

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.1965 of 2004

Ravindra Singh Banafar, S/o Shri Chandra Bhan Singh, Aged about 45 years, R/o Village Bhatgaon, Tahsil Bhatgaon, District Raipur (C.G.)

---- Petitioner

Versus

1. Managing Director, Chhattisgarh Infrastructure Development Corporation, Ghari Chowk, Raipur.
2. Madhya Pradesh State Road Transport Corporation, Through Depot Manager, Madhya Pradesh State Road Transport Corporation, Raipur, Depot No.1, Raipur.
3. Madhya Pradesh State Road Transport Corporation, Through Divisional Manager, Madhya Pradesh State Road Transport Corporation, Raipur, Depot No.1, Raipur (C.G.)
4. The Industrial Court, Chhattisgarh, Raipur, Distt. Raipur
(Defendants)
---- Respondents

For Petitioner: Mr. Manoj Paranjpe, Advocate.
For Respondent No.1: Mr. G.D. Vaswani, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

24/07/2017

1. The petitioner was conductor in the M.P.S.R.T.C.. His services were terminated on 16-5-1994 finding him guilty under Section 12(1)(b)(d) of the M.P. Industrial Relations Act, 1960 which lead to moving an application by the petitioner under Section 31 (3) of the said Act questioning the domestic enquiry and termination. The Labour Court held that domestic enquiry is vitiated for non-compliance of the principles of natural justice, however, permitted

the employer to lead evidence to prove misconduct and in turn, the employer led evidence to prove misconduct which was accepted by the Labour Court and the application was dismissed which has been upheld by the Industrial Court leading to filing of this writ petition before this Court challenging the orders passed by the two courts below.

2. Learned counsel for the petitioner submits that once the domestic enquiry is held to be illegal by the Labour Court, the Labour Court ought not to have granted opportunity of hearing to lead evidence to prove misconduct and ought to have reinstated the petitioner which has not been done. The Industrial Court has also perpetuated the illegality.
3. On the other hand, learned counsel for respondent No.1 would support the impugned orders.
4. I have heard learned counsel for the parties and perused the impugned order as also the records of the courts below with utmost circumspection.
5. Way back in the year 1973, the Supreme Court in the matter of **The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management and others**¹, considered various earlier decisions of the Supreme Court and laid down the principles governing the jurisdiction of the Tribunal adjudicating the dispute relating to dismissal and catalogued the principles in paragraph 32 of the said judgment which states as under:-

¹ (1973) 1 SCC 813

“32. From those decisions, the following principles broadly emerge-

- (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the later has power to see if action of the employer is justified.
- (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
- (3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or mala fide.
- (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.
- (5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the later, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.
- (6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in jurisdiction of the action taken only, if no enquiry has

been held or after the enquiry conducted by an employer is found to be defective.

- (7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.
 - (8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.
 - (9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.
 - (10) In the particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this court in *The Management of Panitole Tea Estate v. The Workmen*, (1971) 1 SCC 742, within the judicial decision of a Labour Court or Tribunal.”
6. In the aforesaid judgment, it has been clearly held by the Supreme Court that even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

7. The aforesaid decision has been followed by the Supreme Court with approval in the matter of **Amrit Vanaspati Co. Ltd. v. Khem Chand and Another**² and also in the matter of **Amar Chakravarty and others v. Maruti Suzuki India Limited**³.
8. In the matter of **Shambhu Nath Goyal v. Bank of Baroda and others**⁴, the Supreme Court laid down the principle that the management should make a request in the written statement itself for the opportunity to adduce evidence in case the domestic enquiry was held to be invalid. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay leading to wrecking the morale of the workman and compel him to surrender which he may not otherwise do.
9. The Constitution Bench of the Supreme Court in the matter of **Karnataka State Road Transport Corpn. v. Lakshmiddevamma (Smt) and another**⁵, considered some of the decisions by holding in **Shambhu Nath Goyal** (supra) that the management was given the right to adduce evidence to justify its action if it had reserved its right to do so in the application made by it under Section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under Section 10 of the Act, meaning thereby that the management had to exercise its right of leading fresh evidence at the first available opportunity.

The Constitution Bench has also considered that procedure laid

2 2006 SCC (L&S) 1331

3 (2010) 14 SCC 471

4 (1983) 4 SCC 491

5 (2001) 5 SCC 433

down in **Shambhu Nath Goyal (supra)** is just and fair and the law laid down therein is correct law on the point. It has also been observed that opportunity of leading evidence is being sought by the management only as an alternative plea and observed as under:-

“17. Keeping in mind the object 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 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.

19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shabhu Nath Goyal v. Bank of Baroda is the correct law on the point.”

10. The decision rendered by the Constitution Bench in the matter of **Karnataka State Road Transport Corpn.** (supra) has been followed with approval in the matter of **Divyash Pandit v. Management, NCCBM**⁶.

11. In the case in hand, the respondent Management has taken alternative plea and demanded fresh opportunity to lead evidence in support of the charge of misconduct in case the domestic enquiry is held to be vitiated which was considered and granted by

⁶ (2007) 15 SCC 787

the Labour Court after having declared the domestic enquiry illegal and thereafter extended opportunity to adduce evidence to the Management which is in accordance with the decision rendered by the Supreme Court in **The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd.** (supra) (see proposition No.4) and followed by the decision of the Supreme Court in **Amrit Vanaspati Co. Ltd.** (supra).

12. In view of the above, the argument of the petitioner has rightly been turned down as since domestic enquiry has been held to be illegal and the Management sought opportunity to lead fresh evidence to prove the charge of misconduct which has been considered and granted after finding the domestic enquiry to be illegal. I do not find any illegality in the submission that such an opportunity could not have been granted. The finding of misconduct is based on evidence available on record which is neither perverse nor contrary to record.

13. As a fallout and consequence of aforesaid discussion, the writ petition is liable to be and is accordingly, dismissed leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge