

WORKMEN OF BALMADIES ESTATES
v.
MANAGEMENT BALMADIES ESTATE AND ORS.
(C.A. No. 2435 of 2006)

JANUARY 18, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Labour laws :

Domestic enquiry – Dismissal for committing theft, on the basis of evidence of two other workmen – Set aside by Labour Court on the ground that evidence was not properly appreciated by enquiry officer – High Court held that appreciation of evidence by Labour Court was perverse – Correctness of – Held: Correct – In domestic enquiry, guilt may not be established beyond reasonable doubt and the proof of misconduct is sufficient – Evidence Act is not applicable to proceeding in domestic enquiry though principles of fairness would apply – The two witnesses stated that confession was made by delinquents in their presence and also in the presence of others – There was no cross-examination with regard thereto – Also no complaint by delinquents even after charge-sheet was filed that they were compelled to make confession – Industrial Disputes Act, 1947 – s.11A – Evidence Act, 1872.

Two workmen were issued charge sheet on allegation of theft. An enquiry was held in which they participated till the evidence of MWs.1 and 2 was recorded. MW.1 was cross examined by both the workmen. Neither of them questioned the correctness of the statement of MW1 that they had confessed to the police about the theft in his presence. The statement of MW-1 was uncontroverted. MW-2 confirmed the statement of MW-1. After cross examining the witnesses, the delinquents did not take part in the enquiry. The enquiry officer concluded

A that the two delinquents had committed the theft. Thereafter they were dismissed from service. The dispute was referred to the Labour Court, which held that there was no direct evidence to show that the two workmen had committed theft and the evidence was not properly appreciated by the enquiry officer and the finding of guilt was based on a very slender evidence. The award was challenged by the employer by filing writ petition. High Court allowed the same holding that the Labour Court had failed to take note of the direct evidence more particularly the evidence of MWs. 1 and 2. Hence the present appeal.

C Dismissing the appeal, the Court

D HELD: 1. The power of the Labour Court under the Industrial Disputes Act has expanded vastly after the introduction of s.11A into the Statute. In view of the wide powers of the Labour Court, it can, in an appropriate case, consider the evidence which has been considered by the domestic Tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the Domestic Tribunal. The assessment of evidence in a domestic enquiry is not required to be made by applying the same yardstick as a Civil Court could do when a *lis* is brought before it. The Evidence Act, 1872 is not applicable to the proceeding in a domestic enquiry though principles of fairness are to apply. It is also fairly well settled that in a domestic enquiry guilt may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In a domestic enquiry, all materials which are logically probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility. [Paras 7-8] [871-G; 872-B-E]

H *The Workmen of M/s.Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management and Ors. (1973)1 SCC 813; Sadhu Ram v. Delhi Transport Corporation (1983) 4 SCC 156; Indian Overseas Bank v. I.O.B. Staff Canteen Workers'*

Union and Anr. (2000) 4 SCC 245; J.D. Jain v. Management of State Bank of India and Anr. (1982) 1 SCC 143 – relied on. A

2. What MWs. 1 and 2 had stated was to the effect that the confession was made by the two delinquents in their presence and also in the presence of others. There was no cross examination with regard thereto. There was no complaint made by the delinquents even after the charge sheet was filed that the confessions had been extracted from them and/or that they had been compelled to make such a statement by reason of any threat held out. Even when they cross examined the witnesses, they did not even suggest that what had been stated by the witnesses are incorrect. The findings of the Labour Court were perverse and can be termed to be based on misconception of law. The High Court, therefore, rightly observed that the evidence could not have been brushed aside by the Labour Court in the manner done. [Para 10] [872-G; 873-A, B] B C D

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 2435 of 2006. E

From the final Judgment and Order dated 26.09.2003 of the High Court of Judicature at Madras in Writ Appeal No. 409 of 1997

C.K. Chandrasekaran and S.R. Setia for the Appellant. F

G. Umapathy, Rakesh K. Sharma and V. Ramasubramanian for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order of the Madras High Court dismissing the writ appeal filed by the appellant. The writ appeal was filed against the order of a learned Single Judge of the High Court in Writ Petition No. 589 of 1987. G

2. Two workmen-Stephen and Nallusami were issued with H

A charge sheets on 15.12.1980 wherein it was alleged that the Manager had received information that they had stolen 100 litres of gramoxine weedicide chemical belonging to the estate from the store room during the period between 29.11.1980 and 2.12.1980. The two employees replied to that notice stating that they had not committed any misconduct as alleged in the notice. Thereafter, an enquiry was held in which they participated till the evidence of M.Ws. 1 and 2 was recorded. They also cross examined those two witnesses.

3. After cross examination MW2, Stephen stated that he had no confidence in the enquiry and walked out of the enquiry. Thereafter the other workman, Nallusami made a statement in which he stated that on 6.12.1980 while he was doing work in the estate, some workmen were asked to meet the Manager and at that time one lady has identified him to have committed the theft. He added that she was following the instructions of somebody else and that he had pleaded with the police that he had not committed the theft. Thereafter he stated that the police beat him and again he was identified by that lady and thereafter he was asked as to who were all with him for the crime. He then stated that supervisor Stephen was with him. MW1 was one Easwaradas. As noted above MW1, was cross examined by both Stephen and Nallusami. Neither of them questioned the correctness of the statement of MW1 that they had confessed to the police to the theft in his presence when he went to his house and opened the lock of the store room. The statement of MW1 was thus uncontroverted.

4. MW 2 Seetharaman confirmed the statement of MW1. After the witnesses gave the evidence and have been cross examined, the delinquents did not take part in the enquiry. Thereafter three other witnesses were examined, one of them was Mary who had identified the accused persons. The enquiry officer at the conclusion of the enquiry held that the two delinquents had committed the theft and thereafter the employees were dismissed from service by order dated 28.3.1981. At the instance of the workmen, the dispute was

referred for adjudication to the Labour Court, Coimbatore. A preliminary dispute was raised about the validity of the enquiry. The labour court rejected the stand and by a detailed order dated 31.12.1984 held that the domestic enquiry was conducted on proper lines and keeping in view the principles of natural justice the final award was made on 6.8.1985. The Labour court held that there was no direct evidence to show that the two workmen had committed theft. It was held that the employer had not produced stock register and there was no material to show that as to how many times store room was open prior to 4.12.1980. The Labour Court finally concluded that the evidence was not properly appreciated by the enquiry officer and the finding of guilt was based on very slender evidence. The award was challenged by the employer and the learned Single Judge held that the Labour Court had failed to take note of the direct evidence more particularly the evidence of MWs. 1&2 and held that the appreciation of evidence by the Labour Court was perverse and the Labour Court's interference with the order of termination was insupportable in law. Before the High Court in the writ appeal the stand was that the evidence of MWs. 1&2 should not have been treated as direct evidence, it was also submitted that under Section 11(A) of the Industrial Disputes Act, 1947 (in short the 'Act') the Labour Court has the power to re-appreciate the evidence. Therefore, the High Court should not have interfered with the order of the Labour Court in a petition under Article 226 of the Constitution of India, 1950 (in short the 'Constitution').

5. The High Court by the impugned order did not find any substance and dismissed the Writ appeal.

6. Learned counsel for the appellant re-iterated the stand taken before the High Court.

7. Learned counsel for the respondents supported the order of the learned Single Judge and the Division Bench. The power of the Labour Court under the Act has expanded vastly after the introduction of Section 11A of the Act into the Statute.

- A This was emphasized by this Court in *The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management and Others* [1973 (1) SCC 813] and *Sadhu Ram v. Delhi Transport Corporation* [1983 (4) SCC 156] and *Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Anr.* [2000 (4) SCC 245].
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8. It is fairly well settled now that in view of the wide power of the Labour Court it can, in an appropriate case, consider the evidence which has been considered by the domestic Tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the Domestic Tribunal. The assessment of evidence in a domestic enquiry is not required to be made by applying the same yardstick as a Civil Court could do when a lis is brought before it. The Indian Evidence Act, 1872 (in short the 'Evidence Act') is not applicable to the proceeding in a domestic enquiry so far as the domestic enquiries are concerned, though principles of fairness are to apply. It is also fairly well settled that in a domestic enquiry guilt may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In a domestic enquiry all materials which are logically probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility.

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9. In *J.D. Jain v. Management of State Bank of India and Anr.* (1982) 1 SCC 143 it was held, almost in a similar factual background, that confessional evidence and circumstantial evidence, despite lack of any direct evidence, was sufficient to hold the delinquent guilty of misconduct and to justify the order of termination that had been passed.

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10. As noted above what MWs. 1 & 2 had stated was to the effect that the confession was made by the two delinquents in their presence and also in the presence of others. There was no cross examination with regard thereto. There was no complaint made by the delinquents even after the charge sheet was filed that the confessions had been extracted from them

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and/or that they had been compelled to make such a statement by reason of any threat hold out. Even when they cross examined the witnesses, they did not even suggest that what had been stated by the witnesses are incorrect. The findings of the Labour Court were perverse and can be termed to be based on misconception of law. The High Court, therefore, rightly observed that the evidence could not have been brushed aside by the Labour Court in the manner done. That being so, the appeal is without merit, deserves dismissal, which we direct. No costs.

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Appeal dismissed.

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