ORISSA HIGH COURT

Hindusthan Steel Ltd

Vs

Rourkela Mazdoor Sabha

O.J.C. No. 175 of 1964

(S. Barman and B.K. Patra, JJ.)

18.12.1968

JUDGMENT

S. Barman, C.J.

1. The petitioner, Hindusthan Steel. Ltd., challenges the award of the labor court, Orissa by which it directed the management of Hindusthan Steel, Ltd., to reinstate their dismissed workman, opposite party 2, Udayanath Patra, with half of his back wages,

2. The charges of misconduct on which the workman was charge sheeted, were willful insubordination and disobedience of orders of superiors and negligence in duty resulting in stoppage of work in that on 10 August 1962, the opposite party 2, a crane operator, was asked to take out the fourth spindle at about 9-30 p.m., but he refused to carry out the order and did not do his work after 9-30 p.m. even though he had taken more than adequate relief by not working from 3-30 to 6-30 p.m. as a result of which the work had to suffer-all as stated in the charge sheet.

3. There was a departmental enquiry held by an enquiry committee who found the workman guilty of gross misconduct of disobedience of orders and he was dismissed. The workman, represented by Rourkela Mazdoor Sabha, opposite party l, submitted that the action taken by too management was wrong, improper and unjustified as the same was actuated by motives of victimisation,

4. This dispute between the management and the workman was referred to the labor court, Orissa, for adjudication on the question whether the dismissal of the workman is Justified and, if not, to what relief he is entitled?

5. By its award, dated 27 August 1964, the labor court held that the order of dismissal passed against Patna, the workman, is unjustified and directed the management to reinstate him with half of his back-wages. It is against this award that the management of Hindusthan Steel, Ltd.has filed this writ petition.

6. The points urged on behalf of the management-petitioner in support of its contention challenging the award are, in substance, these: The delinquent workman having admitted his guilt before the labor court, the findings of the labor court are vitiated in law being patently wrong on the materials placed before it and such findings have resulted in grave miscarriage of justice; the award of the labor court is based on irrelevant considerations and is opposed to the principles of natural justice and maintenance of industrial peace. It was also submitted that the labor court, when it came to a finding that the domestic enquiry was not fair and decided to go into the merits of the case on the very same grounds, it should have given notice to the management at that stage on such finding so that the management could have adduced evidence afresh to establish the charges before the labor court.

7. On the point relating to admission of guilt by the workman, the management relied on a sentence in the evidence of the workman where he stated-

> "As he (referring to the shift-in-charge Sri Bhatnagar) did not attend to my query, I sat on the crane without working. Immediately before this part of his evidence, the workman said as follows:
> "At 9-30 p.m., while I was sitting on the 40-ton crane, my shift-in-charge Sri Bhatnagar came and told me ' work.' He did not specify what work I was to do. Ha did not point out if any spindle was lying to be lifted. I was on the crane till 10 p.m. I got down from it when my reliever of tie C-shift came there. Sri Bhatnagar went away without attending to my reply ' I have already worked for four hours; shall I be given overtime allowance, if I work more'?

8. In the ultimate analysis of the evidence as discussed the labor court, it is evident that there was some ambiguity or confusion in the context of which the verbal order of the shift in-charges is said to have been made, nor was the order made clear to the workman. In *Jagdish Prasad Saxena v. State of Madhya Bharat*[1] the Supreme Court held that where the statements made by the appellant do not amount to a clear or unambiguous admission of his guilt, the failure to hold a formal enquiry would certainly constitute a serious infirmity in the order of removal passed against him; all his statements must be considered as a whole and thus considered, the Supreme Court held in that case that there was no admission of guilt at all.

9. In the present case before us, it is not clear from the evidence as to who actually in respect of which particular work in what manner communicated the order to the workman, nor is it clear whether the workman understood the same in the circumstances as discussed by the labor count. In any event, this is a finding which the labor court came to on Ha reassessment of the evidence before the enquiry committee and there 1b no reason why this Court should, in exercise of its writ jurisdiction, interfere with each a finding based on an appreciation of the circumstances from evidence as fully discussed in the award.

10. That apart, there are certain infirmities in the procedure of the enquiry committee as discussed by the labor court. It was commented that the enquiry committee first examined the delinquent workman about the allegations made against him. Admittedly, this was done at the very commencement of the enquiry before any evidence in support of the charges leveled against

him was recorded. The management should have first called evidence in support of the charge. Thereafter, the workman should have been called to meat the charges against him. Until the management adduced evidence in support of the charge, the workman could not have known of the charges ha has to meet. In *Associated Cement Companies, Ltd. v. their workmen and Anr*[2]. it was held that it is necessary to emphasize that in domestic enquiries the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross examine the Bald evidence, and then should the workman be asked whether he wants to give any explanation about the evidence led against him; It is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry the employee should be cross-examined even before any of the evidence is led against him; it is necessary not to expose the employee to the risk of cross-examination in the manner adopted in the enquiry proceedings ; cad that such an elaborate examination of the accused workman at the cutest constitutes an infirmity in the enquiry. Relying on this decision, the labor court came to the conclusion.-with which we agree -that the enquiry conducted by the enquiry committee was unfair to the workman.

11. Apart from this, the considerations which weighed with the labor court in coming to its conclusion are these; The report of the shift in charge Sri Bhatnagar does net disclose that he himself ordered the workman to take cut the fourth spindle. There was no evidence before the enquiry committee to support the allegation that the workman refused to carry out, the orders of his superiors. It was rightly commented that the management did not examine before the labor court Sri Bhatnagar whose order was alleged to have been disobeyed by the workman. Indeed, no witness was examined before the labor court to show that Sri Bhatnagar had actually directed the workman to take out the fourth spindle that night. Thus, the most material witness had not been examined. In view of these infirmities in the domestic enquiry the labor court can ignore the domestic enquiry and deal with the merits of the dispute itself, as held by the Supreme Court in *Samnuggur Jute Factory Company, Ltd. v. their workmen*[3] In this view of the case, we do not consider that the considerations which weighed with the labor court are irrelevant, nor do we think that the award of the labor court is opposed to the principles of social justice) or maintenance of industrial peace.

12. There is also no substance in the argument that the labor court, when it came to the finding that the domestic enquiry was not; fair and decided to go into the merits of the case, should have given notice to the management at that stage of such finding. It was open to the management to raise this as a preliminary issue praying before the labor court to decided whether or not the domestic enquiry was unfair. The management however did not raise the point before the labor court. In this position, the management should have added evidence before the labor court to establish the charge against the workman. At no stage either before the enquiry committee or before the labor court-did the management call even Sri Bhatnagar on the basis of whose report the workman was charged. It is, therefore, difficult to see how any material prejudice was caused to the management by the procedure adopted by the labor court. It was not obligatory, in law, for the labor court to indicate its mind about

the infirmities in the domestic enquiry at any stage before it gave its findings in the
award, unless in the very beginning a preliminary issue was raised before the labor court is that respect.

13. We see, therefore, no reason to interfere with the conclusion arrived at by the labor court. The writ petition 1b accordingly dismissed with costs. Hearing fee ₹ 100.

Patra, J.

14. I agree.

Petition dismissed.

Cases Referred.

[1]1963-I L.L.J. 325
[2]1963-II L.L.J. 396
[3]1964 -I L.L.J. 634