

(2008) 09 DEL CK 0215

Delhi High Court

Case No: Writ Petition (Civil) No. 12378 of 2006

The Workman S.K.
Adhikari

APPELLANT

Vs

The Management of St.
Stephen's Hospital
Society

RESPONDENT

Date of Decision: Sept. 29, 2008

Acts Referred:

- Industrial Disputes Act, 1947 - Section 11A

Citation: (2008) 155 DLT 360

Hon'ble Judges: Sudershan Kumar Misra, J

Bench: Single Bench

Advocate: R.P.Sharma, for the Appellant; Rajeev Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Sudershan Kumar Misra, J.

The petitioner, Sh. S.K.Adhikari has approached this Court against an order dated 16th May, 2006 passed by the Labour Court-XX (Fast Track), Karkardooma Courts, New Delhi in ID No. 595/2006 (Old No. 550/1998). By that order, the Labour Court set aside the enquiry that was instituted by the respondent Hospital against the petitioner/workman on the ground that the Enquiry Officer, who happened to be retired District Judge, had violated the principles of natural justice by not permitting the petitioner to be represented by one Mr. Hamilton despite a request by the petitioner in that behalf. The Labour Court felt that as a result of this refusal, the petitioner/workman was denied a proper and fair opportunity to defend himself and for that reason, the enquiry proceedings stood vitiated and deserve to be set aside. As requested by the respondent in its written statement before the Labour Court, after the enquiry was set aside for the aforesaid reason, the respondent management was given the opportunity to prove the charges against the petitioner/ workman in the Court and the matter was fixed for management evidence

thereafter.

2. The grievance of the petitioner is that once the Labour Court came to the conclusion that the enquiry against the petitioner was liable to be set aside, the natural consequence should have been an order directing reinstatement with full back wages. He is also aggrieved by the fact that inspite the enquiry being set aside, the Labour Court granted an opportunity to the management to substantiate the charges against the petitioner.

3. The petitioner was working with the respondent as a Cashier since 1972. On 4.7.1994, the petitioner was served with a charge sheet, wherein the petitioner was stated to be responsible for shortage of cash of Rs. 6,000/-, and for tampering with certain vital records of the section relating to that matter. The respondent appointed one Sh. R.N. Mehrotra, a retired Additional District Judge, as the Enquiry Officer. The petitioner requested the Enquiry Officer to permit Mr. Hamilton to represent him at the enquiry. At that time, Mr. Hamilton was the President of the St. Stephens Hospital Employees Association. On 25th August, 1994, the Enquiry Officer rejected this request on the ground that Mr. Hamilton had never been an employee of the Hospital and he was, therefore, an outsider. Ultimately, after the enquiry was completed, the petitioner's services were terminated by the respondent on 27th November, 1995.

4. Consequent upon his termination, the petitioner raised an industrial dispute against the respondent and the matter came to be referred to the Labour Court by the Government. One of the issues framed by the Labour Court was, "whether valid and proper enquiry in accordance with the principles of natural justice was conducted against the workman." Whilst examining the argument of the petitioner that he was not provided a proper opportunity to defend himself in the enquiry because he was not permitted to seek the assistance of a person of his choice from the Union, the Labour Court accepted the fact that although Mr. Hamilton, who is a person chosen by the petitioner, was not a worker in St. Stephens Hospital, "but being the President of St. Stephens Hospital Employees Association, he has every right to defend the workman in enquiry proceedings who is a member of the said association. Accordingly, the workman was entitled to seek assistance of Mr. Hamilton during the enquiry proceedings as Mr. Hamilton was the President of the Association of which the workman was a member. As such, the workman was denied assistance of Union representative of his liking who was competent to defend him." Consequently, this issue was decided in favour of the petitioner and the following order was passed:

As such the enquiry is not in accordance with the principles of natural justice. As such the enquiry proceedings stand vitiated for the reason stated above. Accordingly the enquiry is set aside. The management in its written statement has stated that in case the enquiry is set aside the management may be given opportunity to prove the charges against the workman in the Court. Accordingly opportunity is given to the management to prove the charges against the workman in the Court.

5. The contention of the workman that such an order cannot be passed by the Labour Court, to my mind is unfounded. The powers vested with the Labour Court under the Industrial Disputes Act to permit the parties to adduce evidence is well recognized. Such a power has been bestowed upon the Labour Court by the insertion of Section 11A, in the Industrial Disputes Act, in 1971. The Supreme Court in [The Workmen of Firestone Tyre and Rubber Co. of India \(Pvt.\) Ltd. Vs. The Management and Others](#), whilst dealing with the powers vested with the Tribunal, by virtue of Section 11A, laid down the following principles in paragraph 32:

32(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 employee notholding 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.

(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.

6. Relying on the above observations, the Supreme Court in [Amrit Vanaspati Co. Ltd. Vs. Khem Chand and Another](#), also held that:

8. ...Even if no inquiry has been held by the employer or the inquiry held is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to given 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.

7. Similarly, in [Bharat Forge Company Ltd. Vs. A.B. Zodge and another](#), the Supreme Court in para 7 therein held that:

7. A domestic enquiry may be vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well recognized. In this connection, reference may be made to the decisions of this Court in *Workmen v. Motipur Sugar Factory (P) Ltd.*, *State Bank of India v. R.K.Jain*, *Delhi Cloth and General Mills Co. v. Ludh Budh Singh* and *Firestone Tyre Co. case....* There is no dispute in the present case that before the closure of the proceedings before the Tribunal, prayer was made by the employer to lead evidence in support of the impugned order of dismissal. Hence, denial of the opportunity to the employer to lead evidence before the Tribunal in support of the order of dismissal cannot be justified.

8. Looking to the above judgments, it becomes amply clear that if the enquiry is set aside, the Labour Court has the power to grant an opportunity to the employer to prove the charges, provided that the employer seeks such an opportunity at an appropriate stage. In the case at hand, the Labour Court in the impugned order, after setting aside the enquiry, has itself noted that:

the management in its written statement has stated that in case the enquiry is set aside the management may be given opportunity to prove the charges against the workman in the court.

Thus, it was well within the powers of the Labour Court to provide an opportunity to the employer, to prove the charges against the petitioner.

9. The contention of the petitioner that once the Labour Court held that the enquiry was liable to be set aside, the petitioner should have been as a natural consequence be reinstated with full back wages, can also not be countenanced. The Supreme Court in *Workmen of M/s. Firestone Tyre And Rubber Co. of India (P) Ltd.* (supra) held that:

32(7) It has never been recognised 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.

10. This was also reiterated by the Supreme Court in the case of [Karnataka State Road Transport Corpn. Vs. Smt. Lakshmidamma and Another](#), and [State Bank of India Vs. Tarun Kumar Banerjee and Others](#), . This Court also in the case of [Nehru Yuva Kendra Sangathan Vs. Union of India and Others](#), held that; "reinstatement is not the inevitable consequence of quashing an order of termination".

11. On a perusal of the petition it is also noted that one of the grounds, inter alia, contended by the petitioner is that he was never granted an opportunity to address the question of a fresh opportunity being granted to the management and neither any hint was given to him that such a question was in consideration. Such a contention cannot be countenanced. It is not a prerogative of the workman that before granting an opportunity

to the employer, he must be consulted by the Labour Court or intimated beforehand that such an opportunity might be given. All that is required is that firstly, the Labour Court draws a conclusion that the enquiry was vitiated and secondly, the employer has sought an opportunity at an appropriate stage to prove the charges against the employee before the Labour Court. If the above two requirements are met then, an opportunity can be given u/s 11A of the Industrial Disputes Act by the Labour Court. This is exactly what was done by the Labour Court in the present case.

12. For the reasons stated above, to my mind the contentions of the petitioner lack merit and must be rejected.

13. Under the circumstances, the writ petition is dismissed.