(2009) 07 CAL CK 0001

Calcutta High Court

Case No: M.A.T. No. 534 of 2008

R.K. Gandhi and Others		APPELLANT
	Vs	
The 1st Labour Court, W.B. and Others		RESPONDENT

Date of Decision: July 15, 2009

Acts Referred:

- Evidence Act, 1872 - Section 17

Citation: 114 CWN 1017

Hon'ble Judges: Md. Abdul Ghani, J; Kalyan Jyoti Sengupta, J

Bench: Division Bench

Advocate: R.N. Majumdar, Saikat Basu and Debraj Roy, for the Appellant; S.N. Sanyal, L. Ghosh and Sourav Sen, for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.

This appeal is against the judgment and order of the learned trial Judge dated 2nd May, 2008, whereby and whereunder the award of the learned Labour Court directing reinstatement of the workman concerned, viz, the respondent No. 3, has been upheld. However, another portion of the award for payment of 50% of back wages has not been accepted and for which the case been remanded to the learned Labour Court to decide only on the issue of payment of 50% back wages. The fact of the case for which this dispute cropped up is stated hereunder.

2. The respondent No. 3 was an employee at the time of issuance of the charge sheet and the allegations against him was that since he has been convicted by competent court for fraudulent drawal of amount from the EC.S.I. Corporation, a disciplinary proceedings was to be initiated against him. It is rather better to set out the text of the charge sheet:

"You had fraudulently and dishonestly drawn an amount of Rs.75/- (Rupees seventy live only) as sickness benefit by misrepresentation which is a cognizable offence

under law. You have been convicted by the Addl. Chief Judicial Magistrate of Sealdah Court and sentenced to pay fine of Rs.60/- i.e. to suffer S.I. for 6 days and ordered to refund the amount of Rs.75/-fraudulently drawn by you as sickness benefit to the ESI Corpn., within a month from the date of order i.e. 16.12.1985.

Thus you have been convicted by the Court of Law for your such criminal offence.

Your behaviour is considered highly subversive of factory discipline.

The offences alleged to have been committed by you are serious and grave. You are hereby asked to show cause within two days of the receipt of this charge sheet why appropriate disciplinary action, should not be taken against you. Should you fail to submit your written explanation within the above specified period, it shall be presumed that you have no explanation to offer and the Management shall proceed in the matter as may deem fit and proper."

3. Thus, it is clear that the appellants intended to initiate disciplinary proceedings on receipt of the written explanation, pursuant to the said charge sheet. A reply was given by the respondent No. 3 and the text thereof is set out thereunder:

"In response to your letter dated 20.01.1986, which has been received in late, I beg to submit that for the discharge of my honest duty and maintenance of strict discipline in the factor I have become an eye-sore of you all and since last few months I am being terrorised by you for no fault of mine.

To seek justice whenever I approached you I have been made victim of false allegation and I am promptly defending myself which you know well.

The charge sheet which has issued against me does not deserve any reply since the allegation does not fall within the category of moral turpitude which requires explanation.

In the circumstances I pray your Honour to be kind enough to have pity on a poor, honest and disciplined employee and withdraw the charge-sheet issued against me for the ends of justice.

And your petitioner shall every pray."

4. On receipt of the said reply, the order of dismissal was passed, reading mid interpreting every words of the said reply that since there has been no denial, it amount to admission. Therefore, no formal enquiry was called for.

5. Being aggrieved with the aforesaid order of dismissal, the respondent No, 3 approached the appropriate forum, viz. the Labour Department, who in its turn raised a dispute as to whether the dismissal of the respondent No. 3 is justified or not.

6. It is an admitted position that there has been no enquiry and without any enquiiy the order of dismissal was passed. Before the learned Tribunal, both the parties filed

their respective statement and counter-statement, stating their cases. In the statement of the respondent No. 3, we find, he has taken a point, amongst others that there has been no enquiiy and as such, the order of dismissal is bad in law and further, this punishment is excessive and disproportionate to the alleged misconduct.

7. The learned Labour Court thereafter heard the matter receiving evidence of both the sides and after analyzing evidence, the learned Labour Court found that the order of dismissal was not justified and this is unfair labour practice. The learned Labour Court ordered for reinstatement of the respondent No. 3 with 50% back wages. We have already noted that the learned trial Judge has accepted the portion of the award regarding reinstatement, of the learned Labour Court. However, other portion of the award, i.e. payment of 50% back wages has not been accepted. The learned trial Judge found that the decision making process of the Labour Court does not suffer from any illegality and infirmity.

8. Mr. Majumdar, appearing for the appellant contends that when there is an admission by not denying specifically the imputation of misconduct, there was no warrant of holding any enquiry and the order of dismissal is perfectly lawful as undeniably the order of conviction is staring on its face. Therefore, it is the confidence of the employer whether such an employee should be retained in employment or not. In support of his submission, he has relied on a Supreme Court decision, reported in 2009 (XI) L.L.J. 324.

9. He further submits that when the entire issue was before the learned Labour Court, this case could have been proved by the workman and indeed his client, being the management, has proved the case by adducing oral evidence and the learned Labour Court even did not take note of the same adduced by his client; so the order of rein statement is based on conjecture, and no evidence. The learned Labour Court ignored this aspect of the matter. In support of this part of submission he has drawn our attention to a Supreme Court decision rendered in the case of Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, .

10. It is the further submission of Mr. Majumdar that as far as the back wages, or for that matter, enquiry into the entitlement of back wages is concerned, such a direction, is uncalled for as there was no necessity in view of the facts and circumstances of this case. In this connection, he has referred to a decision of the Supreme Court, reported in J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, .

11. Mr. Sanyal, appealing for the respondent No. 3 workman submits that the award of the learned Labour Court is perfectly justified and before the learned Labour Court, his client has been able to prove his innocence and lie has explained before the learned Labour Court as well as before the learned trial Judge with sufficient evidence, under what circumstances, the said amount was allegedly drawn by his client. After analysis of evidence adduced by both the parties, the award has been

passed on merit. Therefore, this Court should not interfere, either with the award or the judgment of the learned trial Judge.

12. In the Supreme Court decisions, cited by Mr. Majumdar it is made clear, so also we agree that if the charge labeled against a particular employee, even in absence of any standing order, is admitted expressly, it is the discretion of the employer either to hold enquiry or not to hold. Now, it has to be examined here whether there has been any admission on the paxt of the employee or not.

13. We have already set out the entire text of the reply of the workman. It is true, there has been no specific denil of the charges labeled against the employee that he was convicted of criminal charges. According to us the concept of non-denial amounts to admission, is borrowed from the provisions of the CPC and in the domestic enquiry, in our view, such an inference cannot be drawn for the simple reason, if any order is passed on the basis of inferential admission, then (here will be a civil and evil consequence. Besides domestic proceeding cannot not be treated at par with civil or criminal proceeding of adversarial nature. The object of disciplinary proceeding is to find whether employee is indiscipiined or not. According to us, in order to record a punishment, the employer must get unequivocal and unambiguous admission of the misconduct and this admission must be without any reservation whatsoever. The word "admission" has not been defined in the Industrial Disputes Act or elsewhere, but we can appropriately adopt the definition of admission from the Evidence Act because the principles of Evidence Act are applicable in domestic enquiry also, though the provisions of Evidence Act, ipso facto, do not apply in stricto sensu.

14. Section 17 of the Evidence Act defines the word "admission" as follows:

Section 17 :

"An admission is a statement (oral or documentary or contained in electronic form), which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned."

15. Thus it is clear that there must be statements in writing. In this case the fact that there has been a criminal proceedings against the employee and there has been conviction. One could have termed in this case, as admission, had there been any statement in the manner I admit, there has been criminal proceedings against me and I was convicted." At the highest, from the aforesaid statement, it can be inferred only that there has been statement that the conviction was not based on moral turpitude. According to us, this was the defence taken by the employee concerned. We are of the view, having regard to the facts and circumstances of this case particularly language of reply that it was not an admission of such a degree which entitle the management to dispense with the enquiry, as it had decided to hold an enquiiy earlier.

16. Admission is always a weak piece of evidence and can be explained away at any stage. In this case, there; no express admission; so it was not proper for the lanagement to proceed on the basis of the aforesaid nferential admission; particularly in case of an order of ismissal.

17. It has been rightly argued by Mr. Majumdar that he enquiry was not held by his client but the entire matter and issue were at large before the learned Labour Court So, in view of the judgment of the Supreme Court reported in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, (relevant paragraph 60), both the parties could have placed their all cards before the learned Labour Court, and adduce evidence. According to Mr. Majumdar, it has been done on behalf of his clients bringing two witnesses.

18. We find that the learned Labour Court has not discussed the evidence adduced by the appellants. In true sense it is failure, on the part of the learned Labour Court, in exercise of jurisdiction vested in it. The Writ Court in exercise of its discretion can rectify the same. But the learned trial Judge failed to take note of the same to rectify the same. We, therefore, take the trouble of going through the evidence of the two witnesses of the company.

19. In a Writ Court, evidence adduced before the inferior Tribunal is not appreciated, as it is done in a civil case. Only the Court is to look into whether there has been any evidence or not. It is not the quantity and sufficiency of evidence as distinguished from no evidence. We have gone through the evidence of the two witnesses and nowhere we find that these persons have made any attempt to prove factum of conviction by adducing any documentary evidence. Nowhere it has been proved that in their presence the workman committed the offence. Nowhere it is proved by documentary evidence that criminal prosecution was initiated. It is the initial burden of the appellants to prove the aforesaid essential ingredient of charges that there has been criminal prosecution and there has been conviction. When this was not done, it was not for the learned Labour Court to proceed further. So evidence of the other side should not have been read or analyzed.

20. We are, therefore, of the view that the order of reinstatement, setting aside the order of dismissal is justified as there was no enquiry, as such an enquiry was pre-eminently an essential thing. The decision of the Supreme Court, reported in Himachal Road Transport Corpn. and Another Vs. Hukam Chand, does not lend any help in this case as in that case factually we find that the concerned employee had made an admission by written document with regard to the date of birth by making two declarations. In this case, we have already observed that there has been no unequivocal and clear cut admission; rather there has been an inference of admission. This case is, therefore, distinguishable.

21. The last decision cited by J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, relates to back wages. We think that in this case when the punishment is awarded

lesser, question of back wages cannot be called for. Here, the punishment is dismissal. However, the learned Labour Court did not accept the order of dismissal and set aside the same and awarded reinstatement of the employee concerned. We do not find any fault in it.

22. Therefore, we uphold the judgment and order of the learned trial Judge. Since the matter has been remanded to the learned Labour Court on the issue of enquiry of back wages it shall be done. However, we give liberty to the appellants to proceed, afresh in accordance with law, if so advised, and the same shall be done only upon reinstatement of the employee is made and not before that.

23. As far as back wages portion of judgment and order is concerned, there has been no cross objection against it, obviously it shall be carried out within four months from the date of communication of this order. In the event, the appellants decide not to proceed against the workman concerned, then the order of reinstatement will be a permanent one, and no fresh enquiry will be required. However, the enquiry with regard to back wages can be proceeded with. The appellants, therefore, have to take decision whether they will proceed afresh or not, within a period of two months from the date of receipt of copy of this order. If it is decided to proceed afresh the same must be concluded within a period of four months from the date of taking decision. This appeal is, thus, disposed of. There will be no order as to costs.

Md. Abdul Ghani, J.

I agree.