
(1994) 03 OHC CK 0004
In the Orissa High Court
Case No : O.J.C. No. 2075 of 1984

Balasore District Co-operative Central Bank Ltd.	APPELLANT
Vs	
Karunakar Das and Others	RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes (Amendment) Act, 1971 — Section 3
Industrial Disputes Act, 1947 — Section 11A

Citation : (1995) 2 LLJ 196

Hon'ble Judges : L. Rath, J; K.C. Jagadeb Roy, J

Bench : Division Bench

Advocate : B.B. Ratho and P.K. Bhuyan, for the Appellant; Additional Standing Counsel for Opposite Parties 2 and 3, for the Respondent

Final Decision : Partly Allowed

Judgement

K.C. Jagadeb Roy, J.—This writ application preferred under Articles 226 and 227 of the Constitution of India is filed challenging the award dated April 22, 1984 passed by the Presiding Officer, Labour Court in Industrial Dispute Case No. 46 of 1975 directing the management to reinstate the present opposite party No. 1 reducing him to the next lower rank carrying lower scale of pay and to pay him back wages in his lower post with effect from July 14, 1972 till reinstatement which comes to about 12 years. The opposite party No. 1 who was a Senior Supervisor, and was posted at Tihidi Branch of the petitioner, was proceeded under a disciplinary proceeding for the alleged misconduct, negligence, dereliction of duty and disobedience to the direction of the authorities and the circulars of the Department with 15 charges which were framed against him vide letter No. 9183 dated June 24, 1970 and the Disciplinary Authority having been satisfied that the charges were established against the present opposite party No. 1 and according to the management the charges being serious and grave in nature, directed the opposite party No. 1 to be discharged from service. The duties of the Supervisor were to recommend credit limit application of the loanee

members, collection of loan amount on behalf of the management through the societies and to disburse loan to the members through the societies, remain present in person at the time of disbursement of loan and supervise disbursement in order to enable the actual loanee to receive the loan, scrutinise cash book, minutes book, membership and share register and to verify the share collections, prepare annual returns of the societies and monthly demand collection and balance register, ensure proper utilisation of loan, supervise timely collection of loan from the members and reinvestment of loan with the eligible members through the societies, submit advance tour programmes and tour diaries before the dates specified for the purpose and to submit monthly returns of membership and legal actions etc. to attend such other works as and when necessary from him. It was the allegation of the petitioner, the Bank, that the opposite party No. 1 (a) grossly neglected his duties, (b) failed to collect minimum amount of loan, (c) disobeyed orders of superiors, (d) tampered with official records and documents, (e) suppressed material facts, (f) gave false certificates and recommendations, (g) did not submit tour programmes and tour diaries in time, (h) if submitted tour programmes, did not stick to the same, (i) gave false diaries, (j) did not prepare the records which he was required to prepare as his normal routine work, (k) did not attend loan disbursements, (l) did not properly check up loan registers, membership and share registers, (m) did not submit credit limit application in time with proper scrutiny and accuracy, (n) did not properly check up resolution book of societies, (o) did not verify and compare the signature of member applicants in the share and membership register and the loan applications and recommended loan applications without proper security and with false certificate and false recommendations and committed various other illegalities and irregularities which put the bank into a false position, deliberate losses and (p) proceeded on leave and extended that without prior permission and refused to return from leave when asked at a very crucial period of the bank's business.

2. In the year 1969 the Bank found that there was abnormal shortfall in collection of loan for which the Bank apprehended that fresh loans from the R.B.I. and other financing agencies may not be available. That is why, on May 20, 1969 a circular was issued by the Bank as per Annexure-1 to this writ application that in the event shortfall of collection by 50% of the outstanding dues, it would be a fit case for termination of services of Supervisors. On March 17, 1970 the attention of the present opposite party No. 1 was also drawn to the said circular and on April 10, 1970 as the position did not improve, the opposite party No. 1 was asked to explain as to why the collections in his area was very poor and below the mark. It is only after the opposite party No. 1 was found to have indulged in commission of several misconducts, a disciplinary proceeding was initiated against him with 15 charges as stated above. He did not offer any formal explanation and when the matter was brought to the Labour Court u/s 11A of the Industrial Disputes Act, he filed the copy of letter dated September 17, 1970 as his explanation to the charges.

3. The Management in paragraph-10 of the writ application has denied that the petitioner has submitted any explanation to the charges as required of him under Annexure-4. The opposite party No. 1, however, filed a letter dated September 17, 1970 marked Ext.-A to the I.D. Case and said to be the office copy of his explanation. The Management has filed the copy of the said letter as Annexure-5 to the writ application. In the said letter, the opposite party No. 1 had admitted that his collection was below the target fixed. Against charge No. 2, he also admitted that there was some delay in attending some work due to heavy pressure of work. Against charge No. 3, he admitted that he had overlooked that on the credit limit applications, signature of members were taken twice which was taken without his knowledge, but he had overlooked it. Against charge No. 4, he admitted not to have prepared certain registers required of him, but it was on account of non-supply of registers. Against charge No. 5, he has admitted that he had kept the credit limit application for several days and afterwards returned the same for rectification and reproduction and admitted that this was not done in time but lately. As against charge No. 6, he has stated that he has submitted the tour programmes and tour diaries in time. Against charge No. 7 he admitted that he had extended leave on his own. Against charges Nos. 8, 9, 10 and 11 he admitted that he had sufficient knowledge to run his office being a senior officer and was confirmed in the post and had 15 years of experience and denied the charges Nos. 12, 13, 14 and 15. The charges were enquired into and opposite party No. 1 was found to be guilty of the charges which was placed before the President and the President offered the opportunity of personal hearing on October 28, 1971 to the present opposite party No. 1. On April 14, 1972 the disciplinary authority discharged opposite party No. 1 from service as per Annexure-6 to this writ application. The Branch Manager, Basudevpur Branch of the Balasore Dist. Co-operative Central Bank was appointed as the Enquiring Officer. Annexure-6, however, shows that opposite party No. 1 has submitted his explanation on September 18, 1970 the enquiry report was submitted on August 5, 1971 and after personal hearing having been given on October 28, 1971 the President, in exercise of his power conferred on him under Rule 15 of the Service Conditions of the Employees of the Bank, discharged opposite party No. 1 from service by his order dated April 14, 1972. After opposite party No. 1 was discharged from service he has raised a dispute which was taken up for conciliation and the conciliation having been failed, the matter was referred to the Labour Court u/s 11A of the Industrial Disputes Act, reference being whether termination of the service of Sri Karunakar Das by the President of Balasore District Co-operative Central, Bank Ltd., Balasore is legal and/or justified? If not, to what relief Sri Karunakar Das is entitled.

4. The Management has filed its written objection which is made Annexure-7 to this writ application and the opposite party No. 1 who was the 2nd party in the Industrial Disputes Case No. 46/75 filed his written statement which is marked Annexure-8 to this writ application. In the written objection filed by the Management, the Management has indicated that discharge of 2nd party from

the service of the Bank is just, proper and in accordance with law and as such the aforesaid proceeding is not maintainable since there was gross dereliction of duty and negligence and disobedience on the part of 2nd party-opposite party No. 1 to the lawful order of the Bank and failed to maintain registers and absented himself from the duty without permission. There was proper inquiry as the 2nd party was served with the copy of the charges and the Enquiring Officer Dr. Behera who was appointed as the Enquiring Officer had conducted the inquiry and submitted his report. After personal hearing order of discharge was passed and the action taken against the 2nd party-present opposite party No. 1 was just and proper. The written statement filed by opposite party No. 1 alleged that the domestic inquiry was not conducted by an impartial officer; the President himself had served notice and called for explanation and passed the discharge order whimsically taking arbitrary decision in the matter. He also mentioned in paragraph-3 of his written statement that the President had made the inquiry. Though Mr. Behera was appointed as the Enquiring Officer, he did not enquire anything to the knowledge of opposite party No. 1; he did not take notice of written statement made by the 2nd party and the 2nd party earnestly requested to get a copy of the alleged inquiry report but the Management did not supply the same to him. The President had no power to terminate opposite party No. 1 without approval of the Board of the Management. The opposite party No. 1 also alleged that though he appealed to the Board of Directors on May 9, 1972 they did not hear the appeal and hence the opposite party No. 1 approached the District Labour Officer to settle the dispute and after failure of conciliation, the Conciliation Officer submitted his failure report to the Government and the matter was referred to the Labour Court for adjudication. The Labour Court by its order dated February 22, 1984 held that the present opposite party No. 1 was found guilty of charge Nos. 1,2,3,4 and partly of charge No. 6. As far as rest of charges were concerned, the Labour Court held that the same were not established against opposite party No. 1. The four charges which were established against present opposite party No. 1 are as follows:

"(1) That as against the total demand of Rs. 7.05 lakhs in your block, you have been able to collect only Rs. 3.03 lakhs upto May 31, 1970 and thereby heavy overdue has increased in the societies in your area. This has not only resulted in stoppage of investment in your (sic) but also it has injured the financial position of the Bank.

(2) That the Branch Manager, Tihidi in his letter No. 798 dated May 6, 1970 has observed that you have deliberately neglected to attend the disbursement of Chadadia g.p.g.y.e.s. Moreover you are in habit of avoiding the instructions to attend the disbursement of loans to the society.

(3) That you have recommended the credit limit application of Joshipur S.C.S. under Chandbali Block for a sum of Rs. 45,463/- on February 24, 1970 which is full of irregularities as observed in the visit note of the Secretary, Balasore D.C.C. Bank Ltd. The signature obtained in the credit limit application is not genuine and

signature of the members have been obtained more than twice so as to receive more credit from the Bank. You have also not checked land registers and other register of the C.S. prior to recommending the application vide letter No. 788 dated May 5, 1970 of the Branch Manager, Tihidi."

(4) You have failed to maintain the Demand Collection and Balance Register from February 1970 and you have no knowledge to prepare the Demand Collection and Balance Register vide letter No. 780 dated May 5, 1970 of the Branch Manager, Tihidi."

As far as charge No. 6 is concerned, it was partly proved against the present opposite party No. 1. The Labour Court in paragraph- 28 of the award has stated that four and half charges which were sustained against him are no doubt vital charges and in paragraph-27 of the award, the Labour Court had observed that Rule 15 of the Rules aforementioned does not provide for any punishment of discharge from service, but an employee of the Bank can be dismissed from service. But in fact as the Labour Court observed the discharge order passed by the President against 2nd party, is nothing but dismissal from service. In paragraph-30 of the award; the Labour Court held that on the above analysis, according to him, the termination of the services of present opposite party No. 1 by the President of the Bank is illegal and unjustified and as such he reduced the opposite party No. 1 to his lower post carrying lower scale of pay and directed to pay the back wages of his lower post. It may be stated here that the President had discharged opposite party No. 1 from service from the date of issue of his order i.e. April 14, 1972. The 4 1/2 charges that were established against opposite party No. 1 are stated to be charges in so far as negligence of opposite party No. 1 to attend the legitimate duty, disobeying the direction of higher authorities, irregularities in scrutinising the credit limit applications, failure to prepare D.C.S. Registers for March and April, 1970 in time and non-submission of tour programmes and diaries in time are concerned which were sustained by the Labour Court. But finding that even though those 4 1/2 charges are vital charges, in his opinion, discharge or dismissal from service seems to be unjustified considering the nature and gravity of the charges proved against him, and he observed to be awarded with lesser punishment of reduction in rank to his next below post carrying lower scale of pay, the Labour Court directed that opposite party No. 1 to be reinstated in service in his next below post carrying lower scale of pay and with full back wages in his lower post.

5. Section 11A of the Industrial Disputes Act, 1947 was introduced into the Industrial Disputes Act, 1947 by Section 3 of the Industrial Disputes (Amendment) Act of 1971 which came into effect from December 15, 1971. Section 11A has enhanced the power of the Tribunals, Labour Courts and National Tribunals in the matter of adjudication of matters u/s 10 of the Act. While before engrafting Section 11A of the I.D. Act, the Tribunal had only to examine if there was a proper domestic enquiry and the management's conclusion on the evidence adduced at such enquiry was plausible and disturb

the finding only when the Tribunal finds it perverse or that the punishment is so harsh as to suggest victimisation or unfair labour practice. After the above section is added, the Tribunal had the further and equally important duty to satisfy itself if the legally acceptable evidence on record of the domestic inquiry could sustain the conclusion reached and if need be to substitute or modify the employer's conclusion. If the domestic enquiry is held valid, the management can insist that the same should be accepted and the Labour Court in order to differ from the conclusions arrived at by the management will have to give very cogent reasons for not accepting the view of the management and if the domestic inquiry held was invalid, the management loses benefit of urging before the Court for accepting the view taken by it and the Labour Court will be free to ignore the proceedings held by the management completely and to hold fresh inquiry itself. In a case where a domestic enquiry is held valid, the evidence recorded in the domestic enquiry continues to be a valid piece of evidence against the employee and the management may be allowed to adduce additional evidence, if necessary, in addition to the evidence already adduced before the domestic enquiry. On the other hand, if the domestic enquiry held is invalid, the entire evidence adduced in the domestic enquiry stands vitiated and the management loses the advantage of relying on the said evidence before the Industrial Tribunal or the Labour Court, as the case may be.

6. In the present case there is no finding by the Labour Court that the domestic enquiry was invalid. The evidence that was led by the management in the domestic enquiry was, therefore, to be treated as good evidence. Reference can be made to *Motor Industries Co. Ltd. Vs. D. Adinarayanappa and Another*, .

7. To grant relief u/s 11A of the Act, there must be a finding that the discharge or dismissal is not justified. Unless the Labour Court gives such a finding, it has absolutely no power to grant any relief contemplated u/s 11A such as award of lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require or any other relief. Thus the finding regarding the non-justification of discharge or dismissal is condition precedent for granting the other reliefs contemplated u/s 11A. The finding of misconduct supported by evidence in domestic enquiry ordinarily should not be reappraised by the Labour Court to arrive at a different conclusion. The Labour Court can interfere if enquiry is unfair, or findings are perverse, or there has been victimisation, unfair labour practice or mala fide or the punishment is harsh. A reference may be made in this regard to *The East India Hotels Vs. Their Workmen and Others*, . But the Labour Court is competent in all matters referred to it subsequent to the introduction of Section 11A to exercise all such powers as a Court of appeal. The only restrictions being those which apply normally to an appellate Court. (Ref -1981 Lab IC 233 (Ker)).

8. Prior to the insertion of Section 11A into the Act, there was no provision in the Act empowering the Industrial Tribunals to set aside wrongful orders of discharge or dismissal exercising appellate jurisdiction over the domestic authorities. The

insertion of Section 11A has resulted in enlargement of the Tribunal's power in an adjudication relating to the discharge or dismissal of a workman. In essence, u/s 11A, the Legislature has vested in the Labour Court all the powers which are normally exercised by appellate authorities by way of reappraising the evidence and setting aside the findings and also imposing reasonable punishments when desired.

9. Where the domestic enquiry is found to have been held properly, the Labour Court or the Tribunal, as the case may be, as already stated in above paragraphs, shall be competent to reappraise the evidence recorded in the domestic enquiry, not only for upholding or upsetting the finding of guilt returned by the person who conducted the enquiry but also with a view to determining whether or not the punishment was commensurate with the gravity of charge made against the employee. Neither the employer nor the employee, in such a case, shall have the right to produce further evidence before the Labour Court or the Tribunal to support or demolish the finding of guilt recorded, or the quantum of punishment imposed as a result of the domestic enquiry. Reference may be made to (1981) 2 SLJ 54 (J&K). In extreme cases additional evidence has been accepted in addition with the evidence already on record by the management even when the domestic enquiry was found valid. It is a matter of discretion of the Court just like an appellate Court which if at all satisfied that such evidence is to be laid to advance justice, there is no bar for the same even though as already stated in (1981) 2 SLJ 54, a party has no right to adduce evidence to support or demolish the findings. Because the power of the Labour Court u/s 11A is analogous to an appellate Court which finds support from a decision reported in 1983 Lab IC 288.

10. As held in a case reported in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , after the amendment of the Industrial Disputes Act in 1971, the Tribunal has not only the power and jurisdiction to reappraise the evidences, but the Tribunal has also a duty u/s 11A to consider as to whether or not the impugned punishment was just and proper in the facts and circumstances of the case and whether or not for the ends of justice it is desirable to inflict a lesser punishment on the concerned employee. When it is a normal rule for reinstatement since the order or termination is non est even so, the Labour Court may well slice off a part of the relief if the workmen are not wholly blameless. But to what extent the wages for the long interregnum should be paid is, therefore, variable dependent on a complex of circumstances. A reference may be made to *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, , in this regard. There may be cases where the Labour Court can also direct reinstatement even without back wages.

11. When the matter was pending hearing in this Court, by the order dated February 10, 1986 in Misc. Case No. 3172 of 1985, arising out of this writ application, this Court passed an order that the management shall pay the wages

last drawn to the petitioner from September, 1984 till the disposal of the writ application. The ar-rear dues from September 1984 till February, 1986 shall be paid by the management during the first week of March 1986 and thereafter the monthly wages shall be paid by the 15th of each succeeding month. Prior to this on May 1, 1985 this Court had passed the order directing the present petitioner to pay a sum of Rs. 5,000/- to the present opposite party No. 1 within one month from the date of that order failing which the order of stay of operation of the award that was passed, was directed to be vacated without further reference to Bench. When the matter was being heard, on April 5, 1991 this Bench on a memo being filed by the lawyers appearing for the opposite party No. 1, directed deletion of the names of Sri J.K. Tripathi and M.M. Jena as there was no instruction received from opposite party No. 1 by his lawyers. On July 23, 1991 when the matter was heard in part, at the instance of the Bench, the learned counsel for the petitioner undertook to file an affidavit showing the pecuniary benefits that could have been available to the opposite party No. 1 in the event the direction in the award would have worked out and pursuant to that direction, the learned Counsel for the petitioner had filed an affidavit on July 29, 1991 wherein the learned Counsel has indicated that as detailed in that affidavit the amount that should have been made available to the opposite party No. 1 was Rs. 1,42,278/-, but because of the direction given by this Court, a sum of Rs. 29,830/- has already been paid to the opposite party No. 1 keeping the balance at Rs. 1,12,448/-.

11-A. In the case of Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, (supra), the Hon"ble Supreme Court stated thus: p. 156.

"xx xx. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the Court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglo-philic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine."

In paragraph-81 of the said judgment, it has been held: pp. 157- 158:

"xx xx. The powers of judicial supervision of the High Court under Article 227 of the Constitution, as it then stood, are not greater than those under Article 226 and it must be limited to seeing that a tribunal functions within the limits of its authority, xx xx."

In another case reported in Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , the apex Court held thus:

"This led to a proposition that in exercising jurisdiction under Article 226, the

High Court is not constituted a court of appeal over the decision of authorities, administrative or quasi- judicial. Adequacy or sufficiency of evidence is not its meat. It is not the function of a High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

A Constitution Bench of the Apex Court in the case of P.H. Kalyani Vs. Air France Calcutta, succinctly set out the limits of the jurisdiction of the High Court in dealing with a writ petition. It was said that in order to justify a writ of certiorari it must be shown that an order suffers from an error apparent on the face of the record. It was further pointed out that if the finding of fact is made by the impugned order and it is shown that it suffers from an error of law and not of fact a writ under Article 226 would issue, and, while so saying, the decision in Nagendra Nath Bora's case was affirmed. Following the aforementioned decision, the Gujarat High Court in Navinchandra Shakerchand Shah Vs. Ahmedabad Co-operative Department Stores Ltd., , observed that the amended Article 226 would enable the High Court to interfere with an award of the industrial adjudication if that is based on a complete misconception of law or it is based on no evidence or that no reasonable man would come to the conclusion to which the arbitrator has arrived.

12. In the case of Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another, the Supreme Court in paragraph-17 of the judgment held thus: p. 233:

"xx xx. Moreover, in view of the provisions contained in Section 11A of the Act, which empowers the Industrial Tribunal to go into the question whether the order of discharge or dismissal passed against a workman is justified or not and permits the Tribunals to set aside the order of discharge or dismissal as the circumstances of the case may require, it was open to the High Court to consider what would be adequate punishment for the misconduct found to have been committed by these workmen and take the view that the acts of misconduct found proved against these five workmen were not such as to warrant dismissal and denial of one-half of the back wages for the period of about six years was adequate punishment for the misconduct found to have been committed. We do not find any infirmity in the aforesaid view expressed by the Appellate Bench of the High Court, xx xx."

It, therefore, follows that it was within the scope and jurisdiction of the Labour Court to reappraise the evidence and to come to a finding of guilt of opposite party No. 1 and it was also within his jurisdiction to determine the quantum of punishment. There is no jurisdictional error or the error committed in law or the order is found to be perverse on facts so as to interfere with the orders of the Labour Court, though at one or two places there may be little slip or error of record committed by the Labour Court which were not so material. But the Supreme Court has already stated in Workmen of Bharat Fritz Werner (P) Ltd. 's case (supra) that if the circumstance so requires, the High Court exercise its power to see if on the admitted facts of guilt, the punishment awarded by the

Labour Court is also arbitrary and needs interference.

13. In the present case, the opposite party No. 1 has been reinstated in a post which is below in rank and the Labour Court allowed him full back wages from the date of discharge till payment calculating the salary as he is entitled in new post in which he was reinstated. But taking into consideration the fact that Bank has already suffered a lot because of negligence of the present opposite party No. 1 in not taking initiative in collection of outstanding loan, not applying his mind to any work, taking leave without any permission and disobeying the lawful order of the higher authorities, I am of the view that the order of the Labour Court to the extent that opposite party No. 1 is entitled to the full back wages from the date of his discharge is to be set aside and is, accordingly, quashed and the opposite party No. 1 is entitled to the half of the back wages for the period indicated by the Labour Court.

14. In the result, the writ application is partly allowed, but in the facts and circumstances of the case, there shall be no order as to costs.