

Pradeep Kumar Vs. M.C.D.

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Court : Delhi

Decided On : Feb-26-2007

Reported in : [2007(114)FLR360]

Judge : Hima Kohli, J.

Acts : Industrial Disputes Act - Sections 10 and 33

Appeal No. : Writ Petition (C) No. 14333/2005

Appellant : Pradeep Kumar

Respondent : M.C.D.

Advocate for Def. : Geeta Mehrotra, Adv.

Advocate for Pet/Ap. : Sanjay Ghose, Adv

Judgement :

Hima Kohli, J.

1. With the consent of both the parties, this matter is taken up and disposed of at the admission stage itself.

2. In the present petition, the petitioner has sought a declaration to the effect that the order dated 20.4.2005, passed by the Presiding Officer, Industrial Tribunal in ID No. 16/1999 is illegal and contrary to the provisions of law. The brief facts,

which are relevant for deciding the present petition are that the petitioner workman joined the service of the respondent MCD as Lower Division Clerk (LDC) on 3.10.1981. In 1987, a charge sheet was issued against the petitioner. Pursuant thereto, an Enquiry Officer was appointed, who submitted an enquiry report to the Disciplinary Authority in 1988, wherein it was held that the charges against the petitioner to the effect that he had remained absent from duty unauthorizedly and had made interpolation in the office attendance register, stood proved. Thereafter a penalty of stoppage of two increments with future effect was imposed against the petitioner on 5.12.1990.

3. After over a period of two years, in March, 1993, the petitioner served a demand notice on the respondent. Thereafter, as the conciliation proceedings failed, an industrial dispute was raised by the petitioner. The appropriate Government referred the same to the Industrial Tribunal II, vide its order of reference dated 26.7.1995. The terms of reference framed as below:

Whether penalty of stoppage of two increments with cumulative effect inflicted on Shri Pradeep Kumar is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

4. The pleadings were completed and vide order dated 23.12.1998, the Industrial Adjudicator framed the following issues:

1. As per terms of reference.

2. Whether the claim is not maintainable for the reasons stated in para 1 to 5 of the preliminary objections in the written statement as alleged?

5. On 22.12.2004, the Industrial Adjudicator passed the following order:

Perusal of the order sheet goes to show that on 23.12.98, following issues were framed-

a) As per terms of reference.

b) Whether the claim is not maintainable for the reasons stated in para 1 to 5 of the preliminary objections of the written statement, as alleged? (OPM)

Accordingly, the parties led their evidence. However, today the parties stated that they were under the impression that issue of fairness of enquiry was also framed and therefore, according to the mgt. they led evidence only on that issue. This case is an old matter. The punishment awarded to the workman was sometimes in 1988. In these circumstances, there will be no point in framing any additional issue on enquiry. The proper procedure would be to grant further opportunity to the parties to lead any additional evidence if they so want on the issue already framed. The workman does not want to lead any further evidence. The mgt., however, want to take one more opp. to lead additional evidence for which only one opp. is granted. List this matter for remaining evidence of the management on 11.2.04. However, the mgt. would supply the advance copy of the affidavit to the workman.

I.T. III/22.12.04

6. Despite the aforementioned order, no evidence was led by the management on the next date of hearing as fixed in the matter. It is recorded in the impugned order, that the A.R. for the management states that he was under the impression that the necessity to lead evidence on the issue of misconduct would arise only when the Court vitiated the enquiry. In the impugned order, the learned Presiding Officer, Industrial Tribunal perused the evidence adduced by the parties and on the basis thereof arrived at a conclusion that the enquiry conducted by the respondent management was null and void. After arriving at the aforesaid conclusion, the respondent was granted one more opportunity to lead evidence on the issue of misconduct and other issues. Although, the petitioner workman objected to such an opportunity being granted to the respondent in view of the fact that no such plea had been taken by the respondent in the written statement, the said objection was rejected in the light of the statement made on behalf of the respondent earlier as referred to herein above and the matter was listed for the evidence of the management.

7. Aggrieved by the aforementioned order, the petitioner filed the present petition. It was argued by counsel for the petitioner that the Industrial Adjudicator erred in granting an opportunity to the respondent to lead additional evidence when the respondent had never sought such leave from the Tribunal either in its written

statement or by way of preferring a separate application at the relevant time. It was submitted that in view of the order passed by the Tribunal, holding that the domestic enquiry is illegal and vitiated, a natural corollary thereto ought to have been to decide the remaining issues without granting any further opportunity to the respondent to lead evidence with regard to the same, particularly, when no such permission was sought for by the respondent at the relevant time. It was further submitted that the Industrial Adjudicator failed to cite any special or exceptional circumstances so as to grant the respondent an opportunity to lead additional evidence on the issue of misconduct, more so as the same resulted in delay in disposal of the proceedings to the detriment of the petitioner workman. Counsel for the petitioner has vehemently argued that once an opportunity was granted by the Industrial Adjudicator to the respondent in terms of the order dated 22.12.2004, and despite the same, the respondent failed to lead any evidence on the merits of the case, they ought not to have been granted any further opportunity for producing any additional evidence. The grievance of the petitioner is also that his case has been prolonged and dragged on account of dilatory tactics being adopted by the management to his detriment. In support of his contentions, the petitioner has placed reliance on a Constitution Bench judgment rendered by the Apex Court in the case of Karnataka State Road Transport Corporation Ltd. v. Lakshmiddevamma (Smt) and Anr. reported as : (2001)IILLJ199SC .

8. In the aforementioned case, while approving an earlier judgment rendered by the Supreme Court in a case entitled Shambhu Nath Goyal v. Bank of Baroda reported as 1983 (4) SC 491, wherein it was held that the right which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or the Industrial Tribunal either under Section 10 or Section 33 of the Industrial Disputes Act, (herein after in short referred to as `the Act') questioning the legality of the order terminating the service, must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application either seeking permission to take certain action or seeking approval of the action taken by it, the Supreme Court held as below:

Para 17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the

opinion that the directions issued by this Court in Shambhu Nath Goyal case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal case is just and fair.

9. With the aforesaid observations, as per majority judgment, it was held that the law laid down in Shambhu Nath Goyal's case (supra) is the correct law on the point that the management was entitled to adduce evidence to justify its domestic enquiry only if it reserves the right to do so in the application made by it under Section 33 of the Act or in the objection that the management has to file to a reference under Section 10 of the Act, i.e. at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/ Labour Court.

10. On the other hand, counsel for the respondent supported the impugned order and stated that the same is neither illegal nor contrary to the settled law. Counsel for the respondent also placed reliance on the aforesaid judgment rendered by the Apex Court in Karnataka SRTC case (supra), and drew the Court's attention to the concurring judgment rendered in the aforesaid case by S.P. Patil, J. for Khare, J. and himself wherein it has been held as below:

Para 45 -It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/Tribunals have the power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek

leave of the court/tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the court/tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice.

11. Counsel for the respondent submitted that the Court and the Tribunal can follow the procedure which meets the ends of justice in the given facts and circumstances of the case and in accordance with the principles of natural justice. She also contended that the Labour Court/ Tribunal has to first examine as to whether the enquiry conducted by the management is proper and valid and only after the preliminary issue is decided against the employer and it is held that the enquiry conducted is not valid that the burden would shift and would lie on the management to show by adducing evidence that the action taken against the workman was justified, for which evidence shall have to be led to establish that the charges leveled against the workman were proved. Thus, she submitted that an employer is entitled to be given a chance to prove the charges before the Labour Court by adducing fresh evidence. Justifying the order passed pursuant to the enquiry and the fact that the right of the employer to adduce evidence for the first time before the Tribunal cannot be taken away in case the enquiry is held to be found defective, reliance was placed on the following judgments:

(i) Uco Bank and Ors. v. P.O. and Anr. : (2000)ILLJ1187 Del ,

(ii) Ram Kishan Singhal v. PO and Ors. : 83(2000)DLT414

12. I have heard the arguments advanced by counsels for the parties and have also perused the impugned order and the documents placed by the petitioner on record as also the judgments relied upon by the respective parties. It is an admitted case of both the parties that the respondent did not make a request at the time of filing its written statement, reserving its right to adduce evidence in case the domestic enquiry conducted by it was found to be illegal, invalid or improper, nor was any such request made by virtue of filing an appropriate

application seeking such a liberty. It is also a matter of record that the issue of fairness of the enquiry conducted by the respondent though required to be framed, was not specifically framed at the time when issues were framed in the matter by the Tribunal on 22.12.1998. As a result, the management led evidence only on the issues which were framed.

13. In the light of the aforesaid peculiar facts and circumstances, the Tribunal while observing that as the case in hand was very old and would be further delayed if additional issue was framed on the validity of the enquiry, ordered that the proper procedure would be to grant further opportunity to the parties to lead additional evidence, if they so wanted on the issue already framed. Thus, the matter was adjourned for recording of the remaining evidence of the management as the petitioner workman stated that he did not want to lead any further evidence. It is also a matter of record that despite the aforesaid order dated 22.12.2004, the management did not lead any evidence and took a plea that it was under the impression that such an eventuality with regard to adducing evidence on the issue of misconduct would arise only if the domestic enquiry is held to be vitiated.

14. After recording the aforesaid plea of the respondent management, the Industrial Adjudicator proceeded to hear arguments on the validity of the domestic enquiry and ultimately arrived at a conclusion that the enquiry conducted by the respondent was unfair and was required to be vitiated. At this stage, the Industrial Adjudicator suo motu granted one more opportunity to the respondent to lead evidence on the issue of misconduct and other issues, while rejecting the objection of the petitioner that no such liberty was sought by the respondent at any stage before closure of proceedings.

15. Keeping in mind the judgment rendered by the Constitution Bench of the Supreme Court in Karnataka SRTC case (supra), there is no gainsaying the fact that the principles of natural justice cannot be sacrificed at the altar of strict interpretation of procedure and statutory powers. Enough leeway has been granted to the Courts/ Tribunals to follow the procedure which they think fit in the circumstances of each case, subject of course to the provisions of the Act and relevant Rules. There can be no quarrel with the proposition that Labour Courts/

Tribunals have the statutory power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case so demand, so as to meet the ends of justice in a given case.

16. In the present case while no such request was made by the management by way of making an application or by way of reserving its right in the written statement filed in reply to the statement of claims of the petitioner, the Industrial Adjudicator exercised powers vested in it suo motu to call for evidence by the management on the remaining issue of misconduct and other issues. In Karnataka SRTC case (supra) it has been held that no fetters can be placed on the powers of the court /Tribunal in requiring or directing the parties to lead additional evidence if it is deemed just and necessary in the interest of justice.

17. In the facts and circumstances of the present case, keeping in mind the fact that the Industrial Adjudicator exercised the powers vested in him to suo motu direct the parties to adduce additional evidence on the remaining issues which were yet to be tried, this Court does not deem it fit or appropriate to interfere in the said order as the same cannot be held to be either perverse or illegal as to warrant interference in judicial review. However, keeping in view the anxiety expressed by the petitioner about the delay that has been caused in the adjudication of his case, as also the fact that a year and a half has passed since the present writ petition was filed by the petitioner, the Industrial Adjudicator is directed not to grant more than two opportunities to the respondent management to produce any evidence in support of its case with respect to the remaining issues. An endeavor shall also be made by the Presiding Officer to decide the matter as expeditiously as possible, preferably within a period of four months from the date of passing of this order.

18. In view of the fact that the respondent failed to avail of the opportunity granted to it vide order dated 22.12.2004 to lead additional evidence, thus causing delay in the adjudication of the case of the petitioner, the respondent is directed to compensate the petitioner by paying him a sum of Rs. 10,000/- as costs. Subject to the respondent paying costs of Rs. 10,000/- within two weeks from the date of passing of this order, the respondent is permitted to adduce evidence as ordered above.

19. The parties are directed to appear before the Presiding Officer, Industrial Tribunal on 12th March, 2007 whereupon, a date shall be fixed for enabling the respondent management to lead evidence.

20. With the aforesaid orders, the writ petition stands disposed of.

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