

Chowrinathan and Others Vs. the Management of M/S. Bharath Gold Mines Limited, Kolar Gold Fields, Kolar

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Court : Karnataka

Decided On : Jun-07-2000

Reported in : 2001(1)KarLJ15; (2001)ILLJ1052Kant

Judge : G.C. Bharuka and ; N.S. Veerabhadraiah, JJ.

Acts : [Constitution of India](#) - Articles 226 and 227; [Industrial Disputes Act, 1947](#) - Sections 2-A and 10(4-A); Mysore Mines Act, 1906 - Sections 5 and 13; [Prevention of Corruption Act, 1988](#); [Evidence Act, 1872](#)

Appeal No. : Writ Appeal Nos. 5517 to 5519 of 1998 connected with Writ Appeal No. 5599 of 1998 and Writ Appeal N

Appellant : Chowrinathan and Others

Respondent : The Management of M/S. Bharath Gold Mines Limited, Kolar Gold Fields, Kolar

Advocate for Def. : A.S. Bopanna, Adv.

Advocate for Pet/Ap. : Sri M.C. Narasimham, Adv.

Judgement :

1. The Management of M/s. Bharath Gold Mines Limited preferred these appeals assailing the order of the learned Single Judge in W.P. Nos. 7218 to 7220 of 1990, dated 3-9-1998 insofar as it relates to reinstatement of the respondents with the benefit of continuity of service and consequential benefits.

2. The workmen also questioned the order of the learned Single Judge passed in Writ Petition Nos. 7218 to 7220 of 1990, dated 3-9-1998 insofar as it relates to denial of back wages. The parties herein will be referred to with respect to their original status as the Management and the workmen.

3. M/s. Bharath Gold Mines Limited is a public sector undertaking engaged in mining activities of extraction and purification of gold at Kolar Gold Fields, Kolar, in which 3 workmen namely Chowrinathan, Jagadeesha and Govindraj were the employees. That on 17-4-1982 at about 3.45 P.M. while the Sub-Inspector of Police, Champion Reefs, K.G.F. accompanied with the Circle Inspector of Police were on rounds the workmen were found in unauthorised possession of (a) 2 1/2 gms of mining sponge gold ball, (b) 3 1/2 gms of mining sponge gold mixed with mercury, (c) 175 gms of sand mixed sponge gold along with other apparatus and the same were seized under mahazar from a room adjacent to the house bearing Door No. 77 'G' Block, Champion Reefs. In respect of the unauthorised possession of the above materials, a domestic enquiry was held for the misconduct as per Standing Order 15(b) and 15(b)(34). After a detailed enquiry, the 3 workmen namely Chowrinathan, Jagadeesh and Govindaraj were found guilty of misconduct and accordingly they were dismissed from service. The workmen raised an Industrial Dispute and the same was referred to the Central Government Industrial Tribunal cum Labour Court, Bangalore which came to be registered in Ref. Nos. 104, 105 and 106 of 1987. The learned Presiding Officer of the Central Government Industrial Tribunal permitted both the parties to lead evidence in support of their case. Considering the materials on record, Tribunal rejected the reference of all the 3 workmen by its order dated 31-7-1989 justifying the action of the Management in dismissing the workmen. Being aggrieved of the order of the Central Government Industrial Tribunal cum Labour Court, Bangalore, the workmen preferred Writ Petition Nos. 7218 to 7220 of 1990.

The learned Single Judge held, that the findings of the Tribunal as perverse on the ground that 'the Management has not established as to whether the properties seized does not belong to them and that it was incumbent upon the management to lead evidence to establish the fact that the properties belong to M/s. Bharath Gold Mines Limited'. With the said reasonings, the learned Single Judge set aside the order of dismissal of the workmen and directed the Management to reinstate the workmen with the benefit of continuity of service and consequential reliefs. However, it was held that the workmen were not entitled to anyback wages. It is this order which is now assailed by the Management insofar as it relates to order of reinstatement whereas the workmen have questioned the order insofar as it relates to withholding of backwages.

4. The learned Counsel Sri M.C. Narasimhan for the workmen contended that the domestic enquiry itself is vitiated as it is not in consonance with the provisions of the standing orders. The standing order prescribes the procedure for holding an enquiry and the same has not been followed. Secondly, he contended that the Management has not proved the essential element of misconduct. The Enquiring Officer as well as the Presiding Officer of the Industrial Tribunal have crept into an error in holding that the workmen have committed misconduct and further holding that the enquiry is 'fair and proper'. The learned Counsel further submitted that the provisions of Sections 5 and 13 of the Mysore Mines Act, 1906 cannot be made applicable and that it is only in relation to criminal offences, the possession of such property has to be construed. The learned Counsel relying on the decision in Capt. M. Paul Anthony v Bharat Gold Mines Limited and Another, contended that in respect of the very same charges framed, a domestic enquiry was held as well as the Criminal prosecution was also initiated. The criminal Court considering the evidence on record has clearly held that no 'search' was conducted nor any recovery was made from the residence of the appellant. In that view of the matter, it is contended that the Criminal Court has acquitted the workmen. Therefore, relying on the very same materials by the enquiring authority and dismissing the workmen is not sustainable in law and the same is vitiated. Relying on the decision supra, he tried to justify the order of the learned Single Judge in ordering reinstatement by setting aside the order of the Tribunal. The Counsel further relied on the decision in the case of Government of Andhra Pradesh and Another v C.

Muralidhar , and contended that when once the workman (accused) is acquitted in the criminal case, the disciplinary proceedings for the very same charge cannot be held. On this count also justified the order of the learned Single Judge. The learned Counsel for the workmen contended that the learned Single Judge has erred in not awarding back wages where in the normal circumstances, the Court ought to have awarded back wages. Therefore, prayed to dismiss the appeals of the Management and to allow their appeal by awarding back wages and also the grant appropriate relief to the L.Rs of Govindaraj (workman who died during the pendency of the appeal).

5. The learned Counsel Sri A.S. Bopanna for the Management vehemently contended that there was no reason for the learned Single Judge to interfere with the findings of the Central Government Industrial Tribunal and that the order of reinstatement is bad in law. Further contended that in the light of the principles laid down in the case of State of Rajasthan v B.K. Meena and Others , the learned Single Judge has erred in interfering with the findings of the Central Government Industrial Tribunal. He secondly contended that even coming to the merits of the case, though the seizure of the articles in question have been proved, that the observation of the learned Single Judge 'that the ownership is not proved' is an erroneous finding without any basis and submitted that the Management initiated action only on the basis that they were found in unauthorised possession of the raw materials, in other words which belonged to the Mining Company, and it is also sought to be contended that if the property in question were to have not belonged to the Management that there was no necessity for it to initiate any enquiry proceedings. Therefore, even on this ground also the order of the learned Single Judge is not sustainable in law. Accordingly, prayed to allow the appeal.

6. In the light of the contentions of the learned Counsels, the points for consideration that arise:

(1) Whether the learned Single Judge is justified in interfering with the findings of the Industrial Tribunal ordering reinstatement of the workmen with consequential benefits.

(2) Whether the workmen are entitled for full backwages as contended?

(3) What order?

7. It is not in dispute that the workmen namely Chowrinathan, Jagadeesha and Govindaraj were the employees of Management of M/s. Bharath Gold Mines Limited, were charge-sheeted for the misconduct, punishable under Clause 15(b)(23) and 15(b)(34) of the standing orders. The Central Government Industrial Tribunal cum Labour Court found that they were in possession of the incriminating articles and also found that the 'seizure' was proved. The Tribunal appreciating the evidence of the Management witnesses as well as the workmen, justified the order of the dismissal by the Management.

8. The learned Single Judge at para 8 observed as follows:

'From the evidence led with regard to the fact of seizure as also from these suggestions, I find no perversity in the finding of the Tribunal as regards mining materials concerned having been seized from the possession of the petitioners'.

Though the learned Single Judge has clearly held that the mining materials were seized from the custody of the workmen, having not found any perversity in the findings of the Tribunal, only on the ground that the charge is levelled under Clause 15(b)(23) and 15(b)(34) of the standing orders required to be established, that the said materials belong to M/s. Bharath Gold Mines ordered for reinstatement.

9. The charges framed against the workmen thus reads:

'It is reported that you have indulged in theft of employer's property and in unauthorised possession of property belonging to the Company, in that on 17-4-1982 at about 3.45 P.M. during rounds of the Sub-Inspector of Police, Champion Reefs, KGF, accompanied with the Circle Inspector of Police, Champion Reef, KGF found you in unauthorised possession of 2 1/2 gms of Mining Sponge Gold along with other apparatus and the same were seized under a mahazar from a room adjacent to the house to Door No. 77 'G' Block, Champion Reefs and arrested you along with Shri V. Govindaraj, T. No. 153 and Sri Jagadish, T. No. 2130'.

The reading of the charge itself makes clear that the enquiry has proceeded with the notion that the workmen were in unauthorised possession of the property belonging to the Company which is 'an act of misconduct as provided under the Standing Order 15(b)(23) and 15(b)(34). It is made clear in the charge itself that they were in unauthorised possession of the incriminating articles namely (a) 2 1/2a grams, (b) 3 1/2 and (c) 175 grams, which they were required to give proper explanation regarding the unauthorised possession. The Standing Order 15(b)(23) and 15(b)(34) reads thus:

'15(b) The following acts of commission and omission shall be treated as misconduct:

(23) Unauthorised possession/use of any property, machinery, tools or land belonging to the Company.

(34) Theft or abetment of theft, fraud or dishonesty in connection with the employer's business or property, including mining materials as defined in the Mysore Mines Act'.

10. If the workmen were to be found in unauthorised possession of the property of the Company i.e., mining materials as defined under the Mysore Mines Act, then it amounts to an act of misconduct.

11. In the present case, we have carefully examined the reasonings of the Industrial Tribunal and also the impugned order under appeal, as well as the relevant provisions of the Mines Act. We need to consider whether there is any misconduct on the part of the workmen. In view of the clear findings that the workmen were found in possession of the mining articles when the search took place, the only inference is that they were in possession of the said articles which is an 'act of clear misconduct'. It is in that context, the matter has to be looked into. When the charges have been specifically levelled that the workmen were found in possession of the material objects of the Company, the fact remains that the workmen were found in unauthorised possession of the articles which under law, they cannot possess such incriminating articles. Therefore, the non-explanation of circumstances for possession of it, is an act of proved misconduct. It is with this

approach, the standing order has to be read.

12. It is well-established principles that whenever a domestic enquiry has to be proceeded, it should be in conformity with the standing orders. But it is needless to say that all the acts of the workmen be incorporated in the standing orders defining which of the acts are misconduct, as it is purely a matter of evidence. It is with that perspective, the matter has to be examined.

13. It is time and again the Apex Court observed that each case has to be examined on its own facts and circumstances. Therefore, in order to appreciate the contention of the learned Counsel Sri M.C. Narasimhan, we have to consider the present set of facts and whether the decisions relied are applicable to the facts of this case. In the decision of Capt. M. Paul's case, *supra*, para 34 of the said judgment reads thus:

'There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom'. The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery', at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings, to stand'.

14. In the above decision, the very seizure of the theft articles in question was not proved, therefore held the evidence cannot be relied upon. Whereas in the case on hand, the Industrial Tribunal as well as the learned Single Judge have clearly arrived to the findings that the property in question were seized from the custody of the workmen. In that view of the matter, the above decision cannot be made applicable to the present set of facts and the same is of no avail to the workmen. Similarly, in C. Muralidhar's case, *surpa*, also cannot be made applicable to the facts of this case in view of the specific charges and therefore, mere acquittal of the accused persons in criminal case itself is not a ground for ordering reinstatement.

15. In the case of B.K. Meena, *supra*, at paragraph 17, it has been held that:

' The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different'.

The above judgment was again followed with approval in the case of Depot Manager, Andhra Pradesh State Road Transport Corporation v Mohd. Yousuf Miya, it was again reiterated at page 2235 that:

' The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The- standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence'.

16. Applying the above principles to the facts of this case, the possession of minerals and mining articles which came to be seized and despite grant of effective and reasonable opportunity appellant's failure to explain the source of their possession, is quite sufficient to hold that the seized property belonged to the respondent-Company. It has to be borne in mind that the properties seized are not of day-to-day use and available in open market. It is not the case of the appellants that they had acquired it from any identifiable source either legally or illegally, Therefore the preponderance of probabilities can lead to only one acceptable conclusion, namely, that the properties seized were of the respondent-Company. When once it is found that the workmen were in illegal possession of the mining materials of the Company, it is a clear act of misconduct. Therefore the workmen do not deserve for reinstatement particularly when the management cannot any more repose confidence in such workmen. In these type of cases, it is always unsafe to reinstate such workmen who are of such conduct. No doubt true, it is the normal rule that the Court should not interfere with either the factual findings regarding guilt or with penalty or punishment imposed or otherwise whenever the conduct of the workmen is unwarranted. Under such circumstances, even the High Court cannot interfere with the findings of the Tribunal by substituting its opinion for the opinion of the Labour Court or Industrial Tribunal.

17. For the foregoing reasons we hold that the findings of the Central Government Industrial Tribunal is well-founded and not liable to be interfered with. Therefore, all the contentions of the learned Counsel Sri M.C. Narasimhan fails. Consequently, the order of reinstatement of the workmen ordered by the learned Single Judge is hereby set aside confirming the order of dismissal passed by the Tribunal by allowing the appeals of the Management in W.A. No. 5599 of 1998 and W.A. Nos. 522 and 523 of 1999.