

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 354 of 2002

- Director Operation And Projects M/s Bharat Aluminium Co. Ltd.
Balco Nagar, Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Member Judge Industrial Court, Bench At Raipur, Krishna Sadan,
Raipur, Chhattisgarh
2. Presiding Officer, Labour Court, Bilaspur
3. A. R. Khan, (Died and Deleted) Through Legal Heirs
 - 3.(A) – Jakir Hussain S/o Late Abdul Rahman Aged about 50
years, R/o Qr. No.1051, Adarsh Nagar, Kusmunda, PS Kusmunda,
Tahsil Katghora, Revenue and Civil District Korba (CG)
 - 3.(B) – Smt. Sayyara Khatoon, W/o Sharif Ali, Aged about 40
years, R/o Village Jilga, Barpali, PS and Tahsil Kartala, Revenue
and Civil District Korba (CG)
 - 3(C) – Smt. Jubada Begam, W/o Dauad Hussain, Aged about 39
years, R/o Plot No.191, T.P. Nagar, Revenue and Civil District
Korba (CG)
 - 3(D) Smt. Najama Khatoon, W/o Wajid Hussain, Aged about 35
years R/o Village Gharghoda, Revenue and Civil District Raigarh
(CG),
 - 3.(E) – Smt. Amana Khatoon, W/o Sajad Hussain Aged about 32
years, R/o Village Jilga, Barpali, PS and Tahsil Kartala, Revenue
and Civil District Korba (CG)
 - 3.(F) – Nural Hussain S/o Late Abdul Rahman, Aged about 30
years, R/o Plot No.191, T.P. Nagar, Revenue and Civil District
Korba (CG)

---- Respondent

For Petitioner
For Respondents 3(A) to 3(F)

Mr. Abhishek Sinha, Advocate
None

Order On Board By

Hon'ble Mr. Justice Prashant Kumar Mishra

1/8/2019

1. Heard.
2. The petitioner has assailed the legality and validity of the appellate order passed by the Industrial Court-Annexure P/1 on 13.12.2001 and the original order passed by the Labour Court, Bilaspur on 10.4.2000-Annexure P/2, thereby, allowing the respondent-workman's application under Section 31(3) read with Section 107-A of the C.G. Industrial Relations Act, 1960 (in short "the Act, 1960") and directing his reinstatement with back wages. During pendency of the proceedings before the Industrial Court, the workman retired on 30.9.2000 and during pendency of this writ petition, the workman has died on 21.1.2013 and is now represented through his legal representatives.
3. The brief facts of the case is that at the relevant time, the workman was working as Fitter in the Petitioner's establishment at BALCO. During his employment, the workman and his wife were obtaining treatment at the Medical Centre of BALCO. Both were referred for further treatment to be obtained from C.M.C., Vellore. From there, they were referred for obtaining treatment at Shankar Netralaya, Chennai. However, they obtained treatment at these two hospitals and submitted medical bills as well as travelling bills of New Delhi, Vellore and Chennai. The officer dealing with the bills suspected the genuineness of the bills, therefore, the matter was referred to

the Vigilance Department of BALCO. The CVO, BALCO got the medical bills as well as travelling bills verified by writing letters to the concerned organisations. He received communication from C.M.C., Vellore that except for one bill issued by the said hospital, the other bills are forged. All the bills purportedly issued by the AIIMS, New Delhi and Shankar Netralaya, Chennai were reported to be forged. Similarly, the Railway Officers at Bilaspur and Hazratnizamuddin informed that the Railway tickets produced by the respondent-workman was not issued by these two Stations and that the tickets produced by the workman for seeking reimbursement was issued in the name of some other person. The Management, therefore, issued a charge sheet against the workman vide Annexure P/3 on 6.6.1994 containing the details of the statements of facts mentioning that 'the particular bills were found to be forged' and directing the workman to reply as to why a Departmental Enquiry be not constituted against him for committing fraud and deceit violating sub-clause (ii) and (vii) of clause 29 of the Standing Orders of the Company. In the Domestic Enquiry, the charges were found to be proved and he was terminated from services. The workman challenged the order of termination by moving an application under Sections 31(3) and 107-A of the Act, 1960.

4. The Labour Court found that the principles of natural justice were not followed, therefore, the enquiry is vitiated. However, the Labour Court allowed the Management to prove the misconduct by leading evidence before the Labour Court. The

Management produced all the original letters through which the respective organisations at New Delhi, Vellore, Chennai, Bilaspur and Hazratnizamuddin have informed the Management that most of the bills produced by the workman seeking reimbursement are forged. The workman did not raise objection to the admissibility of these documents at the time when the witnesses examined by the Management produced the same. In the Domestic Enquiry, the workman submitted the list of witnesses seeking permission to examine the following persons :

1. Shri NC Verma, Former CMO, BACLO
 2. Shri J.P. Swarnkar, Former Dy. CMO, BALCO
 3. Medical Officer, Shankar Netralaya, Chennai (Smt. Mary, *Mahila Chikitshak*)
 4. Medical Officer, AIIMS, New Delhi
 5. Medical Officer, CMC, Vellore
 6. Other witnesses brought by him
 7. Shri RS Swarnkar, Medical Officer, BALCO
5. Record of the Domestic Enquiry, which is part of the record of the Labour Court, is available. The record of the Domestic Enquiry does not reflect that these Medical Officers of the Hospitals at Chennai, Vellore and New Delhi were examined by the workman nor any of these officers were examined by the

workman before the Labour Court. In its final order dated 10.4.2000 -Annexure P/2, the Labour Court found that although the original letters issued by the concerned hospitals have been produced by the Management but the same have not been proved by summoning the author(s) thereof or any other officer from the concerned hospitals. Therefore, according to the Labour Court, the Management has not proved that the bills submitted by the workman were forged.

6. On the basis of these findings of the Labour Court directed reinstatement of the workman and the Industrial Court has affirmed the findings recorded by the Labour Court. Hence, this petition.
7. Mr. Abhishek Sinha, learned counsel for the petitioner would submit that strict rules of evidence do not apply in the Domestic Enquiry or during the proceedings before the Labour Court. He would further submit that the workman having not objected to the admissibility of the documents or the manner of proof of the documents relied by the Management, when the same were introduced during the statement of the Management's witness Shri RP Mehta, it was not open either for the workman or for the Courts below to have questioned the admissibility of the documents or the evidentiary value thereof and more particularly when the workman has not adduced any evidence in rebuttal showing that the documents are not forged. Mr. Sinha would refer to the judgments rendered by the Supreme Court in the matters of **Sindhu Resettlement Corporation Ltd. Vs.**

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Industrial Tribunal of Gujarat and others, AIR 1968 SC 529, State of Haryana and another Vs. Rattan Singh, (1977) 2 SCC 491, Workmen of Balmadies Estates Vs. Management, Balmadies Estates, (2008) 4 SCC 517 and R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and another, (2003) 8 SCC 752.

8. None appears for the respondents despite repeated calls.
9. Mr. KK Singh, learned Government Advocate assisted the Court by referring to the record of the Labour Court.
10. I have perused the entire record including the record of the proceedings drawn by the Enquiry Officer and before the Labour Court.
11. It is fairly well settled in the matters of **Sindhu Resettlement Corporation Ltd.(supra), Rattan Singh (supra), Workmen of Balmadies Estates (supra)** and **R.V.E. Venkatachala Gounder (supra)** that strict proof is not required in the Domestic Enquiry or in the proceedings during enquiry while adjudicating an industrial dispute.
12. In **Sindhu Resettlement Corporation Ltd.(supra)**, the concerned workman at no stage has challenged that the documents filed could not be taken into account until proved formally in the manner required to be proved in a regular civil proceeding in accordance with the provisions of the Indian Evidence Act. It has also been observed in this case that in proceedings before the Industrial Tribunal, strict proof of

documents in accordance with the provisions of the Indian Evidence Act is not required.

13. Coming to the failure of the respondent-workman in the present case, to object to the admissibility of the documents, when the same were introduced at the time of recording of evidence, it would be apt to refer to the judgment of the Supreme court rendered in the matter of **R.V.E. Venkatachala Gounder (supra)**, wherein, the following has been held in para 20 :

“20. The learned counsel for the defendant-respondent has relied on *Roman Catholic Mission v. State of Madras* in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is *itself inadmissible* in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the *mode of proof* alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as “an exhibit”, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and

once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court."

14. In the case at hand, both the Courts below have reached to the

conclusion that the Management has not proved the letters/communications emanating from the concerned Hospitals at New Delhi, Vellore and Chennai or letters issued by the Railway Officers at Bilaspur and Hazratnizamuddin. However, no such objection to the admissibility of these documents were raised by the workman at the time of examination of the witnesses. He has also not made any specific plea in his application under Sections 31(3) and 107-A of the Act, 1960 branding the letters as manipulated or concocted. In his deposition before the Labour Court also, the workman has not stated in his examination-in-chief that the letters relied by the Management are not genuine. If objection would have been raised by the workman at the time of enquiry, the Management would have an opportunity to summon the authors of the letters or any other officer from the concerned Hospitals and the Railways, who are competent to depose as also to own the documents. This opportunity is necessary because rules of fair play demand that the party owing and introducing a document should be offered opportunity to produce the same and should not be taken aback at the stage of proceedings without there being any objection to the admissibility or admitting of the questioned documents at the initial stage. If no such objection has been raised by the workman, it was not open for the Court below to have thrown the documents out of consideration for want of formal proof by examining the author(s) and even otherwise, the documents have been issued by the reputed concerns like CMC Vellore,

AIIMS, New Delhi and Shankar Netralaya, Chennai.

15. The approach of the Labour Court and the Industrial Court, while disbelieving the documents, to hold that the Management has not proved the charge does not appear to be proper and justified in view of law laid down by the Supreme Court in the matter of **R.V.E. Venkatachala Gounder (supra)**.

16. In my considered view, both the Courts have misdirected themselves by seeking actual proof of the documents by examining the author(s) without realising that the workman has never questioned the authenticity of the documents either in his application or during recording of his statement.

17. For the foregoing, both the orders passed by the Labour Court and Industrial Court- Annexure P/1 & P/2 respectively deserve to be and are hereby set-aside.

18. Consequently, the writ petition is allowed and the application preferred by the workman under Sections 31(3) and 107-A of the Act, 1960 is dismissed. Sd/-

(Prashant Kumar Mishra)

Judge

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