

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 207 of 2010

The Kisan Sehkari Chini Mills Limited Petitioner.

Versus

Hari Dutt Joshi Respondent

Present :

Mr. T.A. Khan, Senior Advocate, assisted by Ms. Sadaf, Advocate, for the petitioner.
Mr. M.C. Pant, Advocate, for the respondent.

JUDGMENT

Hon'ble Sharad Kumar Sharma, J.

Heard learned counsel for the parties.

2. The employer/petitioner, herein, has put a challenge to the judgment / award dated 7th October, 2010, as it has been passed by the Presiding Officer, Labour Court, Kashipur, District Udham Singh Nagar, in Adjudication Case No. 175 of 2008 (Old Case No. 6 of 2006), as it was published on 26th November, 2009.

3. The question, which was referred to be decided by virtue of the G.O. No. 624-29/Haldwani CP64(K)/2005 dated 6th February, 2006, was to the following effect :-

“क्या सेवायोजकों द्वारा अपने श्रमिक श्री हरीदत्त जोशी पुत्र श्री रुद्रमणी जोशी, वर्कमेट सिविल, की सेवायें दिनांक 31-01-1998 के आदेश द्वारा समाप्त किया जाना उचित है ? यदि नहीं तो सम्बन्धित श्रमिक क्या हितलाभ पाने का अधिकारी है? तथा अन्य किस-किस विवरण सहित?”

4. In a nutshell, the reference which was made to be adjudicated by the Labour Court, while exercising its powers under 4-K of the U.P. Industrial Disputes Act, was as to whether, the act of the employer of dismissing the services of the workman w.e.f. 31st January, 1998, was just and proper or not ?

5. To summarize the basic issues, as argued by the learned counsel for the petitioner, while assailing the impugned award is, that the action taken by the employer on 31st January, 1998, of dismissing the services of the workman did not suffer from any legal vices because, all cannons of law, including adherence of principle of the natural justice was appropriately followed by the employer, and ample of opportunity was given to the workman to defend himself and thus, the action taken by the employer was well within the cannons of law, which does not require an interference by this Court, in the exercise of powers by this Court in supervisory jurisdiction under Article 227 of the Constitution of India.

6. While on the contrary, it has been argued by the learned counsel for the respondent, that in fact, there is an absolute non adherence of the principle of natural justice for the reason being, that according to his contention, once a workman is charged by the employer of having committed a misconduct contrary to the service rules applicable to it, the charge is a prerogative of the employer depending of facts, who formulates the same to be put to an inquiry officer, but then the charge has had to be based upon credible and

material evidence, which is to be scrutinized by the employer prior to framing a charge against the employee, which could be justified to be serious enough to entail an imposition of a major punishment. His argument is, that when the charge has been framed by the employer thereby intending to dismiss the services of the workman, then it is rather the responsibility of the employer who has to discharge to prove the sanctity of the charges levelled by him against the workman, by leading evidence to the said effect, when the proceedings are taken, to establish that the charge actually stands proved by the evidence, which was to be discharged by the employer and if, the said aspect is not discharged by the employer, the consequential punitive action taken, without establishing the factum and basis of charge against the workman of dispensing the services would be in absolute and utter violation of principle of natural justice.

7. Rather to the contrary, it has been argued by the learned counsel for the petitioner, that the issue pertaining to, as to who has to discharge the burden of proof of a charge, this Court is of the view, that it was the employer, which has been shifted to be discharged by the workman, and in relation thereto, he submits, that the workman has not led any evidence to prove his innocence as against the charge, which has been levied by the employer, which could have necessitated the termination of services.

8. In response to it, in a nutshell, the learned counsel for the respondent has argued, that the occasion for the workman to lead evidence, either documentary or oral or by

way of a cross examination, its' only necessitated when the employer himself leads evidence in support of the charge to prove the same, that the workman was involved in an act, which was a misconduct under the service rules. What he intends to contend, that when the employer himself has not adduced any evidence to prove a charge and its truthfulness, in that eventuality, there was no occasion for the workman to either adduce oral or documentary evidence or to cross examine the witnesses to prove his innocence.

9. This is basically the issue of debate ! In the instant Writ Petition, where, the employer puts a challenge to the award of 17th October, 2009, as rendered by the learned Labour Court in Adjudication Case No. 175 of 2008 (Old No. 6 of 2006), whereby, a reference was made for deciding the issue pertaining to as to whether, there was a rightful dismissal of the services of the workman by an order dated 3rd January, 1998. The said reference has been answered against the employer/ petitioner, directing the reinstatement of the workman with 50% of backwages.

10. Brief facts as it engages consideration in the instant Writ Petition are, that there was certain agitation, which has taken place by the participation of the workman, including others in the establishment of the petitioner, where it is said that certain slogans were raised outside the residence of the Manager by the workmen.

11. Owing to the aforesaid act, where there were number of other workmen, who were simultaneously

suspended for their alleged outraging activities by instigating strikes and stoppage of work.

12. On this issue, a conciliation proceeding was raised by way of CP No. 36 of 1998, by the respondent, as against the action of termination of the services, which for the best reasons known, was withdrawn on 2nd December 1998, before the Regional Deputy Labour Commissioner.

13. The controversy germinates from the second conciliation proceedings, which stood registered as CP Case No. 64-K of 2005, as it was registered on 12th July, 2005.

14. The conciliation proceeding was held to resolve the dispute, against the action of the employer for terminating the services of the workman by an order dated 31st January, 1998.

15. The reference was made and, consequently, the Adjudication Case No. 6 of 2006, was initially registered before the Labour Court, Haldwani.

16. The workman filed his written statement, in which, he submitted that the strike did started on 6th September, 1997, and number of workmen were suspended on 5th September, 1997, though despite of the fact, that certain compromise took place on 6th October, 1997, but owing to the compromise, the suspension order as issued against other workmen was taken back, and all the workmen,

who were said to be engaged in the strike, they were taken back into services by the employer.

17. Against the suspension, some of the workmen approached the High Court by filing a Writ Petition No. 331 of 2002, which was dismissed by the Coordinate Bench. The Coordinate Bench, while dismissing the Writ Petition on 16.06.2005, this Court has observed, that no interference was required to be called for by the Court, and all the issue was left open to be decided on a reference to be made before the Labour Court, and consequently, the following observations were made :-

“Accordingly, the writ petition is dismissed. However, the petitioner may raise the industrial dispute for adjudication by the court constituted under the provision of Industrial Disputes Act, 1947, and the Court constituted under the aforesaid provision shall decide the dispute within a period of three months.”

18. The allegation according to the respondent, and as reflected from the chargesheet too, as submitted against the respondent workman was, that the prime role which was said to be played in the strike, which has started on 6th September, 1997, was alleged to be because of an active participation of the workmen, as he was the person, who was alleged to be found to be responsible for provoking the strike, and thus, he was separated from those against whom, the action was taken, though despite of the fact, that the other similar workmen were taken back into services after invocation of

their suspension order. But, however, the basis of the compromise due to which the suspension was revoked, since was not approved by the Federation of the Cooperative Sugar Mills, the Deputy Labour Commissioner, had not attached any legal sanctity to it. This aspect about the impact of the compromise, and what legal bearing will it have to the instant case, may not be the subject, which is required to be elaborated upon by this Court, since being altogether a different subject qua the other workmen, who were reinstated.

19. The allegation of the employer was, that the strike which was initiated on 6th September, 1997, allegedly in which the respondent workman said to be an instrumental was uncalled for according to the version of the employer, since the demand which was raised by the Union of the workers, the cut-off date for the same to be accepted by the employer was 12th September, 1997, and there was no reason as to why the strike was provoked by the workman on 6th September, 1997, i.e. prior to it.

20. The statements of witnesses were recorded, which has been placed on record by the petitioner. But basically, the action which has been taken against the present respondent by issuance of the chargesheet on 7th November, 1997, could be summarized in the following manner :-

“That respondent has submitted, that he was a disobedient workman, who was rather a miscreant in the organization of the petitioner and, who held rather in the capacity of being a leader has instigated the

workers to use abusive language against the Manager, and has obstructed the work of the Manager.”

21. In the chargesheet, which was thus submitted, (annexure-17) to the Writ Petition, primarily two charges were imposed upon the workman, and if the charges are summarized, it basically observed, that the charge No. 1 pertained to act of insubordination of the petitioner in connivance with the other workmen, and disobeying of the directions issued by the employer.

22. The second charge which was levied upon the workman was, that the workman was instrumental in consuming liquor, alongwith the other workmen in the Factory premises and was actively participating in the act of gambling, along with other workmen, which was an immoral act, and contrary to the various directives as applicable in the organization of the petitioner, and consequently, in a nutshell, the charge which has been framed therein, could be primarily culled out, that the basic role which was assigned to the respondent/workman was, that he was instrumental in commission of an offence, which was otherwise prohibited by Section N-1, J-9 and W, and according to them, it was a crime which was committed against the institution.

23. Consequently, the chargesheet as submitted on 17th September, 1997, which had called upon the respondent workman to submit his reply to the charges thus framed within the specified time frame as provided therein.

24. The workman did submit his reply on 24th of November, 2019, in defence of his case, qua the charges levelled against him, and in the reply thus submitted, apart from denying the charges levelled against him, he submitted that all the story which has been developed by the employer was concocted, and actually no such incident had ever taken place on the date and time as mentioned in the chargesheet, and he submitted, that he has been wrongly harnessed upon with the allegation levelled in the chargesheet, though actually he was not instrumental in commission of any of the said offences.

25. What is important here is, that if the chargesheet itself is taken into consideration, the chargesheet abruptly ends, and it does not even disclose as to on what basis and material, the charges have been framed, nor even it discloses about any statement, if any, of the witnesses, who were examined by the Chief Manager for the purposes of framing of a charge against the workman. Hence, in that eventuality, where the employer, while framing a charge does not disclose the material based on which the charges have been framed, at that stage or at the point of time, when the workman is called upon to file his reply, under service jurisprudence, quite obviously, his reply would be only literal in sense to the contents of the charges, but not with regard to the material based on which the charge has been framed, in the absence of being supplied with the chargesheet.

26. In that eventuality, where the proceedings stand initiated and is put to motion, after the submission of the

chargesheet, and the reply submitted by the workman, it is not an occasion which the workman could avail or could be called upon by employer to provide him an opportunity to controvert the evidence relied by the workman, qua the charges as levelled against him, nor it was an occasion for the workman, to call upon the employer to supply him the material, based on which, the charges were framed, which could have facilitated the workman, to call upon the employer to produce the witnesses, both oral or documentary which were relied during the course of the investigation, being carried by the Investigating Officer to establish the basis of formulation of a charge is not made out against the workman.

27. The logic behind it is, that if Part-III of the Evidence Act is taken into consideration, it provides in its Chapter 7, that as to who has to discharge the burden of proof, particularly in the context of the provisions contained under Section 101 and the provisions henceforth falling under Chapter 7 of Part-III of the Evidence Act. In the context of the provisions contained under Part-III and Chapter 7 of the Evidence Act, this Court is of the view, that once the employer has framed the charge, and that too without making any reference to the material, the normal analogy would be, that the charge could not have been framed by way of a fiction. The charge must have been framed only when the employer had sufficient material, available before him necessitating to frame the charge, and if that be the situation, at the first step, during the course of the inquiry, it is rather the employer, who is supposed to

discharge his responsibility to prove the charge, as to whether, they are substantiated by way of evidence to attach credibility to it, for which, the workman could be called upon to lead his evidence or establish his innocence. But once, no efforts have been made by the employer to lead any evidence in support of the charge, there was no occasion for the workman to lead any evidence to the contrary in the absence of the evidence supporting the charge itself being established in accordance with the service jurisprudence.

28. There is another reason, that the action taken by the petitioner of dispensing the services of the workman, by virtue of an order of 31st January, 1998, is in violation of the principle of natural justice.

29. The contention of the employer/petitioner, that it was rather the responsibility of the workman to avail an opportunity to lead evidence, and cross examine the witnesses, may not be substantially accepted, for the reason being, that even if the wider principles to be drawn under the normal rules as applicable, under the Disciplinary and Appeal Rules, the stage of cross examination only arrives at the stage when the chargesheet on the record is proved by the employer by oral evidence in the presence of the delinquent employee, who is facing the disciplinary proceedings. If the charge itself is not proved by the employer, the contention, that the cross examination was required to be done by the employer, does not come in the picture, as to reason being whom would the workman cross examine, when the employer himself has not adduced any oral evidence in support of charge.

30. The Inquiry Officer had submitted the inquiry report on 20th January, 1998, and if that inquiry report is taken into consideration, in fact, the entire inquiry report does not dispel or speak about the consideration of any evidence both oral or documentary as such, which could have justified the charges levelled against the workman on 17th November, 1997.

31. The inquiry, which was concluded on 20th January, 1998, and the consequential letter which was issued to the respondent/workman, on 22nd January, 1998, along with the report of inquiry, as submitted holding the workman to be guilty, none of the material either documentary or oral based on which the inquiry officer has come to a conclusion holding the workman to be guilty of misconduct was made as part of the show cause notice issued to the workman on 24/27th January, 1998, calling a reply from him, as to why his services may not be dispensed with, based upon the inquiry report as submitted by the Inquiry Officer.

32. Consequently, whatsoever material was supplied to the workman by the correspondence of 22nd January, 1998, in fact, it was simplicitor including only the inquiry report, without there being any supporting material annexed with it, based on which, the charges were framed and found to be proved by the Investigating Officer. The workman was bound to be constrained to file a reply which obviously would be limited to the extent of the show cause or the inquiry report, and that elaboration or deliberation or reason which could

have justified the inquiry report necessitating the dismissal of the services of the workman, since was not provided to the petitioner, the basic spirit of the judgment of **Managing Director, E.C.I.L., Hyderabad Vs. B. Karunakar**, as reported in **1994 Supp (2) SCC 391**, was not met with by the employer which could have justified the dismissal.

33. The judgment of **Managing Director, E.C.I.L. (Supra)** has laid down, that upon a culmination of an inquiry by an Inquiry Officer who is other than the disciplinary authority, a show cause notice is to be issued, along with the material based on which the reply is being solicited from the delinquent employee, and the said principle has been made applicable not only to the government organization, but even to all private institutions also. Hence, the implications of the judgment of **Managing Director, E.C.I.L. (Supra)**, will not be ousted to be made applicable to the industry of the petitioner, and hence, in the absence of a specific adherence to the principle of natural justice, merely because of issuance of a show cause notice based on the inquiry report, cannot be said to be a complete and fair compliance of the principle of natural justice.

34. For the purposes of holding a person to be guilty of misconduct as alleged therein in the inquiry report raising slogans at the residence of the General Manager, and making demonstration, along with other 92 supporters, that in itself, cannot be exclusively accepted to be the reason since being, that it was a one side version of the employer, which was placed before the inquiry officer, without the same being

placed and proved by evidence before the Inquiry Officer, with a prior opportunity to the workman to deny the same, and as such, the observation made in the inquiry report, which is the basis of the dismissal order dated 31st January, 1998, that the workman has indulged himself into the act of misconduct, the misconduct in itself cannot be relied with in its vagueness until and unless it is established by unflinching evidence on record regarding gravamen of misconduct, which could be accepted by the Inquiry Officer and, consequently, the disciplinary authority after considering the reply which was to be submitted by the workman on the receipt of the show cause notice, the action could have been taken.

35. Since in the instant case, the basic element of leading of an evidence by the employer, to prove the charge, and the material based on which the charge has been framed was lacking, the contention of the learned counsel for the employer, that the workman has not lead any evidence nor has cross examined the witnesses will be of no avail, for the reason being, that the cross examination would have only been required, once the employer has discharged his responsibility in accordance with Charter – 7 of Part -III of the Evidence Act, to prove the charge based on material both documentary and oral based on which charge was framed.

36. Since, the employer has utterly failed to perform his responsibility of leading evidence supporting the charge, and the disciplinary proceeding itself was doubted, no sanctity could be attached to it, the impugned award passed

by the Labour Court, whereby, the workman has been directed to be reinstated with 50% of the backwages, does not suffer from any apparent error, which could call for any interference by the High Court while exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

37. There are certain aspects thereafter which are required to be dealt with, for the reason being, that when the Writ Petition was entertained on 19th February, 2010, the Coordinate Bench, while granting the interim order has passed a conditional interim order to the effect, that the amount awarded by the Labour Court, would be ensured to be deposited by the employer before the Labour Court, and it was consequently, observed during the course of the proceedings of the Writ Petition, that the employer did deposit the amount before the Labour Court, which was later on sought to be withdrawn. At that stage, this Court had passed an order on 29th March, 2022, whereby the Registry was directed to direct the Labour Court to determine as to what would be the actual total financial implications, which would follow to be paid as a consequence of the directions issued for remittance of the 50% of the backwages from the date of the termination of services, till the attainment of the age of superannuation. The relevant observation made in the order of 29th March, 2022, is extracted hereunder :-

“In that eventuality, the Registry is directed to inform the concerned Labour Court concerned by forwarding the copy of today’s order requesting, the Labour Court to determine the actual total financial implications, which would flow as a consequence of the

direction for payment of 50% of back wages from the date of termination of the services till attainment of age of retirement, and inform the Court as to what would be the actual and exact financial liability, which could or which may be borne by the petitioner-employer after deducting the amount already paid to the workmen.

The information would be supplied within a period of one month from today.

List this writ petition after a month i.e. on 28.04.2022.”

38. After the computation of the payable amount made by the Labour Court, the matter travelled once again before this Court while hearing the Withdrawal Application No 856 of 2014, which was allowed and it was directed that all the money, which has been deposited before the Labour Court in compliance of the interim order would be remitted back to the workman except for Rs. 1 lac, which was to be retained.

39. But owing to the today's judgment, whereby, this Court has declined to interfere in the impugned award on merits, it goes without saying, that whatsoever the consequential benefit would flow, as a result of the judgment and award dated 7th October, 2009, that would be ensured to be remitted to the workman after excluding the amount, if any paid.

40. Subject to the aforesaid, the Writ Petition stands dismissed.

(Sharad Kumar Sharma, J.)

09.10.2023

Shiv