

(2003) 01 P&H CK 0268
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2120 of 1985

Autometers Limited

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 29-01-2003

Acts Referred:

Citation : (2003) 134 PLR 609

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Alok Jain, for the Appellant; Ranjit Singh Saini, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—Vide order dated 1.10.1984 (Annexure P-13), Presiding Officer, Industrial Tribunal, Faridabad ordered the reinstatement of workman (Khem Chand) who had been dismissed from service by his employer M/s Autometers Ltd. and in place of dismissal from service, ordered the stoppage of three annual increments and also deprived him of back wages. M/s Autometers Ltd. petitioner through this writ petition filed under Articles 226/227 of the Constitution of India has prayed for the issuance of a writ in the nature of certiorari quashing order/award (Annexure P-13) of the Labour Court, Faridabad. It is stated that Khem Chand was employed in the department of Plating Shop where smoking was specifically prohibited. On 5.10.1980 at about 12.00 noon, he was found smoking in the shop floor gallery upon which his Incharge Sh. Bachan Singh stopped him from doing so and asked him to smoke in the bath room. Upon this, Khem Chand caught hold of Bachan Singh from the collar of his shirt and gave him two blows. Besides, he used unparliamentary language against him. He threatened him with death the moment he went out of the factory. Khem Chand did not stop at that. He followed his Incharge Bachan Singh with an iron rod where upon one Sohan Paul caught hold of him and brought him under control, otherwise he would have caused many more serious injuries to Bachan Singh. Incharge of shop floor gallery, where Khem Chand was found smoking. Written reports were submitted

to the Management by Sohan Paul. Bachan Singh and D.K. Jain on 5.10.1990. Thereupon charge sheet-cum-suspension letter was issued to the workman on 6.10.1980. Charge sheet is Annexure P-2. Workman submitted his explanation to the charge sheet which was found not satisfactory and enquiry was ordered into his mis-conduct. In the enquiry he was given full opportunity to participate and to defend himself by producing evidence in his evidence. After the enquiry, Enquiry Officer gave his finding holding the workman guilty of major misconduct on both counts namely that he was found smoking in the factory premises at a place where smoking was prohibited and further he physically man-handled Bachan Singh the Incharge of Plating Shop, by catching hold of his collars, besides using unparliamentary and abusive language against him. It is stated that both these acts amounted in law to "major misconduct" in terms of Clauses 17 and 18 of the Certified Standing Orders. Besides this, it was found by the Enquiry Officer that the workman would have caused serious injuries with iron rod to his incharge Bachan Singh had he not been rescued by Sohan Paul. Annexure P-7 is the report of the Enquiry Officer. The management agreed with the report of the Enquiry Officer and issued him show cause notice Annexure P-8 calling upon him to show cause why he be not dismissed from service. Order of dismissal Annexure P-9 was passed after serving show cause notice upon him. Report of the Enquiry Officer with the entire record of the enquiry proceedings was duly considered by the management before passing the order of dismissal Annexure P-9.

2. I have heard the learned counsel for the petitioner, learned counsel for respondent No. 2-workman and have gone through the record.

3. Learned counsel for the petitioner submits that it was an act of indiscipline on the part of workman inasmuch he was smoking in the factory premises where smoking was specifically prohibited under the standing orders framed by the Management under the authority of Industrial Employment Standing Orders Act, 1946. It was submitted that under Clause 17 of the Standing Orders, drunkenness, fighting or riotous or disorderly or indecent behaviour or any act subversive of discipline or efficiency is major misconduct. Under Clause 18 of the Standing Orders smoking in the factory premises where prohibited is also a major misconduct. He was found smoking in the shop floor gallery where smoking was specifically prohibited. Smoking in the factory premises where it was prohibited was one misconduct on his part. When his Incharge Bachan Singh asked him to restrain himself from smoking and if he had to smoke, he could go to the bath room and smoke, he became riotous, caught hold of him by his collar and gave him two blows. Besides, he abused him and threatened him with death, the moment he went out of the factory. He followed him with an iron rod. It was another misconduct on his part. Earlier misconduct became aggravated by the later misconduct. Dismissal from service is the natural consequence of such "major misconduct" as per the Certified Standing Orders.

4. Learned counsel for the petitioner submits that if such type of workman is

taken back on the job, that will send wrong signals to the other workmen. They will be encouraged to indulge in to indiscipline with impunity. Discipline is the core of service. Particularly in private establishments, where production depends upon the hard work being put in and discipline being shown by the workmen, on whose shoulders the quality and quantity of production rests.

5. Learned counsel for the petitioner submits that look at the workman who had the audacity of breaching discipline and when he was called upon to be within the bounds of discipline, he became riotous with his charge and gave him blows. Not only that he gave him blows but also abused him and threatened him with death and following him with an iron rod in his hand.

6. Learned counsel for the respondent-workman on the other hand submits that he (workman) is a poor man. If he is thrown out of job, he and his family would starve. He should be given one opportunity to reform himself. He submits that in view of Section 11-A of the Industrial Disputes Act, 1947, Labour Court was well within its right to tone down the punishment and make it commensurate to the gravity of the charge. In support of this submission, he seeks to draw my attention to Management, Lokashikshana Trust No. 2 v. Presiding Officer, Labour court and Anr. 2000(4) R.S.J. 139, Eicher Tractors v. Presiding Officer, Labour Court-cum-Industrial Tribunal-1, Faridabad and Anr. 2001(4) RSJ 539 and Management of Shri Ganapati Bus Service, Thirunelveli v. Presiding Officer, Labour Court and Ors. 2001(1) R.S.J. 436.

7. It is true that in view of Section 11-A of the Industrial Disputes Act, 1947, it is within the ambit of the Labour Court to tone down the punishment imposed upon the workman by the Management.

8. Learned counsel for the petitioner submits that misconduct complained of and proved against the workman was subversive of all discipline and punishment of dismissal was the only punishment which could curb such indiscipline and serve as an eye-opener to other workmen who might have any time the tendency to deviate from the path of discipline and rectitude.

9. Keeping in view the nature of the misconduct with which the workman was charged and which was brought home to him in an enquiry. I do not think the punish ment of dismissal could be toned down by the Labour Court. So this writ petition is al lowed and order/award Annexure P-13 is quashed/set aside.