(2018) 08 CHH CK 0049

Chhattisgarh High Court

Case No: Writ Petition (227) No. 2248 Of 2008

Chhattisgarh Infrastructure Development Corporation		APPELLANT
	Vs	
Yogendra Sahu And Ors		RESPONDENT

Date of Decision: Aug. 1, 2018

Acts Referred:

- Chhattisgarh Industrial Relations Act, 1960 - Section 31(3), 61, 62, 65(3)
- Industrial Disputes Act, 1947 - Section 11A

Hon'ble Judges: Parth Prateem Sahu, J

Bench: Single Bench

Advocate: H. V. Sharma, N. K. Vyas

Final Decision: Dismissed

Judgement

Parth Prateem Sahu, J

1. By this petition, the petitioner/employer has challenged the legality and validity of the impugned order dated 27/11/2007 passed by State Industrial

Court, Chhattisgarh, Raipur in Civil Appeal No.55/C.G.I.R.A./A-11/2007 whereby the Appellate Court has affirmed the order passed by the learned

Labour Court, Raipur (C.G.) in Case No.272/C.G.I.R.Act/2002 dated 16/05/2007 and dismissed the appeal of the petitioner/employer.

2. Brief facts of the case, are that, respondent No.1/employee was employed with Madhya Pradesh State Road Transport Corporation (hereinafter

referred as 'Corporation') and posted at Depot No.2 on the post of Conductor. He was appointed on vacant post and was permanent employee of the

Corporation. The Corporation had issued charge-sheet against respondent No. 1 on 23/09/2001 and after conclusion of the enquiry; the respondent

No.1/employee was terminated from service on 20/07/2002 in pursuant to order issued by Head Office on 28/06/2002.

3. Respondent No.1/employee aggrieved by order of termination dated 20/07/2002 filed an application under Section 31(3) read with Sections 61 and

62 of the M.P./C.G. Industrial Relations Act, 1960 (hereinafter referred to as 'Act of 1960') on 30/09/2002 on the ground that prior to proceedings of

domestic enquiry, he was not granted proper opportunity to make his defence as the documents and list of witnesses which are part of charge-sheet

had not been provided to him nor even during the proceedings of domestic enquiry and he was not afforded an opportunity to keep assistance in the

domestic enquiry proceedings. Further, it has been stated that his application for calling the witnesses who have participated during the time of making

Panchanama and other witnesses present on spot was rejected by the Enquiry Officer.

4. The petitioner/employer made its appearance and submitted reply to application under Section 31(3) read with Sections 61 and 62 of the Act of

1960.

5. The learned Labour Court on the basis of pleadings made by respective parties framed preliminary issue ""Whether domestic enquiry held against

respondent No.1/employee was illegal and unjust"". The learned Labour Court thereafter fixed the case for recording of evidence of respective parties,

in which, respondent No.1/employee entered into witness-box and given his evidence supporting the claim as pleaded in his application.

6. The learned Labour Court thereafter fixed the case for recording of evidence of petitioner's/employer's witnesses. The petitioner/employer stated

that they do not want to lead any evidence, which is evident from order-sheet dated 27/05/2005. The learned Labour Court on the basis of the material

available on record, decided the preliminary issue and arrived at a finding that domestic enquiry was conducted in violation of principles of natural

justice and held that domestic enquiry initiated against respondent No.1/employee is illegal and unjust and further fixed the case for producing evidence

by petitioner/employer on merits of the case. The learned Labour Court though has provided an opportunity to petitioner/employer to prove charges as

levelled by them before the Court itself, but the petitioner/employer even after taking several dates for producing their witnesses, not produced anyone

of them and subsequently stated that they do not want to produce any evidence and prayed for time for final arguments.

7. As no witness has been produced by the petitioner/employer before the learned Labour Court to prove the charges, therefore, looking to the

material available on record, learned Labour Court allowed the application filed by respondent No.1/employee and directed for reinstatement of

respondent No.1/employee on his earlier post without back wages.

8. The said order was challenged by the petitioner/employer before the Industrial Court, Raipur under the provisions of Section 65 Rule 85 of the Act

of 1960. The Industrial Court after considering the material available on record, arrived at a conclusion that learned Labour Court has not committed

any error in holding that the domestic enquiry initiated against respondent No.1/employee to be illegal and unjust and further not committed any error in

passing an order of reinstatement without back wages because the petitioner/employer failed to prove the charges of misconduct levelled against

respondent No.1/employee. The Industrial Court also held that there is non-compliance of the provisions of Section 65(3) of the Act of 1960 and

dismissed the appeal.

9. It is this order, which is challenged by the petitioner/employer before this Court on the ground that learned Courts below committed an error in

allowing the application under Section 31(3) read with Sections 61 and 62 of the Act of 1960 as it was without any evidence and further learned

Industrial Court also committed an error in not considering evidence and material available on record.

10. Learned counsel appearing for the petitioner/employer submitted that learned Labour Court has no jurisdiction to interfere with the findings arrived

at by the petitioner/employer in a domestic enquiry and also that Labour Court has no jurisdiction to interfere with the punishment imposed by the

petitioner/employer on the basis of findings recorded in the domestic enquiry.

11. Per contra, learned counsel appearing for respondent No.1/employee submitted that respondent No. 1 in his application under Section 31(3) read

with Sections 61 and 62 of the Act of 1960 raised specific grounds with regard to non-providing documents and list of witnesses along with charge-

sheet prior to enquiry and during the proceedings of enquiry. He further submitted that his application for calling witnesses who are relevant and

important as they were present during preparation of the Panchanama and Search of the vehicle, on which, respondent No.1/employee was travelling

as Conductor, but the petitioner/employer has not made any reply to specific allegations levelled by respondent No.1/employee with regard to legality

and validity of holding domestic enquiry. He further submitted that even petitioner/employer has not produced record of proceedings of domestic

enquiry and not led any evidence before learned Labour Court though learned Labour Court has framed very specific issue ""Whether domestic

enquiry held against respondent No.1/employee was illegal and unjust"". The learned Labour Court acted strictly in accordance with law and framed

preliminary issue. He lastly submitted that orders passed by the Labour Court as well as Industrial Court were strictly in accordance with law and

based on settled legal principles and do not call for any interference.

12. I have heard learned counsel appearing for parties and perused records carefully.

13. On perusal of the application under Section 31(3) read with Sections 61 and 62 of the Act of 1960 (Annexure P-3), it is evident that respondent

No.1/employee specifically levelled allegation against the petitioner/employer that principles of natural justice was not followed and not complied with

provisions of law for initiation of domestic enquiry proceedings as documents and list of witnesses with charge-sheet was not supplied. However, in

reply to the said application (Annexure P-4), the petitioner/employer has not controverted or rebutted the allegations made in the application with

regard to irregularity and illegality committed by petitioner/employer in initiation of domestic enquiry proceedings.

14. The Hon'ble Supreme Court in number of decisions has held that the domestic enquiry should not be a formality; it has to be initiated and

proceeded strictly in accordance with law after providing proper opportunity to the workmen before giving finding of the misconduct and passing

consequential order of punishment.

15. The legal position is succinctly explained by the two-judge Bench of the Hon'ble Supreme Court in the matter of Delhi Cloth and General Mills Co.

v. Ludh Budh Singh reported in (1972) 1 SCC 595 and held as under:-

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal

to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding

on the preliminary issue is against the management.

However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a

preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence

need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer

an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce

evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the

preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be,

that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged

misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that

the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence

and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal

itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should

avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been

available of, or asked for by the management, before the proceedings are closed, the employer, can make no grievance that the Tribunal did not

provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been

held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the

pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the

finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to

invite suo moto the employer to adduce evidence before it to justify the action taken by it.

16. Similar view has been taken in recent judgment of the Hon'ble Supreme Court in the matter of Kurukshetra University v. Prithvi Singh reported in

(2018) 4 SCC 483 after considering the earlier judgments and held as under :-

17. When we examine the facts of this case in the light of the aforementioned principles of law, we find that the termination of the respondent was by

way of punishment because it was based on the adverse findings recorded against the respondent in the domestic enquiry. So the question, which the

Labour Court was expected to decide in the first instance as a ""preliminary issue"", was whether the domestic enquiry held by the appellant (employer)

was legal and proper. In other words, the question to be decided by the Labour Court was whether the domestic enquiry held by the appellant was

conducted following the principles of natural justice or not. If the domestic enquiry was held legal and proper then the next question which arose for

consideration was whether the punishment imposed on the respondent (delinquent employee) was proportionate to the gravity of the charge leveled

against him or it called for any interference to award any lesser punishment by exercising the powers under Section 11-A of the ID Act.

17. In the case in hand, as respondent No.1/employee made allegation with regard to illegality or irregularity in holding domestic enquiry by the

petitioner/employer and on the basis of the findings arrived at in the said enquiry, respondent No.1/employee was terminated. In that circumstance, the

learned Labour Court has rightly framed preliminary issue to look into whether the domestic enquiry conducted by the petitioner/employer was

proceeded in accordance with law after following the principles of natural justice.

18. The petitioner/employer though afforded an opportunity by the learned Labour Court to prove that the enquiry conducted by it, was strictly in

accordance with law and the principles of natural justice was followed, but the petitioner/employer has not produced any documentary or oral

evidence before the learned Labour Court, in fact, they have submitted that they do not want to lead any evidence in support of their claim, which is

also evident from order-sheet recorded by learned Labour Court on 27/05/2005.

19. The learned Labour Court considering the uncontroverted pleadings and evidence of respondent No.1/employee held that enquiry conducted by the

petitioner/employer is vitiated for non-compliance of principles of natural justice. In my considered opinion, the learned Labour Court has not

committed any error in arriving at a conclusion as stated above.

20. The learned Labour Court even after holding that the domestic enquiry was vitiated for non-compliance of the principles of natural justice, fixed

the case for evidence of Petitioner/employer and gave an opportunity to petitioner/employer to prove the charges levelled against respondent

No.1/employee before the Court itself. The proceedings adopted by the learned Labour Court for giving an opportunity to the petitioner/employer to

prove the charges of misconduct of respondent No.1/employee is strictly in accordance with the provisions of law and the law laid down by Hon'ble

Supreme Court in number of cases and latest judgment on this issue has been passed in the matter of Kurukshetra University (supra), in which,

Hon'ble Supreme Court held as under :-

18. If the domestic enquiry was held illegal and improper then the next question, which arose for consideration, was whether to allow the appellant

employer to prove the misconduct/charge before the Labour Court on merits by adducing independent evidence against the respondent employee. The

appellant was entitled to do so after praying for an opportunity to allow them to lead evidence and pleading the misconduct in the written statement.

(See also para 33 at pp. 1665-66 of Shankar Chakravarti v. Britannia Co. Ltd., (1979) 3 SCC 371).

19. Once the appellant employer was able to prove the misconduct/charge before the Labour Court, then it was for the Labour Court to decide as to

whether the termination should be upheld or interfered by exercising the powers under Section 11-A of the ID Act by awarding lesser punishment

provided a case to that effect on facts is made out by the respondent employee.

20. We are constrained to observe that first, the Labour Court committed an error in not framing a ""preliminary issue"" for deciding the legality of

domestic enquiry and second, having found fault in the domestic enquiry committed another error when it did not allow the appellant to lead

independent evidence to prove the misconduct/charge on merits and straightaway proceeded to hold that it was a case of illegal retrenchment and

hence the respondents' termination is bad in law.

21. From perusal of the records of the learned Labour Court, it reveals that no documentary or oral evidence has been produced by the

petitioner/employer even after taking several dates for producing witnesses in their support and ultimately, they have submitted before the leaned

Labour Court that they do not want to produce any witness or evidence and closed their right to lead evidence.

22. In the aforesaid background and circumstances of the case, the learned Labour Court has left with no other option but to hold that

petitioner/employer failed to prove the charges of misconduct levelled against respondent No.1/employee and passed an order of reinstatement of

respondent No.1/employee.

23. In view of above discussions and facts and circumstances of case, in my considered opinion, the order passed by the learned Labour Court

directing reinstatement of respondent No.1/employee without back wages vide order dated 16/05/2007 is strictly in accordance with provisions of law

and does not call for any interference.

24. In the result, the petition being devoid of merit, is liable to be and is hereby dismissed.

25. No order as to costs.