Niranjan Das Vs. Asst. General Manager, Traffic and Raw Material Department, Rourkela Steel Plant

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SooperKanoon Citation : sooperkanoon.com/533372

Court : Orissa

Decided On : Jul-15-2005

Reported in : 100(2005)CLT193; [2005(107)FLR716]; (2005)IIILLJ655Ori

Judge : M.M. Das, J.

Acts : Industrial Disputes Act, 1947 - Sections 33(1) and 33(2); Constitution of India - Articles 226 and 227

Appeal No. : Writ Petition (Civil) No. 2777 of 2002

Appellant : Niranjan Das

Respondent : Asst. General Manager, Traffic and Raw Material Department, Rourkela Steel Plant

Advocate for Def. : None

Advocate for Pet/Ap. : Somanath Mishra, ;G. Tripathy and ;S. Mishra, Advs.

Disposition : Petition allowed

Judgement :

M.M. Das, J.

1. The Writ Petitioner was an employee under the Opp. Party-Rourkela Steel Plant of Steel Authority of India Ltd. The case of the petitioner is that in order to victimizing and curb his Trade Union activities, the employer with mala fide intention charge sheeted him on 12.8.2000 for commission of certain alleged misconduct of intimidating an officer of the Company within the work premises by exhibiting indecent behaviour etc. An inquiry was conducted to prove the charges leveled against the petitioner which, according to the petitioner, was conducted in a perfunctory and arbitrary manner violating the principles of natural justice. The petitioner alleges that he was not afforded with the opportunity to adduce evidence during the course of inquiry and the Inquiry Officer holding the petitioner guilty of the charges, submitted a report. The disciplinary authority accepting the said report proposed to dismiss the petitioner 'from service and since I.D. Case No. 7 of 1997 relating to another industrial dispute was pending before the Industrial Tribunal, Rourkela where the petitioner was a party as the workman, the Opp. Party-Management filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') for approval of its action as per the proviso to the said Section. - The said application was registered as I.D. Misc. Case No. 46 of 2000. The petitioner, on receiving the notice to show cause in the aforesaid case, filed his show cause. Thereafter, the Opp. Party filed an application to take up the question of fairness of the domestic inquiry as the preliminary issue, to which the petitioner filed his objection. The said application under Section 33(2)(b) of the Act was allowed by the Learned Industrial Tribunal, Rourkela by its order dated 11.7.2002. Being aggrieved by the said order annexed as Annexure-6 to the Writ Petition, the petitioner has preferred this application under Articles 226 and 227 of the Constitution of India.

2. Mr. Somanath Mishra, Learned Counsel for the petitioner contended that the impugned order under Annexure-6 could not have been passed by the Industrial Tribunal on the application filed by the Management to consider the question of fairness of domestic inquiry as preliminary issue. He submitted that it is well settled in law that in an industrial adjudication, the industrial adjudicator is to take up all the issues simultaneously and it is not permitted to decide a case in a piece meal manner. He further submitted that if all the issues are not taken up together, delay would be caused in deciding the case which would lead to the misery of the

workman and as such, the purpose and intention of enactment of the Industrial Disputes Act would be frustrated.

3. The Opp. Party in spite of notice has not entered appearance in this case.

4. I have perused the impugned order under Annexure-6 passed by the Industrial Tribunal, Rourkela. I find from the said order that the Tribunal while considering the application filed by the Management under Section 33(2)(b) of the Act, has minutely gone into the details of the domestic inquiry conducted by the Inquiry Officer against the petitioner and as a matter of fact even has gone to the extent of giving a finding on the legality of the said inquiry conducted against the petitioner and has recorded a finding that the inquiry was properly conducted and there was no violation of the principle of natural justice. It has also found that sufficient materials were made available by the Management before the Inquiry Officer for proving the charges framed against the petitioner.

5. Mr. Somanath Mishra, Learned Counsel for the petitioner submitted that though the Tribunal conducted a hearing on the application filed by the Opp. Party-Management to decide the question of fairness of the domestic inquiry as preliminary issue, but the Tribunal without affording any opportunity of hearing to the petitioner to address it on the merit of the petition, illegally entered into the merit of case.

6. In order to appreciate the contentions raised it is necessary to quote Sub-section (2) to Section 33 of the Act which reads as follows :

'During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman :

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman :Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.'

7. The jurisdiction of the Tribunal under the proviso to Section 33(2)(b) of the Act has been elaborately discussed by the Supreme Court in the cases of the Lord Krishna Textile Mills v. Its workmen, : (1961)ILLJ211SC ; The Bata Shoe Co. (P) Ltd. v. D.N. Ganguly and Ors., : (1961)ILLJ303SC and The Straw Board ., Saharanpur v. Govind, : (1962)ILLJ420SC . It has been consistently held that the proviso to Section 33(2)(b) requires three things, namely, (i) dismissal or discharge, (ii) payment of wages and (iii) making of an application for approval, to be simultaneous and to be part of the same transaction. It has been held by the Supreme Court in the above cited decisions that the employer's conduct should show that the three things contemplated under the proviso, are parts of the same transaction. In the case of The Lord Krishan Textile Mills (supra), the Supreme Court held thus :

'The jurisdiction of the appropriate industrial authority in holding an enquiry under Section 33(2)(b) cannot be wider and is, if at all, more limited, than that permitted under Section 33(1). In view of the limited nature and extent of the enquiry permissible under Section 33(2)(b) all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval is made out by him or not. If before dismissing an employee the employer has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribed by Section 33(2)(b) and the proviso are satisfied or not. The approving authority has to consider only (a) whether the standing orders justify the order of dismissal,(b) whether an enquiry has been held as provided by the standing order, (c) whether the wages for the month have been paid as required by the proviso, and (d) whether an application has been made as prescribed by the proviso. And when all these conditions have been fulfilled by the employer the tribunal is not justified in refusing to accord approval to the action

taken by the employer. Nor is it justified while holding the enquiry to assume powers of an Appellate Court which alone is entitled to go into all questions of fact. The question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a Court of facts and may fall to be considered by an Appellate Court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the Court is limited as under Section 33(2)(b).'

8. In the case of Lalla Ram v. Management of D.C.M. Chemical Works Ltd. and Anr., : (1978)ILLJ507SC , the Supreme Court held that in a proceeding under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/ Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out and (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimize the employee. The Supreme Court further held that when deciding the above factors, though it is a settled position that the award of punishment for misconduct under the relevant rules/orders, is a matter for the Management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe, yet an inference of mala fide may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment. The Tribunal has to further find out as to whether the employer has paid or offered to pay wages for one month to the employee.

9. Law, is therefore, clear that if the tribunal assumes jurisdiction not vested in it by law and consequently either refuses or grants approval under the proviso to Section 33(2)(b) of the Act, the same would be patently an erroneous order. In the present case, as has been discussed earlier, though the tribunal stated in the concluding paragraph of the impugned order that a prima facie case has been made out against the petitioner but it has clearly exceeded its jurisdiction in entering into the merit of the domestic enquiry conducted by the opp. party-employer and has further committed an error in arriving at specific findings which are substantially question of facts and can only be decided in a Court of appeal.

10. In view of the above, the impugned order under Annexure-6 is not sustainable and is, therefore, quashed. The matter is remanded back to the Industrial Tribunal, Rourkela which shall deal with the application of the employer filed under the proviso to Section 33(2)(b) of the Act in accordance with law keeping the observations made above in view and after affording opportunity of hearing to the parties concerned.

The Writ Application is, accordingly, allowed.