (for purchase of microphone and loudspeaker) but added that

for this purpose I collect the said contribution outside the gate of the company and this being so, such erroneous information supplied to you by someone should not be considered acceptable.

3. After holding the domestic inquiry in which some witnesses were examined by the employer and cross-examined by the workman and questioning the workman at the outset as well as the end of the inquiry, the Enquiry Officer submitted a very brief report to the works manager (hereinafter the Manager) holding that the charges were established. He did not give any detailed resons for preferring the evidence of the six witnesses examined on behalf of the employer in the inquiry to the version of the workman. The manager after perusal of the report of the Enquiry Officer passed the order of dismissal without adverting to the evidence in the inquiry. This was particularly necessary since the Enquiry Officer had not given his reasons for his finding. Another incident occurred during the inquiry before the manager. The workman after answering the first question of the manager, when another question was put, abruptly left the inquiry without paying any heed to the orders of the manager and to persuasion of other officers present asking him to wait. The dismissal order was passed the same afternoon.

4. In this appeal we will proceed on the assumption that the domestic inquiry was rightly found by the labour court to be defective. The labour court is aware of the legal position that it was competent in this case to take evidence of the parties and come to its own conclusion on the merits of the case and to decide whether the order of dismissal was justified or not to enable it to consider about the relief, if any, to be awarded to the workman. The labour court, however, observed in its award that

in the instant case no evidence regarding merits is led by the opponent before this Court .... it is open to the Labour Court to hold an enquiry itself. But the opponent has chosen not to lead any evidence regarding the merits of the alleged misconduct. The natural result of vitiating the enquiry would therefore be to set aside the order of dismissal and to direct the reinstatement in the service of the dismissed employee with all back wages.

5. The question posed at the commencement of our judgment is thus highlighted by the aforesaid observations of the labour court and we are required to consider whether after the labour court comes to a decision about the inquiry being defective it has any duty to announce its decision in that behalf to enable the employer an opportunity to adduce evidence before it to justify the order on the charge levelled against the workman. There is, however, no doubt that when the employer chooses to do so the workman will have his opportunity to rebut such evidence. There is also no doubt, whatsoever, that if the employer declines to avail of such an opportunity, it will be open to the labour court to make an appropriate award and the employer will thereafter be able to make no grievance on that score.

6. In dealing with a case of dismissal of an industrial employee, this Court has time and again adverted to various principles and it is not necessary to recount all those decisions. It will be sufficient to concentrate our attention only on a few of the decisions so far as material for our purpose and which are also rightly referred to at the Bar.

7. The first case arising out of an award that has a material bearing on the question is that of Workmen of Motipur Sugar Factory (Private) Limited v. Motipur Sugar Factory ((1965) 3 SCR 588 : AIR 1965 SC 1803 : (1965) 2 LLJ 162) which is a decision of four learned Judges. Inter alia, the question that arose in that appeal was as to whether, since the management held no inquiry as required by the standing orders, it could not justify the discharge before the Tribunal. In Motipur Sugar Factory's case (supra), the Court observed at page 597 of the report as follows :

If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry given. On the other hand, if in such a cases the employer is given an opportunity to justify the impugned dismissal on the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so the tribunal tries the merits itself. This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes.

8. The consequence that can ensue from a contrary view, as noticed by the Court in Motipur Sugar Factory's case (supra), will appear from what took place in the Management of Northern Railways Co-operative Society Ltd. v. Industrial Tribunal, Rajasthan, Jaipur ((1967) 2 SCR 476 : AIR 1967 SC 1182 : (1967) 2 LLJ 46) where pursuant to the award after reinstating the employee the management drew a fresh proceeding and passed a fresh order of removal and the said order was again the subject-matter of another reference to the industrial tribunal.

9. The pertinent question that arises for consideration is whether it is the duty of the Tribunal to make known it decision to the parties on this jurisdictional aspect of the case so that the employer can avail of the opportunity to justify the dismissal based on the charge.

10. In Management of Ritz Theatre (P) Ltd. v. Workmen ((1963) 3 SCR 461, 469-470 : AIR 1963 SC 295 : (1962) 2 LLJ 498), this Court was required to deal with a rather ingenious argument. It was contended in that case by the workmen, in support of the tribunal's decision, that since the management at the very commencement of the trial before the Tribunal adduced evidence with regard to the merits of the case it should be held that it had given up its claim to the propriety or validity of the domestic enquiry. While repelling this argument this Court made some significant observations :

In enquiries of this kind, the first question which the Tribunal has to consider is whether a proper enquiry has been held or not. Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the finding recorded at such an enquiry are perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute .....

If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need to be cited by the employer; if the finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence.

11. Although this Court in Ritz Theater's case (supra) observed that such a procedure may be "elaborate and somewhat cumbersome" it was not held to be illegal nor had it been rejected out of hand.

12. In State Bank of India v. R. K. Jain ((1972) 1 SCR 755, 766, 777 : (1972) 4 SCC 304, 321-322), this Court had to deal with a similar question. The contention on behalf of the management in that case was that :

Even assuming that the domestic inquiry conducted by the Bank was in any manner vitiated, the Industrial Tribunal erred in law in not giving an opportunity to the management to adduce evidence before it to establish the validity of the order of discharge.

13. In dealing with the above contention this Court observed as follows : [SCC pp. 321, 322, para 35]

If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and if the Tribunal holds against the management on that point, the management will fail .....

It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised, that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it

is for the management to avail itself of the said opportunity.

14. On the facts of that case this Court held that the management, having made it clear to the Tribunal that it was resting its case solely on the domestic enquiry, had no right to make a grievance that it should have been given an opportunity to adduce evidence on facts before the Tribunal in justification of its order.

15. This Court further observed in that case that "no such opportunity was asked for by the appellant nor even availed of". This Court in that case took into account management's consistent stand throughout before the Tribunal as also that it made no grievance on the score of non-availability of opportunity to adduce evidence even in the special leave petition. The claim of the bank in that case was rejected on the peculiar facts found by this Court.

16. Referring to the State Bank's case (supra) in Delhi Cloth & General Mills Co. v. Ludh Budh Singh ((1972) 3 SCR 29, 54-56 : (1972) 1 SCC 595, 615-618), this Court observed that [SCC p. 615, para 59]

the grievance of the management before this Court that the Tribunal should have given such an opportunity suo motu was not accepted in the circumstances of that case.

There was a further observation in Delhi Cloth & General Mills' case (supra) to the following effect : [SCC p. 615, para 60]

It may be pointed out that the Delhi and Madhya Pradesh High Courts had held that it is the duty of the Tribunal to decide, in the first instance, the property of the domestic enquiry held by the management and if it records a finding against the management, it should suo moto provide an opportunity to the management to adduce additional evidence, even though the management had made no such request. This view was held to be erroneous by this Court, in State Bank of India v. R. K. Jain (supra).

17. We may now refer to the propositions Nos. (4), (5) and (6) in Delhi Cloth and General Mills' case (supra) : [SCC pp. 616-617, para 61]

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end .....

(5) The management has got a right to attempt to sustain it order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can

make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been properly, it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it.

18. In the Delhi Cloth and General Mills' case (supra) dealing with the case of management's application to adduce evidence after close to arguments, although on the same day after the Court reserved judgment, this Court observed as follows : [SCC p. 618, para 63]

The appellant did not ask for an opportunity to adduce evidence when the proceedings were pending nor did it avail itself of the right given to it in law to adduce evidence before the Tribunal during the pendency of the proceedings.

19. In Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management ((1973) 3 SCR 587, 606-607 : (1973) 1 SCC 813, 828 : 1973 SCC (L & S) 341), this Court stated the law laid down by this Court as on December 15, 1971. For our purpose we will extract from that decision only propositions Nos. 4, 6, 7, and 8 : [SCC p. 828 : SCC (L & S) p. 356, para 32]

(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.

(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 ask 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.

20. We are particularly concerned with proposition No. (8). What is the appropriate stage was specifically adverted to in the Delhi Cloth and General Mills' case (supra) which we are now required to seriously consider whether this conclusion is correct and ensures justice to all concerned in an industrial adjudication.

21. Propositions Nos. (4), (6) and (7) set out above the well-recognised. Is it, however, fair and in

accordance with the principles of natural justice for the labour court to withhold its decision on a jurisdictional point at the appropriate stage and visit a party with evil consequences of a default on its part in not asking the court to give an opportunity to adduce additional evidence at the commencement of the proceedings or, at any rate, in advance of the pronouncement of the order in that behalf ? In our considered opinion it will be most unnatural and unpractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be reached by the labour court prior to embarking upon an enquiry to decide the dispute on its merits. The reference involves determination of the larger issue of discharge or dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal. Besides, even if the order of dismissal is set aside on the ground of defect of enquiry, a second enquiry after reinstatement is not ruled out nor in all probability a second reference. Where will this lead to ? This is neither going to achieve the paramount object of the Act, namely, industrial peace, since the award in that case will not lead to a settlement of the dispute. The dispute, being eclipsed, pro tempore, as a result of such an award, will be revived and industrial peace will again be ruptured. Again another object of expeditious disposal of an industrial dispute (see Section 15) will be clearly defeated resulting in duplication of proceedings. This position has to be avoided in the interest of labour as well as of the employer and in furtherance of the ultimate aim of the Act to foster industrial peace.

22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in Industrial adjudication.

23. In the present case, however, besides the long delay that has already taken place, since the law did laid down by this Court was not very clear at the time of the award in casting a duty upon the labour court to decide the preliminary issue and also in view of the submission of the appellant that it is prepared to pay the entire salary of the workman uptodate, it will meet the interest of justice if the order of reinstatement is converted to one of compensation in terms of his entire salary from the date of dismissal to the date of this decision except for what has already been paid to him instead of remitting the matter to the labour court for disposal in the light of this judgment by setting aside the award.

24. In the result the appeal is dismissed with the above modification of the relief. There will be, however, no order as to costs.

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