(2011) 02 P&H CK 0453

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 6869 of 1991

Polymers Paper Ltd.		APPELLANT
	Vs	
Presiding Officer Industrial Tribunal and Anr		RESPONDENT

Date of Decision: Feb. 28, 2011

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10, 33

Citation: (2011) 4 LLJ 211 : (2011) 162 PLR 526

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Mehinder Singh Sullar, J.

Tersenessly, the facts, which require to be noticed for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, are that Vijay Paul Singh-workman (Respondent No. 2) (for brevity "the workman") was employed as pleating machine-man, with the management of Petitioner Polymers Paper Limited (for short "the management") since 222.1979 at a monthly salary of Rs. 404-50 P. The workman was stated to have been suspended, without any charge sheet or inquiry and the management-did not supply any charge sheet of alleged domestic inquiry conducted against him on 15.6.1985 or suspension order, despite repeated requests. He (workman) filed the reply (Annexure P8) to the show cause notice dated 19.7.1985 (Annexure P7) on the same day and ultimately, he was dismissed from service with effect from 20.7.1985, by virtue of termination order (Annexure P9).

2. The workman claimed that as he was the President of the workmen union, there fore, he was a protected workman, but his services were illegally terminated, without following the due procedure as a result of vengeance by the management.

In all, according to the workman that since his services were illegally terminated without any charge sheet or inquiry and without providing any opportunity of being heard, so, he prayed for his reinstatement with full back wages and continuity of service. In this manner, the workman raised an industrial dispute, which was referred to the Presiding Officer, Industrial Tribunal-cum-Labour Court (for brevity "Labour Court") by the appropriate government, in view of the provisions of The Industrial Disputes Act, 1947 (hereinafter to be referred as "the Act").

3. The management contested the claim of the workman and filed its written statement (Annexure P11) before the Labour Court, inter-alia stoutly denying all the allegations contained in the statement of his (workman) claim and prayed for its dismissal. Additionally, it was pleaded that in case the Court comes to the conclusion that the inquiry is vitiated, then the management craved for the leave of the Court to permit it to adduce the evidence in support of its case as it is entitled to do so under the various pronouncements of the Hon''ble Supreme Court.

4. In the wake of pleadings of the parties, the Labour Court framed the following issues for proper adjudication of the matter:

1. Whether the enquiry is fair and proper?

2. As per reference?

3. Another the workman is gainfully employed?

5. The parties to the lis, brought on record the oral as well as documentary evidence, in order to substantiate their respective pleaded stands. The Labour Court accepted the claim of the workman and reinstated him, with continuity of service and full back wages, by means of impugned award dated 6.11.1990 (Annexure P13).

6. The Petitioner-management did not feel satisfied and filed the instant writ petition, challenging the impugned award (Annexure P13), invoking the provisions of Articles 226 and 227 of the Constitution of India. That is how, I am seized of the matter.

7. Taking the benefit of her usual alterness and assailing the impugned award, the learned Counsel for the management contended with some amount of vehemence that the reasons of reinstatement of the workman recorded by the Labour Court are misplaced and contrary to the record. The argument is that although the management has specifically pleaded in para 5 of its written statement, that in case, the Labour Court comes to the conclusion that the inquiry is vitiated in any manner, then the management be permitted to adduce the evidence, but it was wrongly mentioned in the impugned award that as the management has not desired to prove the charges in case the enquiry was held to be ultra vires, therefore, there is no occasion to offer another opportunity to the management to lead evidence to prove its allegations against the workman. The argument further proceeds that the impugned award is non-speaking, is the result of non-application of mind and

against the facts and legal provisions. In support of these contentions, she has placed reliance on the judgments of Hon''ble Apex Court in cases The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, and Karnataka State Road Transport Corpn. Vs. Smt. Lakshmidevamma and Another, .

8. On the contrary, hailing the impugned award, the learned Counsel for the workman urged that the Labour Court has rightly taken into consideration the entire material on record and correctly came to the conclusion that the inquiry against the workman is vitiated and reinstated him with continuity of service and full back wages. Thus, he prayed that no interference is warranted in this regard.

9. Having heard the learned Counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the instant writ petition deserves to be partly accepted in this context.

10. As is evident from the record, that the workman claimed that his services were illegally terminated as a result of vengeance by the management without serving any charge sheet or holding an inquiry and without providing any opportunity of being heard to him. The management has stoutly denied the same in its written statement (Annexure P11). Apart from variety of other objections pleaded by the management, it has been specifically mentioned in para 5 of its written statement (Annexure P11) as under:

That the dismissal of the workman was effected after fair and proper enquiry and in case the Hon''ble Industrial Tribunal find in any manner that the enquiry is vitiated, then the management craves leave of the Hon''ble Industrial Tribunal to permit the management to adduce the evidence in support of their case, as they are entitled to do so under the various pronouncement of their Lordship of Supreme Court.

The workman has not so denied in his rejoinder (Annexure P12) that the management was not entitled to produce its evidence before the Labour Court.

11. Such thus being the position on record, now the short and significant question, though important that arises for consideration in the present petition is, as to whether the management was entitled to opportunity for producing its evidence before the Labour Court, in order to substantiate its plea of holding an inquiry against the workman or not?

12. Having regard to the rival contentions of the learned Counsel for the parties, to me, the answer is in the affirmative and the Labour Court was duty bound to permit the management to adduce its evidence in this relevant behalf.

13. This question is not res integra and is well settled by the Hon''ble Supreme Court in The Workmen of M/s Firestone Tyre & Rubber Co. of India P. Ltd. ''s case (supra), wherein it was held 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. The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective." At the same time, it was also observed 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. The Labour Court was duty bound to provide the opportunity to adduce evidence if asked 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."

14. Not only that, again an identical question arose before the Hon''ble Apex Court in Karnataka State Road Transport Corporation''s case (supra). Having considered the relevant provisions of the Act, it was ruled (paras 16 to 18) as under:

16. While considering the decision in Shambhu Nath Goyal Vs. Bank of Baroda and Others, , we should bear in mind that the judgment of Vardarajan, J., therein does not refer to the case of Cooper Engineering AIR 1995 S.C. 1900 (supra). However, the concurring judgment of D.A. Desai, J. specifically considers this case. By the judgment in Goyal''s case the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it u/s 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made u/s 10 of the Act, meaning thereby the management had to exercise its right to leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

17. Keeping in mind the object of 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''s 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 inquiry. At the same time, it is also of 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 ''s case is just and fair.

18. There is one other reason why we should accept the procedure laid down by this Court in Shambhu Nath Goyal''s case. It is to be noted that this judgment was delivered on 27th of September, 1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis require us to approve the said judgment to see that a long standing decision is not unsettled without strong cause.

The ratio of law laid down in the aforesaid judgments "mutatis mutandis" is applicable to the facts of the present case and is the complete answer to the problem in hand.

15. What is not disputed here is that the management has craved the indulgence of the Labour Court to permit it to adduce evidence in support of its stand taken in the written statement (Annexure P11) in case it is held that the indicated inquiry against the workman is vitiated. Once the Labour Court was of the opinion that the inquiry conducted against the workman was not fair and proper according to rules, in that eventuality, the Court ought to have granted an opportunity to the management to adduce its evidence in order to substantiate its plea, as claimed in its written statement. The denial of such valuable opportunity has naturally caused a great prejudice to the case of the management. The observation of the Labour Court that the management has not desired to adduce evidence to prove the charge in case the inquiry was held to be ultra vires, is misplaced and against the record. As depicted hereinabove, the management has clearly claimed its right to adduce evidence in this relevant direction. Therefore, to my mind, the Labour Court was duty bound to provide an opportunity to the management to adduce evidence in support of its stand, which was denied to it, without any cogent reasons.

16. In this manner, the argument of the learned Counsel that a great prejudice has been caused to the case of the management, has considerable force and the contrary arguments of the learned Counsel for the workman "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances. Hence, the impugned award (Annexure P13) cannot legally be maintained in the obtaining circumstances of the case. In my view, the justice would be sub-served if the matter is remanded back to the Labour Court for its fresh decision.

17. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial before the Labour Court, the instant writ instant petition is accepted. Consequently, the impugned award (Annexure P13) is hereby set aside. The matter is remitted back to the Labour Court for its fresh decision, after affording the parties to lead their

evidence, in view of the aforesaid observations and in accordance with law. 18. The parties through their counsel are directed to appear before the concerned Labour Court on 30.3.2011 for further proceedings.