

(2014) 01 P&H CK 0186
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 24029/2013

Assistant Superintendent of Post Office	APPELLANT
Vs	
Central Govt. Industrial Tribunal-cum-Labour Court-II and Another	RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2014) LLR 524

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Vikram Bajaj, Advocate for the Appellant

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—The challenge in the present writ petition is to the award dated 4.3.2013 (Annexure P-10) whereby the Labour Court-II, Chandigarh has substituted the punishment of removal with stoppage of two increments permanently and held that the workman is entitled to be reinstated without payment of back-wages. From the record of the writ petition, it transpires that the demand notice dated 5.7.2004 (Annexure P-6) was served upon by the petitioner challenging the termination on the basis of which reference was made to the Labour Court.

2. As per the statement of claim, the workman-respondent No. 2 was appointed as a regular labourer in the Post and Telegraph Department in February, 1988 and he worked at Rs. 2403 per month. He was threatened with termination of service and as such filed an application with the Central Administrative Tribunal, Chandigarh and an interim protection was granted to him on 28.5.1993. Thereafter, he withdrew the said application 20.9.1993 on the ground that case was covered under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act"). Thereafter, the Management terminated his

services on 21.9.1993 and he was relieved from duty as Extra Departmental Agent (EDA). He served a demand notice dated 22.9.1993 to the Management and they had agreed to reinstate him and he was reinstated with effect from 30.4.1994 and posted at Bus Stand Office, Ludhiana. Thereafter, he performed his duties upto 3.7.2000 and took leave from 4.7.2000 to 13.7.2000 and thereafter upto 23.11.2000. He was not allowed to join his duty thereafter. He served a demand notice on 22.8.2003 and he was reinstated and joined his duty on 5.9.2003 and was transferred to Khasi Kalan Branch office, Ludhiana. He was thereafter removed from service and relieved from duties on 28.6.2004/5.7.2004. Accordingly, it was pleaded that mandatory provisions of the Act had not been complied with and that he had not absented intentionally and remained on leave and absence from duty is not such a grave offence for which the extreme punishment of removal from service could be imposed. The departmental enquiry was illegal and against the principle of natural justice and action of the respondents was arbitrary and he was not even granted any personal hearing by the competent authority.

3. In reply to the claim petition, the petitioner department took various pleas including the fact that the Tribunal did not have jurisdiction in the matter and the workman had remained absent from duty from 1.9.2000 to 5.9.2003 and he was asked to join his duties immediately vide letter dated 23.12.2000. He resumed his duties on 5.9.2003 after a period of three years three days and was proceeded against for remaining unauthorisedly absent and charge sheeted on 10.11.2003. He appeared before the Enquiry Officer and pleaded his guilt of the charges in his own hand written application submitted before the Enquiry Officer on 8.1.2004 and appropriate action had been taken against him after following the due procedure and he was duly heard in person and given opportunity to defend himself.

4. Before the Labour Court, the workman examined himself whereas the Management examined Amarjit Singh Sekhon, Assistant Superintendent, Post Office and also filed copy of the enquiry report. The Labour Court after examining the file of enquiry report came to the conclusion that though no witness had been examined in the enquiry but the punishment was inflicted on the basis of the admission of the workman himself as per letter dated 28.1.2004. The workman had admitted that he could not attend his duties for the period mentioned above and could not apply for leave as he was ill and the family circumstances were also bad. Though in his replication, he pleaded that he had written according to the wishes of the management officer as it had been misrepresented that he will be reinstated but the said plea was rejected. It was held that no wrong was done by the management in acting upon the admission of the workman and accordingly, the Labour Court was of the opinion that enquiry proceedings were justified and proper procedure had been followed. However, on the question of quantum of punishment, the Labour Court while placing reliance upon the judgment of the Hon''ble Apex Court in Life Insurance Corporation of India Vs. R. Dhandapani, ; Chairman cum Managing Director, Coal

India Limited and Another Vs. Mukul Kumar Choudhuri and Others, ; Syeed Zahir Hussain v. Union of India, 1999 LAB IC 2616 and has come to the conclusion that though the absence was for a very long period of about three years but due to the fact that the workman had admitted his guilt and had explained the reasons for his absence, the punishment awarded to him unduly harsh and grossly in excess to the allegation and, therefore, substituted the punishment with stoppage of two increments permanently and did not grant him the benefit of back-wages.

5. Resultantly, the present writ petition has been filed.

6. Counsel for the petitioner has vehemently submitted that the workman had remained absent for a long period of more than three years and the judgments relied upon pertain to a lesser period of absence and the Labour Court could not substitute the punishment imposed by the departmental authorities and the conduct of the workman had to be seen as on earlier occasions also he remained absent from duty.

7. After hearing the counsel for the petitioner, this Court is of the opinion that the impugned award is liable to be upheld as Section 11A of the Act provides that the Labour Court has to satisfy itself to the fact that the order of discharge or dismissal of the workman was not justified and it has power to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions as it thinks fit or to give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal. In the present case as narrated above, it is not the case where there was any misappropriation, embezzlement or dishonesty on the part of the workman. Rather it has been shown that the workman had been harassed time and again and he had to seek legal redressal. A perusal of Annexures P/2/2, P/3/1 and P/3/2 would go on to show that the workman had appeared before the Enquiry Officer and admitted his guilt regarding his absence and prayed that enquiry proceedings may be closed and did not take any unnecessary plea of procedural technicalities. As per statement recorded on 2.9.2003 before the conciliation authorities, it is mentioned that he had remained absent because his condition was not stable and his wife was ill and he may be permitted to join his duties. Thereafter also, before the Enquiry Officer he took the same -plea that he could not present himself on duty as his wife was ill and also his brother had expired and due to some mental problem he could not apply for the leave. In such circumstances, the Labour Court had substituted the punishment of dismissal taking into account the fact that the petitioner was appointed way back in 1988 and his services were terminated in the year 2004.

8. In a Division Bench judgment of this Court in Gajraj v. JMP Industries and others, 1996(3) RSJ 802, legal position was summarized by-referring to The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, and it was held that the Labour Court is required to evaluate the evidence and satisfy itself whether findings recorded by the

employer are justified or not and whether punishment awarded is justified or highly disproportionate. Relevant paragraph reads as under:--

Argument of the learned counsel for respondent No. 1 that the Labour Court is bound to confirm the action taken by the employer if the finding on the issue of fairness of domestic enquiry is in favour of the employer is wholly without substance. This argument is based on the legal position which held the field till 14.10.1971, i.e. the date on which the Industrial Disputes (Amendment) Act, 1971 came into force by which apart from other provisions, Section 11A was incorporated in the Act, 1947 conferring wide powers on the Labour Courts/Tribunals and National Tribunal in cases involving termination of services of the workmen by way of discharge or dismissal. This section came up for interpretation before the Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, . Their Lordships referred to the legal position which obtained prior to the incorporation of Section 11A and held that the legislature has designedly conferred much more wider powers on the Labour Courts and Tribunals to deal with the cases in which the workman is removed from service as a measure of disciplinary action. Their Lordships held that after coming into force of Section 11A, the Labour Court is required to examine the issue of fairness of enquiry and give opportunity to the employer to produce evidence in cases where no enquiry is held or the enquiry held by the employer is found to be defective and a prayer is made at an opportune moment by the employer for permission to adduce evidence in case finding on the issue of fairness of enquiry is adverse to it. In case of fair and proper enquiry the Labour Court is required to evaluate the evidence and decide for itself whether the finding recorded by the employer is justified or not. In cases where the employer produces evidence before the Labour Court to support the allegation of misconduct, evidence produced during the course of proceedings before the Labour Court has to be analysed by the Court itself for recording a finding whether the action of the employer is supportable or not. In either of these cases, the Labour Court has to further examine whether the punishment awarded by the employer, the action taken by the employer is just or not and if it is found that the punishment is harsh or highly disproportionate or is wholly unjustified, the Labour Court can reduce the punishment or substitute it by some other penalty.

9. The Labour Court was justified in placing reliance upon the judgments in *Life Insurance Corporation of India's* case, *Chairman-cum-Managing Director of Coal India Limited's* case and *Syed Zahir Hussain's* case (supra). The Hon'ble Apex Court in *U.B. Gadhe and Others Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd.*, also held that the Tribunal is to examine these facts and power has to be exercised judicially. The relevant portion reads as under:--

18. It is not necessary to go into in detail regarding the power exercisable u/s 11A of the Act, The power under said Section 11A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected

to interfere with the decision of a management u/s 11A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words "disproportionate or "grossly disproportionate by itself will not be sufficient.

10. In the present case, it is to be noticed that the workman had been appointed in February, 1988 and he was removed from service on 28.6.2004 and, therefore, almost held 13 years of service apart from 3 years he remained absent. Thus, keeping the length of service in mind of the workman, the substitution of the punishment by the Labour Court was well justified and no fault can be found with the said action.

11. It has time and again been held by the Apex Court that while exercising the powers of writ jurisdiction under Article 226 of the Constitution of India, this Court is to exercise its power only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice has taken place. The High Court will not convert itself into a Court of appeal and indulge, appreciate or evaluate evidence and correct errors in drawing inferences or correct errors of mere formal or technical character. The said principle was laid down in *Surya Dev Rai Vs. Ram Chander Rai and Others*, . It has been laid down that where the Tribunal has acted illegally in exercise of jurisdiction conferred on it and decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted in dealing with the dispute is opposed to the principles of natural justice, this Court would interfere. The error of law has to be apparent on the face of the record and it has to be manifestly clear that the conclusion of law recorded by the Tribunal is on an obvious misinterpretation of the relevant statutory provisions or in ignorance of the same. Thus, what can be corrected is an error of law, which should be of such a character which is apparent on the face of the record and if the statutory provision is capable of two constructions and one of it had been adopted by the Tribunal, it may not be desirable to correct the same by way of writ of certiorari. In the present case, no such error of law or fact has been shown which would warrant interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India. Accordingly, there is no scope for interference in the well reasoned order of Labour Court and the writ petition is dismissed.