
(2015) 11 GAU CK 0010
In the Gauhati High Court
Case No : W.P. (C) No. 5021 of 2007

Assam Roofing Limited

APPELLANT

Vs

Munchi Rai and Others

RESPONDENT

Date of Decision : 02-11-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(c), 17B

Citation : (2016) 148 FLR 476 : (2015) 5 GLT 492 : (2016) LabIC 253 : (2015) 4 LLJ 641 : (2016) LLR 47

Hon'ble Judges : Hrishikesh Roy, J.

Bench : Single Bench

Advocate : S.N. Sarma and S.C. Keyal, Advocates, for the Appellant; S. Das, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Mr. S.N. Sarma, the learned senior counsel appearing for the petitioner/management. Also heard Mr. S. Das, the learned counsel appearing for the respondent No. 1 (workman). The workman was dismissed from service on 5.7.1999 (Annexure-7) in pursuant to the finding of the Inquiry Officer and since the conciliation attempt failed, the Government framed a reference under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act"), on the following two points for adjudication by the Labour Court:

- i) Whether the management of Kamakhya Udyog (P) Ltd. is justified by dismissing Sri Munchi Rai from his service with effect from 5/7/99?
- ii) If not, then the said workmen is entitled for reinstatement with full back wages and other back benefit as per the rule or any other relief in lieu thereof?

2. The workman was engaged in the night shift duty in the factory of Kamakhya Udyog (P) Ltd. (now taken over by Assam Roofing Limited). The duty of the workman in the manufacturing process of PVC pipes was to operate the mixture

machine, to mix the powder and chemicals and to put the raw materials in the machine in the automatic process. But while discharging his night shift duty from 10 P.M. on 1.2.1999 to 6 A.M. of 2.2.1999, the workman was found to be fast asleep and accordingly the charge memo was given to him on 13.2.1999 (Annexure-2) with the following 3 charges:

"Charge No. 1: Sleeping While On Duty: On 01.02.1999, you were performing duty at Night Shift i.e. from 10 PM of 01.02.1999 to 6 AM of 02.02.1999. At around 2.10 AM you were found to be fast asleep. Although you were entrusted to operate Cicinnati M/c. on that shift, but instead of performing your duty, you slept putting your back on Kolsite M/c. which was not operating at that time. Being an employee, you are responsible for the running the plant smoothly and also for the safety and security of the property of the company. However, you have found to be asleep and you have thereby exposed everybody to the danger and thereby you have violated the Rules and Regulations of the Company. As such, you are charged for sleeping while on duty.

Charge No. 2: Negligent Discharge of Duty: On 01.02.1999, you were engaged in Night Shift duty. At around 2:10 AM, Shri K.K. Singh, Chowkidar found you fast asleep and your attitude towards your duty shows that you do not have any regards for the Rules and Regulations of the Company and you have willfully neglected your duty. Further, your act also exposed your fellow workers to the danger for their life and property and set up a bad example among the others. As such, you are charged for negligent discharge of duty.

Charge No. 3: Gross Misconduct: On 01.02.1999, you were engaged in Night Shift duty. At around 2:10 AM, Shri K.K. Singh, Chowkidar found you fast asleep and thereby committed gross misconduct by violating the Rules and Procedures of the Company."

3. In his reply dated 22.2.1999, the workman contented that he was photographed by the chowkidar with his eyes closed but he claimed that he was not sleeping. However he requested for forgiveness with the assurance that such mistake will not be repeated again.

4. Finding the response of the workman to be unsatisfactory, the management decided to conduct a domestic enquiry and appointed an Inquiry Officer. The workman was intimated about the decision through the management's communication dated 6.3.1999 (Annexure-4). In this letter, the workman was informed that he can seek assistance of a colleague during the inquiry proceeding and he will be afforded all the opportunities to defend the charges.

5. During the inquiry, the workmen admitted to have fallen asleep during duty hours and declined to adduce any defence evidence while the management produced one witness (K.K. Singh) to prove the charges. When a guilty finding was recorded by the Inquiry Officer on 30.4.1999, the 2nd show cause notice was issued on 10.6.1999, proposing to dismiss the workman. But finding no mitigating circumstances for a lesser punishment, the punishment of dismissal

was ordered against the workman on 5.7.1999 (Annexure-7) by the disciplinary authority.

6. The learned Labour Court adjudicated the Reference Case No. 2/2000 and examined the Exhibits 1 and 2, which showed similar lapses of sleeping during duty hours by the workman. The photographs (Exhibits 5 and 6) confirmed that the workman was sleeping during shift duty. The learned Labour Court also noted that the workman had pleaded guilty through Exhibit 7 and had prayed earlier for mercy. Thus the negligence of the workman of sleeping during shift duty was found to be established. However the punishment of dismissal for such charge was found to be disproportionate and on that basis, reinstatement with 30% back-wages with continuity of service was ordered by the learned Labour Court, through the impugned award dated 18.12.2004 (Annexure-11) and this verdict is challenged by the management in the present case.

7. Mr. S.N. Sarma, the learned senior counsel submits that the basis for the verdict on the disproportionality of the punishment, was the Apex Court's decision in *Colour-Chem Limited Vs. A.L. Alaspurkar and Others*, but the senior counsel argues that this decision is not an authority for the proposition that in a case where employee is found to be asleep during duty hours, the penalty of dismissal despite his past record, is disproportionate to the act of misconduct. In support of his contention, *Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate*, .

8.1. On the other hand Mr. S. Das, the learned counsel for the workman submits that sleeping on duty can at best be a minor misconduct and such lapses do not warrant the punishment of dismissal.

8.2. The learned counsel for the workman further argues that this workman had fallen asleep during the tea break and not during the duty hours and therefore there was no justification for drawing up any disciplinary proceeding against the respondent workman.

9. The pleaded case of the workman before the Labour Court was that he was not negligent in discharge of his duties during the shift duty during the night of 1.2.1999 and that he did not commit any misconduct. But what is glaring here is that the workman never pleaded that he fell asleep during off duty hours (tea break). Moreover both letters of the workman dated 22.2.1999 (Annexure-3) and the one dated 9.3.1999 (Annexure-5) indicate that the charges were admitted and the workman prayed for leniency by assuring that, such mistake shall not be repeated in future. Therefore the new plea sought to be raised first time in the High Court by the workman's lawyer, of lapses occurring during tea break, can't now be accepted, as this was never the pleaded case of the workman in the Labour Court.

10. In so far as the plea of proportionality of the punishment is concerned, the learned Labour Court relied on *Colour-Chem Ltd. v. A.L. Alaspurkar* (supra) to declare that when a workman fall asleep during duty hours, the punishment of dismissal is disproportionate. But the Apex Court in its subsequent decision in *Mr.*

Sarma refers to *Bharat Forge Co. Ltd. v. Uttam Manohar Nakate* (supra) clearly pointed out that the punishment of dismissal for a workman found asleep during duty hours is not disproportionate to the act of misconduct.

11. The workman here was punished earlier for similar misconducts of falling asleep during the duty hours and therefore it was not his first lapse. The learned Labour Court noted that on two earlier occasions, the workman was punished for similar negligence of duty when the workman was posted on night shift duties and on both occasions, he was leniently punished with strict warning. In fact for the past misconduct, the workman was kept under observation for three months as can be gathered from the management's letter dated 9.1.1999 (Annexure-1). But even during the period of observation, the workman was found to have committed same lapses during the shift duty hours on the night of 1.2.1999 and thus he appears to be an incorrigible employee.

12. It must also be noted here that the manufacturing process in the factory is fully automated and the workers are required to responsibly perform their duties in their respective positions, in the continuous manufacturing process. Thus there is no scope of negligence by any workman, assigned with any specific responsibilities, in the continuous manufacturing process, since such lapses will harm the manufacturing process and the other workmen engaged in shift duties. Falling asleep during duty hours in such continuous operation, can't in my view be treated lightly, as such workmen are expected to ensure uninterrupted manufacturing in the automated factory. Moreover the concerned workman was punished earlier for similar lapses and was under observation at the relevant time.

13. However only because of the decision in *Colour-Chem Ltd. v. A.L. Alaspurkar* (supra), the learned Labour Court considered the punishment to be disproportionate and on that basis, the reference was answered against the management and reinstatement of the workman was ordered. But in *Mr. Sarma refers to Bharat Forge Co. Ltd. v. Uttam Manohar Nakate* (supra), the Apex Court categorically observed that *Colour-Chem Ltd. v. A.L. Alaspurkar* (supra), is not an authority for the proposition that in a case where an employee is found to be sleeping during duty hours, the punishment of dismissal is disproportionate to the act of misconduct. Thus the past similar lapses of the workman and the fact that he was dealt leniently earlier by ordering the workman to be kept under observation, should have been taken into account by the learned Labour Court to determine the proportionality of punishment. But this was not done and the reference was answered on the basis of the verdict of *Colour-Chem Ltd. v. A.L. Alaspurkar* (supra), which was disapproved by the Apex Court itself, in its later decision in *Mr. Sarma refers to Bharat Forge Co. Ltd. v. Uttam Manohar Nakate* (supra).

14. In this case as the reinstatement order of the Labour Court was challenged by the management, the workman is receiving his wages under Section 17B of the ID Act since 2007. Moreover by now he has also attained the age of

superannuation. In view of above, the impugned award dated 18.12.2004 (Annexure-11) in the Reference Case No. 2/2000 is held to be unsustainable and thus the decision of the learned Labour Court is set aside and quashed. Consequently the dismissal of the workman is found to be justified and the Industrial Reference is answered accordingly. With this order, the Writ Petition stands allowed in the manner indicated. No cost.