

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 4420/2002

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Date of decision: 4th May, 2010

DAYA SWAROOP SAXENA

..... PETITIONER

Through: Petitioner in person

Versus

THE PRESIDING OFFICER, LABOUR COURT

No.VII & ANR

.....RESPONDENTS

Through: Mr. Harvinder Singh with Mr. Mohit
Gupta, Advocates for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? No.
2. To be referred to the reporter or not? No.
3. Whether the judgment should be reported
in the Digest? No.

RAJIV SAHAI ENDLAW, J.

1. The petitioner workman impugns the award dated 8th April, 2002 of the Labour Court holding the respondent no.2 M/s Hindustan Times Ltd to have, before terminating the services of the petitioner workman, held a valid, proper and legal domestic enquiry and further holding the punishment of removal from service meted out by the respondent no.2 to the petitioner workman to be justified and proportionate to the act of misconduct conducted by the petitioner workman. Rule was issued in the writ petition on 20th November, 2002. The petitioner workman appearing in person and the counsel for the respondent no.2, both stated that they have filed written arguments and relied on the same.

2. The petitioner workman was chargesheeted for misappropriation of monies while performing the duty of collecting cash from the advertisers in the newspaper of the respondent no.2. A domestic enquiry was conducted in which the charge was found to have been established / proved. The Disciplinary Authority vide order dated 12th February, 1973 dismissed the petitioner workman from service. A criminal case was also lodged against the petitioner workman relating to the same transaction. The same was in progress at the time of such removal of the petitioner workman from service. The said criminal case continued till 30th September, 1986 when the petitioner workman was acquitted from the Court of the Metropolitan Magistrate. It was thereafter that the petitioner workman raised the Industrial Dispute against the award wherein present petition has been preferred.

3. It was *inter alia* the plea of the respondent no.2 that the reference was bad and liable to be decided against the petitioner workman for the reason of delay, laches etc. It was contended that the right, if any, to raise the industrial dispute had accrued to the petitioner workman immediately on his dismissal from service on 12th February, 1973 and the petitioner workman could not be permitted to raise an industrial dispute after 13 years therefrom. The Labour Court however found that the petitioner workman was entitled to wait for the outcome of the criminal prosecution and was justified in raising the industrial dispute immediately thereafter. The counsel for the respondent no.2 has raised the said argument before this court also and contended that the petitioner workman is not entitled to invoke the equitable jurisdiction of this court by way of this writ

petition when the industrial dispute was raised after inordinate delay of more than 13 years.

4. I find merit in the said contention of the counsel for the respondent no.2. It is a settled principle of law that the decision of an industrial dispute, the facts whereof are also subject matter of criminal prosecution does not take colour from the decision of the courts in the said criminal prosecution. The test to be applied in a domestic enquiry and/or in a labour dispute is entirely different from the test to be applied in a criminal prosecution. While the outcome of a criminal prosecution is based on proof beyond doubt, the outcome of a domestic enquiry and/or a proceeding before an industrial adjudicator depends upon the preponderance of probability. This court in *All India Institute of Medical Sciences Vs. O.P. Chauhan* MANU/DE/0322/2007 has held that though the law does not prescribe any time limit for the appropriate Government to exercise its powers under Section 10 of the ID Act, it is not that this power can be exercised at any point of time and to revive matters which have since settled. It was held that the appropriate Government should not refer stale and dead disputes. The reference in that case after ten years and on the same ground, as in this case, of acquittal by the criminal court was held to be bad in law. It was held that the termination, in the long period of ten years, had become a settled fact and the employer could not be expected to keep the post vacant. It was held that such references of stale disputes disturb rather than promote industrial harmony. The facts of the present case are squarely covered by the said judgment. The factum of acquittal by the criminal court was held to be not relevant for the reason of

standards of proof required by a criminal court and in disciplinary proceedings to be different.

5. The Supreme Court recently in *Southern Railway Officers Assn. Vs Union of India* (2009) 9 SCC 24 has also held that order of dismissal can be passed even if the delinquent official has been acquitted of the criminal charge. It was further held that acquittal in a criminal case by itself is not a ground for interfering with an order of punishment imposed by the Disciplinary Authority. The Supreme Court in *State of Rajasthan Vs. B.K. Meena* (1996) 6 SCC 417 had also reiterated that the principles of natural justice do not require that the employer should wait for the decision of the criminal court before taking disciplinary action against the employee and held that it is not in the interest of administration (in that case of State) that persons accused of serious misdemeanour should be continued in office indefinitely and for long periods awaiting the result of criminal proceedings. Such a situation was held to be serving the interest of the guilty and the dishonest only. To the same effect is *Noida Entrepreneurs Association. Vs. Noida* AIR 2007 SC 1161. It was further held that the purpose of criminal prosecution and departmental enquiry are different. Disciplinary proceedings were held to be with the purpose of maintaining discipline and efficiency in service and it was further held that it is expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible.

6. The petitioner workman has in his written submissions referred to *M. Ravindran Vs. Bharat Electronics Ltd* 2002 Lab. I.C.1011 (Karnataka), *Rajib Lochan Jha Vs. State of Bihar* MANU/BH/0263/2004 and *Captain M. Paul*

Anthony Vs. Bharat Gold Mines Ltd. AIR 1999 SC 1416. Though undoubtedly in *Captain M. Paul Anthony* (supra) the order of the disciplinary authority contrary to that of the criminal court was set aside but on a finding that the same witnesses were examined and same evidence led before both the fora. In these facts, it was held that it would be unjust, unfair and oppressive to allow the evidence recorded in the ex parte departmental proceedings to stand. It is however not a case of the petitioner workman herein. It was for this peculiar reason that the Supreme Court in *Captain M. Paul Anthony* differed from the general principles as discussed in the judgments supra.

7. Moreover after the Disciplinary Authority had meted out the punishment of removal from service to the petitioner workman, what first fell for consideration in the industrial dispute raised by the petitioner workman was the legality, validity and fairness of the domestic enquiry preceding such dismissal. The finding on the legality, validity and fairness of the domestic enquiry was not dependent in any manner whatsoever on the outcome of the criminal prosecution. The Supreme Court in *Delhi Cloth & General Mills Co. Vs. Ludh Budh Singh* AIR 1972 SC 1031 has held that if the industrial adjudicator finds a legal, valid and fair domestic enquiry to have been conducted, it has no jurisdiction to re-investigate the charge leading to the punishment meted out to the employee. It is only if no proper, legal and valid enquiry is found to have been conducted and further if the employer chooses to prove the misconduct before the industrial adjudicator, does the industrial adjudicator get the jurisdiction to adjudicate on that aspect. A perusal of the orders of the Labour Court impugned by the petitioner workman shows that the petitioner workman challenged the

validity/legality of the domestic inquiry; for the said challenge there was no need for the petitioner workman to await his acquittal in the criminal prosecution. The petitioner workman is thus found to have raised the industrial dispute belatedly as an afterthought and the same constitutes reason enough for this court to refuse to exercise the discretionary jurisdiction.

8. There is another important related aspect of the matter. The petitioner workman before the Labour Court pleaded and filed an affidavit to the effect that he was unemployed since the date of his dismissal on 12th February, 1973 till the pendency of the industrial dispute before the Labour Court. The respondent no.2 however proved the falsity of the said statement of the petitioner workman. The respondent no.2 proved before the Labour Court certified copies of records of another industrial dispute raised by the petitioner workman against another employer with whom the petitioner workman was employed in the interregnum. The petitioner workman did not dispute the said documents and rather did not cross examine the witness who proved the said documents on this aspect. It thus stands established that the petitioner workman had sworn a false affidavit in the proceeding before the Labour Court. The entire jurisprudence in labour/industrial matters is tilted towards the workman who is treated as unequal to the employer and a much weaker party in the dispute, deserving protection of/from the law and the courts. However, if such workman is found to be twisting the said law, already heavily loaded in his favour, to his unfair advantage and/or found to be playing hide and seek with the court and thus abusing the process of the court, such a workman cannot be treated as one who deserves the protection from the court. Moreover, such a workman as a bad fish

brings a bad name to the workmen generally and runs the risk of tilting balance of sympathy of the courts away from the workman. Such workman has to be thus dealt with a heavy hand so as to be a deterrent for other workmen from indulging in such conduct/practice. Moreover, I do not find any need/necessity for the petitioner workman to have indulged in such conduct. The petitioner workman could have deposed that though he had sought employment in the interregnum but had problem there too. However, the petitioner workman showed scant regard for the law and its machinery and did not show any hesitation whatsoever in making a false statement on oath. Such litigants do not deserve any sympathy at all of the courts and are required to be shown the door for the said reason alone. I am inclined to dismiss the present writ petition on this ground alone.

9. However, it is deemed expedient to deal with other aspects also.

10. The petitioner workman in his written submissions has contended that the order of the Labour Court is illegal for the reason of holding that “merely because the Inquiry Officer asked few questions and cross questions, the same cannot be a ground to vitiate the departmental proceedings”. The petitioner workman in this regard relies on *Meenglas Tea Estate v. Its Workmen* AIR 1963 SC 1719. However there is no merit in the said contention also of the petitioner workman. This court in *Smt. Sushma Rani Vs. The Divisional Engineer, Phones Special Services, MTNL and General Manager, MTNL* MANU/DE/9159/2006 had held that an Inquiry Officer is not barred from asking questions from the witness and if the Inquiry Officer asks questions to the witnesses, he does not become a prosecutor. It was further held that Inquiry Officer is supposed to find out the truth of the matter and has right to ask

questions to the witnesses, if necessary, and such an act of the Inquiry Officer shall not vitiate the enquiry. The Supreme Court also in *Mulchandani Electrical and Radio Industries Ltd. Vs The Workmen* AIR 1975 SC 2125 held that if the Inquiry Officer puts questions to witnesses it does not lead to the conclusion that he has done something that was not fair or proper. It was rather held that Inquiry Officer in a domestic enquiry can put questions to the witnesses for clarification wherever necessary and if he allows the witnesses to be cross-examined thereafter, the inquiry proceeding cannot be impeached as unfair.

11. The petitioner workman has also contended that the enquiry report is perverse because the charge of misappropriation was not established. Such challenge cannot be entertained. The Labour Court on perusal of the inquiry proceedings has not found the inquiry report to be perverse. In any case, the arguments raised requires this court to reappraise the evidence led before the Inquiry Officer and which is clearly impermissible.

12. The petitioner workman has next contended the inquiry to be bad for the reason of non-payment of subsistence allowance and also relied on certain judgments of this court. However, the Labour Court has found that no such plea was raised by the petitioner workman at the contemporaneous time and further held the petitioner workman to have raised the said dispute as an afterthought. No ground is made out for interference in the said finding of the Labour Court.

13. The petitioner workman has next contended that he was not provided with legal assistance. The Labour Court has held that no such plea was taken by the petitioner workman at the contemporaneous time. The petitioner workman seeks to justify the same by contending that he was not aware of his legal rights then.

The Supreme Court in *Kalindi Vs. Tata Locomotive & Engineering Co. Ltd* AIR 1960 SC 914 has held that a workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though of course an employer in his discretion can and may allow his employee to avail himself of such assistance. The same view was reiterated recently in *Biecco Lawrie Ltd. Vs. State of West Bengal* AIR 2010 SC 142. Moreover, the Labour Court has rightly found that no prejudice has been caused to the petitioner workman therefrom.

14. No case for interference in the impugned award is made out. The petition is dismissed. However, no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

4th May, 2010
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