Engineering Laghu Udyog Employees' ... vs Judge, Labour Court And Industrial ... on 25 November, 2003

Equivalent citations: AIR 2004 SUPREME COURT 4951, (2004) 5 ALL WC 3894, (2004) 2 JCR 117 (SC), 2003 (12) SCC 1, 2004 LAB LR 331, (2004) 16 ALLINDCAS 330 (SC), 2004 (2) SLT 208, 2004 (1) SCALE 666, 2004 (2) UJ (SC) 783, (2005) 1 BANKCAS 262, (2004) 5 ANDH LT 175, (2004) 2 MAD LJ 169, (2004) 1 SCALE 666, (2004) 2 ESC 213, (2004) 1 LABLJ 1105, (2004) 104 FJR 715, (2004) 100 FACLR 843, (2004) 1 LAB LN 1177, (2004) 3 MAH LJ 331, (2004) 3 MPLJ 3, (2004) 1 SCT 760, (2003) 8 SERVLR 569, (2004) 2 SUPREME 167, (2004) 5 ANDHLD 18, (2005) 25 ALLINDCAS 188 (AP), (2004) 14 INDLD 852, (2004) 2 CURLR 942, 2004 SCC (L&S) 974, (2004) 3 CPJ 52

Bench: S.B. Sinha, Ar. Lakshmanan

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           CASE NO.:
Appeal (civil)  1729 of 1998

PETITIONER:
ENGINEERING LAGHU UDYOG EMPLOYEES' UNION

RESPONDENT:
JUDGE, LABOUR COURT AND INDUSTRIAL TRIBUNAL AND ANR.

DATE OF JUDGMENT: 25/11/2003

BENCH:
V.N. KHARE CJ & S.B. SINHA & DR. AR. LAKSHMANAN

JUDGMENT:
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JUDGMENT 2003 Supp(6) SCR 253 The Order of the Court was delivered :

> One Smt. Rukma was an employee of M/s. Neeraj Tising Industry, Ajmer. It appears that she committed certain misconduct as a result of which her services were terminated by the employer on 20th December, 1989. The charge against the workman was that the Manager has entered into conspiracy to get her kidnapped through one Amar Singh by offering her Rs. 10,000. Such an allegation was made against the Manager in front of other workmen and on Manager's asking as to why she had been casting, such false allegations against him and despite his efforts to pacify her, she became violent and took off her chappal and threatened to beat him, but on intervention of some other workmen, she could not reach him. She despite the Manager's asking her to behave herself, continued to make allegations against him in the most filthy language.

Having regard to the said misconduct as also her other past misconducts, the workman was dismissed from service. She did not even acknowledge the receipt of the order of dismissal as a result whereof the same had to be sent to her by registered post along with a covering letter in respect thereof. She even refused to accept the dues as admissible to her and the same was sent by Money Order on 21.12.1989.

The appellant herein espoused the cause of Smt. Rukma (workwoman). As the conciliation proceedings failed, the matter was referred to the Labour Court under Section 10 of the Industrial Disputes Act (for short 'the Act'). One of the issues framed before the Labour Court was whether the order .terminating the services of Smt. Rukma was contrary to the principles of natural justice as no domestic inquiry proceedings were held for the said purpose. Under such circumstances, the employer opted to lead evidence to prove the charges as a result of which the services of Smt. Rukma were terminated. The Labour Court permitted the employer to lead evidence. After examining the evidence adduced by the employer, the Labour Court found that the charges levelled against Smt. Rukma are proved. Consequently, the Labour Court gave its award on 19.2.1996 against the workman holding that the charges are proved. Aggrieved, the appellant who espoused the cause of the workman filed a petition under Article 226 of the Constitution before the Rajasthan High Court. A learned Single Judge of the High Court dismissed the writ petition A letters patent appeal filed by the appellant also met with the same fate. Aggrieved, the appellant is in appeal before us by way of special leave.

Learned senior 'counsel appearing for the appellant urged that the view taken by the High Court to the extent it held that the order of termination would relate back to the date of the original order of termination, is erroneous and relied upon a 3-Judge Bench decision of this Court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, [1980] 2 SCR 146 at page 215.

Having heard the matter, we are of the view that the said submission cannot be accepted as this question stands concluded by a Constitution Bench decision of this Court in P. H. Kalyani v. M/s. Air France, Calcutta, [1964] 2 SCR 104. In P.H. Kalyani's case (supra), it was held by the Constitution Bench that where a domestic inquiry is found defective and the employer leads evidence before the Labour Court and subsequently the Labuor Court gives its approval that the charges are proved, the order of termination would relate back to the date of original order of termination. This decision was followed in Punjab Daily Development Corporation Ltd. and Another v. Kala Singh and Others, [1997] 6 SCC 159 wherein it was said that the Constitution Bench decision in P.H. Kalyani's case (supra) and the decision in R. Thiruvir Kolam v. Presiding Officer, [1997] l SCC 9 have held that when Labour Court records a finding that the domestic inquiry was defective and opportunity was given to the management and the workman to adduce evidence and Labour Court upholds dismissal order passed by the management, the dismissal order would relate back to the date of order of original dismissal and not from the date of award of the Labour

Court. In Vishweshwaraiah Iron & Steel Ltd. v. Abdul Gani & Ors., [1997] 3 SCC 713, this Court however, observed that some of the decisions rendered by this Court subsequent to P.H. Kalyani's case (supra) require a relook as the same are not in consonance with the Constitution Bench decision. The same Bench in Director, State Transport Punjab and Another v. Gurdev Singh and Another, [1998] 2 SCC 159 held that where an order of termination is found defective having been passed contrary to the principles of natural justice and the employer before Labour Court has adduced evidence to prove the charges and the Labour Court comes to the conclusion that the charges are proved, in such a situation the order of dismissal will relate back to the original order of termination. In Rambabu Vyankuji Kheragade v. Maharashtra Road Transport Corporation, [1995] Suppl (4) SCC 157, it was held that the effective date of dismissal after domestic inquiry if Labour Court finds the inquiry to be unfair and as such gives the employer an opportunity to prove the charge and finally upholds the dismissal, will relate back to the date of original order. This has been the consistent view of this Court.

Section 11A of the Industrial Disputes Act, 1947 (for short 'the Act') confers a wide power upon the Labour Court, Tribunal or the National Tribunal to give appropriate relief in case of discharge or dismissal of workmen. While adjudicating on a reference made to it, the Labuor Court, Tribunal or the National Tribunal, as the case may be, if satisfied that the order of discharge or dismissal was not justified, it may, while setting aside the same, direct reinstatement of the workman 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. Thus, only in a case where the satisfaction is reached by the Labuor Court or the Tribunal, as the case may be, that an order of dismissal was not justified, the same can be set aside. So long as the same is not set aside, it remains valid. But once whether on the basis of the evidences brought on record in the domestic inquiry or by reason of additional evidence the employer makes out a case justifying the order of dismissal, we fail to understand as to how such order of dismissal can be given effect to only from the date of the award and not from the date of passing of the order of punishment. The distinction r-ought to be made by this Court in some of the matters including Gujarat Steel Tubes (supra), in our opinion, is not based on a sound premise, particularly when the binding decisions of this Court in Motipur Sugar Factory's case (supra) and Workmen of Messrs Firestone Tyre & Rubber Company of India (P.) Ltd. v. Management & Ors., [1973] 3 SCR 587, have not been taken note of.

In the present case, we find that the charges were proved before the Labour Court and, thus, the High Court was correct in holding that the order of termination would relate back to the date of original order.

Learned senior counsel then urged that P.H. Kalyani's case (supra) . is dissimilar as it was a case of defective inquiry. According to the learned senior counsel, there is a

difference between a termination which is not followed by an inquiry and where inquiry is found to be defective on account of procedural breach.

It is not in dispute that in a proceeding for obtaining approval of an order of dismissal from the Labour Court or the Industrial Tribunal, as the case may be, in terms of Section 33(2)(b) of the Act or where a reference has been made under Section 10 thereof, if it is found that an inquiry has been conducted in violation of the principles of natural justice, the employer is entitled to raise the said question in its written statement by way of preliminary issues and pray for grant of such an opportunity to prove the charges levelled against him.

In Workmen of Motipur Sugar Factory (Private) Limited v. Motipur Sugar Factory, [1965] 3 SCR 588, this Court held :

"It is now well-settled by a number of decisions of this Court that where an employer has failed to make enquiry before dismissing or discharging a workmen it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic inquiries have been held. The entire matter would be open before the tribunal which will .have jurisdiction not only to go into the limited questions open to a tribunal where domestic inquiry has been properly held (see Indian Iron & Steel Co. v. Their Workmen, [1958] SCR 667) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to M/s. Sasa Musa sugar Works (P) Limited \. Shobrati Khan, [1959] Supp. SCR 836, Phulbari Tea Estate v. Its Workmen, [1960] l SCR 32 and the Punjab National Bank Limited v. Its Workmen, [1960] l SCR 806. These three cases were further considered by this Court in Bharat Sugar Mills Limited v. Shri Jai Singh, [1962] 3 SCR 684, and reference was also made to the decision of the Labour Appellate Tribunal in Shri Ram Swarath Sinha v. Belaund Sugar Co., (1954) LAC 697. It was pointed out that "the import effect of commission to hold an enquiry was merely this : that the tribunal would not have to consider only whether there was a prima fade case but would decide for itself on the evidence adduced whether the charges have really been made out." It is true that three of these cases, except Phulbari Tea Estate's case, were on applications under s. 33 of the Industrial Disputes Act, 1947. But in principle we see. no difference whether the matter comes before the tribunal for approval under s. 33 or on a reference under s. 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate's was on a reference under s. 10, and the same principle was applied there also, the only difference being that in that case, there was an enquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy

the tribunal that on facts the order of dismissal or discharge was proper." The employer, thus, has got a right to adduce evidence before the Tribunal justifying its action, even where no domestic inquiry whatsoever has been held.

Yet again in Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Ors., [1973] 3 SCR 587, this Court while interpreting the provision of Section 11A of the Act held that in terms thereof, the management need not necessarily rely on the materials on record as while introducing Section 11A of the Act, the Legislature must have been aware of the decisions of this Court which are operating in the field for long time. This Court enunciated several principles bearing on the subject and, therefore, it held that it was difficult to accept that the expression materials on record; used in the proviso to Section 11A was set at naught. The Court formulated the propositions of law emerging from the decisions rendered by this Court, the relevant portions whereof are as under:

"From those decisions, the following principles broadly emerge:

(1) ...

(2) ...

(3) ...

(4) Even if no enquiry has been held by an employer of 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, has to give an opportunity to the employer and employee to adduce evidence for the first time justifying his action; and it is open to the employee to adduce evidence contra.

(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 straightaway, 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) ....."

Even in Firestone 's case (supra), no distinction, thus, has been made between a defective inquiry and no inquiry.

In Gujarat Steel Tubes Ltd. Case (supra), [1980] 2 SCR 146, Krishna lyer, J. sought to make a

distinction between an approval which is required to be made under Section 33 of the Act and a reference under Section l O thereof stating :

> "Kalyani was cited to support the view of relation back of the Award to the date of the employer's termination orders. We do no agree that the ratio of Kalyani corroborates the proposition propounded. Jurisprudentially, approval is not creative but confirmatory and therefore relates back. A void dismissal is just void and does not exist. If the Tribunal, for the first time, passes an order recording a finding of misconduct and thus breathes life into the dead shall of the Management's order, predating of the nativity does not arise. The reference to Sasa Musa Kalyani enlightens this position. The latter case of D.C. Roy v. The Presiding Officer, Madhya Pradesh Industrial Court, Indore & Ors. (supra) specifically refers to Kalyani 's case and Sasu Musa 's case and holds that where the Management discharges a workmen by an order which is void for want of an enquiry or for blatant violation of rules of natural justice, the relation-back doctrine cannot be invoked. The jurisprudential difference between a void order, which by a subsequent judicial resuscitation comes into being de novo, and an order, which may suffer from some defects but is not still born or void and all that is needed in the law to make it good is a subsequent approval by a tribunal which if granted, cannot be obfuscated."

When in terms of the proviso appended to clauses (b) of Section 33 of the Act, an approval is sought for and is refused, the order of dismissal becomes void. If an approval is not obtained still, the order of punishment cannot be given effect to. It is, therefore, not correct to contend that the Tribunal in a reference under Section 10 of the Act, when passes an order recording a finding of misconduct, brings life into the dead. Unfortunately, the Court did not take notice of the binding decisions in Motipur Sugar Factory's case (supra) and Firestone's case (supra).

We may further notice that P.H. Kalyani case (supra) has also recently been followed by another Constitution Bench in Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and Others, [2002] 2 SCC 224.

We may, however, observe that although in certain contingencies an employer may in a case of grave nature of misconduct dismiss a workman without holding an enquiry but ordinarily such an enquiry will not be dispensed with. In the event it is found ultimately by the Labour Court/ Industrial Tribunal that the employer had taken recourse to unfair labour practice or the order of termination has been passed malafide or by way of victimization, it will be open to the Tribunal to pay compensation even in a case where ultimately charges are proved, despite holding that the order of termination is valid for the reason that principles of natural justice have not complied with.

For the aforesaid reasons, we do not find any merit in this appeal. It is, accordingly, dismissed There shall be no order as to costs.