

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF FEBRUARY, 2020

BEFORE:

THE HON'BLE MRS. JUSTICE S. SUJATHA

WRIT PETITION No.51714/2019 (L – RES)

VINAYAKA CNC CENTRE PRIVATE LIMITED

AND:

RUDRESHA D.P.,

O R D E R

The petitioner has challenged the order dated 16.11.2019 passed by the Principal District Judge at Tumkur in Case No.(I.D. Act S.10) 4/2016 dismissing I.A.No.15 filed under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, seeking to recall RW2 and I.A.No.16 filed under Order VIII Rule 1-A(3) of the Code of Civil Procedure to produce the additional documents.

2. The petitioner is a Company registered under the provisions of the Companies Act, 1956. The respondent was appointed as CNC operator with the petitioner - Company. On certain charges of misconduct leveled against the respondent said to have been proved, the petitioner - Company terminated the service of the respondent vide order of dismissal dated 30.09.2014. The respondent aggrieved by the order of dismissal, raised an industrial dispute under Section 10(4-A) of the Industrial Disputes (Karnataka Amendment) Act, 1988 read with Section 2A of the Industrial Disputes Act, 1947. Thereafter, the respondent filed claim statement before the Labour Court seeking for setting aside the

order of dismissal and consequently for reinstatement with full backwages and all other consequential benefits including continuity of services. The petitioner entered appearance and filed statement of objections.

3. In the said proceedings, the Labour Court has framed the following issues:-

1. *Whether the Party No.II proves that, enquiry conducted against Party No.I is fair and proper?*

2. *Whether Party No.II proves that order of dismissal of Party No.I is in accordance with law?*

3. *What order?*

4. In the memorandum of writ petition at paragraph No.9, it is narrated by the petitioner that on the main issues (Issue Nos.2 and 3), the petitioner witness, RW2 was examined in chief on 01.03.2019 and Exs.R35 to R40 were marked into evidence. Subsequently, RW.2 was cross-examined on 21.03.2019 and the matter was posted on 05.04.2019 for final arguments by the respondent/first party.

5. In paragraph No.10, it is explained that during final arguments, the counsel for the

respondent/first party knowing well that the Tumkur Unit of the petitioner - Company was being closed permanently, sought for employment and reinstatement of the respondent at Bengaluru Unit of the petitioner. Further, the counsel for the respondent also made baseless allegations beyond the pleadings that employees who were retrenched from the Tumkur Unit were provided alternate employment at the Bengaluru Unit of the petitioner.

6. In paragraph No.11, it is pleaded that in order to counter the said allegation of the respondent and to demonstrate that the said contention raised on behalf of the respondent is baseless and misleading, the petitioner filed the applications (I.A.Nos.12 to 14) seeking to reopen the stage of second party/petitioner's evidence, recall RW.2 and to produce additional documents.

7. It is significant to note that such applications, I.A.Nso.12 to 14 filed by the petitioner were indeed allowed and the petitioner was permitted to recall its witness and lead evidence. Accordingly, RW2 was recalled and two additional documents were

produced and marked. At that juncture, the petitioner has again filed I.A.Nos.15 and 16 to recall RW2 and to produce additional documents. Considering the veracity of the documents proposed to be produced and marked as documents and its relevancy, the learned District Judge having found the said repeated applications filed by the petitioner is nothing but to protract the proceedings, dismissed the same with cost of Rs.5,000/-. Hence, the present writ petition.

8. Learned counsel Sri Ganapati Hegde appearing for the petitioner placing reliance on the judgments of the Hon'ble Apex Court in the cases of *Union of India vs. R. Gandhi, President, Madras Bar Association* reported in *(2010) 11 SCC 1* and *Karnataka State Road Transport Corporation vs. Lakshmiddevamma (Smt) and another* reported in *(2001) 5 SCC 433* submitted that the provisions of Code of Civil Procedure and the Evidence Act are not applicable in *stricto sensu* to the proceedings before the Labour Court/Tribunal, but essentially the principles of natural justice has to be observed in the proceedings. No opportunity was provided to the petitioner to

examine the objections filed by the respondent to the applications, I.A.Nos.15 and 16 and to adduce the arguments on the same. The impugned order is passed in a hasty manner. Hence, the order impugned calls for interference by this Court.

9. Learned counsel for the respondent would submit that I.A.Nos.15 and 16 filed by the respondent are no way relevant for the adjudication of the dispute inasmuch as the claim statement made by the respondent challenging the order of termination of his service. Placing reliance on the ruling of the Hon'ble Apex Court in the case of *The Workmen of M/s. Firestone Tyre and Rubber Company of India (Pvt.) Ltd.*, reported in (1973) 1 SCC 813 submitted that the Labour Court/Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective. In the present proceedings, the issue relating to the genuineness of the enquiry has been held to be proper and legal and the same has been answered in favour of the petitioner. In such

circumstances, leading further evidence by the petitioner and more particularly, filing series of I.As. to reopen the matter recalling the witness and to produce the documents would be nothing but abuse of process of the Court. The learned District Judge having analyzed the factual aspects as well as the legal aspects in a right perspective has dismissed the applications and the same requires to be confirmed by this Court.

10. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the material on record.

11. As could be seen from the pleadings as aforementioned, the petitioner has narrated that to refute the arguments advanced by the learned counsel for the Workman that on closure of the industrial establishment at Tumkur appointments were provided to similar workmen at Bengaluru Unit, the applications were filed. I.A.Nos.12 to 14 were filed at the first instance to recall the witness - RW2 to mark the documents which indeed were allowed and the petitioner has availed the same.

12. It is strange to note that again the petitioner has made an attempt to recall the very same witness and to mark the documents namely i) certified copy of the II party letter dated 29.03.2016 addressed to Shashikiran B for fresh employment offer; ii) certified copy of the II party letter dated 29.03.2016 addressed to Veeresh M for fresh employment offer; iii) certified copy of the II party letter dated 21.04.2016 addressed to Arunkumar B.S. for fresh employment offer. What is the relevancy of these documents is neither whispered in the affidavit filed in support of the applications nor the same was argued before the Court. However, the pleadings before this Court indicates that to counter the arguments made on behalf of the workman that similarly situated workmen working at Tumkur Unit, have been provided employment at Bengaluru Unit, the I.A.Nos.15 and 16 were filed.

13. It is trite law that in the event of the enquiry held to be proper and legal, no further evidence is mandatory to establish/substantiate the case of the Management. It is suffice to rely upon the material evidence placed before the Enquiry Officer. However, in

furtherance of the material placed by the workman, the Management can adduce the evidence but not in piecemeal as observed by the learned District Judge. The opportunity of recalling the witness and mark the documents can be availed and such power can be exercised by the Court not repeatedly at the convenience of the parties depending on the arguments advanced or to fill up the omissions in the evidence noticed at the time of the arguments.

14. Order XVIII Rule 17 of the Code of Civil Procedure is not a provision intended to enable the parties to recall any witness for their further examination or cross-examination which could be produced when the evidence was being recorded. Such power envisaged under the Code to recall the witness cannot be used routinely. If so used, it would certainly defeat the very purpose of rendering the justice in an expedite manner. If such applications are allowed, it would certainly protract the proceedings. Procrastination of the proceedings would result in the failure of justice.

15. It is significant to note that the petitioner having filed I.As.12 to 14, had marked certain documents, the documents now to be marked indeed were within the possession of the petitioner and these documents relates to the year 2016. It is thus clear that the entire exercise of the petitioner is an attempt to fill up the lacuna in evidence recorded by the Court based on which the arguments were advanced by the workman.

16. There is no cavil on the legal proposition advanced by the learned counsel for the petitioner. However, in the facts and circumstances, the judgments relied upon by the learned counsel for the petitioner would not lend any assistance to the petitioners.

In the circumstances, the finding of the learned District Judge cannot be faulted with.

For the reasons aforesaid, the writ petition stands dismissed.