SUPREME COURT OF INDIA

Amar Chakravarty

Vs.

Maruti Suzuki India Ltd.

C.A.Nos.10135 of 2010

(D.K. Jain and H.L. Dattu JJ.)

29.11.2010

JUDGMENT

D.K.Jain, J.

1. Leave granted.

2. These appeals, by special leave, are directed against the judgments delivered by the High Court of Punjab and Haryana, whereby it dismissed the writ petitions of the appellants herein, holding that the Labour Court was correct in shifting the burden on the workmen-appellants to prove that their termination was unjustified.

3. Since the question of law arising in all the appeals is the same, these are being disposed of by this common judgment. However, a brief reference to the facts in S.L.P (C) No.7187 of 2008 would be expedient in order to appreciate the controversy at hand.

4. On 23rd November, 2000, the respondent-management dismissed the appellant without holding an enquiry mainly on the allegations that he had been participating in tool down strike; had been exhorting other workers to slow down the work so that there is fall in production of cars; had indulged in holding demonstrations within the factory premises and raised derogatory and offensive slogans against the management; and was threatening the supervisors etc. The relevant portion of the dismissal order reads thus:

> "In view of the situation created by you, Management finds that it is not reasonably practical to hold an enquiry. In view of the gravity of the misconduct thus committed by you, you are hereby dismissed from service."

5. The appellant having raised an industrial dispute, the State Government referred the same to the Labour Court, Gurgaon under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short "the Act"). The terms of reference for the adjudication were:

"Whether the termination of service of Shri Amar Chakarvarty was justified and in order, if not, to what relief is he entitled?"

6. On 13th May, 2002, the Labour Court framed the following issues:

"1. Whether the termination of the services of the petitioner is justified and if not to what relief he is entitled to? OPM

2. Whether the petitioner is gainfully employed?

3. Relief."

It is manifest that in relation to issue No. 1, the Labour Court had placed the onus of proof on the management."

7. Thereafter, the appellants preferred an application before the Labour Court for framing additional issues and disposal of the reference by treating them as preliminary issues. One of the proposed additional issue was with reference to the violation of Standing Order No. 21.3, which stipulates that no order of dismissal shall be made except after holding an enquiry against the workman concerned in respect of the alleged misconduct. However, the Labour Court, vide order dated 12th August, 2003, dismissed the application, observing as under: "It is for the management to prove, by adducing cogent evidence, that the order of dismissal passed against the workman was perfectly legal. For that the management is required to adduce evidence. The matter cannot be cut short (sic) by disallowing the management to adduce any evidence and by holding the order of dismissal as illegal, being violative Standing Order 21.3. The additional issues sought (sic) to be framed by the workman, stand clearly covered in issue no.1 framed in this case. The workman can lead evidence in rebuttal on issue no.1 to prove those facts which he wants to bring on record by getting additional issues framed." (emphasis supplied by us)

"The Labour Court thus, held that in the first instance, it was for the management to prove, by adducing cogent evidence, that the order of dismissal passed against the workman was legal."

8. However, on a motion being made by the management, the Labour Court, vide a short order dated 31st January, 2006, shifted the onus of proof in relation to the afore-extracted issue No. 1 on the workman. The order reads as follows:

"In view of the latest law on the point. I hereby shift the onus to prove issue no. 1 from the management to the workman. To come up on 11.01.2007 for the evidence of the workman."

9. Being aggrieved by the said order, the appellant preferred a writ petition before the High Court. As afore-mentioned, the High Court, vide judgment dated 22nd January, 2008 has

dismissed the writ petition of the appellant, inter alia, observing that onus of establishing a plea of victimization or that he had completed 240 days of service in the last calendar year, in order to avail of the benefit of Sections 25F, 25G and 25H of the Act, is on the workman. The High Court held that the order of the Labour Court cannot be said to be perverse or illegal warranting its interference.

10. Hence, the present appeals.

11. Mr. Jitendra Sharma, learned senior counsel appearing for the appellants in S.L.P. (C) Nos. 7187-7194 of 2008 and S.L.P. (C) No. 9604 of 2008 while assailing the impugned order contended that in light of the decisions of this Court in *Karnataka State Road Transport Corpn. Vs. Lakshmidevamma (Smt.) & Anr.*[1] and The *Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. Vs. The Management & Ors.*[2], it is a settled principle that when a domestic enquiry is found to be irregular or improper or is not at all conducted on the ground that it is not practical to hold it because of some compelling circumstances, the onus to prove that the termination was justified is on the management. It was asserted that the order passed by the Labour Court on 31st January, 2006 is per se illegal and therefore, the High Court erred in not reversing the same.

12. Per contra, Mr. Altaf Ahmed, learned senior counsel appearing on behalf of the respondent, urged that the impugned order deserves to be affirmed in light of the decisions of this Court in *Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors.*[3] *and Talwara Cooperative Credit and Service Society Limited Vs. Sushil Kumar*[4] wherein it has been held that the burden of proving that the termination was unjustified lies on the workman. Learned counsel also submitted that since both the parties have already filed affidavits by way of evidence, these appeals have been rendered infructuous.

13. In our opinion, in light of the settled legal position on the point, the judgment of the High Court is clearly indefensible. Whilst it is true that the provisions of the Evidence Act, 1872 per se are not applicable in an industrial adjudication, it is trite that its general principles do apply in proceedings before the Industrial Tribunal or the Labour Court, as the case may be. (See: *Municipal Corporation, Faridabad Vs. Siri Niwas*[5]). In any proceeding, the burden of proving a fact lies on the party that substantially asserts the affirmative of the issue, and not on the party who denies it. (See: *Anil Rishi Vs. Gurbaksh Singh*[6]) Therefore, it follows that where an employer asserts misconduct on the part of the workman and dismisses or discharges him on that ground, it is for him to prove misconduct by the workman before the Industrial Tribunal or the Labour Court, as the case may be, by leading relevant evidence before it and it is open to the workman to adduce evidence contra. In the first instance, a workman cannot be asked to prove that he has not committed any act tantamounting to misconduct.

14. In Karnataka State Road Transport Corporation (supra) relied upon by learned counsel for the appellant, a Constitution Bench of this Court affirmed the decision of this Court in *Shambu Nath Goyal Vs. Bank of Baroda & Ors.*[7], wherein the issue for consideration was as

to at what stage, the management is entitled to seek permission to adduce evidence in justification of its decision to terminate the services of an employee. It was held that the right of the employer to adduce additional evidence, in a proceeding before the Labour Court under Section 10 of the 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. It was observed that: "The management is made aware of the workman's contention regarding the defect 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."

15. Similarly, in The Workmen of M/s Firestone Tyre & Rubber Co. (supra), this court observed that:

> "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, had 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, and it is open to the employee to adduce evidence contra." (See also: *United Bank of India Vs. Tamil Nadu Banks Deposit Collectors Union & Anr.*[8]; *Engineering Laghu Udyog Employees' Union Vs. Judge, Labour Court and Industrial Tribunal & Anr.*[9] (emphasis supplied by us)"

16. In our opinion, the decisions in Manager, Reserve Bank of India (supra) and Talwara Cooperative Credit and Service Society Limited (supra) relied upon by the learned counsel for the respondent have no bearing on the issue at hand in as much as the said decisions deal with the onus of proof in relation to proving 240 days of continuous service and entitlement to back wages respectively, for which the claims were made by the workmen, which is not the case here. In the present case, as stated above, the assertion to the effect that it was not practical to hold domestic enquiry to prove the misconduct of the workman was by the employer and therefore, the assertion has to be proved by the employer and not by the workman.

17. In view of the aforesaid position in law, the inevitable conclusion is that when no enquiry is conducted before the service of a workman is terminated, the onus to prove that it was not possible to conduct the enquiry and that the termination was justified because of misconduct by the employee, lies on the management. It bears repetition that it is for the management to prove, by adducing evidence, that the workman is guilty of misconduct and that the action taken by it is proper. In the present case, the services of the appellants-workmen having been terminated on the ground of misconduct, without holding a domestic enquiry, it would be for the management to adduce evidence to justify its action. It will be open to the appellants-workmen to adduce evidence in rebuttal. Therefore, the order passed by the Labour Court,

shifting the burden to prove issue No. 1 on the workmen is fallacious and the High Court should have quashed it.

18. For the foregoing reasons, the appeals are allowed; the impugned judgments are set aside and the Labour Court is directed to dispose of the references expeditiously. The appellants will also be entitled to costs, quantified at ` 10,000/- for each set of appeals.

[1]*(2001) 5 SCC 433*
[2]*(1973) 1 SCC 813*
[3]*(2005) 5 SCC 100*
[4]*(2008) 9 SCC 486*
[5]*(2004) 8 SCC 195*
[6]*(2006) 5 SCC 558*
[7]*(1983) 4 SCC 491*
[8]*(2007) 12 SCC 585*
[9]*(2003) 12 SCC 1*