(2014) 07 P&H CK 0850

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 7727/2014

PCI Ltd. (Engg. Division)		APPELLANT
	Vs	
Presiding Officer,Industrial Tribunal-cum-Labour Court-II		RESPONDENT

Date of Decision: July 7, 2014

Acts Referred:

- Constitution of India, 1950 - Article 136, 226
- Industrial Disputes Act, 1947 - Section 11-A, 2(s)

Citation: (2015) 144 FLR 971 : (2014) 4 LLN 532 : (2014) LLR 931

Hon'ble Judges: Gurmeet Singh Sandhawalia, J

Bench: Single Bench

Advocate: Rajiv Sharma, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Gurmeet Singh Sandhawalia, J.

Challenge in the present writ petition is to the order dated 28.01.2014 (Annexure P-33) passed by the Labour Court, Gurgaon whereby, a finding has been recorded regarding issue No. 1 that the workman was not given opportunity to defend himself in the domestic inquiry by the person of his choice and the inquiry was not fair and proper. A perusal of the file would go on to show that the services of the workman were terminated vide letter dated 28.9.2001 in pursuance to the charge sheet dated 19.07.2001 and the inquiry held thereafter. A demand notice dated 9.10.2001 was given, which was replied to by the petitioner-company on 2.2.2002 taking the plea that the charges leveled in the charge sheet were of grave and serious nature and the workman was given full opportunity to defend himself. Resultantly, the matter was referred to the Labour Court wherein, in view of the stand of the petitioner company, issue No. 1 was that whether the inquiry conducted by the management was not fair and proper. The Labour Court has found that the workman wanted to be represented by Jai Singh but the inquiry

officer denied him the opportunity on the ground that Jai Singh, Law Secretary was not Member of the Union. The statement of Yudhveer Singh, Inquiry officer was also taken into consideration wherein, it was noticed that the petitioner-company did not give him any Model Standing Order not certified copy of the standing order applicable to the respondent-concern. Accordingly, it was held that the Inquiry Officer had admitted that certain documents were given by the workman to show that settlement had taken place between the union and the respondent but they had not been taken into consideration. It was found that Jai Singh, through whom the workman wanted to be represented had put his signatures on the settlement effected and thus was not an outsider. The workman was not represented by the person of his choice. It was also noticed that Sh. DP. Bhardwaj, the Director of the petitioner-company, with whom the mis-behaviour was made on the basis of the charge sheet had not been examined it was in such circumstances, the impugned order had been passed.

2. The Apex Court in The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, while examining the provisions of Section 11-A of the Industrial Disputes Act, 1947 (in short "the Act"), held that the Labour Court had the power to examine the correctness of the findings arrived at in the domestic inquiry. It was also held keeping in view the judgment of the Apex Court in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, that the employer had a right to adduce evidence before the Tribunal justifying its action even if the inquiry was held to be found defective. Accordingly, the following principles were laid down:--

"27. 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 latter 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 victimisation, 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, has 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 latter, 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 justifications 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 straightaway, 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 a 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, within the judicial decision of a Labour Court or Tribunal."

3. As per the principles laid down above, it is clear that the employer has a right to file an appropriate application before the Tribunal to adduce evidence for the first time before the Tribunal in the interest of both the management and the employee to satisfy the Tribunal about the alleged misconduct. The said procedure has not been resorted to by the petitioner company and it has come straight to this Court challenging the findings on issue No. 1. This strategy of the management has been deprecated by the Apex Court in D.P. Maheshwari Vs. Delhi Administration and Others, In the said case, the dispute was regarding whether the workman was covered under the definition of Section 2(s) of the Act. A preliminary issue was got framed, which was decided against the management which invoked the jurisdiction of the High Court successfully. The said order was set aside by holding that the said

procedure of challenging the issues in a piecemeal manner tends to elongate the litigation and instead of adjudicating upon the labour disputes without delay, misery is compounded upon the workman. The relevant observations read thus:--

"1. It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Art. 226 of the Constitution and to this Court under Art. 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Art. 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art. 226 of the Constitution nor the jurisdiction of this Court under Art. 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Art. 226 and Art. 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeyings up and down. It is also worth while remembering that the nature of the jurisdiction under Art. 226 is supervisory and not appellate while that under Art. 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues.

2.....The management was dissatisfied with the decision of the Labour Court on the preliminary issue. So, they invoked the High Court''s extra-ordinary jurisdiction under Art. 226 of the Constitution. A learned single judge of the High Court, by his judgment dated 12th July 1976 allowed the Writ Petition and quashed the order of the Labour Court and the reference made by the Government. A Division Bench of

the High Court affirmed the decision of the Single Judge on 25th July 1980. The matter is now before us at the instance of the workman who obtained special leave to appeal under Art. 136 on 4th April 1983. The services of the workman were terminated on 28th July 1969. A year later the dispute was referred to the Labour Court for adjudication. Thirteen years thereafter the matter is still at the stage of decision on a preliminary question. In our view, further comment is needless."

4. Keeping in view the above settled position of law and the fact that the management has a right to adduce sufficient evidence and prove the fact of misconduct before the Labour Court afresh, this court is of the opinion that the challenge to the preliminary issue is not justified. Accordingly, the present writ petition being bereft of any merit is dismissed in limine.