Before K. Kannan, J.

AWDESH GOSWAMI AND OTHERS—*Petitioners*

versus

M/S K.G. KHOSLA AND ANOTHER—*Respondents*

C.W.P. No. 8724 of 2000

14th October, 2009

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—Charges of participation of workmen in strike & assault on security staff—Termination of active functionaries of workers Union—Management declaring lockout and seeking permission from Government to close factory—No permission granted by Government—Factory resuming operations—Petitioners not permitted to join—Removal from service—Reference—No permission sought by Management from Labour Court to prove misconduct—Management leading evidence without any permission—Workmen participating in whole proceedings by cross-examination of witnesses without any objection—Workmen cannot be allowed to plead at this stage that management ought not to have been permitted to rely on evidence adduced before Labour Court—Labour Court finding that Management establishing charges of misconduct—Management entering into a separate settlement with other classes of workmen by leaving registered union—Termination of workmen only on account of fact that they were members of trade union—Evidence only supporting case of some workmen having resorted to strike—Management failing to show that strike was illegal and also to prevent same without entering into meaningful negotiation for putting an end to strike—Action of Management to terminate services of workmen unjustified and illegal—Petition allowed, orders of termination held to be illegal and ineffective.

Held, that there was definitely nothing brought on record to show that the management had sought to prove the misconduct. The management had without any permission started leading evidence purporting to prove the misconduct attributed to the workman and the workman had also

participated in the whole proceedings by cross-examination of the witnesses without any objection. It should, therefore, be taken only as a situation where the Labour Court had granted permission and it would be too late in a day to allow the workmen to plead that the management ought not to have been permitted to prove the misconduct or rely on the evidence adduced before the Labour Court.

(Para 6)

Further held, that I have examined the evidence rendered before the Labour Court minutely only to satisfy myself about the utter perversity of the finding of the Labour Court that the charges had been proved. The charge sheet was specific but there existed no proof. The charge sheet proceeded even on a wrong basis that there was an illegal strike. The evidence only supported the case of some among the workmen as having resorted to strike. If the workmen had joined the strike, so long as it was not shown to be illegal, any act by the management to prevent the same without entering into meaningful negotiation for putting an end to the strike or entering into a settlement but dismissing some workmen only will have to be characterized as only as unfair labour practice. The action of the management to terminate the services of the workmen was, therefore, clearly unjustified and illegal.

(Para 11)

Ms. Abha Rathore, Advocate, for the petitioners.

Vivek Sharma, Advocate, for respondent No. 1.

K. KANNAN, J. (Oral)

(1) The award under challenge at the instance of the workmen is a finding that the retrenchment of the workmen was unjustified. Still the Labour Court had awarded only Rs. 25,000 as conpensation to each of them in lieu of reinstatement.

II. Facts leading to the lis

(2) The 10 workmen, who were seeking for reference before the Labour Court through individual applications to the Government were indeed the residual lot. Earlier 23 persons felt aggrieved by the same order of retrenchment by the management, but 4 persons, however, were later taken back and 19 of them had sought through demand notices complaining of illegal termination. The Government of Haryana rejected the demand that led to filing of the writ petition before this Court seeking for issuance of

writ of mandamus for a direction against the Government for reference to a Labour Court. The reference was ultimately made by the Government and the persons that prosecuted the case before the Labour Court numbered 10, who continue as a flock till the cases are brought for decision by this Court now.

(3) The stand-off between the workmen and the management is alleged to have begun when the workmen through their Union had made a charter of demands, which was not favourably considered. The management had sought for some undertaking from the workmen and when some of them had conceded to the management's dictates, 23 of them, who were active functionaries in the worker's Union, found themselves singled out. The management declared a lockout on 5th September, 1991 and continued the status till 7th June, 1992. They had sought for permission from the Government to close the factory but permission was not granted. Ultimately when the factory resumed operations, the petitioners, among others, had not been permitted to join on the plea that the charge-sheets had been levelled against them for misconduct and they had been removed on proof of such misconduct. The workmen claimed that they were never apprised of any imputations of misconduct and that there had even been passed orders of retrenchment. The issue said to have come to light only during the conciliation proceedings and that was when the matters came to a head culminating in the reference to the Labour Court for adjudication. The management had not expressed themselves anywhere in the written statement that they were seeking for permission before the Labour Court to prove the misconduct, but, however, they produced several witnesses to establish the so-called misconduct that the workmen had been charged with.

III. The law as stated in Karnataka State Road Transport Corporation.

(4) The initial objection of the learned counsel appearing for the workmen was that the management, Ms. Abha Rathore, was really springing a surprise at the trial by attempting to prove the misconduct even without seeking express permission from the Labour Court. The learned counsel relied on a decision of the Hon'ble Supreme Court in **Karnataka State Road Transport Corporation** *versus* **Smt. Lakshmidevamma (1)**, that

(1) 2001 (2) S.C.T. 1041

sets out the procedure for proof of misconduct in the event of the Court's finding that the domestic enquiry had not been fair and proper. The Constitution Bench resolved the controversy in view of the seeing conflict of decisions expressed in **Shambhu Nath Goyal** *versus* **Bank of Baroda and others, (2)** and **Rajendra Jha** *versus* **Labour Court (3).** In **Shambhu Nath Goyal** *(supra),* the Hon'ble Supreme Court held that right of employer to adduce additional evidence in a proceeding questioning the legality of the order terminating the service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or should make an application seeking the permission to take certain action or seeking approval of the action. In **Rajendra Jha** *(supra)* however, the Court held that the order of the Labour Court allowing the employer to lead evidence had been accepted and acted upon by the workman. He had also given a list of his won witnesses and had cross-examined the witnesses. The Hon'ble Supreme Court, therefore, held that it would be wrong to undo what had been done in pursuance of the order of the Labour Court.

(5) The majority view of the Constitution Bench held that there was really no conflict between **Shambhu Nath Goyal** and **Rajendra Jha,** while a single Judge (V.K. Sabharwal) held that **Shambhu Nath Goyal** did not lay down the correct law. The majority opinion with a supplementary note of Justice Shivraj V. Patil held that keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal or the Labour Court, the direction in **Shambhu Nath Goyal** itself was not required to be varied being just and proper. Justice Shivraj V. Patil had added a supplementary note that the Labour Court/Tribunal had the same powers as invested in a Civil Court under the Code of Civil Procedure and the Courts would have the power to call for any evidence at any stage of the proceedings. Even then the Court had held that in order to avoid unnecessary delay and multiplicity of proceedings, the management had to seek the leave of the Court in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its right and contentions. The Hon'ble Bench, however, observed that it was

(2) 1984 (1) SCR 85
(3) 1985 (1) SCC 544

not be understood as placing fetter on the powers of the Court or the Tribunal requiring or directing the parties to lead additional evidence including production of documents at any stage.

(6) The law laid down by the Constitution Bench must, therefore, be understood as laying down a procedure where the management has perforce to seek for permission to let in evidence and seek to prove the misconduct at the time of filing of the written statement in **Shambhu Nath Goyal.** Still this cannot fetter the right of the Labour Court on the Tribunal to permit the management in appropriate circumstances to adduce evidence in proof of the misconduct. In this case, there was definitely nothing brought on record to show that the management had sought to prove the misconduct. What really happened was the situation as found in **Rajendra Jha** *(supra)* when the management had, without any permission, had started leading evidence purporting to prove the misconduct attributed to the workman and the workman had also participated in the whole proceedings by cross-examination of the witnesses without any objection. It should, therefore, be taken only as a situation where the Labour Court had granted permission and it would be too late in a day to allow the workmen to plead that the management ought not to have been permitted to prove the misconduct or rely on the evidence adduced before the Labour Court. It would have been legally tenable, keeping in view the law expressed by the Constitution Bench in **Karnataka State Road Transport Corporation** *(supra)* to object to the management to let in evidence when the Labour Court could have either accepted the plea of the workmen and rejected permission, or for sufficient reasons and in exercise of its discretion (as in the view expressed by Justice Shivraj V. Patil), the management could have been permitted to let in evidence. In this case, the evidence was permitted to be let in and the workmen have also availed of full opportunity to cross-examine the management-witnesses. The Labour Court had found that the misconduct had been proved which is assailed by the learned counsel appearing for the workmen. The allegations of misconduct and the manner of proof which was found as having been established and which is assailed before the Court still, therefore, require our measured attention.

IV. The charge-sheet against the workmen

(7) The charge-sheet as found in the award refers to three charges, which are as under :—

> *"1. That you incited and instigated the willing workers to illegal and unjustified strike with effect from 26th August, 1991 to 4th September, 1991 and incited them also to various acts of indiscipline apart from yourself being on such strike and committing various acts of indiscipline during the said strike and thereby causing serious financial damages to the Company.*
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> *2. That on 4th September, 1991, you pushed aside security staff posted at Gate No. 1 and forcible entered the factory without giving the undertaking as required. You incited and instigated the other workers also to do so for their entering the premises. You again incited and instigated them to strike and to commit various acts of indiscipline.*
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> *Except in case of workmen Avdesh Goswami, Ravinder Kumar and Jaikrit Lal where charge No. 3 has also been added, which is as follows :*
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> *3. You in spite of having been locked out since 5th September, 1991 presented yourself at Gate No. 1 of the factory and obstructed the entry of exempted employees S/Sh. G. Ghosh and M.L. Nandwani today at 8.30 A.M. and did not allow them to go inside."*

The third charge was found to have been not established and the charges 1 and 2 related to the alleged participation of the workmen in an illegal strike between 26th August, 1991 to 4th September, 1991 and the incitement of other workmen to such participation and commission of acts of sabotage. The second charge was a charge of assault on the security staff at Gate No. 1 on different date on 4th September, 1991. The Labour Court had, by sweeping observation held that the witnesses had comprehensively spoke about the misconduct and the management had established the allegations against the workmen.

V. No proof of strike, muchless, illegal strike and instances of unfair labour practice.

(8) The learned counsel appearing for the workmen, Ms. Abha Rathore would, however, strenuously contend that there was not even a proof that there had been a strike by the workmen between 26th August, 1991 to 4th September, 1991 and that it was an illegal strike. According to her, the activity of the factory was not in relation to any public utility undertaking and Section 22 was, therefore, not operative which sets out procedure for issuance of notices prior to the actual strike. Section 23 was also not applicable since it contemplates a general prohibition during the pendency of the conciliation or proceeding before the Labour Court or the Tribunal or Arbitration or during the period of operation of award or settlement. Section 24 which brings out instances of illegal strikes shall operate only if the strike was in contravention of Section 22 or 23 or if it was in contravention of Section 10(3) or 10-A(4a), all of which admittedly were not attracted. The submission, therefore, was there was no illegal strike at all and even if it were to be assumed that there was a strike, it is a legitimate weapon in the hands of the workmen and the management cannot resort to a lockout which admittedly it did.

(9) From the period from 5th September, 1991 to 7th June, 1992, the learned counsel had at least three instances to show that the management was indulging in unfair labour practice by deliberately singling out the workmen, who had been the office bearers of the trade union and entering into negotiation with persons, who are not members of the Union, but with separate classes of workmen with an intent to derive a wedge of misunderstanding amongst the workmen. The learned counsel would refer to Entry 15 of Schedule V which describes the act of refusing to bargain collectively in good faith with the recognized trade union as constituting unfair labour practice. Entry 5 in the same schedule, is an act to discharge or dismiss a workman by way of victimization and it is another instance of unfair labour practice. Entry 4-A and B that sets out the circumstance of *"discharging or punishing a workman because he urged other workmen to join or organize a trade union or discharge or dismissing a workman for taking part in any strike not being a strike, which is deemed to be an illegal strike under the Act"* as other instances of unfair trade practices. According to the learned counsel, the workmen had been ultimately

discharged from service only because of their participation in the trade union activities. There was no proof of strike and even if it was proved, the participation in the strike itself was made to be the ground for discharging their services. On an admitted premise, the management had deliberately entered into a separate settlement only with other classes of workmen by leaving the registered Union by the way side and ignoring it for working out a settlement. I have no doubt in my mind that the management had practiced victimization against the workmen and they had been terminated only on account of the fact that they were members of the trade union and they were alleged to have canvassed support for their activities.

VI. Charges not proved-finding of Labour Court tot he contrary, perverse.

(10) Even without characterizing the management as being guilty of unfair trade practice, even the charges attributed to them had not been proved. We have already seen that the first charge was the alleged incitement carried out by the workmen to join the illegal strike. There was no proof of strike. Thee was no illegality, even if there was one. The acts of sabotage had not been spoken by any of the witnesses. The Labour Court was unjustified in making an observation that the witnesses had spoken so. Even as regards the second charge that there had been an assault on security staff, even the security staff, who had given evidence did not expressly say so; on the other hand, his evidence was that the workmen forced their entry. If the charge had been that the workmen had forced the entry without the permission of the security staff and evidence had been given that he had been pushed down, it could be forcible entry. On the other hand, if the charge was a definite act of assault on the security staff, a mere expression of a forcibly entry in evidence by the security cannot prove the misconduct of assault. The learned counsel for the workmen had taken me through the evidence of each one of the witnesses of the management. MW-1 D.R. Gera, Deputy Manager, had given evidence only to the effect that the orders of dismissal had been sent to the workmen, but they had been received back unserved. Nothing was elicited from him as regards the misconduct attributed. MW-2 Bhupinder Mallah, Deputy Manager of the respondent, had stated that the workers had stopped working from 26th August, 1991 and the Company was forced to lockout on 5th September, 1991 and that

all the claimants were involved in the strike. His evidence was that he had advised to all the workmen to resume work. He again did not utter a word about any misconduct found in the charge-sheet. MW-3 R.K. Kapoor stated that the workmen had gone to strike and the management was forced to declare a lockout. He also gave evidence to the effect that three of the workmen had been advised by him to resume the work. MW-4 referred to one Ravinder, as having participated the strike and that he had advised him not to resort the strike. MW-5 referred to a person by name Lalu as having working under him, who also had joined the alleged strike and that he had advised him to resume work. MW-6 Sanwal Ram was the Supervisor, Security Staff, but he had not spoken about the alleged assault. MW-7 Ram Singh, who was the Security Guard himself stated no more than the workmen as having forcibly entered the factory. He did not utter any word on the alleged assault on him as found in the charge-sheet.

(11) I have examined the evidence rendered before the Labour Court minutely only to satisfy myself about the utter perversity of the finding of the Labour Court that the charges had been proved. The charge-sheet was specific but there existed no proof. The charge-sheet proceeded even on a wrong basis that there was an illegal strike. The evidence only supported the case of some among the workmen as having resorted to strike. If the workmen had joined the strike, so long as it was not shown to be illegal, any act the management to prevent the same without entering into meaningful negotiation for putting an end to the strike or entering into a settlement but dismissing some workmen only will have to be characterized as only as unfair labour practice. The action of the management to terminate the services of the workmen was, therefore, clearly unjustified and illegal.

VII. Present disposition

(12) The award of the Labour Court, under the circumstances, is set aside and the reference shall be answered in favour of the workmen that the impugned termination was illegal and ineffective. The workmen shall be treated as having continued in service and all the monetary benefits accruing to them from the date when they were terminated from their services till date, shall be paid. It was contended by the learned counsel appearing for the workmen that the factory has remained closed and the management had shifted its operations to southern part of India. If the

factory has closed with permission from Government, the workmen shall be entitled to all the monetary benefits till the date of closure as if they continued in service and shall also be entitled the closure compensation as provided by law. If there is no closure and no permission for such closure has also been accorded, the workmen shall be entitled to be treated as if they continue in service and be paid all the benefits till date or till the date when they had reached the age of superannuation. In respect of cases where the workmen would have reached the age of superannuation, the benefit shall accrue till the respective dates of superannuation. The workmen shall also be entitled to all terminal benefits in the event of such attainment the age of superannuation.

(13) The writ petition is, accordingly, allowed with cost assessed at Rs. 10,000 in favour of the workmen.

R.N.R.

Before K. Kannan, J

LAL BAHADUR—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

C.W.P. No. 13596 of 2001

15th October, 2009

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—Chapter V-B, Ss. 25-F, 25-G, 25-H and 25-N—Factories Act, 1948—S.2(m)—Termination of workman—High Court setting aside order of termination—Letters Patent Bench setting aside order of Single Judge while holding that there was no prima facie proof that respondent was an 'industrial establishment'—Question of fact-Referred to Labour Court—Labour Court finding that workman failing to prove that respondent was an 'industrial establishment' and also principles u/ss 25-G & 25-H not applicable-Labour Court in other cases holding respondent as industrial establishment and termination made in violation of S.25 held bad—'Industrial Establishment'—Includes a 'factory' as defined in S.2(m) of 1948