

WP(C) No.6179 of 2007

The Management of
M/s. Orissa Air Products Ltd. Petitioner

State of Orissa & others	Opp. Parties
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For Opp. Parties : Addl. Government Advocate
M/s.Ramnath Acharya
& B.Barik

In person (Workman)

Date of Judgment: 26.03.2013

THE HONOURABLE KUMARI JUSTICE SANJU PANDA

2. The facts, as narrated in the writ petition filed by the petitioner-management, are as follows:

Opposite party no.3-workman, while serving as an Assistant Depot Superintendent in the establishment of the petitioner-management at Balasore during 1992-1993, committed serious misconducts, such as, habitual disobedience of orders of superiors, riotous, disorderly behaviours with superiors, unauthorised collection of money from customers without issuing printed company receipts amounting to fraud

and dishonesty, misappropriation of company's cash, submitting false reports and bills, leaving headquarters without permission, etc. For such serious misconducts, a charge sheet dated 15.6.1993 was issued to the workman. On his failure to furnish satisfactory explanation, a domestic enquiry was conducted to prove into the allegations with due observance of principles of natural justice. Workman chose not to participate in the enquiry though he was intimated about the same. During enquiry, he was present in the office where the enquiry was conducted. The enquiry proceeded ex parte. All the charges which were of grave and serious in nature having been proved in the said enquiry, he was found guilty of the charges. Ultimately, the disciplinary authority dismissed him from service with effect from 25.3.1994. Accordingly, he raised a dispute pertaining to his dismissal from service before the Deputy Labour Commissioner, Rourkela. The matter was referred to the District Labour Officer, Rourkela. The petitioner, on being noticed, participated in the conciliation proceeding. However, the workman did not choose to pursue the said complaint and the conciliation proceeding was closed. However, on his initiative and filing of the complaint on the self-same issue to his dismissal from service, a dispute was raised before the District Labour Officer. The conciliation proceeding having been failed, the State Government on receipt of the said report, referred the dispute to the Labour Court for adjudication. The reference is as follows:

“Whether the action of the management of M/s.Orissa Air Products Ltd., Gundichapada, Dhenkanal in dismissing Sri Manoj Kumar Panda from service with effect from 25.3.1994 is legal or justified ? If not, what relief he is entitled to?”

3. The petitioner having been noticed in the above case filed its written statement on 3.9.1998 before the Labour Court, Bhubaneswar taking a stand that the workman was working in a Supervisory cadre. Therefore, he was not a workman to claim any benefit under the Industrial Disputes Act (in short, “I.D. Act”). While working as an Assistant Depot Superintendent at Balasore, he committed serious misconduct for which charge sheet was issued. After due enquiry, the Enquiry Officer submitted a report and found the workman guilty of all charges. The second show cause notice along with enquiry report was sent to the workman prior to imposition of the penalty by registered post, but the same was not received by him. As such, it was returned with a postal endorsement “refused”. Accordingly, the disciplinary authority imposed penalty. Therefore, he was not entitled to any relief under the I.D Act. On the pleadings of the parties, the Labour Court framed two issues which are as follows:

“i) Whether the action of the management of M/s.Orissa Air Products Ltd., Gundichapada, Dhenkanal in dismissing Sri Manoj Kumar Panda from service with effect from 25.3.1994 is legal or justified ?

ii) If not, what relief he is entitled to?”

4. The petitioner-management as well as opposite party no.3-workman in support of their respective cases examined witnesses. An application was filed by the petitioner-management on 13.3.2001 with a prayer to issue direction to the workman to adduce evidence first. Accordingly, workman adduced his evidence on 12.4.2001. His evidence was closed on 3.12.2001. The petitioner-management adduced its evidence on 21.12.2001. After closure of its evidence, an application was filed by the petitioner-management on 24.12.2001 to adduce further evidence to prove that opposite party no.3 was not a workman. The Tribunal rejected the said application.

5. Learned counsel for the petitioner-management submitted that without affording an opportunity to adduce fresh evidence to the petitioner-management, the Tribunal passed the impugned award which is illegal. Therefore, the impugned award need be set aside and an opportunity may be given to the petitioner-management to adduce evidence to prove the charges against the workman.

6. Opposite party no.3-workman appeared in person and contested the case supporting the award submitted that he was harassed by the petitioner-management and as there is no error apparent on the face of the impugned award, the same need not be interfered with.

7. From the rival submissions of the parties and after going through the award, it appears that the Tribunal framed two issues taking into consideration the pleadings of the parties. On analysing the materials available on record, the Tribunal came to the finding that the workman was sent to Balasore to assist the Depot Superintendent in his day to day work as evident from Ext.25. M.W.7 is the General Manager of the management. He had issued the letter to the workman. The said letter did not indicate that the workman had been promoted to the post of Depot Superintendent. In his deposition, the said witness clearly stated that the workman was assisting the Depot Superintendent (Shri P.K.Mishra) who was holding independent charge. M.W.2, who was working as Assistant Depot Superintendent, in his evidence has categorically stated that the workman was not entrusted with the work of Depot Superintendent. According to M.W.2, the duty of the Assistant Depot Superintendent was to move outside and collect orders. Further evidence of M.W.2 was that an

Assistant Depot Superintendent was not empowered to engage labourers and that the labourers used to work as per the direction of the Depot in-charge. Thus, the work of the workman was very much clerical in nature and not supervisory. Therefore, the Tribunal held that the second party is a workman within the meaning of Section 2(s) of the I.D Act. The Tribunal further held that there was no material on record to show that any second show cause notice was given to the workman or he had been given a chance of personal hearing before his dismissal from service. On that count, the order of dismissal of the workman is vitiated.

8. The plea of the petitioner-management in the written statement regarding second show cause notice along with enquiry report had been sent to the workman on 9.4.1994 by registered post with A.D but the said registered letter came back undelivered with postal remark 'refused'. However, the management did not prove such registered postal cover dated 9.4.1994. Therefore, the evidence, regarding second show cause notice was not issued to the workman, was accepted and the claim of the management regarding issuance of second show cause notice was disbelieved. Accordingly, the Tribunal held that the dismissal of the workman from service with effect from 25.3.1994 was illegal, unjustified and the workman was entitled to relief of reinstatement in service with full back wages.

9. Learned counsel for the petitioner submitted that since the findings of the Tribunal that the enquiry is vitiated in respect of awarding reinstatement with full back wages, the Tribunal should have remitted the matter back to the management for further enquiry from the stage where enquiry was not conducted properly. He further submitted that the Tribunal before passing of the award should have framed a preliminary issue, i.e., whether an enquiry was conducted properly or not? In support of his submission, he cited the decisions of the apex Court in the case of *Union of India and others v. Mohd. Ramzan Khan* reported in **(1991) 1 SCC 588** and in the case of *Chairman, LIC of India & others v. A. Masilamani* reported in **2013 LLR 301**.

10. Learned counsel for the petitioner also cited a decision of the apex Court in the case of *Managing Director, ECIL, Hyderabad etc. etc. v. B.Karunakar etc. etc.* reported in **AIR 1994 SC 1074** wherein it has been held that once the Court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the Court cannot reinstate the employee. It must remit the concerned case to the disciplinary authority to conduct the enquiry from the point that it stood vitiated and conclude the same.

11. He has also cited a decision of the apex Court in the case of Cooper Engineering Limited v. Sri P.P.Mundhe reported in **(1976) 1 SCR 361** wherein the apex Court has held that the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue and it will be for the management to decide whether it will adduce any evidence before the Labour Court.

12. In view of the above settled position of law, learned counsel for the petitioner-management further submitted that the matter should have been remanded by the Tribunal to the management for further enquiry. The other decisions cited by the petitioner, i.e., in the case of Union of India and others v. Mohd. Ramzan Khan (supra) and Chairman, LIC of India & others v. A. Masilamani (supra) relate to disciplinary proceedings under the Service Law and since the opposite party no.3 is a workman, the said decisions are not applicable to the facts of the present case.

13. A five judges Bench of the apex Court in the case of Karnataka State Road Transport Corporation v. Smt. Lakshmiddevamma and another reported in **AIR 2001 SC 2090** took note of the question as to at what stage the management should seek leave of the Labour/Tribunal to lead evidence/additional evidence justifying its action was considered and not the power of the Court/Tribunal requiring or directing the parties to produce evidence if deemed fit in a given case having regard to the facts and circumstances of that case. The apex Court taking into consideration the decision of the Cooper Engineering Limited (supra) held that in proceedings before Labour Court/Industrial Tribunal, right of employer to adduce additional evidence in justification of action taken has to be reserved in the application made by employer under Section 33 of the I.D Act or in objection file to reference made under Section 10 of the I.D Act. Right cannot be exercised at any time thereafter. The apex Court in the said case relied on the decision in Sambhu Nath Goyal's case (AIR 1984 SC 289) wherein it was held that 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 under Section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under Section 10 of the Act meaning thereby the management had to exercise its right of leading fresh evidence at

the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

The apex Court also held that the procedure laid down in Sambhu Nath Goyal's case is just and fair and the appellant-employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated. Applying the aforesaid principles, the apex Court dismissed the writ petition of the management. The apex Court further held that it is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before Labour Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/Tribunals have power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the Court/Tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the Court/Tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice.

14. In view of the above settled position of law as decided by the apex Court in the case of Karnataka State Road Transport Corporation v. Smt. Lakshmiddevamma and another (supra) and since the management has not reserved its right to adduce evidence afresh, the Tribunal has rightly rejected the application of the petitioner-management dated 24.12.2001 and passed the impugned order.

15. Since there is no error apparent on the face of the impugned order, this Court is not inclined to interfere with the same.

Accordingly, the writ petition is dismissed.

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Sanju Panda, J.