

The General Manager Vs. Shri Ramesh Prasad

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Court : Madhya Pradesh

Decided On : Jan-02-2013

Appellant : The General Manager

Respondent : Shri Ramesh Prasad

Advocate for Def. : Shri. Pranay Choubey

Advocate for Pet/Ap. : Shri. Anoop Nair

Judgement :

1 HIGH COURT OF MADHYA PRADESH : JABALPUR WRIT PETITION
No.81/2010 The General Manager Vs. Shri Ramesh Prasad

Shri
Anoop Nair, learned Counsel for the petitioner. Shri Pranay Choubey, learned
Counsel for respondent.

Present : Honble Shri Justice K.K. Trivedi

ORDER

(02/01/2013) The petitioner has called in question the order dated 01.09.2009 passed by the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur (herein after referred to as CGIT) whereby the order of terminating the services of respondent is set aside, by filing this petition under Article 227 of the Constitution

of India on the grounds that the CGIT was not correct in holding that the domestic enquiry conducted against the respondent was bad in law and, therefore, it was erroneously held by the CGIT that the respondent was illegally terminated from service. It is contended that the opportunity of adducing the evidence was not granted to the petitioner in adequate manner and, therefore, the award passed by the CGIT is bad in law. It is contended that a charge-sheet was issued to the respondent on 25.09.1987 making the allegation that the respondent was found in possession of the stolen property of the petitioner by the security personnels. The enquiry was conducted in terms of the provisions made in the relevant rules. After recording findings, the Enquiry Officer exonerated the respondent giving benefit of doubt. Such 2 findings were not accepted by the Disciplinary Authority and an order of removal from service was issued against the respondent on 21.08.1989. The issue was raised by the respondent before the Central Government under the provisions of the Industrial Disputes Act, 1947. The matter was referred to the CGIT and after conducting the trial in the manner indicated herein above, the CGIT passed the award in favour of the respondent directing his reinstatement in service, therefore, this writ petition was required to be filed. It is contended that since the enquiry, lawfully conducted by the petitioner against the respondent, was said to be vitiated and illegal by the CGIT, without there being any cogent finding, the award impugned was bad in law and was liable to be quashed.

2. Refuting the allegations made by the petitioner, it is contended by the respondent that in fact in the enquiry when it was found that nothing was proved against the respondent, yet without following the procedure laid-down under the statutory rules, deferring with the findings recorded by the Enquiry Officer, illegally the order of punishment was issued by the petitioner, which action was rightly challenged by making a reference to the CGIT. The opportunity of producing the evidence was given to the petitioner but for a period of about 4 years, the petitioner failed to produce any evidence and ultimately the right to adduce the evidence was closed by the CGIT and it was held that the enquiry against the respondent was improperly conducted. As such, the same was bad in law and only on the basis of such enquiry since the order of punishment was issued, the order was not sustainable in the eyes of law. Thus, it is contended that the award has rightly been passed by the CGIT and no interference in the said award is called

for. It is contended that the petition is, thus, misconceived and deserves to be dismissed

3. Heard learned Counsel for the parties at length, perused the record and the pleadings of the parties minutely.

4. Undisputedly opportunities were extended by the CGIT to the petitioner to adduce the evidence as is reflected from the order-sheets placed on record by the respondent. The order-sheets indicate that not only the petitioner was afforded an opportunity to submit the statement of claim, in reply to the statement of claim filed by the respondent workman but was also directed to produce the enquiry record. By adducing evidence it was necessary on the part of the petitioner to indicate that the enquiry was rightly conducted, extending all possible opportunities to the respondent. The petitioner utterly failed to discharge such a burden and, therefore, it was found by the CGIT that whatever evidence was produced by the respondent it was not rebutted in appropriate manner by the petitioner. In view of this, the cogent finding was given that the enquiry conducted against the respondent was not valid and legal. In fact it was to be demonstrated by the petitioner that when the finding in favour of the respondent was given by the Enquiry Officer, such a finding was not supported by any evidence. It was to be proved that the misconduct alleged against the respondent was proved by the evidence available on record of the enquiry and only on the basis of such evidence, it could have been proved that the misconduct of the respondent was said to be proved but erroneously a finding was recorded by the Enquiry Officer, ignoring the evidence available on record of the enquiry that the respondent has not committed any misconduct and benefit of doubt was extended to the respondent though the same was not available. However, if no such fact was proved by the petitioner before the CGIT no finding could have been given in this respect by the CGIT. The facts are 4 to be considered only if the same are placed on record and are duly proved by adducing evidence.

5. All these submissions of the learned Counsel for the petitioner are examined in the light of aforesaid premises. True it is that enquiry was conducted by the petitioner against the respondent but it is also true that when the CGIT was

considering the justification of conducting the enquiry, the facts were not proved that some other material, which was not included in the enquiry record could be used against the respondent in the enquiry, and could have been taken into consideration by the Disciplinary Authority while reaching to the conclusion that the charges leveled against the respondent were fully proved or not. No attempt was made by the petitioner to show that such material facts were ever brought to the notice of respondent affording him an opportunity to rebut the same. The findings recorded by the CGIT in its order dated 04.06.1999 demonstrate that in fact the confidential report dated 25.09.1987 was used against the respondent by the Disciplinary Authority and placing full reliance on the said report, the finding was recorded by the Disciplinary Authority that the misconduct of the respondent was fully proved. It was not demonstrated that this report dated 25.09.1987 was ever brought to the notice of the respondent and whether on the basis of such a report, a finding could have been recorded as per the law by the Disciplinary Authority. Further, it was found by the CGIT that while the Disciplinary Authority has disagreed with the findings recorded by Enquiry Officer holding respondent as not guilty in his enquiry report, the reasons were not reflected in the order so passed against the respondent. It was said that the principle of natural justice was thus violated and, therefore, it was rightly held by the CGIT that the domestic enquiry was not conducted in accordance to the procedure laid-down under the rules. Even otherwise 5 when an opportunity of adducing of evidence was given by the CGIT, the said opportunity was not availed by the petitioner as is clear from the order-sheets of the CGIT. The order impugned indicates that continuous opportunities were granted to the petitioner to adduce the evidence by the CGIT for a period of about 4 years. Even the order- sheets indicate that on such occasions, none has appeared for the petitioner, the Management, before the CGIT. Time and again opportunities were granted to the petitioner to adduce the evidence. From the order-sheets it is clear that the date was fixed for recording of evidence of the Management right from 15.02.2001. When the case was called on 17.05.2001, nobody appeared on behalf of the petitioner. The same was fixed on 08.08.2001, 20.09.2001 and again when the Counsel appeared for the petitioner before the CGIT, the case was fixed for recording evidence of the petitioner on 07.02.2002. On certain dates the presiding officer was on tour and for some days,

the post of presiding officer remained vacant. Ultimately, again on 28.05.2003 when the case was called, it was again fixed for evidence of the Management on 28.07.2003. On the fixed date again the time was sought for producing the evidence. The case was adjourned to 02.12.2003. Again the same was adjourned on 07.01.2004 and on that day nobody did appear on behalf of the petitioner. However, imposing a cost of Rs.100/-, time was allowed to the Management to adduce the evidence. Again nobody appeared for a long time for the petitioner. On 24.12.2004 as a last opportunity time was allowed to the Management to produce the evidence. Again for certain dates nobody appeared on behalf of the Management and ultimately the right to adduce the evidence was closed and case was heard and award was passed.

6. From the narration of these facts, it is clear that in fact the Management was never interested in producing any 6 evidence and it appears that virtually the petitioner/ Management had no evidence whatsoever to produce against the respondent. In view of this, if the finding was categorically recorded by the CGIT holding that the termination of services of the respondent was illegal and an award of reinstatement was passed in favour of the respondent, how could it be said that such proceedings were vitiated in any manner.

7. Even before this Court nothing has been produced by the petitioner to indicate that there was ample evidence available against the respondent and only on the basis of such evidence, the misconduct of the respondent could have been proved warranting his termination from service. Therefore, it cannot be said that the findings recorded by the CGIT were perverse. In a petition under Article 227 of the Constitution of India, this Court would not re-evaluate the evidence available on record of the CGIT. However, even if it is done, nothing available is enough to show that the award passed by the CGIT is incorrect in any manner.

8. Consequently, the writ petition fails and is hereby dismissed. However, looking to the facts and circumstances of the present case, there shall be no order as to costs. (K.K. Trivedi) Judge Skc