Rajendra Jha

Vs

Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad and Another

Civil Appeal No. 1346 (Nl) of 1981

(CJI Y. V. Chandrachud, A. N. Sen, A. Varadarajan JJ)

21.08.1984

JUDGMENT

CHANDRACHUD, C.J. –

1. The appellant was appointed as a Dresser in the Medical Department of the Steel Authority of India, formerly the Bokaro Steel Plant Ltd. On March 1, 1975 he was dismissed from service as a result of a domestic inquiry on charges of misconduct consisting of absence from duty, falsification of entries in the registers, destruction of records, etc. Since an industrial dispute was pending in the Labour Court, Bokaro, between the management and its workmen, an application was filed by management under Section 33(2)(b) of the Industrial Disputes Act, 1947, seeking approval of the Labour Court, Chota Nagpur, to the order of dismissal passed against the appellant. The decision of that application was partly in favour of the appellant and partly against him. By a judgment dated November 16, 1976, the Labour Court held that (i) the domestic inquiry was invalid because, the Chief Medical Officer of Bokaro Steel Ltd. was neither competent to issue the charge-sheet nor to constitute the Inquiry Committee which held the appellant guilty of the charges framed against him; but, that (ii) the management should be given an opportunity to adduce evidence to justify the order of dismissal.

2. The appellant filed a writ petition (No. CWJC 336 of 1976) against the second part of the Labour Court's order, his contention being that the management should not be allowed to lead evidence to justify the order of dismissal. The High Court issued a Rule on that writ petition and granted stay of further proceedings in the Labour Court. The management filed a writ petition (No. CWJC 27 of 1977) against the first part of the order of the Labour Court by which it was held that the inquiry was vitiated. The High Court of Patna, Ranchi Bench, dismissed both the writ petitions by a judgment dated April 26, 1978.

3. Being aggrieved by the judgment of the High Court which resulted in the dismissal of its writ petition, the management filed Civil Appeal No. 1682(L) of 1978 in this Court, complaining of the finding of the High Court that it was not competent to the Chief Medical Officer to charge-sheet the appellant or to constitute the Inquiry Committee. The appeal was dismissed by this Court on July 23, 1980 (Steel Authority of India (Successor of Bokaro Steel Ltd.) v. Presiding Officer, (1980) 3 SCC 734 : 1980 SCC (L&S) 475). The finding of the Labour Court and the High Court that the inquiry which resulted in the dismissal of the appellant was vitiated, was upheld by this Court.

4. The appellant did not appeal to this Court against the dismissal of his writ petition by the High Court.

5. Since the order of the Labour Court that the management should be allowed to lead evidence in order to justify the order of dismissal was not stayed by this Court in the appeal which was filed by the management, the Labour Court called upon it to lead its evidence. The appellant filed an application objecting to the management leading the evidence but that application was dismissed by the Labour Court on August 24, 1978. Being aggrieved by that order, the appellant filed a writ petition (No. 531 of 1980) in the High Court of Patna contending that the management should not be allowed to lead evidence, especially because, instead of leading evidence in pursuance of the order of the Labour Court, it had chosen to challenge the finding that the inquiry was vitiated. The writ petition having been dismissed on February 5, 1981 by the Ranchi Bench of the High Court, the appellant has filed this appeal by special leave.

6. Section 33(2)(b) of the Industrial Disputes Act provides insofar as relevant, that though, during the pendency of a proceeding in respect of an industrial dispute it is open to the employer to discharge or punish a workman for any misconduct not connected with the dispute, no such workman shall be discharged or dismissed unless an application has been made by the employer to the authority before which the proceeding is pending, for approval of the action taken against the employee. It is well-known that in such a proceedings, it is open to the employer to lead evidence to justify the order passed against the employee. The question as to the rights and obligations of the employer in that proceeding has come up before this Court in many cases. It would be sufficient for our purpose; and more than that will be fruitless repetition, to notice two important decisions on this question which show that the right of an employer to lead evidence is governed by certain conditions.

7. In Delhi Cloth & General Mills Co. v. Ludh Budh Singh ((1972) 3 SCR 29 : (1972) 1 SCC 595 : AIR 1972 SC 1031 : (1972) 1 LLJ 180), an employee was dismissed after an inquiry into allegations of misconduct. Since an industrial dispute between the employers and their workmen was pending before the Industrial Tribunal, the employers made an application to the Tribunal under Section 33(2)(b) of the Industrial Disputes Act for permission to dismiss the employee. After the arguments in that application were over, the Tribunal reserved its judgment. Thereafter, the employers filed an application praying that if the inquiry was found to be defective, they should be given an opportunity to lead evidence in order to justify the dismissal of the employee. The Tribunal did not deal with this latter application, but held in the main proceeding that the findings of the inquiry officer were not in accordance with the evidence and therefore the inquiry was vitiated. Accordingly, it refused permission for the dismissal of the employee. In an appeal filed by the employers, it was held by this Court that in proceedings on a reference under Section 10 or by way of an application under Section 33 of the Industrial Disputes Act, in cases in which a domestic inquiry has been held it is open to the employer to rely upon it in the first instance, and alternatively, and without prejudice to its plea that the inquiry was proper, simultaneously adduce additional evidence before the Tribunal justifying its action. The employer must avail of the opportunity to lead evidence by making a suitable request, before the proceedings are closed. The Court found on the facts of the case that the employers had filed an application for adducing further evidence after the proceedings before the Tribunal had come to an end and the judgment was reserved. Since the employers did not ask for an opportunity to lead evidence while the proceedings were pending, it was held that the Tribunal was justified in not considering the application filed by them for an opportunity to lead evidence to justify the order of dismissal.

8. In Shankar Chakravarti v. Britannia Biscuit Co. Ltd. ((1979) 3 SCR 1165 : (1979) 3 SCC 371 : 1979 SCC (L&S) 279 : AIR 1979 SC 1952 : (1979) 2 LLJ 194), the application made by the employers under Section 33(2)(b) of the Act was rejected by the Tribunal on the ground that the

inquiry leading to the termination of the employee's services was vitiated. A writ petition filed by the employers to challenge the award of the Tribunal was dismissed by a learned Single Judge of the Calcutta High Court. In a Letters Patent appeal filed by them, a Division Bench of the High Court held that after holding that the inquiry was vitiated, it was incumbent upon the Tribunal to give an opportunity to the employers to lead evidence to prove the charges made against the employee. The matter was therefore remanded by the High Court to the Tribunal for giving an opportunity to the employers to lead further evidence, if they so desired. Allowing the appeal filed by the employee, it was held by this Court that while adjudicating upon the legality or propriety of an order of termination of service, either under Section 10 or under Section 33 of the Act, no duty is cast on the Industrial Tribunal or the Labour Court to call upon the employer to adduce evidence to substantiate the charge of msiconduct against the employee. It is for the employer to avail of an opportunity to lead evidence by a specific pleading or by a specific request. If no such opportunity is sought nor is there any pleading to that effect, the Tribunal or the Labour Court is under no obligation to call upon the employer suo motu to adduce evidence to substantiate the charges against the employee. Following the decision in Delhi Cloth & General Mills Co. v. Ludh Budh Singh ((1972) 3 SCR 29 : (1972) 1 SCC 595 : AIR 1972 SC 1031 : (1972) 1 LLJ 180), the Court held that since, in the case before them, there was neither a pleading nor was any request made at the appropriate time for an opportunity to lead evidence for substantiating the charges against the employee, the High Court was in error in giving that opportunity to the employer. The Court rejected the contention of the employers that the request made by them in that behalf after the proceedings were adjourned for pronouncement of the award, should be taken into consideration and an adequate opportunity should be given to them. The stage for asking for that opportunity, the Court said, had already passed.

9. It is doubtful whether the norms prescribed by these two decisions were followed strictly in this case. the employers, who are respondent 2 to this appeal, filed an application under Section 33(2)(b) of the Act, asking for the approval of the Labour Court to the order of dismissal which was passed against the appellant. By that application, they did not ask alternatively for an opportunity to lead evidence to justify the order of dismissal. The tenor of the judgment of the Labour Court dated November 16, 1976 shows that, in all probability, an oral request for permission to adduce evidence was made by the employers to the Labour Court when the hearing of the application filed under Section 33(2)(b) was coming to a close. The appellant has taken up an extreme stand that the employers did not ask for such an opportunity at all and that the Labour Court gave them that opportunity of its own accord. That contention is far-fetched and cannot be accepted in teeth of the facts, both contemporaneous and supervening. We will refer to those facts immediately.

10. In the first place, the judgment of the Labour Court does not support the allegation that the employers had to asked for an opportunity to lead the necessary evidence. These protracted proceedings show that the appellate is a zealous litigant, fairly well-informed as to his rights. He has raised every possible objection under the sun in the proceedings before the Labour Court. Indeed, it is unfortunate that he even went to the length of casting in aspersions on the integrity of the Presiding Officer of the Labour Court. It is unlikely that he would not have protested against the Labour Court granting permission to the employers to lead evidence, if no such opportunity was asked for them. He did raise many protests.

11. The events which supervened the Labour Courts order strengthen the conclusion that there is no substance in the contention of the appellant that the Labour Court acted on its own initiative in allowing the employers to lead evidence. After the writ petitions filed by the appellant and the employers were dismissed by the Patna High Court, the stay order which was passed by the High Court in the writ petition filed by the appellant was vacated. Thereupon, the appellant himself filed

an application in the Labour Court on May 4, 1978 saying that, in view of the fact that the writ petitions were dismissed by the High Court, the employers should be called upon to adduce evidence to justify the order of dismissal. On August 24, 1978 the employers filed an application in the Labour Court to the effect that the original documents which were kept by them in the custody of the Court may be returned to them, since they wanted to rely on those documents while leading evidence to justify the order of dismissal. The appellant, on his own, filed a list of witnesses whom he wanted to examine in the case. On September 1, 1978 the employers examined certain witnesses in the Labour Court and they were cross-examined by the appellant. It is at this stage that the appellant made certain uncharitable remarks against the Presiding Officer which delayed the proceedings. And, it is thereafter that the appellant filed on application in the Labour Court contending that the employers should not be allowed to lead evidence.

12. Thus, the order passed by the Labour Court allowing the employers to lead evidence has been accepted and acted upon by the appellant. He has already given a list of his won witnesses and has cross-examined the witnesses whose evidence was led by the employers. It would be wrong, at this stage, to undo what has been done in pursuance of the order of the Labour Court. Besides, the challenge made by the appellant to the order of the Labour Court has failed and the order of the Patna High Court dismissing the appellant's writ petition has become final.

13. In order to get over these difficulties, it is urged by the appellant that there can be no estoppel against law and therefore, it is open to him to argue even at this stage that he Labour Court ought not to have passed the particular order. In support of this contention, reliance is placed by the appellant on two judgments of this Court.

14. In Chitturi Subbanna v. Kundapa Subbanna ((1965) 2 SCR 661 : AIR 1965 SC 1325 : (1966) 1 SCJ 269), it was held by the majority that pure questions of law, not dependent on the determination of any question of fact, should be allowed to be raised for the first time even at later stages of a litigation.

15. In Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy ((1970) 3 SCR 830 : (1970) 1 SCC 613 : AIR 1971 SC 2355), this Court held that the question relating to the jurisdiction of a court cannot be deemed to have been finally determined by an erroneous decisions of the court. If, by an erroneous decision, the court assumes jurisdiction which it does not possess, its decision cannot operate as res judicata between the parties. In this regard, the Court made a distinction between the decision of a question of fact and the decision of a question as regards the jurisdiction of the court. Insofar as questions of fact are concerned, the court is not concerned with the correctness or otherwise of the earlier judgment while determining the application of the rule of res judicata. Where, however, the question is purely of law and relates to the jurisdiction of the court or where the decision of the court sanctions something which is illegal, the party affected by that decision will not be precluded by the rule of res judicata from challenging the validity of the earlier decision. The reason is, that the rule of procedure cannot supersede the law of the land.

16. We do not consider that either of these decisions can help the appellant. A questions of law which does not require a fresh investigation into facts may be allowed to be raised at a later stage of a proceeding but, that is subject to the qualification that the question is not concluded by a decision between the same parties. In this case, the question as to whether the Labour Court was right in giving an opportunity to the employers to lead evidence, is not being raised by the appellant for the first time in this Court. It was raised by him in the writ petition which he had filed in the Patna High Court and that writ petition was dismissed. Insofar as the question of res judicata is concerned, if an

erroneous decision on a question of law is renders by a court by assuming jurisdiction which it does not posses, it may be possible to argue that the decision cannot operate as res judicata even between the same parties. But, in the case before us, the Labour Court had the jurisdiction to decide whether to allow the employers to lead evidence or not. It may have acted irregularly in the exercise of that jurisdiction but that is to be distinguished from cases in which the court inherently lacks the jurisdiction to entertain a proceeding or to pass a particular order. Besides, as we have stated earlier, though it would be true to say that the employers did not ask for an opportunity to lead evidence simultaneously with the filing of the application under Section 33(2)(b) of the Act, it is not possible to hold on the basis of the date placed before us that they asked for such an opportunity after the proceedings had terminated. What seems to have happened is that the application filed by the employers under Section 33(2)(b) of the Act was taken up for consideration first. When the hearing of that application was nearing completion, but before the final orders were passed therein, the employers asked for an opportunity to lead evidence to justify the order of dismissal. The High Court disposed of both the mattes together by a common judgment which is dated November 16, 1976. It held by one and the same order that the departmental inquiry was vitiated but that the employer should be allowed to lead evidence to justify the order of dismissal. The appellant's contention that the employers did not ask for an opportunity to lead evidence at all and that the Labour Court acted gratuitously is not poossible to accept. Thus, in passing the order allowing the employers to lead evidence, the Labour Court cannot be said to have acted without jurisdiction.

17. For these reasons, we dismiss this appeal and hold that the employers may lead evidence to justify the order whereby the appellant was dismissed from service on March 1, 1975. There will be no order as to costs.

18. A long time has gone by since the appellant was dismissed. Nine years is frightful delay. A large part of that period was wasted in dealing with several obstacles raised by the appellant himself in the disposal of the matter, including the allegations which he made against the Presiding Office of the Labour Court. Twice, he obtained orders staying further proceeding in the Labour Court : once from the High Court in Writ Petition No. 336 of 1976 and then in this appeal. As a result of these stay orders, the evidence has still remained to be recorded. The Labour Court will now complete that process and dispose of this matter as expeditiously as is humanly possible.

19. The employers may consider whether the trauma through which the appellant has gone during the last nine years is not enough punishment for him. The employers are a public sector undertaking and they could lead the way in ensuring industrial peace and harmony.

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