

Kumar Ram Nandan Vs. Fulid Power Private Limited and ors.

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Court : Mumbai

Decided On : Sep-07-1987

Reported in : (1995)IIILLJ347Bom

Judge : S.C. Pratap and ;H.H. Kantharia, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(1) and 12(5)

Appeal No. : W.P. No. 1614 of 1981

Appellant : Kumar Ram Nandan

Respondent : Fulid Power Private Limited and ors.

Advocate for Def. : Sanjay Kadam, Adv. for ;P.R. Dalmia, Adv., i/b., Dalmia & Co.
for Respondent No. 1

Advocate for Pet/Ap. : R.J. Kochar, Adv.

Disposition : Petition allowed

Judgement :

Kantharia, J.

1. The petitioner was employed as a helper by the first respondent in the year 1965 on permanent basis. He was served with a charge-sheet dated 7th November, 1975 alleging that he threw away and caused damage to some

wooden cases which were kept ready for despatch to the Ministry of Defence, Heavy Vehicle Factory, Madras. The petitioner, on 14th November, 1975, gave a reply to the said charge-sheet. He denied the allegations made against him and contended that on 7th November, 1975 when he reported for duty as usual, he noticed that some wooden cases were kept in such a manner that blocked his way to his locker where he kept his clothes and therefore he removed and kept them aside and that he did not cause any damage to them. He further stated that if, however, any damage was caused to the said cases on account of his acts, he was sorry for it. He begged of the first respondent that if any enquiry was contemplated against him he may be permitted to defend himself with the assistance of a person of his choice as he has a layman not knowing the technicalities of a domestic enquiry.

2. The first respondent thereafter appointed one G.J. Dholakia as Enquiry Officer who conducted the domestic enquiry against the petitioner and submitted his report dated 24th January, 1976 holding the petitioner guilty of the charges levelled against him, Acting upon the said report, the first respondent dismissed the petitioner from service vide order dated 29th January, 1976 contending that it was not desirable to continue him in their employment any longer.

3. The petitioner raised an industrial dispute in the matter of his dismissal. The dispute was referred to the First Labour Court, Bombay, for adjudication, by the Government of Maharashtra, under Section 10(1) read with Section 12(5) of the [Industrial Disputes Act, 1947](#) (hereinafter referred to as 'the Act'). It was registered in the Labour Court as Reference (IDA) No. 723 of 1976.

4. At the hearing of the reference the petitioner examined himself and on behalf of the first respondent, the Enquiry Officer G.J. Dholakia and the Director of the Company, G.K. Chhabria were examined. The first respondent also relied upon the original notes of enquiry and the findings given by the Enquiry Officer. The learned Labour Judge (the second respondent) raised a preliminary issue whether the domestic enquiry held against the petitioner was fair and proper and by his award dated 17th October, 1980 answered the issue affirmatively. The reference then proceeded further. Finally, by an award dated 7th February, 1981 the second

respondent held that although the misconduct alleged against the petitioner was proved, the extreme penalty of dismissal from service was not called for. And taking into consideration the long service of the petitioner, he felt that it would be improper to deny the terminal benefits to him which he would get if his services were terminated by an order of discharge simpliciter. He accordingly substituted the order of dismissal by an order of discharge simpliciter.

5. Being aggrieved, the petitioner impugned in this petition the aforesaid two awards passed by the second respondent and prayed that the awards be set aside and he be reinstated with full back wages and continuity of service.

6. On consideration of the record produced before us, we are of the opinion that the action of the first respondent in dismissing the petitioner was not justified and the domestic enquiry held against him was a mere farce and an empty formality. Further, the impugned awards passed by the second respondent were not in accordance with law and suffered from errors apparent on the face of the record. In our view, the findings of the second respondent that the domestic enquiry was fair and proper and the petitioner deserves a punishment of discharge simpliciter, are perverse. The cardinal principles of labour jurisprudence enjoin upon an employer to hold a domestic enquiry against a workman honestly and bona fide with care and caution that such an enquiry does not become an empty formality. It is an elementary principle of labour law that while holding domestic enquiry rules of natural justice must be faithfully followed and fair play strictly ensured. But nothing that is fair, just, proper and in accordance with the principles of natural justice was ensured and observed here. We thus find in this case that the action of the first respondent of dismissing the petitioner from service which was converted by the second respondent into an order of discharge simpliciter has got to be set aside and the petitioner should be reinstated in his original position with full back wages and continuity of service.

7. The following are our reasons and conclusions as a result of the examination of the material on record for arriving at a decision that the petitioner deserves the reliefs he has sought for in this petition:

(a) After he was served with the charge-sheet, the petitioner by his letters dated 14th Nov., 1975 and 8th Dec. 1975 requested the first respondent that, at the domestic enquiry, he may be permitted to defend himself with the help of a person of his choice and/or a union representative. This most reasonable request of the petitioner was not acceded to by the first respondent and, on the contrary, a person by name D.K. Kapadia was imposed upon him as his defender and another person by name P.S. Joshi was appointed as an observer. This is very unusual feature of a domestic enquiry. One fails to understand that when Kapadia was appointed to defend the petitioner, where was the necessity of appointing Joshi as an observer? The first respondent alone can answer this query. The petitioner deposed in categorical terms in the Labour Court that he had not called Kapadia and Joshi either to defend him or to observe the proceedings on his behalf. It is pertinent to note here that the first respondent was represented at the enquiry by a competent and experienced person M. G. Barve, Administrative Officer. It is, therefore, but natural to expect that the petitioner should also be defended by an equally competent person. The request of the petitioner here was the minimum. All that he wanted was to be defended by a person of his choice or a union representative i.e. by a friend who can protect his interests. Every person whose interests are likely to be adversely affected at any given proceeding, is entitled to be heard in such proceeding and be aided and assisted by a friend. Adequate and proper legal assistance to a workman at a domestic enquiry is a must. The fight here is between two unequals. One is a high and mighty employer and the other is a poor workman suffering from the miseries of loss of job. His back is already broken and he cannot withstand the situation without proper and adequate legal assistance. In not permitting the petitioner in the present case to be defended by a person of his choice, the first respondent defeated and violated the principles of natural justice thus denying social justice to the petitioner to which he was very much entitled.

(b) The petitioner at the outset in his letter dated 8th Dec. 1975 requested the first respondent that the enquiry may be conducted either in Marathi or in Hindi. But to his misfortune and dismay, the enquiry was conducted in English, the language unknown to him. He did not understand Marathi properly and therefore it was imperative to conduct the enquiry only in Hindi which was not done. Although the

Enquiry Officer deposed in the Labour Court that the enquiry was conducted in Hindi, the record produced before us does not show that. In fact, the evidence was recorded in English and supposedly explained to the petitioner in Hindi. The use of English language at a domestic enquiry when the workman does not know English should be avoided and discouraged. Such an enquiry should be held in the language understood by him. Only then can one feel confident that the workman was given reasonable opportunity of being heard and to defend himself. An enquiry otherwise would be an empty formality and its validity open to grave doubt.

(c) It appears that the Administrative Officer M.G. Barve had received a report from one Pinto the effect that the petitioner had damaged wooden cases containing Power Pack Units by throwing them away. The petitioner was charge-sheeted on the basis of the said report. However, a copy of that report was not furnished to the petitioner and it was produced for the first time only at the enquiry. Further, the copies of the proceedings were also not given to the petitioner. Enquiry Officer Dholakia deposed in the Labour Court that it was not his duty to supply copies of the documents produced in the enquiry to the workman and the copies of the enquiry notes were also not supplied to him. He further testified that he did not explain the procedure of the enquiry to the workman. All this is indeed shocking to a judicial mind. In the premises, can it at all be said that the instant domestic enquiry was conducted in accordance with the principles of natural justice? The answer is obvious. It is simple 'no' which vitiates the entire enquiry proceeding.

(d) More disquieting and disturbing feature of this case is the fact that the Administrative Officer Barve who represented the first respondent at the domestic enquiry and acted as a prosecutor, himself gave evidence in the enquiry proceeding and the Enquiry Officer merely recorded his statements and made use thereof to hold the petitioner guilty of the charges levelled against him. The involvement of Barve in his manner at the enquiry blatantly violated the principles of natural justice.

(e) One Keshave Ram Yadav was working as a watchman with the first respondent at the relevant time. He and one Naresh Lad were the alleged eye

witnesses to the incident in question. But the first respondent examined the convenient witness Keshav alone at the enquiry and for reasons best known to them, kept back Naresh Lal Indeed, the evidence of Naresh was important so as to corroborate the testimony of Keshav especially when the incident was disputed by the petitioner, Therefore, it was quite necessary for the first respondent to have Keshav evidence corroborated by examining Naresh. We are inclined to draw an adverse inference against the first respondent that had they examined Naresh at the domestic enquiry, his evidence would have gone against them and in favour of the petitioner. In withholding and suppressing this material evidence from coming on record, the first respondent did not act bona-fide.

(f) Considering the matter on merits, we are of the view that the incident as alleged must not have taken place. Thus, it was the case of the first respondent that the petitioner lifted the wooden boxes and threw them away causing damage to the goods therein. But there is nothing on the record to show that any damage was caused to any of the boxes or goods therein. In the absence of any evidence whatsoever in this regard, we feel that the defence of the petitioner that he removed the boxes and kept them aside with a view to clear his way to the locker, appears to be more probable. Further, the record shows that the weight of each of the boxes was about 65 kilograms. In that case, it is difficult to accept the evidence of watchman Keshav that the petitioner lifted the boxes like any ordinary man who throws away things which would mean lifting these heavy boxes upto the height of about 3 to 4 feet regard being had to these facts and circumstances, one can reasonably infer that in all probability the petitioner must have only cleared the boxes from his way. That is the only reasonable inference. In any event, benefit of doubt should, in all the circumstances, go to the workman here.

(g) We are also of the considered view that for whatever was done by the petitioner, he could not have been visited with the extreme penalty of loss of job either by way of dismissal or discharge simpliciter. For impugned conduct, if at all proved, the petitioner could have been at the most given a warning to be more careful in future.

8. In the premises, we hold that the domestic enquiry, against the petitioner, was conducted in flagrant violation of the principles of natural justice and was not just, fair and proper. We further hold that the decision of the first respondent to dismiss the petitioner from service was not justified. We also hold that the findings of the second respondent that the domestic enquiry held against the petitioner was fair and proper and that he deserved the punishment of discharge simpliciter, are perverse. We, therefore, set aside the two impugned awards and substitute the same by directing the first respondent to reinstate the petitioner in his original position with all consequential benefits from 1st Oct. 1987 with continuity of service treating him as being in service without any break. We also direct the first respondent to pay full back wages to the petitioner from the date of his dismissal till 30th Sept., 1987, along with his salary for the month of Oct. 1987. In default the first respondent shall be liable to pay interest at the rate of 15% per annum on the amount of back wages to the petitioner from 1st Nov., 1987 till payment.

9. The petition thus succeeds. The same is allowed. Rule is made absolute in the terms aforesaid but, in the circumstances of the case with no order as to costs.