

CASE NO.:
Appeal (civil) 2194 of 2001

PETITIONER:
Management of Krishnakali Tea Estate

RESPONDENT:
Akhil Bharatiya Chah Mazdoor Sangh & Anr.

DATE OF JUDGMENT: 10/09/2004

BENCH:
N. Santosh Hegde, S.B. Sinha & A.K. Mathur

JUDGMENT:
JUDGMENT

Santosh Hegde, J.

This appeal by leave of this Court is preferred against judgment and order dated 8th of February 2000 made by the Gauhati High Court in Writ Appeal No. 519 of 1997 confirming an order of the learned Single Judge of the same court in Civil Rule No.1485 of 1992 dated 19th July 1997. The original writ petition was filed by the first respondent herein against an award made by the Labour Court dated 21st of August 1991 which award upheld the decision of the appellant-management to dismiss the concerned workmen on the ground of proved misconduct.

Facts necessary for the disposal of this appeal are as follows:

Concerned workmen who are represented by the first respondent herein were in the employment of the appellant-management which was managing a Tea Estate. It is the case of the management that in pursuance to a demand for bonus of 20% made by the workmen which was not acceded to by the management, certain workers came in a mob on the night of 12th-13th of October 1980 to the bungalow of Manager of the Tea Estate, armed with lethal weapons such as lathis, bows and arrows and axes and they gheraoed the Manager and others and by threat demanded bonus at the rate of 20% as against 8.33% offered by the management. The gherao according to the management continued till 3.00 AM on 13.10.1980. It is also alleged that on being informed, the police, Bilasipara arrived at the Estate but the mob consisting the workmen became violent and damaged the bungalow and other property of the Estate. It is also alleged that during the wrongful confinement of the Manager, he was compelled to sign a document, agreeing to pay 20% bonus. It is based on the above allegations, a domestic enquiry was instituted against the concerned workmen and after the enquiry, on the report of the Enquiry Officer, the workmen concerned were dismissed from service. Pursuant to the said decision, an application under Section 33 (2)(b) of the Industrial Disputes Act (for short, 'the Act') seeking approval of the Labour Court of the action of the management in dismissing the concerned workmen was filed. The Labour Court at Gauhati approved the action of the management in dismissing the concerned workmen on 30th July 1983. Nearly 7 years after the order of dismissal i.e. on 4.3.1987 a reference under Section 10 of the Act was made by the concerned Government referring a dispute to adjudication to the Industrial Tribunal, Assam (Labour Court). The said dispute pertained to the justification of the order of the management in dismissing the concerned workmen as also to

the question of entitlement of the workmen for re-instatement with full back wages in the event of the Labour Court coming to the conclusion that the dismissal was not justified.

On receipt of the Govt. notification the Labour Court issued notices to the parties calling upon them to file written statement and documents on which they intended to rely. Accordingly, the parties filed their written statement and documents.

The case of the management before the Labour Court also, as stated above, is that on the night of 12th and 13th October 1980 the workmen concerned along with others came to the Estate, armed with deadly weapons and confined the Manager and others from 8.30 PM to 3.00 AM next morning and it is only after the manager gave it in writing under threat as assurance that 20% bonus would be paid, the gherao was lifted. Management also stated that these workman caused damage to the property of the estate.

Workmen in their written statement contended that on the night of 12.10.1980 the Manager of the Estate by name Shri D.K. Ghosh and one Shri Ratan Babu met some of the workers including one Benja Lohar being armed with guns. It is stated that the Manager on seeing the workmen got furious and hit Benja with the butt of his gun on the left side of his head and Ratan Babu hit the other workmen by name Suko on her right hand, Benja fell unconscious and on hearing the scream of Suko other workmen came to the aid of the injured workmen and they took them to the garden seeking first aid to the said injured persons. It is further contended that police personnel guarding the Manager's bungalow allowed the workmen to enter because of the injuries suffered by Benja and all the workmen only wanted treatment of the said Benja and the other injured co-worker. They contended that they were not armed with any lethal weapons nor did they create any untoward incident. It is due to ulterior motive with a view to get rid of the workmen who were not to the liking of the manager, the management had initiated the domestic enquiry. They also contended that no opportunity was given to the workmen to produce evidence or to defend themselves in the domestic enquiry. They denied that they ever damaged the property of the Estate or illegally confined the Manager and others inside the Manager's bungalow. They contend that the enquiries by the domestic tribunal was vindictive, capricious.

The Labour Court while considering the preliminary issue "whether the domestic enquiry was fair and proper" held that the same was not fair and proper, therefore parties were given opportunities to produce evidence on merits. Labour Court also noted the fact that the charge framed against the workmen in the enquiry was that:-
"on 12th and 13.10.1980 you entered inside the Manager's bungalow from 8.30 PM to 3.00 AM with lethal weapons in hand along with others in the riotous manner and damaged company's property and illegally confined the Manager and others inside the Manager's bungalow".

It is relevant to mention at this stage that in regard to the incident which was the subject-matter of the domestic enquiry, the police had initiated criminal proceedings and in the said proceedings the accused persons were acquitted for lack of evidence.

The Labour Court after considering the material produced by the parties came to the conclusion that the allegations of wrongful confinement and extortion of

documents stood proved and the defence of the workmen that the Manager had assaulted the workers Benja and Suko consequent to which a group of workmen entered the Estate to provide treatment to them was not accepted. The Labour Court also noticed the fact that out of the 29 dismissed workmen, some had settled the dispute with the management and have accepted the compensation offered by the management and had left the services of the management while others who did not accept the settlement were alone proceeded against. The Court also took note of the fact that the criminal case filed as against some of the workmen in the criminal court, ended in acquittal but held that the order of the criminal court had no bearing on the case before it, hence based on the material produced it upheld the dismissal of the workmen and rejected the prayer of the workmen for reinstatement with full back wages.

Being aggrieved by the said award of the Labour court, the workmen-Union, the first respondent herein preferred a writ petition before a learned Single Judge of the Gauhati High Court who after hearing the parties came to the conclusion that the finding of the Labour Court that there was extortion of documents by the workmen concerned was contrary to the chargesheet which did not contain such an allegation. It came to the conclusion that allegation of extortion was an afterthought. It also accepted the defence of the workmen that they entered the Estate only to obtain treatment of the injured workmen who was assaulted by the Manager of the Estate. It also held that the Labour Court did not apply its mind to the vital facts and circumstances of the case as alleged by the learned counsel for the workmen who appeared in the said writ petition. On that basis the learned Single Judge came to the conclusion that the Labour court did not appreciate the material on record properly and passed the order justifying the dismissal which is disproportionate to the offence alleged. It also held that the workmen who were tried before the criminal court were honorably acquitted by the criminal court and the departmental enquiry held by the management was faulty. On the said basis it set aside the award and directed the management to (i) reinstate the surviving workmen who have not attained the age of superannuation with compensation of Rs.15,000/- to each of them in lieu of back wages; (ii) to pay compensation of Rs.30,000/- to each of the workers who have superannuated during the pendency of the proceedings upto that Court and (iii) to fix lump sum compensation in consultation with the petitioner -Union which shall be paid to the actual heir (wife) of the workmen who expired without getting any benefit. It directed the management to pay the said compensation within six weeks from the receipt of its judgment.

An appeal filed against the said judgment and order of the learned Single Judge before the Division Bench of the same Court came to be dismissed. The Appeal Bench held that the Labour Court could not have gone beyond the charge originally framed by the management in the domestic enquiry. Therefore, its finding in regard to the charge of extortion was unsustainable in law. It also came to the conclusion that there was a duty on the part of the Labour Court to have taken into consideration the findings and the facts recorded in the criminal court which not having been done, the award could not be sustained. It upheld the learned Single Judge's conclusion that the punishment of the dismissal of the workmen was disproportionate to the offence actually alleged against the workmen. It is on that basis the appeal came to be dismissed.

As stated above, it is against the said judgment of the High Court the appellant management is before us in this

appeal.

Shri K. R. Choudhary, learned senior counsel addressing arguments on behalf of the appellant contended that the Labour Court having permitted the parties to adduce evidence in justification or otherwise of the finding of the domestic tribunal and having recorded evidence in this regard justly came to the conclusion that the management has established its case of misconduct against the workmen. He also contended that the finding in regard to the extortion of the documents was not actually a new charge but was in fact a part of the charge which referred to the wrongful confinement of the Manager and there being sufficient material before the Labour Court, both in regard to the long and wrongful confinement of the Manager and other officials of the Estate as also in regard to the forceful extortion of a document agreeing to pay 20% bonus, the Labour Court was justified in coming to the conclusion that the workmen were also guilty of the said charge of extortion. He also contended, assuming for the argument sake that the Labour Court could not have gone into the question of extortion of the document, the original charge as framed by the domestic enquiry having clearly stated about the wrongful confinement of the Manager and others and the damage caused to the property of the Estate by a riotous mob of workmen, carrying deadly weapons, itself was sufficient to justify the punishment of dismissal. He submitted that the finding and evidence recorded by the criminal court not binding on the labour court, there was no obligation on the part of the labour court to have considered the evidence led in the said trial. At any rate, he submitted that the Labour Court had taken cognizance of the fact that there was a criminal case which came to be ended in an acquittal. He pointed out that the observations of the learned Single Judge that the acquittal of the workmen by the criminal court was "honorable acquittal", is wholly erroneous. He also submitted that on facts and circumstances of the case it is established that the workmen have indulged in a serious unlawful act which justified the punishment of dismissal. In support of his arguments, learned counsel has relied on a judgment of this Court in State of Rajasthan versus B.K. Meena and others [1996 (6) S.C.C. 417].

Shri D.K. Aggarwal, learned senior counsel appearing for the respondent-Union contended that the finding of the Labour Court having gone beyond the charge framed by the management against the workmen in regard to the allegations of extortion, the same was justly reversed by the High Court. He placed reliance in support of this contention on the judgment of this Court in the case of The Workmen of M/s. Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. etc. versus The Management & Ors. 1973 (1) LLJ 278. He next contended that the Labour Court ought not to have brushed aside the finding of the criminal court and it was duty bound to have considered the same while appreciating the evidence adduced in the proceedings before it. In support of this contention, the learned counsel relied upon a judgment of this Court in the case of Capt. M. Paul Anthony versus Bharat Gold Mines Ltd. and another AIR 1999 SC 1416. He then contended that assuming for argument sake that the workmen did indulge in some sort of gherao, since there is no evidence as to specific overt act assigned to the dismissed workmen, the punishment of dismissal was totally disproportionate to the misconduct alleged. He relied on a judgment of this court in the case of M/s. Burn & Co. Limited versus Their workmen and others AIR 1959 SC 529.

Bearing in mind the arguments addressed before us and

findings of the High Court, we will now consider the various arguments addressed before us in this appeal. In that process we will first take up the contention of the respondent that the finding of the Labour Court is vitiated by the fact that it took into consideration a misconduct which was not part of the charge memo issued to the workmen, and the Labour Court went beyond the charges framed therefore the conclusion of the Labour court as to justification of the punishment is vitiated by irrelevant consideration, and the High Court was justified in interfering with the said finding.

It is true in the charge memo issued to the concerned workmen extortion was not shown as one of the acts of misconduct. The original charge memo contained the following charge:

" (1) On 12.10.80/13.10.80 you entered inside the Manager's bungalow from 8.30 PM to 3.00 AM with lethal weapons in hand along with others in a riotous manner and damaged company's property and illegally confined Manager and others inside the Manager's bungalow. You also used abusive language.

(2) This if proved is an offence under standing orders 10(a)(7), 10(a)(8) and 10(a) 11 in force on this Estate"

The Labour Court in its award on a preliminary point held that the enquiry conducted by the management was not a proper enquiry hence based on the requests made in the statement filed before it, permitted the management to adduce evidence in support of its charge in the proceedings before it and also permitted the workmen to adduce evidence in defence. In the course of the evidence adduced by the parties a specific allegation that the workmen demanded a promise in writing from the Manager of the Estate to give 20% bonus was in fact made and that on police officer having informed that it will not be possible to control the situation unless such a promise was given by the Manager in writing a document to the effect was given by the Manager under threat and that only after receipt of the said document workers dispersed, at about 3.00 AM on 13th October 1980, was made. The Labour Court having considered the evidence led by the Management in this regard as also the counter evidence led by the workmen came to the conclusion that such an extortion of letter under threat was actually obtained.

Learned counsel appearing for the respondent-workmen, relied upon the judgment of this Court in Laxmi Devi Sugar Mills Ltd. versus Nand Kishore Singh [1956 Vol.II LLJ 439] wherein it was held:

"But in view of the fact that the concerned workman was chargesheeted only for instigating his fellow-workmen to demand for removal of the general manager and not for any other act of insubordination, the management could not be permitted to dismiss him\005..The prayer of the management for permission to dismiss such workmen could not be allowed to be justified on any grounds or charges other than those mentioned in the chargesheet. The concerned workman not having been

charged with the act of insubordination which could have really justified the management in dismissing him, the employer could not take advantage of the same even though those acts could be brought home to him in proper proceedings."

Based on the above decision of this Court in the said case, an argument is addressed on behalf of the respondent-workmen that the Labour Court could not have justified the dismissal of the workmen on the basis of an allegation of extortion which was not a part of the charges framed.

It is to be noted herein that in the instant case in the statements filed by the management before the Labour Court, act of extortion was mentioned as one of the facts leading to misconduct which was supported by the evidence led by the management before the Labour Court. Though no specific charge/issue was framed in this regard against the concerned workmen but the workmen in their statement had denied the same. Therefore, the parties were well aware that the extortion of a letter promising 20% bonus from the Manager was one of the facts in the chain of events involved in the incident of 12th and 13th of October 1980. The Labour Court found, among other facts, this fact of extortion as also having been proved. The question then is: can a finding of justification of a punishment awarded by the management based on an additional fact though proved by evidence but not mentioned in the charge can be maintained. It is well-settled that Rules of Procedure found in the Code of Criminal Procedure are not strictly applicable to the proceedings before the Labour Court but the Labour Court can always rely on legal principles found in the provisions of the Code to modulate its procedure. Section 215 of the Code of Criminal Procedure reads thus : "215. Effect of errors.\027No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice."

From the above, it is seen that even in a criminal trial if there are omissions to state a particular offence in the charge, that by itself does not occasion a failure of justice unless the accused satisfies the court that by such omission he was in fact misled and the same has occasioned a failure of justice. In the instant case, as noted above, in the statements filed by the Management before the Labour Court, this act of extortion is specifically alleged and in the reply statement of the workmen, the same is specifically denied and parties have led evidence in regard to their respective cases on the question of extortion, therefore, it cannot be said that the workmen were misled by the omission to mention the charge of extortion. Having joined issue on this question of fact, they cannot also plead that they have been in any manner prejudiced by the said omission or misled by such omission nor can they contend that the said omission has occasioned a failure of justice.

Be that as it may, since this Court in the case of Laxmi Devi Sugar Mills Ltd. (supra), has stated that the Management cannot be permitted to justify the punishment on grounds of charges other than those mentioned in the chargesheet, we

would leave this issue at that.

But what is stated by us hereinabove would not in any manner, vitiate the ultimate justification of the dismissal order as held by the Labour Court. It is to be noticed that the charge memo issued to the workmen has in specific terms stated that the workmen concerned on 12th \026 13th October, 1980 entered the Manager's bungalow, armed with deadly weapons, caused damage to the property of the estate and illegally confined the Manager and others between 8.30 p.m. on 12th October till 3 a.m. on 13th October, 1980. This allegation as found in the charge memo has also been found to be proved by the Labour Court. Therefore, the question for our consideration is: whether this finding as alleged in the chargesheet by itself is sufficient to justify the order of dismissal without the support of the allegation of extortion. On this aspect of the case the decision of this Court in Laxmi Devi Sugar Mills Ltd. (supra) will not assist the respondents' case. In that case, the only charge against the workman was that he instigated the other workmen to demand the removal of the General Manager which charge was not proved in the enquiry, then the management tried to justify the removal by adducing evidence on other allegations in regard to which there was no charge, in those factual situation this Court held such justification based uncharged allegation was impermissible.

In the case in hand, the facts are different, the charge contained the allegation of riotous behaviour, causing damage to the property and wrongful confinement, these charges were held to be proved the additional fact of extortion though factually proved was outside the charge, hence, we will have to consider whether charges proved, other than that of extortion is sufficient to confirm the approval of dismissal of the workmen. From the facts noticed hereinabove, it is seen that on the night between 12th and 13th of October, 1980, the concerned workmen entered the Estate armed with deadly weapon caused damage to the property of the Estate and wrongfully confined the Manager and others between 8.30 PM on 12th to 3.00 AM on 13th of next day. These facts which are mentioned in the Charge-Memo and held proved establishes misconducts alleged against the concerned workmen in the Charge-Memo, in this back ground even proceeding on the basis that the allegation of extortion has not been legally established and ought not to be considered as a misconduct, in our opinion, the other misconducts of causing damage to the property Gherao and wrongfully confining the Manager and others for a long period are by themselves sufficient to come to the conclusion that the concerned workmen have indulged in misconduct punishable under the standing orders applicable to them. The allegation of extortion though being a part of the continuing act of misconducts is severable from the other allegations, on the basis of the finding of the Labour Court the allegations alleged the concerned workmen can be accepted without reference to its finding on the allegation of extortion.

The next contention addressed on behalf of the respondents is that the Labour Court ought not to have brushed aside the finding of the criminal court which according to the learned Single Judge 'honorably' acquitted the workmen-accused of the offence before it. We have been taken through the said judgment of the criminal court and we must record that there was such 'honorable' acquittal by the criminal court. The acquittal by the criminal court was based on the fact that the prosecution did not produce sufficient material to establish its charge which is clear from the following observations found in the judgment of the criminal court:

"Absolutely in the evidence on record of the prosecution witnesses I have found nothing against the accused persons. The prosecution totally fails to prove the charges under Sections 147, 353, 329 IPC"

Learned counsel for the respondents in regard to the above contention relied on a judgment of this Court in the case of Capt. M. Paul Anthony (supra). In our opinion, even that case would not support the respondents herein because in the said case the evidence led in the criminal case, as well as in the domestic enquiry was one and the same and the criminal case having acquitted the workmen on the very same evidence, this Court came to the conclusion that the finding to the contrary on the very same evidence by the domestic enquiry would be unjust, unfair and rather oppressive. It is to be noted in that case the finding by the tribunal was arrived in an ex parte departmental proceeding. In the case in hand, we have noticed before the Labour Court the evidence led by the management was different from that led by the prosecution in the criminal case and the materials before the criminal court and the Labour Court were entirely different. Therefore, it was open to the Labour Court to have come to an independent conclusion dehors the finding of the criminal court. But at this stage it should be noted that it is not as if the Labour Court in the instant case was totally oblivious of the proceedings before the criminal court. The Labour Court has in fact perused the order of the Judicial Magistrate and the exhibits produced therein and came to an independent conclusion that the order of the criminal case has no bearing on the proceedings before it which finding of the Labour Court, in our opinion, is justified. It may be some use to us to refer at this stage to a judgment of this Court in the case of State of Rajasthan (supra) wherein it is held thus :

"There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different\005\005."

From the above, it is seen that the approach and the objectives of the criminal proceedings and the disciplinary proceedings are altogether distinct and different. The observations therein indicate that the Labour Court is not bound by the findings of the criminal court.

Even the reliance placed in the case of M/s. Burn & Co. (supra), in our opinion, does not assist the workmen in this

appeal. That was a case where this Court came to the conclusion that there was no dependable evidence against the individual workman who has incited the workers to participate in the strike. In such circumstances, the Court came to the conclusion that in the absence of any evidence individually implicating the workmen concerned an omnibus allegation against all workmen cannot be used to punish only some workmen. Such is not the situation in the facts of this case wherein we have noticed that the tribunal has come to the conclusion that the concerned workmen had participated in the gherao armed with deadly weapons and caused damage to the property of the Estate and wrongfully confined the Manager and others for nearly 8 hrs. Therefore, it found all those workmen who took part in the said incident guilty of the misconduct.

This leaves us to consider whether the punishment of dismissal awarded to the concerned workmen de hors the allegation of extortion is disproportionate to the misconduct proved against them. From the evidence proved, we find the concerned workmen entered the estate armed with deadly weapons with a view to gherao the Manager and others in that process they caused damage to the property of the estate and wrongfully confined the Manager and others from 8.30 p.m. on 12th of October to 3 a.m. on the next day. These charges, in our opinion, are grave enough to attract the punishment of dismissal even without the aid of the allegation of extortion. The fact that the Management entered into settlement with some of the workmen who were also found guilty of the charge would not, in any manner, reduce the gravity of the misconduct in regard to the workmen concerned in this appeal because these workmen did not agree with the settlement which others are agreed instead chose to question the punishment.

For the reasons stated above, this appeal succeeds. The orders of the High Court are set aside that of the lower court is restored. The appeal is allowed.