

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 12.12.2014

+ **W.P.(C) 8545/2003**

M/S. PATEL ROADWAYS LTD.

..... Petitioner

versus

P.O. INDUSTRIAL TRIBUNAL

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr M. Y. Khan.

For the Respondent : Ms Rashmi B. Singh.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns an order dated 01.10.2003 (hereafter the 'impugned order') passed by the Industrial Tribunal whereby the domestic enquiry conducted by the petitioner against respondent no.2 workman was vitiated and the report of the enquiry officer was held to be perverse.

2. Briefly stated, the relevant facts for examining the controversy in the present petition are that respondent no.2 was working as MIS Executive (i.e. Management Information System Executive) with the petitioner. On 30.11.1993, the petitioner suspended respondent no.2 and issued a charge sheet dated 01.02.1994 alleging that respondent no.2 caused the Divisional Finance Manager of the petitioner to be assaulted on account of some clarification sought by him from respondent no.2 with

respect to a bill of M/s Computer Station (a supplier to the petitioner), prepared by him.

3. On 23.02.1994, the petitioner appointed Shri R.S. Butalia, Advocate as an enquiry officer the petitioner, to consider the charges and explanation provided by respondent no.2. Shri R.S. Butalia resigned on health grounds and on 01.08.1994, Shri C.V. Kumar was appointed as an enquiry officer in place of him. The enquiry officer – Shri C.V. Kumar found respondent no.2 guilty of the charges and submitted his report on 15.03.1997. On 07.08.1997, the service of respondent no.2 was terminated by way of simple discharge.

4. On 22.08.1997, respondent no.2 filed a complaint under Section 33A of the Industrial Disputes Act, 1947 (hereafter the ‘Act’) alleging that his services were terminated without following the mandatory requirement of Section 33 of the Act. After considering the pleadings of the parties, the Industrial Tribunal framed the following issues:-

- “1. Whether the complainant was not a “workman” within the meaning of Section 2(s) of the Industrial Disputes Act?
 2. Whether the respondent / management contravened the provisions of Section 33 of the Industrial Disputes Act?
 3. Whether the enquiry conducted by the management was not fair and proper?
 4. To what relief, if any, is the complainant entitled.”
5. The Industrial Tribunal considered the issue no.3 as a preliminary issue. Respondent no.2 filed his affidavit of evidence leveling number of allegations against the enquiry conducted by the petitioner. Respondent

no.2 also examined two other witnesses on the merits of the disputes. Thereafter, on 21.10.2002, the petitioner filed affidavits of Sh. C.V. Kumar, enquiry officer and K. Ramesh, representative of the petitioner. K. Ramesh was cross-examined, however, Sh. C.V. Kumar, enquiry officer did not appear before the Industrial Tribunal to tender his evidence, although several adjournments were sought by the petitioner for producing him as a witness. On 05.06.2003, the petitioner filed an application for summoning Sh. C.V. Kumar, enquiry officer, however, by an order dated 07.07.2003, the said application was dismissed by Industrial Tribunal. By the impugned order, the Industrial Tribunal held that the domestic enquiry was vitiated principally on the ground that the petitioner was unable to bring Sh. C.V. Kumar, enquiry officer to depose before the Industrial Tribunal; the allegations made by respondent no.2 were accepted as being uncontroverted.

6. The learned counsel for the petitioner contended that the Industrial Tribunal failed to summon and enforce the presence of Sh. C.V. Kumar, enquiry officer for examining him as a witness despite having the power to do so under Section 11(3) of the Act.

7. The controversy to be addressed is whether the finding of the Industrial Tribunal that the enquiry proceedings are vitiated and the report of the Enquiry Officer is perverse are warranted in the facts and circumstances of the case.

8. The respondent was discharged from services on 07.08.1997 on the basis of an alleged enquiry conducted by the petitioner in respect of the charges levelled against respondent no.2. Respondent no.2 had challenged

the enquiry and had deposed that the enquiry was not conducted in accordance with principles of natural justice and he had not been provided the necessary documents. It was further stated that the statement of witnesses were recorded on the same day and he was not permitted enough time to prepare his defence. The respondent no.2 had also further challenged that the enquiry report had not been prepared by the enquiry officer but the enquiry officer had simply appended his signatures thereto. The Industrial Tribunal had held that the said evidence was unrebutted and, therefore, came to the conclusion that the enquiry was vitiated.

9. The allegations made against respondent no.2 are indeed serious. It was alleged that respondent no.2 had submitted a forged bill of M/s Computer Station (a supplier to the petitioner). Respondent no.2 was sought to be confronted with the same in the presence of the supplier and this led to respondent no.2 to misbehave with the concerned officer – Mr Jasjeet Singh (Divisional Finance Officer). It is alleged that later in the evening around 06:00 p.m. while Mr Jasjeet Singh was walking towards his car, he was accosted by six persons and was physically assaulted. Mr Jasjeet Singh suffered injuries on his face and on his right eye besides other parts of his body. It was alleged that the said assault was at the instance of respondent no.2.

Accordingly, the following charges were framed against respondent no.2:-

- “1. Dishonesty in connection with the employers business.
2. Disorderly behavior on the premises of the establishment.

3. Commission of an act subversive of discipline and good behavior on the premises of the establishment.”

10. Admittedly, an enquiry was conducted by the petitioner. The enquiry report submitted by the petitioner indicates that six officers of the petitioner company were examined and a bare perusal of the report indicates that there was sufficient material for the enquiry officer to come to a conclusion that respondent was guilty of the conduct for which he was charged.

11. Respondent no. 2 was cross examined and during his cross examination, he admitted to the following:-

- a) That he was suspended from service on 01.12.1993;
- b) That he received the chargesheet dated 01.02.1994 on 13/15.02.1994;
- c) That he provided the explanation to the chargesheet (which was Ex.WW1/9);
- d) That he participated in the enquiry proceedings and cross examined the management witnesses (although he stated that some questions were not permitted by the Enquiry Officer);
- e) That all management witnesses were examined in his presence;
- f) That enquiry proceedings produced before the Labour Court included the documents that were supplied by both the parties;

In view of the aforesaid admissions, the allegation that the principles of natural justice had not been followed could not be readily accepted.

12. The petitioner had made a specific application for summoning of the enquiry officer and the same was rejected by the Industrial Tribunal

without assigning any reason. The enquiry officer – Mr. CV. Kumar was no longer an employee of the petitioner and further, it was contended on behalf of the petitioner that it apprehended that respondent no. 2 had threatened Mr C.V. Kumar to dissuade him from deposing before the Industrial Tribunal. The Industrial Tribunal had failed to give due consideration to this aspect of the matter.

13. Indisputably, the Industrial Tribunal had the power to summon the enquiry officer for checking the veracity of the enquiry report. In **Sarva Shramik Sangh v. Indian Hume Pipe Co. Ltd.**: (1993) 2 SCC 386, the Supreme Court held that the Labour Courts/Tribunals have the power to grant reliefs which a civil court could grant, however, the Industrial Tribunal/Labour Court is not bound by the technical rules or procedure followed by the Civil Court and has wide powers, to give effect to the provisions of the Act. The relevant portion of the said judgment reads as under:-

“7. It must be remembered that the Industrial Tribunal/Labour Court is supposed to be a substitute forum to the civil court. Broadly speaking, the relief which the civil court could grant in an industrial dispute can be granted by the Industrial Tribunal/Labour Court. Indeed the Industrial Tribunal/Labour Court is not bound by technical rules of procedure which bind the civil court. (See *J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. L.A. Tribunal of India* [AIR 1964 SC 737] .)”

14. In **East India Pharmaceutical Works Ltd. v. Additional Industrial Tribunal-cum- Addl. Court, Hyderabad**: (2000) III LLJ 282 AP, the Andhra Pradesh High Court held that the Tribunal has powers similar to that of a civil court for summoning and enforcing attendance of any person.

Further, the Tribunal could resort to the remedies provided under Rule 10(2) read Rule 21 of Order 21 of CPC for non-compliance of summons. The relevant extract of the judgment reads as under:-

“12. A plain reading of the above shows that the Tribunal is vested with the same powers as a civil Court under the Code of Civil Procedure, 1908 (for brevity 'CPC') in respect of enforcing the attendance of any person and examining him on oath or compelling the production of documents. In the absence of compliance with the summons issued by the Industrial Tribunal under Section 11(3), the consequences that follows are the same as postulated by Rule 10(2) read Rule 21 of Order XVI of CPC.”

15. It is well settled that coupled with every power, is a duty to exercise the same. In this case, the Industrial Tribunal rejected the petitioner's application for summoning Mr C.V. Kumar, enquiry officer who could depose to the conduct of the enquiry, without giving any reason. And, proceeded to summarily reject the enquiry report. This, in my view, was not a fair course of action.

16. In the circumstances, the impugned order is set aside and the matter is remanded to the Industrial Tribunal to consider it afresh in accordance with law.

17. In view of the above the writ petition stands disposed of. No order as to costs.

VIBHU BAKHRU, J

DECEMBER 12, 2014
RK