

GAHC010227042016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5772/2016

THE MANAGEMENT OF KALLINECHERRA TEA ESTATE
P.O. KALLINECHERRA, IN THE DIST. OF CACHAR, ASSAM, REP. BY THE
MANAGER OF THE TEA ESTATE.

VERSUS

THE STATE OF ASSAM and ANR.
REP. BY ITS SECRETARY TO THE GOVT. OF ASSAM, LABOUR AND
EMPLOYMENT DEPARTMENT, DISPUR, GUWAHATI - 781006.

2:BHARATIYA CHA MARMACHARI UNION
BARAK VALLEY
AMBICAPATTY
SILCHAR- 781004
IN THE DIST. OF CACHAR
ASSAM REP. BY ITS SECRETARY

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner	:	Shri S. Chakraborty, Advocate
Advocate for the respondents	:	Shri M. Chetia, GA, Assam
		Shri S. Dutta, Senior Advocate
		Ms. K. Bora, Advocate for R-2.
Date of hearing	:	12.09.2024
Date of judgment	:	18.09.2024

The instant petition under Article 226 of the Constitution of India has been filed challenging an Award dated 20.03.2015 passed by the Industrial Tribunal, Silchar in Reference Case No. 6 / 2009. The petitioner herein is the Management of the Kallinecherra Tea Estate.

2. As per the facts projected, the concerned workman was appointed as Head Clerk under the petitioner- Management. On allegations of certain misconduct, a disciplinary proceeding was initiated against him by issuance of a Charge Sheet dated 13.07.2007. The same was replied on 17.07.2007 which was found not to be satisfactory and accordingly, a domestic enquiry was initiated by appointment of an Enquiry Officer. It is the case of the Management that the enquiry was held in compliance with the principles of natural justice in which the workman was given all the opportunities to defend himself. The enquiry culminated in a report dated 28.11.2007 with a finding against the workman and accordingly vide order dated 31.12.2007, he was dismissed from service. The workman had raised an industrial dispute through the respondent No. 2 - Union which was referred to the Industrial Tribunal, Silchar vide Government Notification No. GLR.147/2009/25 dated 16.10.2009 with the following terms of reference-

“(a) Whether the Management is justified in terminating the service of Sri Anup Kr. Deb, workman on the basis of enquiry report?”

(b) If, not what relief the workman is entitled to?”

3. The Reference was registered as Reference Case No. 6 / 2009. The learned Tribunal, after consideration of the respective written statements of the

parties vide an order dated 25.06.2012 had framed a preliminary issue with regard to the fairness of the domestic enquiry and on the said issue both the contesting parties had adduced evidence. It is the case of the Management that instead of answering the preliminary issue, vide the impugned Award dated 20.03.2015, the order of dismissal was set aside with a direction to reinstate the workman in service with all statutory dues and benefits. The primary grievance of the petitioner -Management is that the impugned Award has been passed without assigning any reasons and without there being any discussion.

4. I have heard Shri S. Chakraborty, learned counsel for the petitioner. I have also heard Shri S. Dutta, learned Senior Counsel for the respondent no. 2 - Union. Shri M. Chetia, the learned State Counsel is also heard. The records in original have also been transmitted, pursuant to order of this Court which have been perused.

5. Shri Chakraborty, the learned counsel for the petitioner has submitted that the allegations against the workman were serious in nature which constituted instigating other workmen leading to an unrest. By referring to the Charge Sheet dated 13.07.2007, the learned counsel has submitted that the charges were based on cogent materials. He has also drawn the attention of this Court to the order dated 25.06.2012 of the learned Tribunal whereby a preliminary issue was framed. It is submitted that instead of deciding the preliminary issue, as required under the law, the Award has been passed whereby the order of dismissal dated 31.12.2007 has been set aside.

6. By referring to the issue involved in the Reference, the learned counsel for

the petitioner has submitted that from a reading of the impugned Award, it appears that the competency of the authority issuing the order of dismissal has been mentioned. It is submitted that the same was not even an issue and consequently, there was no pleading at all on the side of the Union regarding lack of competency of the authority issuing the dismissal order. He has also submitted that the impugned Award has not cited any reasons for reaching the conclusion.

7. On the submission that once a preliminary issue was framed, it was incumbent upon the Tribunal to decide the same, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court ***M.L. Singla vs. Punjab National Bank and Anr.*** reported in ***(2018) 18 SCC 21***. He has also submitted that a Tribunal cannot decide the terms of reference on mere hypothesis and in this regard he has relied upon the decision of the Hon'ble Supreme Court in the case of ***Standard Chartered Bank vs. R.C. Srivastava*** reported in ***(2021) 19 SCC 281***.

8. On the aspect of fairness of the domestic enquiry, the learned counsel for the petitioner has relied upon the decision of ***Delhi Cloth and General Mills Co. vs. Ludh Budh Singh*** reported in ***(1972) 1 SCC 595***. In the said case, it has been laid down that it would be the duty of the learned Tribunal to decide the issue of the fairness of the domestic enquiry at the first instance.

9. It is submitted that the learned Tribunal had ignored and by-passed its own order dated 25.06.2012 by which the preliminary issue on the fairness of the domestic enquiry was framed. It is submitted that there was no issue at all

with regard to the competence of the authority issuing the order of dismissal and therefore, the Labour Court could not have traversed beyond the reference.

10. *Per contra*, Shri S. Dutta, the learned Senior Counsel for the Respondent No. 2 - Union has defended the Award of the learned Tribunal. He submits that the appointment order of the workman concerned has been exhibited as Exhibit - A which is dated 26.03.2000. By referring to the original records, it is submitted that the said appointment letter was issued by the Manager whereas the impugned order of dismissal dated 31.12.2007 was issued by the Deputy Manager. He has also referred to Section 16 of the General Clauses Act, 1897 as per which the power to appoint also includes the power to dismiss. He has also referred to the Standing Orders.

11. The learned Senior Counsel has relied upon the case of ***State Bank of India vs. S. Vijaya Kumar*** reported in ***(1990) 4 SCC 481*** on the issue of competency of the Officer to pass any order of penalty. He has also referred to the case of ***B. C. Chaturvedi vs. Union of India and Ors.*** reported in ***(1995) 6 SCC 749*** on the aspect of disproportionate penalty.

12. The rival submissions have been duly considered and the materials placed before this Court including the records in original of the Tribunal have been carefully perused.

13. In the case of ***Ludh Budh Singh*** (Supra), the requirement of adjudicating an issue which arises from a stand taken by the Management on the fairness of a domestic enquiry has been clearly laid down. In paragraph 61 (3) of the said

decision, the following has been laid down by the Hon'ble Supreme Court.

“61. From the above decisions the following principles broadly emerge —

(1)...

(2)...

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

....

(7)....”

14. In the present case, it reveals from the records that vide the order dated 25.06.2012, the learned Tribunal had framed a preliminary issue in the following terms.

“Whether the domestic enquiry that was held against the connected workman by the Management was fair?”

It transpires that on the aforesaid issue, the contesting parties had reduced evidence. The records, however, do not indicate that any decision was rendered on that issue and therefore, the contention made on behalf of the petitioner that the Tribunal could not have gone into the merits of the dispute without deciding the aspect of fairness in the domestic enquiry would have some force.

15. Be that as it may, the terms of the Reference is required to be examined which have already been extracted above. On a minute observation, it is clear that the terms of Reference is only with the justification of the termination of the services **on the basis of the enquiry.**

16. A close reading of the impugned Award would reveal that other than recording the pleadings of the respective parties, there is no discussion at all on the issue. As regards the finding arrived at by the Tribunal of deciding the Reference in favour of the Union, the relevant discussion, (if any), is extracted herein below.

“Union side had argued in this case that dismissal order has been passed by the Deputy Manager of the T.E., who is not authorized to pass any order of such dismissal. Only appointing authority can dismiss an employee.

This reference case has been decided in favour of the union.”

17. This Court has carefully looked into the respective pleadings of the parties. After such scrutiny, this Court has reached a conclusion that there was no issue regarding competence of the Officer issuing the dismissal order dated 31.12.2007. In the impugned Award, there is only a passing reference to a submission made on behalf of the Union that the Deputy Manager was not competent.

18. Be that as it may, as noticed above, while deciding the Reference in favour of the workman - Union, there is no discussion as to how the said Reference was decided in that manner.

19. It is a settled principle of law that reasons are the links which are to be recorded for reaching the conclusion. In the instant case, not to talk about any reasons, there is not even an iota of discussion on the part of the Tribunal to arrive at the conclusion. In the case of ***Gurdial Singh Fijji v. State of Punjab***, reported in **(1979) 2 SCC 368**, the Hon'ble Supreme Court by referring to an earlier judgment of ***Union of India v. Mohan Lal Capoor*** reported in **(1973) 2 SCC 836** has laid down as follows:

“Reasons”, according to Beg, J. (with whom Mathew, J. concurred) “are the links between the materials on which certain conclusions are based and the actual conclusions”.

20. As regards the case law cited, the Hon'ble Supreme Court in the case of ***M. L. Singla*** (supra) has laid down as follows,

“15. The first error was that it failed to decide the validity and legality of the domestic enquiry. Since the dismissal order was based on the domestic enquiry, it was obligatory upon the Labour Court to first decide the question as a preliminary issue as to whether the domestic enquiry was legal and proper.

16. Depending upon the answer to this question, the Labour Court should have proceeded further to decide the next question.

17. If the answer to the question on the preliminary issue was that the domestic enquiry is legal and proper, the next question to be considered by the Labour Court was whether the punishment of dismissal from the service is commensurate with the gravity of the charges or is disproportionate requiring interference in its quantum by the Labour

Court.

18. *If the answer to this question was that it is disproportionate, the Labour Court was entitled to interfere in the quantum of punishment by assigning reasons and substitute the punishment in place of the one imposed by Respondent 1 Bank. This the Labour Court could do by taking recourse to the powers under Section 11-A of the ID Act."*

21. In the case of **Standard Chartered Bank** (supra), it has been clearly laid down that a Tribunal / Labour Court cannot decide on the basis of mere hypothesis. For any reference, the relevant observation is extracted here and below.

"20. The decision of the Labour Court should not be based on mere hypothesis. It cannot overturn the decision of the management on ipse dixit. Its jurisdiction under Section 11-A of the 1947 Act although is a wide one but it must be judiciously exercised. Judicial discretion, it is trite, cannot be exercised either whimsically or capriciously. It may scrutinise or analyse the evidence but what is important is how it does so."

22. As regards the submission made on behalf of the Union by relying upon the General Clauses Act, 1897, more particularly Section 16 thereof, this Court is of the opinion that the aforesaid clause would not throw any light on the issue involved regarding competency. The reliance upon the case of **S. Vijaya Kumar** (supra) on behalf of the Union shall not be of much relevance. In the said case, even for an Officer of the **State Bank of India**, the Hon'ble Supreme Court has held that Article 311 of the Constitution of India would not have an application as such provision is meant only for a civil servant or a Government Servant. Rather reliance was made upon the Regulations governing the bank in question. Even if it is held that the principles of Article 311 of the Constitution of India

may be made applicable, in absence of any issue raised or there being any materials to come to a conclusion regarding the competency, this Court would not be able to accede to the argument made on behalf of the Union on the justification of the Award.

23. To dispel any doubts and for the interest of justice, this Court has carefully scrutinized the materials on record to examine as to whether there is anything to show on the issue of lack of competency and nothing has been found. The Hon'ble Supreme Court in a catena of decisions including the case of ***Firestone Tyre and Rubber Company of India Private Limited vs. The Workmen Employed represented by Firestone Tyre Employees' Union*** reported in ***AIR 1981 SC 1626*** has clearly laid down that a Labour Court / Industrial Tribunal cannot traverse beyond the terms of reference. Paragraph 9 of the said decision is extracted herein below:

“9. In this case the points of dispute were specified in the schedule to the order of reference, and the Tribunal was therefore, required to confine its adjudication to those points and matters that were incidental to them. From a reading of demands 1(A) and 1(B) as a whole it is clear that the demand for reinstatement in respect of both groups of workmen as made arises on the alleged invalidity of the action taken by the management in dismissing these workmen. The issue of unfair labour practice or discrimination by reason of subsequent reinstatement on a permanent basis of some and not all the 25 workmen was not a matter referred to the Tribunal for adjudication, nor it can be said to be in any way connected with or incidental to the right of reinstatement claimed by the 101 workmen from the date of their dismissal. The fairness of subsequent absorption of some workmen is a matter quite irrelevant for judging the validity of the earlier dismissal of these workmen along with others; it is an entirely separate and independent question. The Tribunal also did not frame an issue on the alleged discrimination. That being so, we think the Tribunal travelled outside its jurisdiction in recording a finding of unfair labour practice and discrimination.”

This Court is of the view that in absence of any materials or any issue framed,

the aspect of competency could not have been gone into by the learned Tribunal.

24. The powers exercised under Article 226 of the Constitution of India by this Court is only to examine the decision making process. In the instant case, as indicated above, the conclusion appears to have been reached by the learned Tribunal without there being any discussion at all. The issue of the Reference which has been quoted above would also show that the adjudication was only on the aspect of examining the justification of termination on the basis of the enquiry. The action of the Tribunal in answering the Reference in favour of the workman without discussion and also on a passing reference on the aspect of competency which is beyond the terms of the Reference is not permitted.

25. In view of the aforesaid facts and circumstances, this Court has no other option but to interfere with the impugned Award dated 20.03.2015 and the same is accordingly set aside.

26. The writ petition accordingly stands allowed.

27. No order as to cost.

28. Let the records be sent back.

JUDGE

Comparing Assistant