

**1995 (2) G. L. H. 514
S. CHATTERJI, J.**

Navin Fluorine Industries ...Petitioner
Versus
Kirit Thomas Rathod ...Respondent

Special Civil Application No. 6777 of 1994*

D/- 22-11-1994

*Writ Petition under Articles 226 & 227 of Constitution of India challenging the award and order passed by the Labour Court, Surat in Reference LOS No. 4 of 1985. dated 7-3-1994

Industrial Disputes Act, 1947 - S. 25F - Retrenchment - Employer took steps to retrench the workman, in view of the admission of the workman immediately after the charge-sheet -Admission of any person is binding on him but he must have an opportunity to explain his admission Retrenchment illegal.

Having heard the learned Lawyers of the respective parties at length and after going through the material on record and in particular the award of the Labour Court, this Court finds that in view of the reply of the workman followed immediately after the charge-sheet, the employer has taken steps to retrench the workman without following any procedure by holding any inquiry. The admission of any person is binding on him but he must have an opportunity to explain his admission. Besides, the reply to the charge-sheet has been brought to the notice of the court, the entire reply has to be considered and all the contentions have to be construed by not taking in piecemeal manner but comprehensively. By reply the workman has denied the charges but he has given an explanation that for purchasing miscellaneous items, the amount was retained which was subsequently deposited. He has, however, stated that he will not do the same. On going through the entire reply, one cannot form that there is clear admission of the offence and on the basis of which the employer can straightway retrench the service of the petitioner workman without holding any inquiry and without giving any opportunity to the workman to explain. Attention of this court has been drawn to the decision in the case of Central Bank of India v. Karunamoy Banerjee reported in AIR 1968 SC 266. It has been found out that in a case if the workman admits his guilt to insist upon the management to let in evidence about the allegations will only be an empty formality. It will be open to the management to examine the workman himself even in the first instance so as to enable him to offer any explanation for his conduct or to place before the management any circum stances which will go to mitigate the gravity of the offence. But even then, the examination of the workman, under such circumstances, should not savour of an inquisition. If, after the examination of the workman, the management chooses to examine any witnesses, the workman must be given a reasonable opportunity to cross-examine those witnesses and also to adduce any other evidence that he may choose. (Para 7)

However, regard being had to the material on record and the peculiar facts [*@page514*] and circumstances in the instant case, the employer did not choose to hold any inquiry and it had to rely upon the admission of the employee and steps for retrenchment had been taken. The Labour Court has considered all the aspects of the matter. (Para 8)

Cases Referred:

1. Krishna Kumar v. Union of India, AIR 1959 SCI 390 (Para 4)
2. Vishwa Nath v. State of J & K, AIR 1983 SC 176 (Para 5)
3. Central Bank of India v. Karunmoy Banerjee, AIR 1968 SC 266 (Para 7)
4. State of U.P. v. Dharmander Prasad Singh, AIR 1989 SC 997 (Para 8)

Appearances:

Mr. K. S. Nanavati, Advocate for the petitioner

Ms. D. T. Shah, Advocate for the respondent

S. CHATTERJI, J.-

1.

The present Special Civil Application is at the instance of Navin Fluorine Industries challenging the impugned award dated 7-3-1994 by the Labour Court at Surat in reference LCS No. 4 of 1985.

2. By the impugned award the reference of the workman has been allowed. The employer has been directed to reinstate the workman in service of his original post with full back wages and continuation in service, it appears from the record that the workman was appointed on probation as Canteen Supervisor and on and from 21-6-1982. By a letter dated 25-8-1983 the services of the petitioner were confirmed and the petitioner was given salary of Junior Assistant. Grade II. He was charge- sheeted and his explanation was sought by a letter dated 3/5-12-1983. He replied to the said letter. However, without going through the Departmental Proceedings, the petitioner has been retrenched from service. It effected on 4-2-1984 by giving salary in lieu of one month's notice. The Labour Court has gone through the matter in detail and depth by giving opportunity to both the sides to produce evidence. In the reasoned judgment the Labour Court has found that the steps taken by the employer are contrary to law and ultimately made the award as indicated above.

3. Being aggrieved, the employer has come to the writ Court. The learned Counsel for the petitioner has argued that the Labour Court has committed an error in not considering the reply of the workman against the charges brought against him and in view of his admission as to delayed remittal of the amount lying with him, item No. 2 ought to have been taken as proved and there is no necessity on going through any procedure and this aspect is not reflected in the award which is challenged before this Court.

4. In support of the contention as made above, the learned Counsel for the petitioner has drawn attention of the Court to the decision in the case of *Krishan Kumar v. Union of India* reported in AIR 1959 SC 1390. In a criminal appeal under Prevention of Corruption Act, it is found that the offence under Section 5(1)(c) is the same as embezzlement, which in English Law, is constituted when the property has been received by the accused for or in the name or on account of the master or employer of the accused and it is complete when the servant fraudulently misappropriates that property. It is not necessary or possible in every case to prove in what precise manner the accused person has dealt with or appropriated the goods of his master. The question is one of intention and not a matter of direct proof but giving a false account of what he has done with the goods received by him may be treated as a strong circumstance against the accused person. In the case of a servant charged with misappropriating the goods of his master the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account was due to an accidental loss then the facts being within the servant's knowledge, it is for him to explain the loss. It is not the law in the country that the prosecution has to eliminate all possible defences or circumstances which may exonerate him. If these facts are within the knowledge of the accused then he has to prove them. Of course the prosecution has to establish a *prima facie case* in the first instance. It is enough to establish facts which give rise to a suspicion and then by reason of Section 106 of the Evidence Act to throw the onus on him to prove his innocence. If under the law it is not necessary or possible for the prosecution to prove the manner in which the goods have been misappropriated then the failure of the prosecution to prove facts it set out to prove the manner of misappropriation or the identity of the goods would be of little relevance. In the said case the lower courts concluded that the accused had dishonestly misappropriated the goods of the Central Tractor Organisation and therefore he was rightly convicted under Section 5(1)(c).

5. The second case referred by the learned Lawyer for the petitioner is the decision in the case of *Vishwa Nath v. State of J & K* reported in AIR 1983 SC 174. It has been found out that where the facts and circumstances of the case clearly establish that there was embezzlement of the Government money by the accused inasmuch as the accused had put to personal use the Government money entrusted to him, instead of depositing the same in the proper place, the fact that the accused refunded the amount when the act of his defalcation came to be

discovered, does not absolve him of the offence committed by him. The accused happened to be a public servant of the Police Department and was posted as Naib-Courty. He was entrusted with the amount seized in two cases. In complete violation of the directions of law he had failed to send the amount to Sardar Courty and with criminal intention he had not made any entry of the money in Rehdari Register, while he made its entry in the Malkhana Register so that his misappropriation of the amount might not be detected by anybody. He committed criminal breach of trust with respect to this money over which he had complete dominion by putting the same to his use. The refund of the amount after detection does not absolve him of the offence.

6. The contention of the petitioner-employer that while in the reply which is at exhibit before the Labour Court the workman has admitted the retention of the amount and there is no further proof of charges by holding any inquiry and on the basis of the reply against the charge- sheet the workman has been retrenched; from service and the employer has not committed anything wrong but the Labour Court has not given any perverse to such an exhibit and has not found that the workman has failed to discharge the onus of his explaining his admission and the order of reinstatement is obviously bad in law and there is all the more necessity to interfere with the award and the judgment of the Labour Court.

7. The workman contested proceedings before this Court and filed copy of the award (a translated copy of the award has been filed before this Court). Having [@page516] heard the learned Lawyers of the respective parties at length and after going through the material on record and in particular the award of the Labour Court, this Court finds that in view of the reply of the workman followed immediately after the charge-sheet, the employer has taken steps to retrench the workman without following any procedure by holding any inquiry. The admission of any person is binding on him but he must have an opportunity to explain his admission. Besides, the reply to the charge-sheet has been brought to the notice of the court, the entire reply has to be considered and all the contentions have to be construed by not taking in piecemeal manner but comprehensively. By reply the workman has denied the charges but he has given an explanation that for purchasing miscellaneous items, the amount was retained which was subsequently deposited. He has, however, stated that he will not do the same. On going through the entire reply, one cannot form that there is clear admission of the offence and on the basis of which the employer can straightway retrench the service of the petitioner-workman without holding any inquiry and without giving any opportunity to the workman to explain. Attention of this Court has been drawn to the decision in the case of *Central Bank of India v. Karunamoy Banerjee* reported in AIR 1968 SC 266. It has been found out that in a case if the workman admits his guilt to insist upon the management to let in evidence about the allegations will only be an empty formality. It will be open to the management to examine the workman himself even in the first instance so as to enable him to offer any explanation for his conduct or to place before the management any circumstances which will go to mitigate the gravity of the offence. But even then, the examination of the workman, under such circumstances, should not savour of an inquisition. If, after the examination of the workman, the management chooses to examine any witnesses, the workman must be given a reasonable opportunity to cross-examine those witnesses and also to adduce any other evidence that he may choose.

8. However, regard being had to the material on record and the peculiar facts and circumstances, in the instant case, the employer did not choose to hold any inquiry and it had referred to rely upon the admission of the employee and steps for retrenchment had been taken. The Labour Court has considered all the aspects of the matter. It is not for the writ court to assess again the evidence. This writ court has to examine the decision making process as held in the case of *State of U.P.K.J. v. Dharmander Prasad Singh* reported in AIR 1989 SC 997. If the Labour Court has not caused any perversity nor it has exceeded any jurisdiction nor it has passed any order contrary to law, the writ court would be slow to interfere. In the instant case the admission, if any, of the workman as submitted by the learned Advocate for the petitioner does not prove as evidence on record. The Labour Court has taken pains to discuss the evidence and it has been found that the charges leveled against the workman have not been proved. Now on the basis of the admission the employer cannot get the relief by sacrificing the inquiry and cannot argue that the reply has not been considered by the Labour Court and such reply has not been reflected in the award for which the writ Court should interfere. This Court does not appreciate any merit in the contention placed on behalf of the petitioner-employer. For the above reasons the petition fails. Rule is discharged with no order as to costs.

(NAP) Petition dismissed. [@page517]

