

Before Hon'ble M. S. Liberhan & M. L. Koul, JJ.

O. N. GIRI,—Petitioner.

versus

PRESIDING OFFICER, LABOUR COURT-CUM-INDUSTRIAL
TRIBUNAL NO. 1, FARIDABAD & ANOTHER,—Respondents.

C.W.P. No. 17576 of 1994

December 6, 1995.

Industrial Disputes Act, 1947—Domestic inquiry—Worker participating in inquiry and then absenting—No cogent reasons given—Labour Tribunal holding inquiry to be fair—Interference in exercise of writ jurisdiction whether permissible.

Held, that once the worker wilfully absented and conducted himself in such a manner that the inquiry was likely to be impeded for he wilfully tried to delay or avoid the proceedings. Dilatory tactics have necessarily to be discouraged and when a claimant in a labour dispute during domestic inquiry appears to be contumacious in his conduct the Inquiry Officer after satisfying himself that the worker had no good ground for not appearing proceeded the matter *ex parte* and found that the misconduct was proved against him.

(Para 7)

Further held, that this Court has to only while exercising its jurisdiction under Article 226 of the Constitution of India see whether any illegality or impropriety has been committed by the Tribunal in disposal of the reference before him or he has misconstrued the evidence led by the parties before him. We feel that the Tribunal on a proper adjudication has come to the conclusion that a fair domestic inquiry was conducted against the worker and no illegality was committed nor there was any violation of the principles of natural justice.

(Para 8)

R. K. Sharma, Advocate. for the petitioner.

Deepinder Singh, Advocate for respondent No. 2.

JUDGMENT

M. L. Koul, J.

(1) Upon a reference made by the appropriate Government to the Industrial Tribunal-cum-Labour Court-I, Faridabad, a preliminary issue "whether the enquiry was fair and proper?" was struck and on the adjudication the finding made was that the domestic enquiry conducted in the case was fair and proper and no violation of any of the principles of natural justice had been made in

conduction of the enquiry held by the Enquiry Officer on the basis of which the petitioner (hereinafter referred to as the Worker) was dismissed by the employer.

(2) Not being satisfied with the said order of the Labour Court a writ in the nature of Certiorari within the Articles 226 and 227 of the Constitution of India for quashing the impugned order has been preferred by the petitioner contending therein that under the instructions of the Management of M/s K. G. Khosla Compressors Limited (in short the Company) got a fake and false enquiry conducted through Shri Sardari Lal Sharma, the then Vigilance Adviser of the Company and the worker was not provided a chance to get his case defended through Mr. R. K. Sharma, a co-worker of the worker. All the necessary documents were not allowed to be produced before the Enquiry Officer as a result of which the enquiry conducted was farce and the same was conducted on a fabricated charge-sheet. Mr. Sardari Lal Sharma, who was a witness in some criminal case registered against the worker, was a party to the incident as complainant and as such could not conduct the domestic enquiry against the worker.

(3) In short, the facts involved in the case with regard to which the worker was charge sheeted and a domestic enquiry was conducted against him are that he handed over a sealed packet containing 108 spring plates against a packing list which accounted for 100 spring plates only for packing and despatch, being fully aware that the said packet contained 108 such plates and not 100 only. These plates valued Rs. 2254. The worker was found guilty of misconduct and was dismissed from service on 18th December, 1987.

(4) The Labour Court after recording the evidence of the parties found that the domestic enquiry held by the Company in all probabilities and circumstances of the case was fair and proper and in no manner any violation of the principles of natural justice or the procedure was committed by the Enquiry Officer in holding the enquiry. Rather appropriate opportunity was provided to the worker to participate in the enquiry.

(5) On perusal of the order passed by the Labour Court it is found that the preponderance of evidence was weighing against the worker showing that the Company in a *bona fide* manner by the honest motive of exercising its duty to discharge the holding of domestic enquiry authorised their Vigilance Adviser Mr. Sardari Lal Sharma to hold a domestic enquiry in the matter as to whether

the conduct of the worker in handling his employer's property committed any misconduct which was indicative that he was unfit for a position of trust and confidence which would justify the Company in dismissing him. Wilful damage to the employer's property, goods or reputation has generally and usually been held misconduct with regard to his duty by a worker towards his employer i.e. an industrial establishment.

(6) Normally in industrial adjudication the plaint of the workman is known as statement to which the employer files the written statement. The workman may file a rejoinder to the written statement of the employer. Then the issues like a civil case are framed. The burden of proof in the first instance remains fixed at a party who asserts the affirmative of the issue and not upon the party who denies it. However, burden of proof like a civil proceeding remains changing and it is on the preponderance of the evidence that the matters are to be adjudicated by the Labour Court.

(7) In the case in hand, the Tribunal came to the conclusion that ample opportunities were provided to the worker to participate in the enquiry and to cross-examine the witnesses led by the Company. On the perusal of the order it is found that the worker participated in the enquiry starting with effect from 3rd October, 1987 till 12th November, 1987 with his co-worker Mr. R. K. Sharma (now the counsel on his behalf before us). After that it was for lame and unwarranted excuses that the worker got the enquiry adjourned for 13th November, 1987, 17th November, 1987, 20th November, 1987, 24th November, 1987, 25th November, 1987 and 26th November, 1987. Since the worker did not appear after 26th November, 1987 the Enquiry Officer proceeded against him *ex parte* and the domestic enquiry was completed. The report was submitted to the Company which concurred with the report of the Enquiry Officer and the worker was dismissed from service. It is a proved fact that the worker had participated in the enquiry till 26th November, 1987 and was being assisted by his co-worker Mr. R. K. Sharma till 17th November, 1987. No proof is available on the file that Mr. Sharma was not allowed to defend the case of the worker. The fact remains that Mr. Sharma helped him in the enquiry and the same was conducted in a fair manner. Once the worker wilfully absented and conducted himself in such a manner that the enquiry was likely to be impeded for he wilfully tried to delay or avoid the proceedings. Dilatory tactics have necessarily to be discouraged and when a claimant in a labour dispute during domestic enquiry appears to be contumacious in his conduct the

Enquiry Officer after satisfying himself that the worker had no good ground for not appearing proceeded in the matter *ex parte* and found that the misconduct was proved against the worker.

(8) The worker got a good chance to raise all the allegations with regard to the ill-conduction of the enquiry in a fair manner before the Tribunal who after shifting and scanning the evidence of the parties found that a fair domestic enquiry was conducted against the worker. The worker in his petition has tried to raise a new case for determination and we do not find any reason to go in such pleas which are not relevant for the disposal of the case under writ jurisdiction for this Court has to only while exercising its jurisdiction under Article 226 of the Constitution of India see that whether any illegality or impropriety has been committed by the Tribunal in disposal of the reference before him or he has misconstrued the evidence led by the parties before him. We in no manner feel that the evidence led by the parties has not been assessed and valued properly by the Tribunal but feel that he on a proper adjudication has come to the conclusion that a fair domestic enquiry was conducted against the worker and no illegality was committed or there was any violation of the principles of natural justice.

(9) The worker has made a charge of *mala fide* against Shri Sardari Lal Enquiry Officer in conduction of the domestic enquiry against him. Said Sardari Lal Sharma has not been made a party to this petition and the same, therefore, at the first instance, was liable to be dismissed on non-joinder of necessary party and for non-impleading of a party against whom specific allegations of *mala fides* have been levelled.

(10) It is very important to mention here that the worker never, during the enquiry, raised a plea that Shri Sardari Lal suffered from any disqualification and could not be appointed as Enquiry Officer and asked for his change. Such allegation that Shri Sardari Lal Sharma was not a competent person to be appointed as an Enquiry Officer is an assumption which has been raised late in the day and that does not repose any confidence with us that Shri Sardari Lal Sharma was not a proper person to be appointed as Enquiry Officer for some report was made by him with the police with regard to the mis-appropriation of the property to the tune of rupees three lacs committed by some officials of the Company. That in no manner could affect the fair mind of the Enquiry Officer. He has conducted an independent enquiry and found that the worker

committed positive misconduct which was quite incompatible with the express and implied terms of relationship of the employer with the employee. What is misconduct will all along depend upon the circumstances of each case and the mere fact that the worker instead of packing 100 spring plates for despatch had packed 108 spring plates thereby causing loss to the Company to the tune of Rs. 2,254.

(11) Mr. Sharma whom the worker submits had not been spared by the Company to defend his case had been transferred to Delhi during the enquiry with regard to which he went to the Labour Court and his transfer was found to be valid by the Labour Court and his application was dismissed. So transfer of Mr. Sharma does not assume any importance and can be found that he was transferred only not to help the worker in the conduction of the enquiry. Rather he was transferred on his own merits of his service record and for that reason his order of transfer was not set at naught by the Labour Court because no *mala fides* were found in his transfer.

(12) The worker has been provided adequate opportunities by the Company to engage the services of Mr. Sharma to defend his case in the enquiry. Although Mr. R. K. Sharma at the relevant time happened to be posted as P.A. to the Material Manager of the Company and the said Manager was not ready to part with the services of Mr. Sharma but the Enquiry Officer took a bold decision in fixing the enquiry proceedings either after office hours or during the lunch hours 12.30 to 1 P.M. in order to enable the worker to avail the services of Mr. R. K. Sharma.

(13) On all fours, as has been held by the learned Tribunal rightly, we find that the domestic enquiry was held in accordance with the procedure and principles of natural justice in a fair manner and the order passed by the learned Tribunal does not suffer from any illegality or impropriety. Hence this writ petition fails which is dismissed without any costs for the matter relates to a dismissed worker.

S.C.K.

Before Hon'ble H. S. Brar & M. L. Koul, JJ.
BATRA FINANCE PRIVATE LTD,—Petitioner.

versus

CHANDIGARH ADMINISTRATION & OTHERS,—Respondents.

C.W.P. No. 5527 of 1994

18th October, 1995

Capital of Punjab (Development & Regulation) Act, 1952—
Ss. 1 & 8—Chandigarh Lease Hold Sites and Building Rules, 1973—
Rls. 1, 6 & 13—Payment of ground rent—Cinema site developed in