MADHYA PRADESH HIGH COURT

Vaidvanath

Vs.

The Madhya Pradesh State Road Transport Corporation

Miscellaneous Petri. No. 13 of 1972
(G.P. Singh and B.R. Dubey, JJ.)

25.04.1974

ORDER

G.P. Singh, J.

1. The petitioner by this petition under Article 226 of the Constitution seeks to challenge an order of the State Industrial Court passed on 25th October 1971, dismissing the revision filed by the petitioner under section 66 of the Madhya Pradesh Industrial Relations Act, 1960.

2. The petitioner was employed as a conductor by the Madhya Pradesh State Road Transport Corporation. On 30th December 1969 he was given a charge-sheet alleging that he had carried ten passengers without ticket on Rewa-Shahdol route on 22nd August 1969. The charges levelled against the petitioner were : (i) that by not issuing tickets to the passengers the petitioner had caused financial loss to the Corporation to the extent of the fare payable by the passengers; (ii) that the petitioner himself recovered the fare from the passenger and misappropriated the same; (iii) that the petitioner disobeyed the orders of the Corporation; and (iv) that the petitioner contravened section 4 of the Motor Vehicles (Taxation on Passengers) Act. In a domestic inquiry held in accordance with the Standing Orders, the petitioner was found guilty and was dismissed from service on 13th March 1970. The petitioner then, after giving usual approach notice, applied under section 31 (3) of the M.P. Industrial Relations Act, 1960, to the Labor Court for setting aside the order of dismissal and for his reinstatement. The Labor Court, by its order dated 11th December 1970, dismissed the application of the petitioner holding that the domestic inquiry was proper and no ground was made out for interference with the order of dismissal. A revision was then filed by the petitioner against the order of the Labor Court which, as already stated,

was dismissed by the Industrial Court on 25th October 1971. Thereafter the present writ petition was filed in this Court.

3. The first contention raised by the learned counsel for the petitioner is that under the scheme of the Madhya Pradesh Industrial Relations Act, 1960, it is open to the Labor Court to look into the merits of the findings reached in the domestic inquiry and to set aside the order of dismissal, if it takes a different view on the evidence produced in the inquiry. It is also contended that the Labor Court can also interfere with the punishment awarded in the domestic inquiry, if in its opinion the punishment imposed is severe. Learned counsel has argued that the powers of the Labor Court under the Madhya Pradesh Act are wider than the powers of the Labor Court under the Industrial Disputes Act, 1947, as it stood before the amending Act 45 of 1971, and that the decisions of the Supreme Court which lay down that the Labor Court functioning under the Industrial Disputes Act did not sit as an appellate tribunal in deciding an industrial dispute relating to dismissal and its powers were limited, cannot be applied under the scheme of the Madhya Pradesh Act.

4. In order to appreciate the arguments advanced before us, it is necessary first to examine the scheme of the Central Act and then to examine the scheme of the Madhya Pradesh Act and to see how the two Acts differ on the question of jurisdiction of the Labor Courts and Tribunals constituted under these Acts for the adjudication of an industrial dispute relating to dismissal of an employee. The Labor Courts and Industrial Tribunals are constituted by sections 7 and 7-A of the Central Act "for the adjudication of industrial disputes relating to any matter specified in the Second Schedule." The following three items of the Second Schedule are relevant on the point:

> 1. The propriety or legality of an order passed by an employer under the standing orders;
> The application and interpretation of standing orders; and
> Discharge or dismissal of workmen including reinstatement of, or a grant of relief to, workmen wrongfully dismissed.

A Labor Court or Industrial Tribunal under the Central Act gets jurisdiction when a reference of industrial dispute is made to it by the appropriate Government under section 10 of the Act. Section 15 of the Central Act lays down that where an industrial

dispute has been referred to a Labor Court or Tribunal for adjudication, it shall hold its proceedings expeditiously and shall as soon as it is practicable on the conclusion thereof submit its award to the appropriate Government. It will be seen from these provisions that a Labor Court or Tribunal functioning under the Central Act is constituted to adjudicate industrial disputes referred to it. When the dispute relates to discharge or dismissal of a workman in accordance with the standing orders applicable to him, the question of propriety or legality of the order itself forms a subject-matter of dispute and the dispute referred to will fall both under Items 1 and 3 of the Second Schedule. The Act did not in terms restrict the power of a Labor Court or Tribunal to go into any question of fact or to enquire into the merits of the findings of domestic inquiry in the adjudication of the industrial dispute referred to it. However, in a series of decisions, beginning from *M/s. Indian Iron and Steel Co. v. Their Workmen :* [1] the Supreme Court held that the jurisdiction of a Labor Court or Tribunal was not of appellate nature and it could not substitute its own judgment for that of the management reached in a proper inquiry. The principles bearing upon the jurisdiction of a Labor Court or Tribunal, when adjudicating disputes relating to dismissal before insertion of section 11-A, were recently reiterated and summarized in *Workmen of F.T.& R. Co. v. The Management* [2] After an exhaustive review of the previous cases, the Supreme Court called out the following principles as emerging from those decisions :

> (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
> (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
> (3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labor practice or mala fide.
> (4) 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.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognized that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of *Panitole Tea Estate v. The Workmen's :* [3] within the Judicial decision of a Labor Court or Tribunal.

5. The above was the law as laid down by the Supreme Court till 15th December 1971

when by Act No. 45 of 1971 section 11-A was inserted in the Central Act. This section reads:

6. Powers of Labor Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen:--Where an industrial dispute relating to the discharge or dismissal of a workmen has been referred to a Labor Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labor Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workmen on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

> Provided that in any proceeding under this section the Labor Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

7. This new section authorizes a Labor Court or Tribunal to reappraise the evidence led in the domestic inquiry and to hold that the alleged misconduct itself is not established by the evidence. It can also see whether the misconduct alleged and found proved is such that it does not warrant dismissal or discharge; [See- *Workmen of F.T.& R. Co. v. The Management*]. A careful perusal of the provisions of the Central Act, as they stood before the insertion of section 11-A, will show that the Act did neither contain any express restriction of the powers of a Labor Court or Tribunal to go into the merits of the findings reached in a domestic inquiry by reappraising the evidence or to examine the propriety of punishment awarded in such an inquiry ; nor did the Act expressly confer any power to reappraise evidence and to interfere with the findings reached in a domestic inquiry like an appellate Court. In this situation, the limitations on the power of a Labor Court or Tribunal in the matter of industrial adjudication arising out of orders of dismissal or discharge were laid down by the cases as emerging by necessary implication on broad principles of policy involved in such matters.

8. We may now advert to the scheme of the Madhya Pradesh Act. Under section 31 (3) of the Act a representative of employees or an employee desiring a change in respect

of an industrial matter specified in Schedule II or any other matter arising out of such change may make an application to a Labor Court. The relevant industrial matters specified in Schedule II are items 1 and 6 which read as follows:

> 1. The propriety or legality of an order passed or action taken by an employer acting or purporting to act under the standing orders.
> Employment including--
> (i) reinstatement and recruitment;
> (ii) unemployment of persons previously employed in the industry concerned.
> Under section 61 (1) of the Act a Labor Court has power "to decide disputes regarding which application has been made to it under sub-section (3) of section 31 of the Act." Section 61 (2) provides that for the purpose of deciding a dispute "it shall be lawful for the Labor Court to determine questions of fact relevant to the dispute." Then comes section 106 which enacts that notwithstanding anything contained in the Act, a Board, the Industrial Court, or a Labor Court, as the case may be, "shall have the power to decide all matters arising out of the industrial matter or dispute referred to it for decision under any of the provisions of the Act."

9. A perusal of these provisions of the State Act will show that a Labor Court under the State Act has not been expressly authorized to go into the merits of the findings reached in a domestic inquiry and to see whether the punishment of discharge or dismissal is justified. The powers of a Labor Court under the Madhya Pradesh Act are quite general as were of a Labor Court or Tribunal under the Central Act before it was amended by insertion of section 11-A. A Labor Court under the Madhya Pradesh Act like a Labor Court under the Central Act can decide an industrial dispute relating to the propriety or legality of an order passed by an employer under the standing orders. The order of employer, which is the subject-matter of industrial dispute, may be an order of dismissal. The propriety or legality of an order of dismissal can, therefore, be decided by a Labor Court under the Madhya Pradesh Act as it could be decided under the Central Act. But the power to determine propriety or legality of an order of dismissal does not confer appellate powers on a Labor Court. Although it has power to determine relevant questions of fact, it does not mean that it can go into the merits of the findings reached in a domestic inquiry and reappraise the evidence. The principles which applied to the industrial adjudication under the Central Act were also applicable to the industrial adjudication under the Madhya Pradesh Act. Indeed, it has not been

disputed by the learned counsel for the petitioner that all along in cases arising under the Madhya Pradesh Act this Court has taken the view that the principles laid down by the Supreme Court in the context of industrial adjudication under the Central Act were applicable to the industrial adjudication under the Madhya Pradesh Act. What the learned counsel argues is that in the previous cases decided by this Court attention was not drawn to the provisions contained in section 61 (2) and section 106 of the Act and that it was not noticed that powers of a Labor Court under the Madhya Pradesh Act are much wider than the powers exercised by a Labor Court under the Central Act. It is true that under sections 61 (2) and 106 power is given to determine questions of fact relevant to the dispute and to decide all matters arising out of the dispute referred to the Labor Court, but it cannot be said that because of these provisions in the Madhya Pradesh Act a Labor Court functioning under it has wider powers than a Labor Court functioning under the Central Act before its amendment in 1971. We have already indicated the relevant provisions and scheme of the Central Act from which it is clear that a Labor Court or Tribunal under the Central Act had power to decide an industrial dispute and to express restrictions were placed on its power of deciding the dispute referred to it. The case law that developed in restricting the powers of a Labor Court or Tribunal under the Central Act was based on general principles of policy involved in a industrial adjudication. Same considerations apply for construing the powers of a Labor Court under the Madhya Pradesh Act. In our opinion, the principles laid down by the Supreme Court in the matter of industrial adjudication of a dispute under the Central Act arising out of an order of dismissal are fully applicable to cases arising under the Madhya Pradesh Act. If the Legislature wants to widen the jurisdiction of a Labor Court under the Madhya Pradesh Act and to give it a power analogous to an appellate Court, it can amend the Act by inserting a similar provision as has been inserted in the shape of section 11-A in the Central Act. But until the law is amended, interference with an order of dismissal passed by an employer can be made only on the principles laid down by the Supreme Court in the context of industrial adjudication under the Central Act which have been uniform ally followed in cases arising under the Madhya Pradesh Act.

10. Learned counsel for the petitioner referred to us a decision of the Bombay High Court in *Vithoba Maruti Chavan v. Taki Bilgrami,* [4] In this case a Division Bench of the Bombay High Court while construing the provisions of the Bombay Industrial Relations Act, which are similar to the provisions of our Act, came to the conclusion that it is not possible to accept the contention that under the Bombay Act the power of

a Labor Court should be so narrowly construed as to enable it to interfere with an order of dismissal only if the circumstances which are enumerated by the Supreme Court in dealing with cases under the Central Act are established. But in this case also the learned Judges were not of the view that a Labor Court exercises any appellate powers or that it can hold a de novo inquiry if the inquiry, conducted by the domestic tribunal has been fair and in accordance with the standing orders. This case was considered by a Division Bench of the Gujarat High Court in *Manekchowk & Ahmedabad Mfg. Co v. Industrial Court,* [5] The learned Judges of the Gujarat High Court held that the principles laid down by the Supreme Court in dealing with cases of dismissal under the Central Act can easily apply to the cases arising under the Bombay Industrial Relations Act. They did not accept the Bombay ruling in Vithoba Maruti's case that there were such, differences between the Bombay Act and the Central Act that the principles laid down by the Supreme Court were inapplicable or that the power conferred on a Labor Court by the Bombay Act was much wider. It was also held that the power conferred on a Labor Court was neither appellate nor revisional, and that the power was in the nature of a limited original jurisdiction to go into the propriety or legality of the order of dismissal passed under the standing orders. We are in respectful agreement with the view taken by the Gujarat High Court.

11. It was then contended by the learned Counsel for the petitioner that the domestic inquiry was held on 27th February 1970 and notice of inquiry was served on the petitioner on that very date, and that the petitioner was not given sufficient time for preparation for his defense in the inquiry. It is argued that because of this the inquiry was vitiated as being against the principles of natural justice. The standing orders do not fix any period which must intervene between the date of service of notice and the date of inquiry. Therefore, all that can be said to be necessary is that the notice must give sufficient time to the employee concerned to prepare himself for the inquiry. It is, a question of fact whether the notice in a particular case has given sufficient time for that purpose. In the instant case the charge-sheet was served on the petitioner on 30th December 1969. The petitioner, therefore, knew two months ahead of the inquiry that these were the charges against him, and that an inquiry would be held on these charges. When the petitioner appeared on the date of inquiry before the Enquiry Officer, he did not object to the inquiry being held on that date. In his statement before the Labor Court the petitioner clearly admitted that he had no objection to the inquiry being held on 27th February 1970. In these circumstances, it cannot be held that the petitioner was in any way prejudiced because of the fact that the notice of the date of

inquiry was served on him on 27th February itself and not earlier. We are, therefore, unable to hold that the domestic inquiry was vitiated being against the principles of natural justice.

12. It was next contended that the order of dismissal was vitiated as the past service record of the petitioner was not shown to him. Reliance for this submission was placed on the case of *State of Mysore v. Manche Gowda* [6] This case was explained by the Supreme Court in *State of V.P. v. Harish Chandra,* [7] These cases deal with the question of reasonable opportunity under Article 311 of the Constitution and lay down that if past record of a civil servant is taken into consideration for imposing on him a higher punishment, he must be told about the past record and given opportunity to explain it. But it is also laid down that if the past record is taken into account only for finding out mitigating circumstances, it is not necessary to give an opportunity to the Civil servant to explain the past record. These cases are not directly applicable to industrial adjudication under the Madhya Pradesh Act. According to the standing orders, in awarding punishment the management should take into account the gravity of misconduct, the previous record of the employee, if any, and any other extenuating or aggravating circumstances; see--Standing Order 12 (3) (c). The procedure for inquiry is prescribed by Standing Order 12 (4). It is nowhere laid down in the standing orders that at the time of awarding punishment the previous record of the employee should be brought to his notice. The petitioner in this case did not produce the order of dismissal. It is not, therefore, proved whether the previous record of the petitioner was taken into account as an extenuating or aggravating circumstance. The petitioner has, therefore, failed to lay down the basis for the grievance that he has been prejudiced because his attention has not been drawn to the previous record. The charges proved against the petitioner included the charge of dishonesty, which is a major misconduct under the standing orders. It is true that a major misconduct need not always be punished with dismissal and the management may award any lesser punishment, such as censure, fine, suspension, withholding of increments and demotion. But having regard to the gravity of the charge that the petitioner had recovered fare from the passengers and had not issued tickets to them so that he may misappropriate the money, it cannot be held that the punishment awarded was in any way severe or disproportionate to the misconduct. The punishment imposed by the management when the misconduct is proved in a proper domestic inquiry cannot be interfered with except in cases where it is so harsh as to suggest victimisation or unfair Labor practice; [see--Proposition No. 9 quoted above from *Workmen of F.T and R. Co. v. The Management* and also *F.I.C.*

Commerce v. R.K. Mittal, [8] As in the present case the punishment of dismissal does not give rise to any inference of victimization or unfair Labor practice, the Labor Court and Industrial Court rightly refused to interfere with it.

13. It was lastly contended that there was no legal evidence for the finding in the domestic inquiry that the petitioner had recovered the fare from the passengers. Reference in this connection was made to *Central Rank of India v. P.C. Jain*[9] , where it has been held that interference with the findings in a domestic inquiry can be made in two types of cases: (i) cases in which the findings are not based on legal evidence; and (ii) cases in which the findings are such as no reasonable person could have arrived at on the basis of the material before the Enquiry Officer. In each of these cases the findings are treated as perverse. It was argued by the learned counsel for the petitioner that the passengers were not examined during the inquiry and the evidence of the Ticket Inspector that the passengers stated that they had paid money to the petitioner was hearsay and could not be acted upon. Having gone through the record of the domestic inquiry, we are, however, not satisfied that the finding reached by the Enquiry Officer that the petitioner had realized the fare from the passengers is perverse. It is no doubt true that the passengers who gave the money to the petitioner were not examined. There are, however, two circumstances which strongly go against the petitioner. After the bus was inspected by the Ticket Inspector Sri Tripathi and tickets were issued to the ten passengers, who were found without ticket, a trip-sheet was prepared which is Ex. D-2. In this sheet it is clearly noted that the ten passengers were without ticket, that the fare from nine of them had already been realized and so far as one was concerned, the fare was realized by the Inspector. This endorsement, which clearly showed that the petitioner had realized the fare from nine passengers without issuing tickets, is also signed by him. Then another circumstance which is material is that the petitioner did not make any statement in the domestic inquiry that he had not received the fare from the nine passengers as stated in Ex. D-2, or that the fare was realized by the Inspector from all the ten passengers at the time when he issued tickets. We must not lose sight of the fact that a domestic inquiry is not a trial before a Court of law and rules of evidence do not strictly apply to such an inquiry. Having regard to the document Ex. D-2, which is signed by the petitioner, and having regard to the fact that he did not make any specific statement in the domestic inquiry that he had not realized the fare, it is not possible to hold that the finding reached in the inquiry is not based on any legal evidence, or that it is such which no reasonable person could have reached. In our opinion, the finding is not perverse.

14. For the reasons stated above, we are satisfied that the Labor Court and the Industrial Court were justified in refusing to interfere with the findings of the domestic inquiry and with the punishment of dismissal.

15. The petition fails and is dismissed. There shall, however, be no order as to costs. The security amount shall be refunded to the petitioner.

Cases Referred.

1. AIR 1958 SC 130
2. AIR 1973 SC 1227 at pp. 1241, 1242
3. AIR 1971 SC 2171: 1971 1 SCC 742,
4. (1964) XX LLJ 31
5. (1967) I LLJ 463
6. AIR 1964 SC 506
7. AIR 1969 SC 1020
8. AIR 1972 SC 763 at p. 780
9. AIR 1969 SC 983