SUPREME COURT OF INDIA

Karnataka State Road Transport Corpn.

Vs.

Smt. Lakshmidevamma

C.A.No.2738 of 2001

(S.P. Bharucha and N. Santosh Hegde JJ.)

01.05.2001

JUDGMENT

Santosh Hegde, J.

1. This appeal is referred to a Bench of Five Judges based on the following order made by a Bench of two Judges of this Court.

2. In view of the conflict of decisions of this Court in *Shambhu Nath Goyal vs. Bank of Baroda & Others*[1], *and Rajendra Jha vs. Labour Court*[2], we are referring this matter to a larger Bench which has to be a Bench of more than three Judges. Mr. Rao, learned counsel appearing for the respondents, states that there is no conflict in the decisions. According to us, that submission is not correct. Hence, we are referring this to a larger Bench.

3. It is seen from the above order that the learned counsel appearing for the respondents had contended that there is no conflict between the two judgments referred to in the said order. However, the Bench thought otherwise. Since it is again contended now before us on behalf of the respondents that there is no conflict between the said judgments, we will first examine that aspect of the case.

4. In *Shambu Nath Goyal vs. Bank of Baroda & Others*[3] this Court held:

> The rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under section 10 or section 33 of the Industrial Disputes Act questioning the legality of the order terminating the service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take certain action or seeking approval of the action taken by it.
>
> (emphasis supplied)

5. This decision was rendered by the Court while deciding the stage at which the management is entitled to seek permission to adduce evidence in justification of its decision taken on the basis of a domestic enquiry.

6. In *Rajendra Jha vs. Presiding Officer, Labour Court, Bokaro Steel City, Distt.Dhanbad & Anr.*[4], though this Court was considering a similar question, we find the Court did not lay down any law contrary to the judgment in Shambu Nath Goyals case. A perusal of the judgment of this Court in Rajendra Jhas case shows that the Court decided the said case on the facts of that case only. This is clear from the following observations of the Court in Rajendra Jhas case:

> "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 own 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 appellants writ petition has become final."

7. Thus it is seen from the above observations of the Court in Rajendra Jhas case that same is decided on the facts of the said case without laying down any principle of law nor has the Court taken any view opposed to Shambu Nath Goyals case. Therefore, having considered the two judgments, we are of the opinion that there is no conflict in the judgments of this Court in the cases of Shambu Nath Goyal and Rajendra Jha.

8. This, however, does not conclude our consideration of this appeal, because on behalf of the appellant reliance is placed on some other earlier judgments of this Court which, according to the appellant, have taken a view contrary to that of Shambu Nath Goyals case. Therefore, we consider it appropriate to decide this question with a hope of putting a quietus to the same.

9. Before we proceed to examine this question any further, it will be useful to bear in mind that the right of a management to lead evidence before the Labour Court or the Industrial Tribunal in justification of its decision under consideration by such tribunal or Court is not a statutory right. This is actually a procedure laid down by this Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the workman. The geneses of this procedure can be traced by noticing the following observations of this Court in *Workmen of Motipur Sugar Factory (P)Ltd. Vs. Motipur Sugar Factory*[5] :

> "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 mean-time. 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 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."

10. Bearing in mind the above observations if we examine the various decisions of this Court on this question it is seen that in all the judgments this Court has agreed on the conferment of this right of the management but there seems to be some differences of opinion in regard to the timings of making such application. While some judgments hold that such a right can be availed by the management at any stage of the proceedings right upto the stage of pronouncement of the order on the original application filed either under Section 10 or Section 33(2)(b) of the Industrial Disputes Act, some other judgments hold that the said right can be invoked only at the threshold.

11. There are a number of judgments of this Court considering the above question but we think it sufficient to refer to the following cases only since these cases have considered almost all the earlier judgments on the question involved in this appeal.

12. In *Delhi Cloth & General Mills Co. vs. Ludh Budh Singh*[6] this Court after referring to most of the earlier cases on the point laid down the following principle:

"When a domestic inquiry has been held by the management and the management relies on it, the management may request the Tribunal to try the validity of the domestic inquiry 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. In such a case if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to adduce additional evidence and also give a similar opportunity to the employee to lead evidence contra. 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 before the proceedings were closed, the employer can make no grievance that the Tribunal did not provide for such an opportunity."

(Emphasis supplied)

13. The words before the proceedings are closed gave rise to some doubts as to whether it is open to the management to seek this right of leading fresh evidence at any stage, including at a stage where the Tribunal/Labour Court had concluded the proceedings and reserved its judgment on the main issue.

14. The above judgment in D.C.M.s case came to be considered again by this Court in the case of *Cooper Engineering Limited vs. Sri P.P.Mundhe*[7], wherein this Court held:

> "We are, therefore, clearly of the 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 the 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."

15. As is seen from the above, this Court in Cooper Engineerings case held that when the Tribunal/Labour Court was called upon to decide the validity of the domestic enquiry same has to be tried as a preliminary issue and thereafter, if necessary, the management was to be given an option to adduce fresh evidence. But the problem did not stop at that.

16. The question again arose in the case of Shambu Nath Goyals case (supra) as to the propriety of waiting till the preliminary issue was decided to give an opportunity to the management to adduce evidence, because after the decision in the preliminary issue on the validity of the domestic enquiry, either way, there was nothing much left to be decided thereafter. Therefore, in Shambu Nath Goyals case this Court once again considered the said question in a different perspective. In this judgment, the Court after discussing the earlier cases including that of *Shankar Chakravarti vs. Britannia Biscuit Co. Ltd. & Anr.*[8], which was a judgment of this Court subsequent to that of Cooper Engineering (supra), the following principles were laid down:

17. We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workman referred to in the above passage in the application which may be filed by the management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission under section 33 of the Industrial Disputes Act, 1947 to take a certain action or grant approval of the action taken by it. The management is made aware of the workmans contention regarding the defeat in the domestic enquiry by the written statement of defence filed by him in the application filed by the management under section 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference under s.10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any

application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defeat in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do.

18. While considering the decision in Shambu Nath Goyals case, we should bear in mind that the judgment of Vardarajan,J. therein does not refer to the case of Cooper Engineering (supra). However, the concurring judgment of D.A.Desai,J. specifically considers this case. By the judgment in Goyals case the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under section 10 of the Act, meaning thereby the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

19. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in Shambu Nath Goyals case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambu Nath Goyals case is just and fair.

20. There is one other reason why we should accept the procedure laid down by this Court in Shambu Nath Goyals case. It is to be noted that this judgment was delivered on 27th of September, 1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis require us to approve the said judgment to see that a long standing decision is not unsettled without strong cause.

21. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of *Shambu Nath Goyal vs. Bank of Baroda & Others*[9] is the correct law on the point.

22. In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated. Applying the aforestated principles to these facts, we are of the opinion that the High Court has rightly dismissed the writ petition of the appellant, hence, this appeal has to fail. The same is dismissed with costs.

[1]*(1984 (1) SCR 85)* [2]*(1985 (1) SCR 544)* [3]*(1984 1 SCR 85)* [4]*(1985 (1) SCR 544)*
[5]*(1965 (3) SCR 588)* [6]*(1972 (3) SCR 29)* [7]*(1976 (1) SCR 361)* [8]*(1979 (3) SCR 1165)*
[9]*(1984(1) SCR 85)*