Thanjavur Textiles Ltd.

Vs

B. Purushotham and Others

Civil Appeal No. 1657 of 1999

(M. Jagannadha Rao, S. M. Quadri JJ)

16.03.1999

ORDER

1. Leave granted.

2. This is an appeal against the judgment of the Division Bench of the Madras High Court dated 9-1-1998 in Writ Appeal No. 433 of 1992. By that judgment the Division Bench dismissed the appeal filed against the judgment of the learned Single Judge in Writ Petition No. 5846 of 1989 dated 13-12-1991. The brief facts of the case are as follows :

Respondents 1 to 3 in this appeal were employees of the appellant-Company. On the ground of alleged misconduct, a domestic enquiry was conducted. The Manager of the Company had the enquiry conducted by an advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings, the Manager passed an order of dismissal on 24-11-1980. Reference was sought by Respondents 1 and 2 but the Government made reference in respect of Respondents 1 to 3 to the Labour Court. The Labour Court by its award dated 28-4-1988 came to the conclusion that the reference made by the Government of Tamil Nadu was not valid in regard to all the respondents inasmuch as the reference was not sponsored by the Union of the workmen. The Labour Court, however, also gave alternative findings on the merits of the case and held that Respondents 1 and 2 were guilty of misconduct but not Respondent 3. It also held that Respondent 3 was not entitled to any relief inasmuch as he had not sought for a reference.

3. Aggrieved by the aforesaid award refusing relief to Respondents 1 to 3, the three workmen preferred a writ petition being Writ Petition No. 8846 of 1989 in the High Court. The learned Single Judge came to the conclusion that the Manager ought not to have referred the enquiry to an advocate and on that short ground the enquiry was vitiated. The learned Single Judge allowed the writ petition and remanded the matter to the Labour Court to enable the parties to lead evidence with regard to the charges framed against them. The Labour Court was also directed to decide the question of the wages payable to the workmen.

4. On an appeal by the Management, the Division Bench held that in view of the concession made by the counsel for the workmen, the reference of the enquiry to an advocate was valid. However, the Division Bench the conclusion that the advocate ought not to have given any findings on the merits in relation to the misconduct of the workmen. According to the division Bench of the High Court, the award was liable to be set aside on his ground. The Division Bench, however, did not alter the alternative direction given by the learned Single Judge for remand to the Labour Court. It is against this order of the Division Bench that the Management has referred this appeal in this Court.

5. In this appeal, Shri R. Sundaravaradan, learned Senior Counsel for the appellant-Management contended before us that once the counsel for the workmen conceded before the Division Bench of the High Court that an advocate could be appointed as an enquiry officer, the said enquiry officer has entitled to give his findings in relation to the misconduct of the employees. Learned Senior Counsel relied upon the decision of this Court in Khardah & Co. Ltd. v. Workmen ((1963) 2 LLJ 452 : AIR 1964 SC 719) for the proposition that whenever an inquiry officer was appointed, he would be entitled to give findings on the charges framed against the workmen.

6. Learned counsel for the respondent, Shri S. Ravindra Bhat, however, contended that having regard to the language of the standing order in this case, the Manager was not permitted to appoint an advocate as an enquiry officer. Learned counsel also contended that in that event, the advocate could only record the evidence and could not have given any findings on the merits as to the misconduct of the workmen. Reliance was placed on the observations of this Court in Workmen v. Buckingham and Carnatic Mills ((1970) 1 LLJ 26 : (1969) 19 FLR 253 (SC)). Our attention was also drawn by the learned counsel on both the sides to the decisions of this Court in Dalmia Dadri Cement Ltd. v. Murari Ljl Bikaneria ((1970) 3 SCC 259) and to Central Bank of India v. C. Bernard ((1991) 1 SCC 319 : 1991 SCC (L&S) 291 : (1991) 15 ATC 720).

7. The relevant portion of the standing order in sub-clause (c) of clause 62 reads as follows :

> "The Manager may himself or through some other responsible officer make such enquiry and the workman shall present himself at the time and date fixed for such enquiry."

8. There was considerable debate before us in regard to the meaning of the words employed in the above sub-clause (c) of clause 62. The words "other responsible officer" referred to in this case could only be an officer of the Company subordinate to the Manager and not an outsider, according to Shri S. Ravindra Bhat, learned counsel for the respondents and hence the advocate could not have been appointed as an enquiry officer nor could he give findings on the merits of the misconduct.

9. The learned Senior Counsel for the appellant, however, referred to the cases referred to above and submitted before us that even going by the language of the above clause and to the observations in the abovesaid judgments, it was permissible for the Manager to appoint an advocate as an enquiry officer. On the other hand, learned counsel for the respondent-workmen contended that the language of the clause in the standing order if this case was different from the language employed in the standing orders in the decided cases. In the present case, the standing order contemplated an enquiry to be conducted only by a responsible officer of the Company, subordinate to the Manager.

10. We, however, find it not necessary to go into this controversy in view of the concession made by the learned Senior Counsel who appeared for the workmen before the Division Bench of the High Court to the effect that he was not raising the "extreme contention" that the enquiry, on the facts of this case, could not have been conducted by an advocate. In view of the said concession, we are not going into the submission before us as to whether the language of the particular clause in the standing order did or did not permit the Manager to appoint an advocate as an enquiry officer.

11. We, therefore, proceed on the assumption that it was permissible for the Manager to appoint an advocate as an enquiry officer.

12. Even so, learned counsel for the respondents contended that in cases where a person outside the

company was appointed as an enquiry officer, he would not be entitled to give findings as to the misconduct of the workmen. According to him, the advocate would only be entitled to record the evidence and send the same to the disciplinary authority. There could not be any delegation to the advocate in respect of the quasi-judicial function.

13. Once it was conceded in the High Court by the learned Senior Counsel who appeared for the workmen that An advocate could be appointed as an enquiry officer, the advocate would, in our opinion, have all the normal powers of an enquiry officer including the power to give findings as to the misconduct of the employees. We are unable to make a distinction between the powers of an enquiry officer who is an employee of the Company and an outsider. If the Manager was entitled to appoint an enquiry officer, in either case, the appointee in his capacity as an enquiry officer, would have the same powers. We accordingly hold that the advocate in this case could have given findings as to misconduct and the Division Bench of the High Court was wrong in thinking that the advocate being an outsider would not have the power to give findings as to the misconduct of the employees.

14. We may point out that in the case cited by the learned Senior Counsel for the appellant in Khardah & Co. ((1963) 2 LLJ 452 : AIR 1964 SC 719) it was stated as follows :

> "We are not prepared to adopt such a course. If industrial adjudication attaches importance to domestic enquiries and the conclusions reached at the end of such enquiries, that necessarily postulates that the enquiry would be followed by a statement containing the conclusions of the enquiry officer. It may be that the enquiry officer need not write a very long or elaborate report; but since his findings are likely to lead to the dismissal of the employee, it is his duty to record clearly and precisely his conclusions and to indicate briefly his reasons for reaching the said conclusions."

15. So far as the judgment in Workmen v. Buckingham and Carnatic Wills ((1970) 1 LLJ 26 : (1969) 19 FLR 253 (SC)) is concerned, it was pointed out in that case that the relevant standing order did not permit any delegation whatsoever. Even so, if the authority concerned had merely delegated power to record evidence, there was nothing wrong in such a delegation as long as the delegate did not express any opinion on the merits of the case. The abovesaid decision is clearly distinguishable inasmuch as the relevant standing order in that case did not envisage the appointment of any enquiry officer whatsoever. But in the present case, the standing order does expressly contemplate appointment of an enquiry officer and if that is the position, the enquiry officer so appointed would, in our opinion, be certainly entitled to give findings in regard to the misconduct of the employees. The above decision is therefore clearly Distinguishable. The Division Bench of the High Court in the judgment under appeal in our opinion erred in not noticing the abovesaid distinction. There was no provision in the standing orders in the above-cited case Permitting appointment of another person to conduct the enquiry.

16. For the aforesaid reasons, we allow the appeal and set aside the judgments of the Division Bench as well as of the learned Single Judge. Learned Senior Counsel for the appellant has submitted before us that the appellant is pressing the appeal only against Respondents 1 and 3 and not against Respondent 2. In fact notice in this special leave petition was given only so far as Respondents 1 and 3 are concerned. Having regard to the nature of the misconduct proved against Respondent 1, we are not inclined to grant any relief to Respondent 1. So far as Respondent 3 is concerned, the Labour Court has given a finding in his favour on the question of misconduct.

17. Having regard to the nature of the misconduct and the findings arrived at by the advocate and

the disciplinary authority and in view of the fact that the Labour Court has not granted any relief to all the three workmen, though for a different reason, we are not inclined to disturb the award which has rejected relief to all the three workmen. In the result, the appeal is allowed and the reference is rejected insofar as Respondents 1 and 3 are concerned. So far as Respondent 2 is concerned, the appeal was, as already stated, not pressed by the appellant against him. There will be no order as to costs.