A THE GENERAL SECRETARY, SOUTH INDIAN CASHEW FACTORIES WORKER'S UNION

v.

THE MANAGING DIRECTOR, KERALA STATE CASHEW DEVELOPMENT CORPORATION LTD. AND ORS.

B MAY 12, 2006

[ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.]

Labour Laws:

C *Industrial Disputes Act, 1947—Section 11A—Re-appraisal of evidence adduced in enquiry to determine the correctness of the findings of enquiry officer and interference with the punishment of reversion of workman, by Industrial Tribunal—Power of—Held: There was no allegation of unfair labour practice or victimization on part of the Management, findings were not perverse and principles of natural justice were complied with while* D *conducting the enquiry—Thus, Labour Court has no power to interfere.*

The question which arose for consideration in this appeal was whether in the industrial dispute under the Industrial Disputes Act, 1947, the Labour Court has power to re-appraise the evidence and E **determine whether the findings of the enquiry officer are correct or not or whether the punishment imposed is adequate or not.**

Dismissing the appeal, the Court

HELD: 1.1 Finding of the Labour Court that enquiry was vitiated F **because it was conducted by an officer of the Management cannot be sustained. The only other ground found by the Labour Court against the enquiry officer is that he made some unnecessary observations and, therefore, he was biased. The plea that enquiry officer was biased was not raised during the enquiry or pleadings before the Labour Court or in earlier proceedings before the High Court. The bias of the enquiry** G **officer has to be specifically pleaded and proved before the adjudicator. Labour Court itself found that the enquiry officer relied on the evidence adduced in the enquiry; that the enquiry was properly held and there was no violation of the principles of natural justice and that the findings were not perverse. In such circumstances, the preliminary order of the** H **Labour Court setting aside the enquiry on the ground that enquiry was**

conducted by an officer of the Management and he had made some observations in the enquiry report which were not warranted in the case is not a vitiating factor and these reasons are not sufficient to set aside the enquiry. The vitiating facts found by the Labour Court against the enquiry are erroneous and are liable to be set aside. When enquiry is conducted fairly and properly, in the absence of any allegations of victimization or unfair labour practice, the Labour Court has no power to interfere with the punishment imposed. In the instant case, there is no allegation of unfair labour practice, victimisation etc.

[494-D-G, 495-B-D]

1.2 Section 11A of the Industrial Disputes Act gives ample power to the Labour Court to re-appraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. Section 11A is only applicable in the case of dismissal or discharge of a workman. Section 11A is not applicable in the instant case, since the workman was reverted by Disciplinary Authority. Labour Court has no power to re-appraise the evidence to find out whether the findings of the enquiry officer are correct or not or whether the punishment imposed is adequate or not. Labour Court can interfere with the findings if the findings are perverse. But, there is a clear finding that the findings are not perverse and principles of natural justice were complied with while conducting enquiry. Therefore, order of High Court does not suffer from any infirmity to warrant interference.

[495-D-E, 495-H, 496-A-B]

Delhi Cloth and General Mills Co. Ltd. **v.** *Labour Court,* **1970 (1) LLJ 23;** *Saran Motors (P) Ltd.* **v.** *Vishwanath,* **(1964) II LLJ 139;** *Tata Engineering and Locomotive Co. Ltd.* **v.** *S.C. Prasad,* **[1969] 3 SCC 372;** *Indian Iron and Steel Co. Ltd* **v.** *Their Workmen,* **[1958] SCR 667;** *Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd* **v.** *The Management,* **[1973] 1 SCC 813, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2521 of 2000.

From the Judgment and Order dated 15.01.1999 of High Court of Kerala at Ernakulam in W.A. No. 439/1994-I.

A B.V. Deepak and Dilip Pillai, Advs., for the Appellant.

E.M.S. Anam and Ms. Malini Poduval, Advs., for the Respondents.

The Judgment of the Court was delivered by

B **ARIJIT PASAYAT, J. :** Challenge in this appeal is to the legality of judgment rendered by a Division Bench of the Kerala High Court setting aside the judgment of a learned Single Judge. By the impugned judgment it was held that the punishment of reversion passed by the disciplinary authority was proper. The concerned workman was in the employment of C Kerala State Cashew Development Corporation Ltd. (hereinafter referred to as the Corporation) the respondent No.1 in this appeal.

Background facts in a nutshell are as follows :

D The appellant-Union raised an industrial dispute on behalf of one of its member questioning correctness of the order passed by respondent No.1 reverting the concerned workman Sh. S. Sivasankara Pillai, Manager, Grade II. He was designated as Manager, Grade II in the respondent No.1's establishment. He was charge-sheeted for misconduct of (1) causing willful loss to the Corporation: (2) habitual breach of rules; (3) making false E allegations against superior officers; (4) gross negligence of duty. The essence of allegations raised against him was that by order dated 1.2.1975 he was put in charge of filling and packing section of that factory. On 8.9.1975 he did not arrange work in the filling section and that occasioned considerable loss to the factory. On 11.9.1975 the filling work suffered for F about 1½ hours due to his indifferent attitude. On 16.9.1975 no work was done in the filling and packing sections, though the workmen were ready to work. Because of this non-cooperation and indifference, huge loss was caused to the Corporation. Dissatisfied with the explanation submitted by the employee, a domestic enquiry was conducted. The Assistant Personnel Manager of the respondent establishment conducted the enquiry. The G enquiry officer submitted a report holding that the charges were proved in the enquiry. After considering the findings of the enquiry officer and seriousness of the charges leveled against the employee, the Management imposed a punishment by reverting the employee as factory clerk, but the salary he was drawing was protected. According to the Respondent-H Management, he was not dismissed from service by taking a lenient view,

even though the misconducts proved in the enquiry were serious. A

The appellant-Union filed statement before the Labour Court questioning the enquiry as well as the punishment imposed. The respondent-management in its pleadings raised three preliminary points:

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(1) Whether the order of reference is proper and valid.

(2) Whether the enquiry held is proper and valid.

(3) Whether the findings of the enquiry officer are based on legal evidence or whether the same are perverse? C

The Labour Court at first held that the concerned employee was not a workman as defined under the Industrial Disputes Act, 1947 (in short the 'Act') and hence there is no valid industrial dispute. That order was set aside by the Kerala High Court and remanded for reconsideration. After remand D the Labour Court in preliminary order found that the employee is a workman as defined under the Act and Industrial dispute is validly raised. With regard to the enquiry, it was found that enquiry was fair and proper and findings are not perverse. But the Labour Court set aside the enquiry report on the ground that the enquiry officer was biased as enquiry was conducted by an employee of the Corporation and he also made certain observations against E the workman, which were not necessary for considering whether there was misconduct or not. The relevant portion of the preliminary order is as follows:

> "The workman challenges the validity of the enquiry. The F findings of the enquiry officers are also challenged by him. As such first of all I shall see whether the enquiry held is proper and valid. In the enquiry 4 witnesses are examined on the side of the management and 19 documents were marked. Three documents were marked on the side of the workman. A perusal of the enquiry G report and connected papers shows that the workman fully participated in the enquiry. The witnesses examined by the management were cross examined in extensor by the workman. The requests made by the workman were allowed by the enquiry officer. It has therefore to be said that principles of natural justice have been complied with by the enquiry officer. In that sense it H

A has to be said that the enquiry is proper and valid."

After holding that enquiry was proper and valid, with regard to the findings, the Labour Court held as follows:

B "...The enquiry officer relied on the evidence of the 4 witnesses examined by the management. He believed them and found the workman guilty of the charges. I do not say that the findings are perverse."

Therefore, after holding that natural justice was complied with, enquiry C held was proper and valid and that the findings are not perverse, the Labour Court set aside the enquiry because enquiry officer was an interested person and biased. Reasoning of the Labour Court as far as relevant is as follows :

D "...As stated by me earlier the enquiry was conducted by the Assistant Personnel Manager of the Corporation. This I may state was not proper. He is an employee of the corporation. As such needless to say that he is an interested person, interested in the corporation. He can and he will record a finding in favour of the corporation only. The enquiry cannot therefore be said to be an E impartial one. It is true that there is not legal bar in the management holding an enquiry by any of its officers. But in fairness that task could and should have been entrusted with some external agency. This the management had not done. The enquiry cannot therefore be said to be a proper and valid one."

F The Labour Court also held that the enquiry officer made some observations which are unwarranted and that shows that the enquiry officer was biased towards the workman. Hence, he did not accept the report and posted the case for fresh evidence.

G The Management challenged the preliminary order before the Kerala Court by filing O.P. No.5185 of 1987 and by judgment that original petition was dismissed holding that validity of the preliminary order can be canvassed by the Management if the award goes against it. Thereafter, the witnesses examined in the enquiry were again examined. No additional evidence was H let in by the worker. Labour Court re-appraised the evidence and found that

the charges were not proved and hence the punishment imposed was set aside by the award. Learned Single Judge found that the findings of the Labour Court in the preliminary order to the effect that the employee is a workman as defined under the Act is based on evidence and there is valid industrial dispute. With regard to the contention that enquiry was valid, no specific finding was recorded. The contention of the Management that enquiry cannot be said to be vitiated merely because the enquiry was conducted by an officer of the Management was not considered by the learned Judge. The learned Judge merely found that the entire matter was considered by the Labour Court and Labour Court had jurisdiction to go into all the aspects of the dispute. Therefore, the original petition was dismissed. The learned Single Judge, *inter alia*, held as follows :

> "...It was submitted that the first respondent was not justified to go into the validity of the domestic enquiry of the findings arrived at by the Enquiry Officer, which, it was submitted, were matters outside the scope of Exh. P.5 (Rejoinder dt. 29.8.1978). I do not agree that this submission is justified. The first respondent, in my view has jurisdiction to go into all aspects of the dispute and to come to conclusions based on the evidence and other materials."

The respondent No.1 filed a writ appeal before the Division Bench contending that the preliminary order of the Labour Court in setting aside the enquiry report was illegal. However, the said issue was not considered by the learned Single Judge. Though it did not contest the finding that the concerned employee is a workman as defined under the Act and that there was valid preference for adjudication, it questioned the conclusion. It was submitted that having found that the enquiry conducted was fair and proper, there was no scope for reappraising the evidence or to consider the adequacy of punishment. The Labour Court had erred in holding that since enquiry was conducted by an officer of the Management, the enquiry was vitiated and also because he made some observations against the workman that did affect the validity of the enquiry. The Division Bench accepted the stand of the respondent No.1. Questioning correctness of the conclusions of the Division Bench, the present Appeal has been filed.

Learned counsel for the appellant submitted that the fact that the enquiry officer was an officer of the management itself affected the fairness of the enquiry. Further his biased approach was evident from the unnecessary

A observations made by him. He, therefore, contended that the view of the learned Single Judge was the correct one and should be restored. Learned counsel for the respondent No.1 on the other hand supported the impugned order of the High Court.

B In *Delhi Cloth and General Mills Co. Ltd.* v. *Labour Court,* [1970] 1 LLJ 23 this Court has held that merely because the Enquiry Officer is an employee of the Management it cannot lead to the assumption that he is bound to decide the case in favour of the Management.

In *Saran Motors (P) Ltd.* v. *Vishwanath,* [1964] II LLJ 139 this Court C held as follows :

> "It is well-known that enquiries of this type are generally conducted by officers of the employer companies and in the absence of any special bias attributable of a particular officer, it has never been held that the enquiry is bad just because it is conducted by an D officer of the employer."

Therefore, finding of the Labour Court that enquiry was vitiated because it was conducted by an officer of the Management cannot be sustained.

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The only other ground found by the Labour Court against the enquiry officer is that he made some unnecessary observations and, therefore, he was biased. The plea that enquiry officer was biased was not raised during the enquiry or pleadings before the Labour Court or in earlier proceedings before F the High Court. The bias of the enquiry officer has to be specifically pleaded and proved before the adjudicator. Such a plea was significantly absent before the Labour Court. We also note that the Labour Court itself found that the enquiry officer relied on the evidence adduced in the enquiry and its findings were not perverse. After such a finding, even if he has stated some unwarranted observations, it cannot be stated that report is biased. In G *Tata Engineering and Locomotive Co. Ltd.* v. *S.C. Prasad,* [1969] 3 SCC 372 this Court held that :

> "Industrial Tribunals, while considering the findings of domestic enquiries, must bear in mind that persons appointed to hold such H enquiries are not lawyers and that such enquiries are of a simple

nature where technical rules as to evidence and procedure do not prevail. Such findings are not to be lightly brushed aside merely because the enquiry officers, while writing their reports, have mentioned facts which are not strictly borne out by the evidence before them."

In this case for finding the employee guilty, the enquiry officer relied on the evidence adduced in the enquiry and Labour Court itself found that the findings were not perverse. In such circumstances, the preliminary order of the Labour Court setting aside the enquiry on the ground that enquiry was conducted by an officer of the Management and he had made some observations in the enquiry report which were not warranted in the case is not a vitiating factor and these reasons are not sufficient to set aside the enquiry.

The Labour Court had earlier held that the enquiry was properly held and there was no violation of the principles of natural justice and that the findings were not perverse. The vitiating facts found by the Labour Court against the enquiry are erroneous and are liable to be set aside. If enquiry is fair and proper, in the absence of any allegations of victimization or unfair labour practice, the Labour Court has no power to interfere with the punishment imposed. Section 11A of the Act gives ample power to the Labour Court to re-appraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. Section 11A of the Industrial Disputes Act is only applicable in the case of dismissal or discharge of a workman as clearly mentioned in the Section itself. Before the introduction of Section 11A in *Indian Iron and Steel Co. Ltd.* v. *Their Workmen,* [1958] SCR 667 this Court held that the Tribunal does not act as a Court of appeal and substitute its own judgment for that of the Management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc. on the part of the management. There is no allegation of unfair labour practice, victimisation etc. in this case. The powers of the Labour Court in the absence of Section 11A is illustrated by this Court in *Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd.* v. *The Management,* [1973] 1 SCC 813. When enquiry was conducted fairly and properly, in the absence of any of the allegations of victimisation or *malafides* or unfair labour practice, Labour Court has no power to interfere with the punishment imposed by the management. Since Section 11A is not applicable, Labour Court has no

A power to re-appraise the evidence to find out whether the findings of the enquiry officer are correct or not or whether the punishment imposed is adequate or not. Of course, Labour Court can interfere with the findings if the findings are perverse. But, here there is a clear finding that the findings are not perverse and principles of natural justice were complied with while conducting enquiry.

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Above being the position the impugned judgment of the High Court does not suffer from any infirmity to warrant interference.

The appeal is sans merit and is dismissed. No costs.

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N.J. Appeal dismissed.