Desh Raj Gupta

Vs

Industrial Tribunal Iv, U.P., Lucknow and Another

Civil Appeal No. 453 (NL) of 1984

(M. N. Venkatachaliah, L. M. Sharma JJ)

12.09.1990

JUDGMENT

SHARMA, J. -

1. This appeal by special leave is directed against the judgment of the Allahabad High court dismissing the appellant's writ petition challenging an award of the Industrial Tribunal.

2. The appellant was working as an Assistant Cashier in the Rampur Zila Sahkari Bank Ltd., when a reference of an industrial dispute was made under Section 4-A of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as 'the U.P. Act'). The provisions of the U.P. Act relevant to the present case are similar to those of the Central Act, that is, the Industrial Disputes Act, 1947. Section 4-K of the U.P. Act, like the corresponding Section 10 of the Central Act, empowers the State Government to refer industrial disputes to Labour Courts or Tribunals. During the pendency of the reference the appellant was put under suspension and served with a charge sheet in February 1976, which was followed by a domestic inquiry leading to the dismissal of the appellant from service on August 16, 1976. The U.P. Act in Sections 6-E and 6-F incorporates provisions similar to those in Sections 33 and 33-A of the Central Act. The appellant filed a complaint under Section 6-F of the U.P. Act before the Industrial Tribunal, and the same was treated as a dispute referred to it, and was finally disposed of by the Award which was impugned before the High Court.

3. The Tribunal, in the first instance, examined the case of the appellant on the question whether principles on natural justice had been followed in the domestic inquiry, and after hearing the parties, decide the issue by its order dated February 23, 1979 in favour of the workman. Proceeding further the Tribunal asked the management to justify the order of punishment on merits. Accordingly, the parties led their evidence and the Tribunal recorder a finding that the charges levelled were established by the materials on the record and the workman, therefore, was not entitled to any relief.

4. As stated earlier, the appellant challenged the award before the Allahabad High Court by filing a writ petition. By a well discussed judgment, which is now under challenge before us, the High Court dismissed the writ petition.

5. Mr. Ramamurthi, the learned counsel appearing in support of the appeal, has raised before us the following two points :

> (i) After recording its conclusion that the domestic inquiry was vitiated on account of violation of principles of natural justice, the Tribunal was under the duty of announcing its award in favour of the appellant; and since there was no application

filed on behalf of the employer for permission to justify the punishment by leading evidence, the Tribunal exceeded its jurisdiction in asking the management to do so.

(ii) In any event, the appellant was entitled to his salary for the period of August 16, 1976 (that is, the date of his dismissal) to July 20, 1980, the date of the Award of the Tribunal.

6. Mr. Ramamurthi contended that after the conclusion reached by the Tribunal that the domestic inquiry held by the employer was illegal, question of justification of the impugned punishment by fresh materials could arise only if the management had applied to the court for permission to justify the punishment and, in the absence of such a prayer, the Tribunal did not have the power to call upon the employer to do so. In order to proceed further with the Reference for the above purpose, it was essential to have a pleading in this regard, along with an express prayer by the employer, and the Tribunal was not entitled to adopt an advisory role by informing the employer of its rights, namely, the right to adduce additional evidence to substantiate the charges. The learned counsel heavily relied on the decision of this Court in Shankar Chakravarti v. Britannia Biscuit Co. ((1979) 3 SCC 371 : 1979 SCC (L&S) 279 : (1979) 3 SCR 1165) which was governed by the Central Act. As rightly urged on behalf of the appellant, a relevant decision under the Central Act must be held to apply to a case under the U.P. Act since the provisions of the two Acts are in pari materia. However, the case cited is not an authority for the point urged by the learned counsel and he, therefore, cannot take any aid therefrom.

7. In the aforementioned case the Tribunal came to the conclusion that the inquiry was conducted in violation of the principles of natural justice and was, therefore, vitiated, and the award was pronounced rejecting the application of the management under Section 33(2)(b) for approval of the action terminating the service of the employee. The employer challenged the award in a writ case before the Calcutta High Court on the ground that the Tribunal was under a duty to call upon the management to lead evidence in support of the correctness on merits of the order of punishment, which was not done, It was not a case of a prayer having been made by the employer which was rejected. This aspect has been specifically mentioned in the judgment and it was further observed that before the learned Single Judge who heard the writ case no plea was raised about any denial of opportunity to the respondent Company "to lead evidence in proof of charges after the domestic inquiry was found to be defective". The writ petition was dismissed by the learned Single Judge and the employer Company preferred a Letters Patent Appeal which was allowed by a Division Bench observing that after holding that the domestic inquiry was defective, it was incumbent upon the Tribunal to give an opportunity to the employer to lead evidence to prove the charges and as this was not done, the award was vitiated in law. This Court, in appeal, discharged with the Divisional Bench of the High Court and reversed the judgment. It was held that if an opportunity is sought by the employer to adduce additional evidence to substantiate the charges of misconduct, the Tribunal or the Labour Court, as the case may be, should grant the opportunity. "But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal suo motu to call upon the employer to adduce additional evidence to substantiate the charges". It was pointed out that there was neither a pleading in which any claim for adducing additional evidence was made "nor any request was made before the Industrial Tribunal till the proceedings were adjourned for making the Award and till the Award was made". The judgment relied upon does not support the proposition formulated before us that in absence of a prayer the Tribunal is debarred from reminding the employer of his right to adduce additional evidence to substantiate the charges. We do not find any valid ground for accepting the stand of the appellant taken before us. The entire argument of the learned counsel is founded on the decision of this Court

in Chakravarti's case which is clearly distinguishable. As has been stated earlier, in that case the Court was not called upon to consider the point as urged before us and the judgment repeatedly made it clear that what was under consideration was whether a duty has been cast in law on the Labour Court or the Tribunal to afford an opportunity to the employer in absence of a request and the question was answered in negative leading to the conclusion that,

> "... if there is no such obligatory duty in law failure to give any such opportunity cannot and would not vitiate the proceedings."

8. Analysing the situation, it appears that by asking the respondent to justify the punishment by adducing additional evidence, the Tribunal merely reminded the employer of his rights and the employer promptly availed of the opportunity. We do not find any illegality in the course adopted which could vitiate the Award. The first point is, therefore, rejected.

9. The second ground urged in support of the appeal appears to be well founded. The learned counsel is right in relying on the observations in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha ((1980) 2 SCC 593, 649-50 (paras 151-53) : 1980 SCC (L&S) 197 : (1980) 2 SCR 146, 215), that if the order of punishment passed by the management is declared illegal and the punishment is upheld subsequently by a labour tribunal, the date of dismissal cannot relate back to the date of the illegal order of the employer. The appellant is, therefore, entitled to his salary from August 16, 1976 to July 20, 1980 and the entire amount should be paid by the respondent Bank within a period of three months from today. If the amount is not paid or offered to the appellant as directed, the respondent Bank will be liable to pay interest thereon at the rate of 12 per cent per annum for the future period commencing on the date of expire of three months from today till the same is realised.

10. The appeal is allowed in part as indicated above. The parties shall bear their own costs.

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