Management Of Singareni Collieries ... vs Industrial Tribunal (C) Hyderabad And ... on 21 April, 1989

Equivalent citations: [1989(59)FLR588], (1989)IILLJ608AP

JUDGMENT

1. In this writ petition, the validity of the order passed by the Industrial Tribunal (Central), Hyderabad, holding that the dismissal of the workman is not justified is challenged.

2. Komaraiah and Hanumantha Rao were working as Coal Cutter and Timberman respectively in M/s. Singareni Collieries, Kalyanikhani. According to the Management they were guilty of several lapses. They were served with a charge-sheet on June 27, 1983 containing the following charges :

> (a) that one June 7, 1983 they have participated in a strike and made picketing in front of Additional C.M.E. confining him in his Office and they along with other workmen abused the C.M.E. in filthy language;
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> (b) that they raised slogans and abuses and gheraoed the Officer along with others;
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> (c) that they led a procession with the effigy of the Manager and attempted to burn the same and they have broken the gate with an intention to do physical harm;
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> (d) that on June 23, 1983 they stopped all the workmen from going to the work and indulged in a strike; and that these acts constitute violation of sub-section 1(a) of Section 22 of the Industrial Disputes Act and that it amounts to serious misconduct under the Standing Orders.

The petitioners were given 3 days time to submit their explanations. They were also asked to appear for enquiry on July 12, 1983. The petitioners submitted their explanations denying the charges. An enquiry was conducted and the petitioners were found to be guilty and they were dismissed from service by proceedings dated September 26, 1984.

3. The petitioners raised an Industrial Dispute and the matter was referred on May 8, 1985 under Sections 7-A and 10(1)(b) of the Industrial Disputes Act to the Industrial Tribunal (Central), Hyderabad for adjudication.

Before the Tribunal, the workmen contended that the order of dismissal was invalid and the findings of the Enquiry Officer are perverse and erroneous.

The matter was contested by the Management supporting the action of dismissal.

4. A preliminary objection was raised that the enquiry is vitiated by non-observance of the principles

of natural justice and this objection was overruled by order dated November 25, 1985. The Tribunal held that the domestic enquiry was held properly and there was no any violation of principles of natural justice.

5. No oral evidence was adduced before the Tribunal, but the workmen filed three documents marked as Exs. W-1 to W-3. Ex. W-1 is a judgment dated April 30, 1984 in C.C. No. 354 of 1983 on the file of Judicial First Class Magistrate, Laxettipet in which the two petitioners and 13 others were charged under Sections 147, 448, 506, 427 and 147 I.P.C. The workmen were acquitted of all the charges.

6. On a consideration of the material on record, the Tribunal held that the order of dismissal is not justified particularly in view of the fact that the Criminal Court had passed an order of acquittal in respect of the very same charges and even on merits, the dismissal is not justified. It is the validity of this order that is challenged in this writ petition.

7. Mr. K. Sreenivasa Murthy, the learned Counsel for the Management, mainly contended that the award is vitiated by an illegality in as much as the Tribunal proceeded on the footing a that all the incidents covered only one incident adjudicated by the Criminal Court. He submitted that criminal case covered only one incident relating to burning of the effigy of the Manager and trespass into the premises. The other charges were not the subject matter of the criminal case. The incident alleged to have taken place on June 23, 1983 and the strike conducted on June 23, 1983 were not the subject matter of the criminal case. The Industrial Tribunal proceeded on a wrong impression that all the charges were the subject matter of criminal prosecution and the workmen were acquitted. This approach had vitiated the entire order. Therefore, it is liable to be set aside. He further submitted that the Industrial Tribunal has no jurisdiction to re-appraise the evidence and come to a different conclusion on merits. Having found that the domestic enquiry was conducted properly, the Tribunal erroneously considered the evidence as if it is an Appellant Authority and recorded its own findings on merits which is not permissible. The Industrial Tribunal has only power to modify the punishment if it is of the opinion that it is disproportionate to the charges levelled against the workmen. But it cannot go beyond that power.

8. On the other hand, it is argued by Mr. G. Bikshapathy, the learned Counsel for the workmen, that the charges levelled against the workmen are substantially covered the Criminal Court's judgment Ex. W-1 in which the workmen were acquitted of all the charges. He further submitted that the Tribunal did not rest its decision only on that point. The Tribunal considered the evidence and the material on record and found that the dismissal is not justified and with the introduction of Section 11-A in the Industrial Disputes Act, the Labour Court or the Industrial Tribunal has ample power to go into questions of fact and satisfy themselves about the justification of the dismissal order. It can also consider whether the punishment imposed is reasonable having regard to the gravity of the charges.

9. I will first consider the contention raised regarding the Judgment of the Criminal Court.

The following facts are not is dispute. The order of dismissal Ex. W-2 is dated 10th June 1984. The Criminal Court rendered its judgment Ex. W-1 in April, 1984. The disciplinary authority has not taken the Criminal Court's judgment into account while passing the order of dismissal. It has now to be examined as to how far this circumstance vitiates the order. The Judgment of the Criminal Court is a decision on merits acquitting the accused workers. The acquittal is not on any technical grounds. The disciplinary authority is bound to take into account the judicial pronouncement of the Criminal Court and give due weight. It has not done so. While conceding this position, the learned Counsel submitted that all the charges were not the subject matter of criminal prosecution and hence the order of dismissal is not vitiated. The workmen were prosecuted for charges under Sections 147, 448, 506, 427 and 147 I.P.C. These charges in my opinion covered almost all the incidents mentioned in the charge-sheet. They are alleged violations of Standing Orders 16(5) and 16(9). The evidence adduced in the Criminal Court as well as at the domestic enquiry is the same. No appeal was preferred against the judgment of the Criminal Court as it has become final. It is now settled law that it is not open to the management to ignore the Criminal Court's Judgment. (Vide Anglo American Direct Tea Trading Co. v. Labour Court, Coimbatore (1970-I-LLJ-481) and Tirunelveli Tuticorin Electric Supply Co. Ltd. v. Industrial Tribunal, Madras (1975-I-LLJ-304).

Even otherwise, the Tribunal did not rest its decision only on that point. The entire evidence was considered and findings were given on merits. It is true that at more than one place the Tribunal repeatedly observed that the Criminal Court's judgment had been ignored. But the Tribunal had gone into the merits of the case and recorded a finding that the dismissal is not justified. In fact, in Para 16 the Tribunal begins by saying "even otherwise, let us see what is the evidence that is let in". So, apart from the Criminal Court's Judgment, the Tribunal independently considered the evidence and came to its own conclusions. Hence it is not possible to say that the Tribunal mainly rested its decision on the fact that the Criminal Court's Judgment was ignored. The Tribunal found as a matter of fact that there was no strike on 23rd June 1983 and that the Mine worked without any obstruction.

10. It is next submitted that the Industrial Tribunal has no jurisdiction to reappraise the evidence and come to its own conclusions. Its power is supervisory and only to see whether the domestic enquiry was conducted in a proper manner. When once it is satisfied that there is no violation of principles of natural justice in conducting the enquiry, the Tribunal has no jurisdiction to set aside the dismissal The learned Counsel in support of his contention relied upon the following decisions :-

> In Hamdard Dawakhana Wakf v. Workmen (1962-II-LLJ-772) it was held that the Industrial Tribunal could not interfere with the findings arrived at domestic enquiry unless the enquiry is vitiated by violation of principles of natural justice. But this is a decision rendered prior to introduction of Section 11-A in the Industrial Disputes Act. The amendment brought about on 14th December 1971 introducing Section 11-A has enlarged the powers of the Industrial Tribunal. Section 11-A says that when an industrial dispute relating to discharge or dismissal of a workmen has been referred to a Tribunal, the Tribunal must be satisfied that the order of discharge or dismissal is justified and if it is not so satisfied, it can set aside the order of discharge or dismissal and direct reinstatement or give such other relief including the award of

any lesser punishment as the circumstance of the case may require.

In Delhi Cloth and General Mills Co. Ltd. v. Ludh Budh Singh (1972-I-LLJ-180) after review of all the earlier cases, the Supreme Court has summarised the principles flowing out of the decisions. It was observed that when no enquiry has been held by an employer or when the enquiry held has been found to be defective the employer has a right to adduce evidence before the Tribunal justifying his action.

In Workmen of Firestone Tyre & Rubber Co. v. Management (1973-I-LLJ-278) the Supreme Court after referring to the several principles that emerge from the earlier decisions, considered the effect of Section 11-A introduced on 14th December 1971 and held that both in respect of cases where domestic enquiry has been held and also in case where the Tribunal considers the matter on the evidence produced before it for the first time, the satisfaction under Section 11-A about the guilt or otherwise of the workman concerned is that of the Tribunal. It has to consider the evidence and come to the conclusion one way or the other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can differ from that finding in a proper case and hold that no misconduct is proved. The Supreme Court rejected the contention that the stage of interference under Section 11-A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. The Court observed that the Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way the tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge.

In C. N. Ramulu v. Labour Court 1984(2) A.P.L.J. 98 a Division Bench of this Court (to which I am a party) held that the Labour Court has power to reappraise evidence in the domestic enquiry in order to satisfy itself whether the misconduct is established and the fate of the workman is no longer left to the subjective satisfaction of the Management but to an objective determination by a quasi-judicial authority.

In Scooter India Ltd. v. Labour Court (1989-I-LLJ-71) it was held by the Supreme Court that the Labour Court can interfere even on findings of fact. The Court observed that Section 6(2A) of the Uttar Pradesh Industrial Disputes Act, which is analogous to Section 11-A of the Central Industrial Disputes Act of 1947, conferred wide powers on the Labour Court to interfere with an order of discharge or dismissal of a workman.

These judgments, in our opinion, set at rest the controversy regarding the powers of an Industrial Tribunal or a Labour Court in considering the validity of an order of

> discharge or dismissal. The Act is a beneficial piece of legislation enacted in the interest of employees. In construction the provisions of a welfare legislation, Courts should adopt a beneficent rule of construction. If two constructions are reasonably possible, the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred. Further, the object of the Act is to safeguard the service conditions of the employees. It, therefore, demands a liberal interpretation.

11. The next submission of Mr. K. Sreenivasa Murthy is that the Tribunal went wrong in holding that gherao is not misconduct as it is not specifically enumerated in the Standing Orders.

In Shri. Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corpn. & Another (1985-I-LLJ-527) the Supreme Court held that no disciplinary action could be taken and punishment imposed for conduct not included in enumerated misconduct in service regulation or standing order. The Court further held (pp 529-530) :

> "It is necessary for the employer to prescribe what would be the misconduct either in the certified standing order or service regulation so that the workman employee knows the pitfall he should guard against. If after undergoing the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workmen will be on tenterhook and be punished by ex post facto determination by the employer. It is a well-settled cannon of penal jurisprudence that removal or dismissal from service on account of the misconduct constitutes penalty in law-that the workman sough to be charged for misconduct must have adequate advance notice of what action or what conduct would constitute misconduct.
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> Unless an act or omission is prescribed as misconduct either in the certified standing order or in the service regulation, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct. It cannot be accepted that even if an act or omission does not fall in any of the enumerated misconducts, yet for the purpose of service regulations, it would none-the-less be a misconduct punishable as such."

The Industrial Tribunal on a consideration of the evidence as a matter of a fact found that no gherao is proved. In view of his factual finding and legal position, I find no substance in the contention raised on behalf of the management is this regard.

12. The scope of interference under Article 226 of the Constitution with the orders of the Industrial Tribunal is now well settled.

In Sadhu Ram v. Delhi Transport Corpn. (1983-II-LLJ-383) the Supreme Court held that the jurisdiction under Article 226 of the Constitution of India, though wide, has to be exercised with

great circumspection. The High Court cannot convert itself into an Appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals.

In Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhavan Ltd. (1984-II-LLJ-10) the Supreme Court pointed out that it is not for the High Court in exercise of its jurisdiction of superintendence to substitute one finding for another and similarly one punishment for the other.

13. The Industrial Tribunal had considered the material on record in extenso though it is guilty of repetition at many stages. The findings are based on evidence. It cannot be said that the findings are perverse. There is no error of law or jurisdiction. In these circumstances, I am convinced that no case is made out for interference under Article 226 of the Constitution of India.

14. The writ petition is accordingly dismissed with costs.

15. Advocate fee Rs. 150/-