Bharat Forge Company Limited vs A.B. Zodge And Anr on 20 February, 1996

Equivalent citations: 1996 AIR 1556, 1996 SCC (4) 374, AIR 1996 SUPREME COURT 1556, 1996 (4) SCC 374, 1996 AIR SCW 1656, 1996 (1) LAB LR 385, 1996 LABLR 1 385, (1996) 5 JT 628 (SC), 1997 (1) UPLBEC 570, (1996) 2 SCR 912 (SC), 1996 SCC (L&S) 945, (1997) 1 UPLBEC 570, (1996) 2 CURLR 345, (1996) 88 FJR 736, (1996) 73 FACLR 1754, (1996) 2 LABLJ 643, (1996) 1 LAB LN 797, (1997) 1 MAD LJ 24, (1996) 3 SCT 848, (1996) 2 SERVLR 492

Author: G.N. Ray

Bench: G.N. Ray, B.L Hansaria

PETITIONER:
BHARAT FORGE COMPANY LIMITED

Vs.

RESPONDENT:
A.B. ZODGE AND ANR.

DATE OF JUDGMENT: 20/02/1996

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
HANSARIA B.L. (J)

CITATION:
1996 AIR 1556 1996 SCC (4) 374
JT 1996 (5) 628 1996 SCALE (2)731

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

Heard learned counsel for the parties. The short question which arises for consideration of this Court is whether the Industrial Tribunal was justified in refusing the prayer of the appellant company the employer to lead evidence in support of the order of dismissal passed against the respondent-employee. By the impugned judgment, the Bombay High Court has upheld the decision of the Tribunal in refusing to give permission to the employer to lead evidence before the Tribunal in justification of the order of dismissal.

Mr. Pai, the learned senior counsel appearing for the appellant has submitted before us that such permission has been refused by the Tribunal by indicating that although the enquiry was properly held, the finding in such enquiry was perverse and in such circumstances, no opportunity to lead evidences should be given. Such view according to Mr. Pai is not justified inasmuch as it has been held in Management of Ritz Theatre (P) Ltd. Vs. Its Workmen (1963 (3) SCR 461) that even when finding is perverse (see page 468) the whole issue is at large before the Tribunal and it would be entitled to deal with the merits of the dispute itself, when it would be open to the employer to adduce additional evidence. Mr.Phadnis, learned senior counsel appearing for the respondents, contends that was the position in law before insertion of Section 11 A in the Industrial Disputes Act, but this section has altered the position.

Mr.Pai s submission is that this is not so. In support of his contention, he has drawn our attention to the decision of this Court in Workmen of Messrs Firestone Tyre and Rubber Co. of India (P) Ltd. versus Management and Ors. (1973 (3) SCR page 587). In the said decision, the legislative changes brought about on the power of the Tribunal to decide the question of correctness and propriety of the order of termination or dismissal of service of an employee under Section 11 A were taken into consideration. It has been indicated in the said decision that the Tribunal under Section 11 A of the Industrial Disputes Act is clothed with the power to assess the evidences placed before the Tribunal for deciding as to whether the decision made by the employer was justified or not and such power is not fettered in any manner. In the said decision, the earlier decisions of this Court were also considered and ten principles emerging from such decisions have also been culled out. It also appears that the contention sought to be raised on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal, for the first time since recognized by this Court in its various earlier decisions, has been taken away by Section 11 A of the Industrial Disputes Act has not been accepted. It has been indicated in the said decision that there is no indication in Section 11 A that such right has been abrogated. It has also been held that if the intention of the legislature was to do away with such right which has been recognized over a long period of time as noticed in the decisions referred to earlier Section 11 A would have been differently worded. This Court has observed that admittedly there are no express words to that effect and there is no indication that the Section 11 A has impliedly changed the law in that respect. Therefore, the position is that even now the employer is entitled to adduce evidences, for the first time, before the Tribunal even if the employer had held no inquiry or the inquiry held by the employer is found to be derverse.

Mr. Phadhis has, however, submitted before us that it does not appear that in the decision of Firestone Tyre Rubber Company's case, proviso to Section 11 A has been specifically adverted to and thereafter considered. The proviso expressly bars introduction of any fresh materials because the proviso to Section 11 A indicates that the Labour Court. Tribunal or National Tribunal, as the case

may be, shall rely only on the materials on record and shall not take fresh evidence in relation to the matter.

Mr. Phadhis has submitted that the implication of proviso to Section 11 A therefore requires consideration. Such contention of Mr. Phadhis, however, cannot be accepted. Mr. Pai has drawn our attention to a later decision of this Court by a Bench of three Judges in Shanker Chakravarti versus Britannia Biscuit Co. Ltd. and Anr. (1979 (3) SCR paged 1165). In the said decision, the question of implication of the proviso to Section 11 A was specifically raised and such question has been gone into. The contention that under the proviso to Section 11 A the Labour Court or the Industrial Tribunal or the National Tribunal in proceeding under Section 11 A shall rely only on the material on record and shall not take any fresh evidence in relation to the matter under consideration was not accepted by this Court by placing reliance on the reasonings indicated in the decision in Firestone Rubber Company case.

A domestic enquiry may be vitiated either for non- compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well-recognised. In this connection, reference may be made to the decisions of this Court in Workmen of Motipur Sugar Factory (P) Ltd. Vs. Motipur Sugar Factory (P) Ltd. (1965 (II) LLJ 162 (SC>). State Bank of India Vs. R.K.Jain (1971 (III) LLJ 599 (SC>). Delhi Cloth General Mill Co. Ltd. Vs. Ludh Budh Singh (1972 (1) LLJ 180 (SC>) and Firestone Tyre Co.s Case (supra). The stage at which the employer should ask for permission to c additional evidence to justify the disciplinary action on merits was indicated by this Court in Delhi Cloth and General Mill's case (supra). In Sankar Chakrabarty's case (supra), the contention that in every case of disciplinary action coming before the Tribunal, the Tribunal as a matter of law must frame preliminary issue and proceed to see the validity or otherwise of the enquiry and then serve a fresh notice on the employe- by calling him to adduce further evidence to sustain the charges, if the employer chooses to do so, by relying on the decision of this Court in the case of Cooper Engineering Ltd. (1975 (2) LLJ 379 (SC>), has not been accepted. The view expressed in Delhi Cloth Mill's case (supra) that before the proceedings are closed, an opportunity to adduce evidence would be given if a suitable request for such opportunity is made by the employer to the Tribunal, has been reiterated in Sankar Chakrabarty's case after observing that on the question as to the stage as to when leave to adduce further evidence is to be sought for, the decision of this Court in Cooper Engineering Ltd. has not overruled the decision of this Court in Delhi Cloth Mill's case. There is no dispute in the present case that before the closure of the proceedings before the Tribunal, payer was made by the employer to lead evidence in support of the impugned order of dismissal. Hence, denial of the opportunity to the employer to lead evidence before the Tribunal in support of the order of dismissal cannot be justified.

In that view of the matter, the impugned judgment cannot be sustained and the same is set aside. It will be open to the parties to lead such evidence as they may deem proper before the Industrial Tribunal where the matter is to be re-heard. Since the proceeding is pending for a long, we direct that the proceeding before the Tribunal should be completed as early as practicable, but not beyond six months from the date of communication of this order. In order to expedite the proceeding before

the Tribunal we direct that the appellant Bharat Forge Ltd. may lead such further evidenced as the said company may desire within a period of two months from today and the worker may also lead evidence if they so desire within one month thereafter. The appeal is accordingly disposed of without any order as to costs.