The Management, Sri Meenakshi Mills Limited, Paravai Branch Vs The Presiding Officer

Court: Madras High Court

Date of Decision: Oct. 26, 2009

Acts Referred: Constitution of India, 1950 â€" Article 14, 21
Industrial Disputes Act, 1947 â€" Section 2

Hon'ble Judges: K.K. Sasidharan, J

Bench: Single Bench

Advocate: R. Chandrasekar, for P.V.S. Giridhar, for the Appellant; Silamabannan for N. Umapathi, for R-1, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.K. Sasidharan, J.
This writ petition challenges the award dated 29 July 1999 on the file of the Labour Court, Madurai relating to the

discharge of the petitioner, who was in employment of the first respondent.

Background facts:

2. The petitioner was employed as a Spinning Doffer in the first respondent Mills from 1970 onwards. He was also an active member of the

Worker"s Union involved in the advancement of the workers interest. While so, on 07 November 1991, the first respondent issued a memo

seeking explanation from the petitioner and 26 other employees alleging that they took part in illegal activities by obstructing and threatening loyal

workers of the mill from attending work during the strike period. Though the said memo made mention that notice was issued on the basis of

certain reports, none of those reports were furnished to the petitioner or other workmen. Petitioner gave an explanation pointing out that the

charges levelled against him were all false and baseless. While so, by way of proceedings dated 07 January 1992, the first respondent discharged

the petitioner from the services of the mill. However, neither notice was issued nor retrenchment compensation was paid.

3. The petitioner moved the Labour Court as the matter in question was deemed to be an industrial dispute within the meaning of Section 2(a) of

the Industrial Disputes Act. The other workmen also challenged the Order of discharge passed against them by way of separate disputes.

Accordingly, the dispute preferred by the petitioner was registered as I.D. No. 243/1993 and connected disputes were registered as I.D. Nos.

222, 233, 240, 241, 242 and 249 of 1993.

4. The first respondent filed counter in I.D. No. 243/ 1993 wherein it was contended that the petitioner and 26 other employees were responsible

for creating tense situation in the mill. According to the first respondent, the group of 27 workers obstructed the loyal workers from entering into

the factory premises and they also caused substantial loss to the factory. Therefore, the management took a decision to discharge them from

service invoking Clause 19(1) of the Standing Orders. The first respondent further contended that the situation was not conducive for conducting

enquiry and as such, no enquiry was conducted. The punishment imposed was a simple discharge and no stigma was attached to it and as such, the

grievance projected has no basis.

Common Evidence:

5. Before the Labour Court, writ petitioner and other employees as well as the first respondent filed a joint memo stating that they have no

objection for recording common evidence and evidence recorded in I.D. No. 222/1993 has to be treated as evidence in respect of all other

Industrial disputes. Accordingly, common evidence was recorded in I.D. No. 222/1993 which was treated as the evidence in all the industrial

disputes.

6. The petitioner in I.D. No. 242/1993 by name Rajangam was examined as WW-1. Ex.W-1 and W-2 were marked on the side of the writ

petitioner and other workers. Exs.M-1 to M-16 were marked on the side of the management. MW-1 and MW-2 were examined on the side of

the first respondent. In the evidence tendered by WW-1 - Rajangam, on behalf of all the workers, he has deposed that the allegations levelled

against the petitioner and other workers were baseless and it was a vindictive action. He was cross examined by the Management and during his

cross examination, a suggestion was put to the effect that the writ petitioner was involved in an earlier case of misconduct and he was suspended

for a period of thirty days. However, there was no denial of the said suggestion.

7. The first respondent has examined the watchman as MW-2 and in his evidence, he has implicated the writ petitioner.

The Award:

8. The Labour Court found that the misconduct alleged against the writ petitioner was proved. However, there was no evidence to substantiate the

charges levelled against the other workers. The Order of discharge passed against the writ petitioner was confirmed. However, with respect to

other workers, the Labour Court found that there was no evidence adduced by the Management justifying the Order of discharge and accordingly,

the other industrial disputes were answered in favour of the workers and the respective workers were directed to be reinstated with backwages

quantified at 50%. Aggrieved by the Order in I.D. No. 243/1993, the unsuccessful petitioner is before this Court.

Submissions:

9. The learned Counsel for the petitioner contended that there was violation of principles of natural justice inasmuch as before discharging the

petitioner from the service of the first respondent, no enquiry was conducted. According to the learned Counsel, principles of natural justice has to

be read into the Certified Standing Orders and the service of the petitioner could be terminated only after a full-fledged enquiry with an opportunity

to the petitioner to substantiate his contention that he was not involved in the alleged misconduct. The learned Counsel also relied on the judgment

of the Supreme Court in D.K. Yadav Vs. J.M.A. Industries Ltd., in support of his contention that Certified Standing Orders have statutory force

and therefore, the same must be in consonance with the principles of natural justice. The learned Counsel further placed reliance on the judgment of

the Supreme Court in The Director General of Police and Others Vs. G. Dasayan, in support of his submission that the Labour Court was not

expected to take two different views on the basis of common evidence relating to similar charges.

10. The learned Senior Counsel for the first respondent supported the award of the Labour Court. According to the learned Senior Counsel, the

defect in the procedure of absence of enquiry was set right subsequently as the first respondent has adduced evidence to show that the act of

misconduct alleged against the petitioner was true. The learned Senior Counsel further contended that the petitioner has not denied the charges

levelled against him by appearing before the Labour Court and in fact, there was no evidence adduced on his side to disprove the charges made

against him. The learned Senior Counsel justified the award of the Labour Court mainly on the ground that the management was permitted to lead

evidence in the absence of enquiry conducted before passing the Order of discharge.

Discussion:

11. The writ petitioner and 26 fellow workers were charge-sheeted by the first respondent management on the ground that they have engaged in a

violent strike on 07.11.1991. The petitioner and other workers were alleged to have blocked a lorry carrying cotton from entering into the mills

and they have also obstructed loyal workers from coming to the factory for the purpose of work. Therefore, the first respondent invoked Clause

19(i) of the Certified Standing Orders and the petitioner and 26 other workers were discharged as per Order dated 20.11.1991. Therefore,

admittedly, no enquiry was conducted before passing the Order of discharge against the petitioner. The issue was taken up before the Labour

Court at the instance of the petitioner. The other workers also raised industrial disputes challenging the Order of discharge.

12. The Labour Court was of the primary view that no evidence was adduced on the side of the writ petitioner in support of his case that he was

not involved in the alleged misconduct and as such, it has to be construed that the charges were proved.

13. The core issue in this writ petition is as to whether the evidence before the Labour Court was adduced by the Management to substantiate their

contentions after taking leave from the Labour Court.

14. It is true that in case the enquiry conducted by the management was found to be defective/or it was not fair, the Labour Court was having the

discretion to permit the Management to lead evidence instead of setting aside the enquiry report. When the Labour Court comes to the conclusion

that enquiry was not fair and it was defective, management gets an opportunity to lead evidence on their application.

15. In the present case, the matter was treated as a dispute raised by the petitioner pertaining to his illegal discharge and the burden was cast on

him to prove that he was not involved in the incident. There is not even a single statement contained in the award of the Labour Court to the effect

that permission was sought and opportunity was given to the first respondent to lead evidence in support of their case. The dispute proceeded as if

the burden was on the workers to prove that they were not involved in the alleged misconduct. It was only on the said basis that common evidence

was recorded in I.D. No. 222/1993. The petitioner and the other workers as well as the first respondent agreed for taking common evidence and

to pass common Order. The petitioner in I.D. No. 242/1993 was examined as a witness on the side of the workers. Therefore, his evidence was

intended to be the evidence of all the petitioners, including the writ petitioner. The evidence adduced by the first respondent in I.D. No. 242/1993

was treated as evidence in all the industrial disputes. The reply submitted by the writ petitioner to the Show Cause Notice issued by the first

respondent was marked as Ex.M-7. However, very strangely, the Labour Court opined that the defence taken by the writ petitioner was not

proved as he has not chosen to examine himself as a witness. The Labour Court would be justified in its observation with regard to the non-

examination of the writ petitioner in case each of the industrial disputes were taken up separately. When the parties have agreed for taking common

evidence in the matter and for the disposal of all the industrial disputes together, it cannot be said that the evidence tendered by the witness WW-1

Rajangam cannot be construed to be the evidence adduced on the side of the petitioner. The reply in Ex.M-7 shows that the petitioner has denied

the entire charges made against him. Even in the face of the said document, and the same having been marked through the witness examined on the

side of the writ petitioner, it was uncharitable on the part of the Labour Court to comment that there was no evidence adduced on the side of the

writ petitioner. It is worthwhile to point out that the evidence tendered by the witness examined on the side of the petitioner was believed by the

Labour Court for the purpose of arriving at a decision that the Management has not proved the misconduct on the part of the other workers.

16. The procedure adopted by the Labour Court caused substantial prejudice to the petitioner. Before taking up the matter, Labour Court was

expected to decide the procedure to be adopted, where industrial disputes of the similar nature were taken up together. In case the Court was of

the view that the Order of discharge passed by the first respondent without an enquiry was the result of a defective procedure, it has to call upon

the management to lead evidence. However, very strangely, no such procedure was adopted by the Labour Court. In fact, there was no

application filed by the Management to lead evidence before the Labour Court. Therefore, the contention of the learned Senior Counsel for the

first respondent that the management was permitted to lead evidence in support of their finding that the petitioner was involved in a serious

misconduct has no factual basis.

17. The names of the other workers who were the petitioners in the connected industrial disputes were also found in the annexure to M-1. M-2

made mention about some of the petitioners before the Labour Court. The Court on the basis of the evidence tendered by MW-1 and MW-2 and

in the light of the discharge proceedings, arrived at a conclusion that the charges against the other workers were not proved. However, the very

same evidence was taken as the basis to come to a conclusion that the charges levelled against the petitioner was proved.

18. The learned Counsel for the petitioner is perfectly correct in his contention that the writ petitioner has not anticipated that the Labour Court

would draw adverse inference for his non-appearance before the Court for giving evidence. It was only on account of the decision taken by the

workers and the management which was also agreed to by the Labour Court. WW-1 Rajangam was examined as a witness for the employees.

The said Rajangam has also marked the explanation submitted by the writ petitioner in Ex.M-7. The witness has also denied the allegations levelled

against the respective workers by the Management. In case the Labour Court was of the view that individual workers have to be examined, the

Court should have indicated the same and an opportunity should have been given to the petitioner. The first respondent having agreed for common

evidence, is estopped from contending that the charges levelled against the petitioner is deemed to have been proved as he has not come to the

witness box.

19. The evidence to be adduced by the management in a matter relating to defective enquiry stands in a diferent footing. Labour Court was

expected to come to a conclusion that the enquiry was fair and proper. Similarly, in the case of non-conduct of enquiry also, the Court was

expected to consider the reasons supplemented by the Management. In case the Labour Court was of the view that the enquiry was not properly

conducted or failure to conduct the enquiry was not supported by materials, it would be permissible for the management to seek permission to lead

evidence. In such cases, evidence has to be opened only by the management. The entire burden was on the management to prove the charges. It

was only then the burden shifts on the workers to lead rebuttal evidence. However, in the subject case, the novel procedure adopted by the

Labour Court caused substantial prejudice to the writ petitioner. There was nothing indicated in the award of the Labour Court that Management

was prepared to lead evidence as there was no enquiry conducted before passing the Order of discharge against the writ petitioner.

20. The Labour Court in paragraph 11 of the award observed that the explanation offered by the writ petitioner as per Ex.M-7 was not

specifically corroborated by the writ petitioner. However, the Labour Court very conveniently omitted to note the fact that it was only as per the

agreement reached between the parties to have a joint trial, common evidence was adduced by the petitioner and W.W.1 was examined. In fact,

the charges framed against the petitioner and others were similar in nature and the explanation was also the same. Same set of evidence was taken

by the Labour Court to sustain the Order of discharge passed against the writ petitioner and to quash the charges framed against the other

workers. There is nothing on record to show that the petitioner was called upon to give evidence in support of the explanation in Ex.M-7. The fact

also remains that Ex.M-7 was marked through a witness and nothing was elicited by the first respondent to prove that what was contained in

Ex.M-7 was an incorrect version.

21. In D.K. Yadav Vs. J.M.A. Industries Ltd., , the management invoked the provisions of the Certified Standing Orders to put an end to the

service of the employee and the tribunal found that it was not a termination or retrenchment under the Industrial Disputes Act. The matter was

ultimately taken to the Supreme Court. The Supreme Court by placing reliance on the earlier decisions observed that the Certified Standing Orders

have statutory force and therefore, it attracts the principles of natural justice. The following paragraphs would make the position clear:

8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of

presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely,

the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of

natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the

concerned person.

9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and

giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of

natural justice. In Mohinder Singh Gill v. Chief Election Commissioner the Constitution Bench held that ''civil consequences'' covers infraction of

not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation

every thing that affects a citizen in his civil life inflicts a civil consequence. Black''s Law Dictionary, 4th edn., page 1487 defined civil rights are such

as belong to every citizen of the state or country...they include...rights capable of being enforced or redressed in a civil action.... In State of Orissa

v. (Miss) Binapani Dei this Court held that even an administrative order which involves civil consequences must be made consistently with the rules

of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair

opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in

violation of principles of natural justice.

11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge

of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or

rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just

and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the

purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if

a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be

applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.

12.Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its

impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of

person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is

interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it

would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual

potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby,

conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and

reasonable.

22. The principles governing the jurisdiction of the Tribunals when adjudicating disputes relating to dismissal or discharge, was indicated by the

Supreme Court in The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, , thus:

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 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 a 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, 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 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 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.

(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 Management of Panitole Tea Estate v. Workmens within the judicial decision of a Labour Court or Tribunal.

23. The industrial dispute raised by the petitioner was rejected mainly on the ground that he has not adduced evidence in support of his contention.

The Labour Court in its common award dated 29.07.1999 again and again made comments about the failure on the part of the writ petitioner to

appear before the Court to substantiate his explanation. Therefore, the industrial dispute was dismissed more on the ground of failure of the

petitioner to appear as a witness.

24. It is true that the misconduct involved in the matter is alleged to have been committed as early as in November 1991. The award is also of the

year 1999. Admittedly, no enquiry was conducted by the management before discharging the service of the petitioner. Their explanation was to the

effect that the situation was not conducive for conducting enquiry. The said reason was approved by the Labour Court also. However, the Labour

Court in the industrial dispute raised by the writ petitioner, decided the issue on the basis of negative evidence, instead of directing the first

respondent management to produce positive evidence with respect to the misconduct committed by the writ petitioner. Therefore, the procedure

adopted by the Labour Court caused substantial prejudice to the writ petitioner. Even though ten years have passed from the date of passing the

award, I am of the view that justice has to be done in the matter and delay is not a constraint for doing justice. The learned Counsel for the

petitioner has prayed for an Order to set aside the award and to reinstate the petitioner in service in view of the Order of reinstatement passed in

respect of other workers. However, I am of the view that the issue has to be looked into by the Labour Court afresh so as to enable the petitioner

to adduce evidence in support of his plea as contained in Ex.M-7. Similarly, it would also enable the first respondent management to produce

materials in support of the charges levelled against the petitioner.

Conclusion:

25. In the result, the award passed dated 29.07.1999 in I.D. No. 243/1993 is set aside and the matter is remitted to the Labour Court for fresh

consideration. The Labour Court is directed to give sufficient opportunity to the petitioner and the first respondent to produce materials to

substantiate their respective contentions. Since the industrial dispute is of the year 1993, Labour Court is directed to dispose of the dispute as

expeditiously as possible and in any case within a period of four months from the date of receipt of a copy of this Order.

26. The writ petition is allowed as indicated above. No costs.