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Court : Karnataka

Decided On : Mar-05-1997

Reported in : ILR1997KAR941; 1997(3)KarLJ19

Judge : P. Krishna Moorthy and ;T.N. Vallinayagam, JJ.

Appeal No. : W.A. No. 1608/1994

Appellant : Mysore Press (P) Ltd.

Respondent : Workmen of Mysore Press (P) Ltd.

Advocate for Def. : Ms Sarojini Muthanna, Adv.

Advocate for Pet/Ap. : B.C. Prabhakar, Adv.

Judgement :

T.N. Vallinayagam, J.

1. The writ Appellant is the Management. Aggrieved by the order of the learned Single Judge who quashed the Award of the Labour Court, and remitted back the matter to the Labour Court, the Management is before this Court.

2. A few facts leading to the filing of the Writ appeals are as follows :-

One Sri P. V. Naik was working as a skilled plate maker in the Appellant Company, which was engaged in printing and publishing a Kannada Weekly

newspaper by name Prajamata. The said workman against whom certain misconduct was levelled was suspended on April 19, 1976. The complaint was that the workman failed to supply the plates required by the printing section for printing the wrapper of 'Prajamata' to be published on May 23, 1976 and May 30, 1976. Despite instructions given to make the plates in time, the workman deliberately failed to get ready the plates. Therefore on the ground of act of wilful insubordination and disobedience which was construed as misconduct under the Standing Orders of the Company, the workman was charge sheeted. In the charge sheet given on June 12, 1976 three charges were framed. The first one regarding his failure to supply on May 18, 1976 the plates required. Second one was that the workman has engaged himself in part time and piece work and the third was that he was carrying privately the business of plate making.

The enquiry was conducted by the domestic enquiry officer before whom 13 witnesses were examined by the Management as against which the workman examined himself alone as a witness. The finding of the enquiry officer was that the first and third charges were proved and second charge was not proved. Accepting the finding the Management dismissed the workman on September 27, 1976.

The workman raised an industrial dispute against the order of dismissal and the Tribunal passed an award holding that the domestic enquiry was valid and the dismissal was justified.

The award of the Labour Court dated June 23, 1984 was challenged before this Court in the Writ Petition. The learned Single Judge of this Court held that the failure to afford legal assistance to the workman in the form of an Advocate to defend himself before the domestic enquiry officer is denial of justice and consequently the learned Single Judge set aside the award, remitted the matter back to the Labour Court for fresh disposal. The learned Single Judge did not go into the quantum of punishment though he observed that the adequacy of punishment should be considered by the Labour Court.

3. Aggrieved by the order of the learned Single Judge, the Management has preferred this Writ Appeal. The main ground of attack in the Writ Appeal against

the order of the learned Single Judge was that the workman participated in the enquiry without seeking for legal aid and that in fact whatever assistance he asked for was given to him in the form of another workman who participated in the enquiry. Consequently, according to the appellant the learned Judge is not right in remitting the award back to the Labour Court.

4. We have considered at length the arguments submitted by both the counsel.

5. Reliance was placed on *The Dunlop Rubber Co. v. Workmen* (1965-I-LLJ-426)(SC). In this case, while holding that refusal to allow representation by any union unless the Standing Orders confer such right, does not vitiate the proceedings, the Supreme Court has held thus at p. 430 :

'The Tribunal was also wrong in thinking that there was a denial of natural justice because the workmen were refused the assistance of a representative of their own Union. Under the Standing Order it is clearly provided that at such enquiries only a representative of a Union which is registered under the Indian Trade Unions Act and recognized by the Company can assist. Technically, therefore, the demand of the workmen that they should be represented by their own Union could not be accepted. It has been ruled by this Court in *Kalindi & Ors. v. Tata Locomotive & Engineering Co. Ltd.* (1960-II-LLJ-228) and *Brook Bond India (P) Ltd. v. Subba Raman* (1961-II-LLJ-417) that there is no right to representation as such unless the Company by its Standing Orders recognises such a right.'

6. Counsel for the appellant relied upon the Judgment reported in *Crescent Dyes & Chemicals Ltd. v. Ram Naresh Tripathi*, (1993-I-LLJ-907) (SC) for the proposition that, providing the delinquent employee the Assistance of a co-workman in the enquiry is compliance with the principles of natural justice. The Supreme Court in this case held that the requirement of rule of natural justice does not extend to be represented through a counsel or agent. The Supreme Court observed as follows at p. 915 :

'It is, therefore, clear from the above case law that the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing Orders. A delinquent has no right to be represented

through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice in so far as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent.'

7. The learned counsel for the appellant also relied upon a Division Bench decision of this Court in G. V. Aswathanarayana v. Central Bank of India and Ors. (1993-I-LLJ-1136) and submitted that the case on hand does not require rendering of legal assistance to the defending workman. The Division Bench in the above case, relying upon the decision of the Supreme Court in J. K. Agarwal v. Haryana Seeds Development Corporation Ltd., (1991-II-LLJ-412) has held thus at p. 414 :

'Where the punishing authority itself enquires into any charge or charges or appoints an Enquiry Officer for holding enquiry against a person in the service of the Government, it may, by an order appoint a Government servant or a legal practitioner to be known as a 'Presenting Officer' to present on its behalf the case in support of the charge or charges.

The person against whom a charge is being enquired into shall be allowed to obtain the assistance of a Government servant, if he so desires, in order to produce his defence before the Enquiring Officer. If the charge or charges are likely to result in the dismissal of the person from the service of the Government, such person may, with the sanction of the Enquiry Officer, be represented by counsel.'

The Supreme Court has observed that in the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case.

'Therefore, in a case like this, where charges run into 25 pages and several hundreds of documents are involved in the case, we are of the view that it is not possible for the delinquent official who is not trained in law, to put forth his defence effectively without the assistance of a lawyer. Even though, in the instant case, the Presenting Officer is not trained in law, in the facts and circumstances of the case, we are of the view that the petitioner-appellant is entitled to have the assistance of

a legal practitioner.'

According to the learned Counsel for the appellant this case is distinguishable from the facts of the present case.

8. Another decision relied upon by the Counsel for the appellant is K. G. Shenoy v. Disciplinary Authority, Union Bank of India, Bombay & Anr. (1994-II-LLJ-1120) (Kant) wherein the learned Single Judge relied following J. K. Agarwal's case, held as follows it pp. 1124-1125 :

'Nevertheless as observed by several learned authorities, in a case where the delinquent is not in a position to express himself or his livelihood is at stake, or that his social or financial status are likely to be ruined, or where several complicated questions are raised which the delinquent is unable to comprehend, etc., the question of such delinquent employee being afforded the assistance of a counsel can be considered. But in the instant case, Annexure-J submitted by the petitioner does not disclose any such circumstances existing at present warranting the granting of legal representation in the enquiry. Nor is it stated therein that the Presenting Officer of the 1st respondent is a legally trained man. In such circumstances, the discretion exercised by the 1st respondent declining permission to engage an Advocate at his stage cannot be described as arbitrary or illegal. The contention of the petitioner in this Behalf has also to fail.'

9. The learned counsel for the workman in support of the order of the learned Single Judge would contend that in the event of the Management rules being silent regarding assistance in the enquiry, natural justice requires that the enquiry officer should resort to the model standing orders. 'According to the learned counsel, since the rules governing the Karnataka Industrial Employment (Standing Orders), 1961 was silent regarding this during the relevant year 1976, the Enquiry Officer ought to have followed the Central Rules which provide for the assistance of an office bearer of a trade union. But we find from the rules, a copy of which is produced before us that the workman may take the assistance of any other workman to represent the case on his behalf. In this case the workman has been given the assistance of one Ganapathy who was working in the same establishment. Therefore, it cannot be contended that refusal of permission by the

enquiry officer to allow an office bearer of the trade union to represent the workman is wrong or illegal.

10. In fact, as pointed out by the counsel for the appellant in a managerial enquiry a workman cannot claim to be represented by a lawyer. For this proposition reliance is placed on *Kalindi v. Telco*. The learned counsel for the respondent further very much relied upon the decision in *The Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and Others*, (1983-I-LLJ-1) (SC) and read in detail Para 10 which is extracted below :

'Even in domestic enquiry there can be very serious charges and adverse verdict may completely destroy the future of the delinquent employee. The adverse verdict may so stigmatize him that his future would be bleak and his reputation and livelihood would be at stake. Such an enquiry is generally treated as a managerial function and Enquiry Officer is more often a man of the establishment. Ordinarily he combines the role of a Presenting cum-Prosecuting Officer and an Enquiry Officer, a Judge and a prosecutor rolled into one. In the past it could be said that there was an informal atmosphere before such a Domestic Tribunal and that strict rules of evidence and pit-falls of procedural law did not hamstring the enquiry by such a Domestic Tribunal. We have moved far away from this stage. The situation is where the employer has on his pay rolls labour officers, legal advisers, lawyers in the garb of employees and they are appointed presenting-cum-prosecuting officers and the delinquent employee pitted against such legally trained personnel has to defend himself. Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford reasonable opportunity to defend himself should be permitted to appear through a legal practitioner. Why do we say so Let us recall the nature of enquiry, who held it, where it is held and what is the atmosphere ?'

11. The above case is certainly a case where the legal assistance was absolutely necessary on the facts of that case. But, the circumstances existing in the case

before us do not necessitate such a need.

12. It is seen from the present case that on June 21, 1976 when the enquiry into the charge was commenced by C. N. Narasimha Setty, Enquiry Officer, the workman was questioned as to whether he himself would conduct his defence or wanted to take the assistance of a co-employee, the workman represented that he wanted the assistance of the co-employee by name Sri C. R. Gangapathy of the Process Department. He also produced a list of names of defence witnesses. This is the first stand taken by the workman when he did not ask for legal assistance or any other assistance by a representative from any other union. When on June 30, 1976 the enquiry continued, the workman appears to have filed an application asking for provision of the assistance of the representative of the Bangalore Newspapers Employees Union. On that day when this point was raised the enquiry officer rendered a ruling holiday that the services of C. R. Gangapathy will be made available to him to defend his case. This ruling was read over in the presence of Sri C. R. Gangapathy who came to attend the enquiry and it is further found that the enquiry officer recorded 'in view of the assurance given by the Management, Sri P. V. Naik has said that he had no objection to participate in the further proceedings of the enquiry. In view of the above submission and as Sri P. V. Naik agreed to the same and also he would participate in the further proceedings of the enquiry, no further orders of the enquiry officer is needed in this regard.' The above proceedings of the enquiry officer has been duly signed by the workman and the aforesaid C. R. Ganagapathy.

13. We find therefore, there is no substance in the argument now raised that the denial of legal assistance in the form of an Advocate has rendered the enquiry void or illegal. As pointed out by us, there was not even a request made by the workman to the enquiry officer to provide him the assistance of a lawyer. In the absence of any such request it is not necessary for the management to volunteer the services of an Advocate to the delinquent employee. We are satisfied that at the very initial stage the workman was satisfied with the provision of the assistance of Sri C. R. Gangapathy, and he has not raised any objection at any point of time nor he complained or want of legal assistance in conducting the enquiry. Only ultimately when he has found that the enquiry went against him and

an order of dismissal has been passed against him the workman has thought it fit to raise this point. In our opinion the workman cannot have any grievance at all in this regard. Therefore, the finding of the learned Single Judge that non-provision of legal assistance to the enquiry nullifies the enquiry is not correct and we set aside such finding.

14. Regarding the quantum of punishment imposed, the learned counsel for the respondent would submit that the punishment awarded is excessive and he has been deprived of his livelihood from the date of the order of dismissal. The finding of the Enquiry Officer is that the workman did not obey the orders of his superiors, that his conduct is nothing but indiscipline and that his delay in getting ready the plates in time is deliberate and amounts to an act of misconduct. Voluminous evidence has been recorded and his own co-employee has come forward to speaking to the incident. In fact even the workman has admitted in his explanation to the order of suspension (vide Annexure-D) that on May 18, 1976 around 9.00 a.m. in the morning the Printer Mr. Govindaraj came and asked him to prepare a new red plate. Foregoing his lunch he took up the work and finished the plate around 1.45 p.m. Although the printing department wanted it very urgently nobody came to collect the plate till around 2.15 p.m. The plate was ready and lying with him for more than half an hour. This admission on the part of the workman is enough to prove the charge of indiscipline. Having been told at 9.00 a.m. to get ready the plate and especially when the printing department wanted it very urgently, his preparing and getting the plate ready by 1.45 p.m. is certainly not proper. When we asked normally what will be the time to get ready such plates, the causal informed us that it will be not more than five to ten minutes. Therefore, we have no hesitation to hold that this act of indiscipline is not tolerable at all and the punishment of dismissal is warranted by such conduct of indiscipline.

15. The learned counsel for the respondent would however bring to our notice a decision reported in *Workmen of Bharat Fritz Werner (P.) LTD. v. Bharat Fritz Werner (P.) LTD., and Anr.*, (1990-II-LLJ-226), wherein the Supreme Court has held that the reinstatement of workman, against whom serious misconduct involving acts of threatening of highest executive with dire consequences were proved, is not proper but, however the Supreme Court directed payment of

compensation taking a sympathetic view. According to the learned counsel for the respondent even for such misconduct found in the present case, does not warrant an order of dismissal. However, we are unable to agree with the view of the learned counsel.

16. We find that the Kannada Weekly has already been closed and the company is running a mere printing press. Taking into consideration all the cumulative aspects of this case, we feel that the ends of justice will be met if the Management is directed to pay a sum of Rs. 50,000 to the workman is enquiry.

17. With the above direction, we allow the writ appeal and set aside the order of the learned Single Judge.

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