
(2001) 12 AP CK 0069

In the Andhra Pradesh High Court

Case No : WA No's. 1864 and 1901 of 2001

Bharat Heavy Electricals Limited

APPELLANT

Vs

Additional Industrial Tribunal-cum-Additional Labour Court,
Hyderabad and Others

RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 11
Penal Code, 1860 (IPC) — Section 378

Citation : (2002) 1 ALD 777 : (2002) 1 ALT 151 : (2002) 93 FLR 269

Hon'ble Judges : Ar. Lakshmanan, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : C.R. Sridharan, in WA No. 1864 of 2001 and Ramesh Babu, for the Appellant; Government Pleader and C.R. Sridharan in WA No. 1901 of 2001, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy and Others, AIR 2005 SC 2769 : (2005) 104 FLR 806 : (2005) 1 JT 474 : (2005) 1 LLJ 865 : (2005) 2 SCC 481 : (2005) SCC(L&S) 282

Ar. Lakshmanan, C.J.—These two Writ Appeals are directed against the common Judgment of the learned single Judge dated 21.11.2001 in W.P.Nos.29150 of 1997 and 10461 of 2000 respectively.

2. Bharat Heavy Electricals Limited (BHEL) Hyderabad preferred W.P. No. 29150 of 1997 to quash the award-dated 28.7.1997 passed by the Additional Industrial Tribunal-Cum-Additional Labour Court, Hyderabad in I.D. No. 91 of 1994. W.P. No. 10461 of 2000 was filed by the workman to set aside the very same award in I.D. No. 91 of 1994 dated 28.7.1997 to the extent of denying him back wages, continuity of service and other attendant benefits.

3. The case of the management was that the respondent-workman while working

with the BHEL as Assistant Grade II was granted house building loan to a tune of Rs. 1,11,283/- and for the said purpose he created equitable mortgage by depositing the title deeds pertaining to the land measuring 200 sq. yds comprised in Plot No. 29, Chinna Thokata, Bowenpally, Secunderabad cantonment. Since the loan amount sanctioned by the management was insufficient for construction of house, the workman raised some private loans. He, however, failed to repay the loan amount sanctioned by the Company as well as the loan obtained from the private source. He decided to sell the property in question. As such he submitted an application through proper channel for release of the title deeds of the property in question.

4. The management placed him under suspension and lodged a police complaint against him alleging theft of the title deeds from its custody. It is the case of the workman that the Deputy Manager, Accounts and Finance and Senior Manager, Personnel and Administration of the management after considering his application only returned the original title deeds officially. On the other hand, the case of the management was that pending mortgage, the workman had entered into an agreement with prospective buyer to sell the property in question and as the original title deeds are available with the workman, he was charge sheeted framing two charges against him, the first charge being under Sub-rule 3(b) of Rule 14 for theft, fraud or dishonesty in connection with the employer's business or property and the other charge Under Sub-rule 3(g) of Rule 14 for habitual breach of any law applicable to the establishment of the Management-BHEL. Thereafter, the workman paid the outstanding loan amount of Rs. 1,33,500/- to the management and requested for revocation of the suspension. The workman submitted his explanation on 4.5.1992 denying the charges levelled against him. The management not being satisfied with the explanation conducted an Enquiry. The enquiry officer found him guilty of the charges and basing on the report of the enquiry officer, the workman was removed from service vide proceedings dated 2.7.1993 and the appeal preferred by the workman was also dismissed by the management. Against the order of removal from service, the petitioner raised an industrial dispute being I.D. No. 91 of 1994. The Labour Court came to the conclusion that the documents which are supposed to be in the custody of the office found their way to the workman which he made use of to sell the property during the subsistence of the mortgage with the management. He Labour Court however felt that the dismissal of the workman from service is harsh and directed his reinstatement as a fresh candidate in the post of Assistant Grade-II.

5. The Labour Court held:

Admittedly there is no procedure or rule of returning documents before discharge of the loan. The petitioner might have influenced the staff being an active union member and when it came to light he used his ingenuity and created this Ex. W.1 with the help of some of his colleagues. This very fact of producing Ex. W.1 for the first time after the second show cause notice was issued speaks volumes about the attitude of the petitioner and his misconduct. Therefore, I agree with

the finding given by the enquiry officer and also confirmation by the punishing authority and in issuing dismissal order as quite legal and valid.

.... In the present case it is established with all fairness about the petitioner getting possession of document which is supposed to be in the custody of the office by unfair methods. Therefore, I do not see any reason to come to a different conclusion to that of the enquiry officer.

The facts here are not disputed. As observed supra the documents which are supposed to be in the custody of the office found their way to the petitioner which he made use of for proposing to sell the property while the mortgage is still subsisting. It is not a case that the petitioner is not aware of the consequences; still the petitioner alone could not have done but for the active assistance (connivance?) of somebody in the office. For reasons best known to them, the department does not appear to have initiated any action by making any enquiry. The petitioner has already paid back the amount to the management. Therefore, there is no financial loss to the management. No doubt the Confidence of the employer on this petitioner has shaken by this occurrence; but no instance of earlier misconduct are spelt. On the other hand, it appears he is an active participant in the cultural activities and for common cause of the employees. Therefore, I also feel the punishment of dismissal from service is harsh, in the circumstances.

This Court feels that the ends of justice will be met if the petitioner is reinstated as a fresh candidate in Assistant Grade- II.

Thus in the light of my discussion supra while upholding the finding of enquiry officer and the impugned order, I hereby modify the punishment of the dismissal to that of the reinstatement of the petitioner as Asst. Gr. II afresh. Award is passed accordingly. The Award shall be enforceable one month from the date of publication in the Gazette.

6. Aggrieved by the above award both the workman and the management have filed the aforesaid writ petitions, which were dismissed by the learned single Judge as devoid of merits.

7. We have heard Sri Sridharan, learned counsel appearing on behalf of the management and Sri Ramesh Babu, learned counsel appearing for the workman.

8. Sri Sridharan, learned counsel for the Management would submit that in the face of the categorical findings recorded by the Labour Court, the Labour Court doesn't have any power u/s 11-A of the Industrial Disputes Act to interfere with the punishment of dismissal from service. In support of the said contention, he relied upon, inter alia, the following judgments:

1. UPSRTC v. Mohan Lal Gupta 2001 ILR 11
2. UPSRTC v. Pukhraj Singh 1999 Lab.IC 29
3. APSRTC v. K. Pochaiah 1999 Lab.IC 2351

4. Ruston and Hornsby (I) Ltd. Vs. T.B. Kadam,

5. Air India Corporation, Bombay v. VA Rebellow 1972 (1) LLJ 501

6. V.J. Ramulu Vs. Hon''ble Labour Court, Anantapur and another,

9. Thus, it was argued by the learned counsel for the Management that when the employee had been found guilty of misconduct and in such an event if the management loses its confidence vis-a-vis the employee, it will be neither proper nor fair on the part of the Court to substitute the finding and confidence of the employer with that of its own and direct reinstatement of the workman into service. The misconduct in the instant case has been proved and in such a situation, by reason of the gravity of the offence, the Labour Court cannot exercise its discretion and alter the punishment. The learned counsel would submit that the charges being serious in nature and as they were held proved, he deserves nothing short of dismissal and that the confidence of the employer on the workman has shaken by the occurrence and, therefore, the question of granting any relief much less reinstatement into service does not arise. Arguing further, the learned counsel for the management would submit that in case of proved misconduct, there is no question of considering the past service record and it is the discretion of the employer to consider the same in appropriate cases but the Labour Court cannot substitute the penalty imposed by the employer in such cases and that it is not a case of where the right of the employer in awarding the punishment can be said to be an irrational one warranting interference by the Labour Court in exercise of its discretion u/s 11-A of the Industrial Disputes Act.

10. The learned counsel for the workman on the other hand would submit that the reasons adduced by the labour Court in moulding the relief under para 20 of its award is just legal and well within its powers u/s 11-A of the Industrial Disputes Act. He would submit that the workman had already paid back the entire loan amount due to the management and there is no financial loss to the management. Above all, no instance of earlier misconduct of the workman is spelt out and that the workman is an active participant in cultural activities and serving for common cause of employees.

11. The learned counsel would further submit that the findings recorded by the Labour Court regarding denial of back, wages, continuity of service etc., which are adverse to the workman are bad in law unjust and contrary to the vital evidence brought on record. The learned counsel would further urge that the Labour Court had failed to consider the order of acquittal passed by the Criminal Court in C.C. No. 61 of 1993 wherein the Court at para 16 held that "admittedly the documents are under lock and safe custody of C.V.S.R. Anjenaya Sastry and Smt. Bala Kameswari. It is not their case that the locks were broke open and Ex. P.1 and other documents of title were stolen and it is the case of them that the workmen and others have threatened them and obtained delivery of the said documents. The workman obtained the documents officially under letter dated

4.5.1991".

12. Learned counsel further submitted that u/s 11-A of the Act, the Labour Court has to consider all the relevant material brought on record, but it had failed to consider the same and had the Labour Court scrutinised the material properly, there would have been no occasion for the Labour Court to record the adverse findings against the workman. Learned counsel would further urge that the cases relied upon by the management are cases which arose in the context of misappropriation and the said decisions rendered in the facts and circumstances of those cases are not applicable to a case of this nature wherein the management charged the act of theft of the documents by the workman while the specific case of the workman was that he obtained the documents officially.

13. Per contra, the learned counsel appearing for the management would submit that the instant case is one of theft of original title deeds kept in the custody of the management as a charge thereby creating mortgage and when an amount of Rs. 1,33,500/- was still outstanding, the case of theft is totally established and that the definition of theft u/s 378 IPC leaves no room for an iota of doubt that it is a case of theft which is equally serious in nature as that of misappropriation and therefore the argument advanced by the counsel for the workman cannot be countenanced.

14. Learned counsel for the workman next submitted that the workman was acquitted in a Criminal Court and therefore the management cannot proceed against the workman on the same set of charges in a departmental enquiry. We are unable to accede to the said submission. It is true that that the workman was acquitted by the Criminal Court but the acquittal does not automatically give him the right to be reinstated into service. It would still be open to the competent authority to take decision whether the delinquent employee can be taken into service or disciplinary action should be taken under the relevant rules. In the facts and circumstances of the case, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct should be taken as per law, if otherwise available. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money. In this context, the teamed counsel for the management has also relied upon a Division Bench decision of the Kerala High Court in Chief Security Commissioner, Southern Railway v. K. Sreedharan 1998 (2) LLN 854, wherein it was held:

This Court and the Supreme Court have held in a catena of decisions that the object of holding departmental enquiry is not really to punish the guilt, but to keep the administrative machinery unsullied by getting rid of bad elements, and that the departmental proceedings are initiated in the interest of the administration as also in the interest of the delinquent officers. Thus, we are of the view that there is no bar in initiating departmental proceedings after the acquittal of the delinquent employee in criminal proceedings.

15. The learned counsel for management then submitted that the charge of theft

in the instant case is more serious and it can be discerned that even as per the law of the land, theft is considered more serious than even a case of misappropriation of fraud and/or dishonesty. It is submitted that there is no separate misconduct called misappropriation under the standing orders of the company. The acts of misconduct enumerated in the Standing Orders are theft, fraud or dishonesty in or in connection with the Company's property. In other words, misappropriation would also squarely fall within the above description. It is, therefore, submitted that all the above acts are treated equally and there is no reason to make any distinction between and amongst them under any circumstances. The learned counsel for the management further submitted that it is the employer's confidence in the employee concerned that determines the punishment as held by the Supreme Court in *B.C. Chaturvedi v. Union of India*, 1997 (4) LLN 65. It is for the employer to decide the punishment and not for the Courts when the misconduct has been proved. Therefore, the question of interference with the dismissal or even altering the punishment does not arise. The learned counsel further submitted that the number of years of service put in by the employee cannot also be relevant in the matter of imposition of punishment for proved misconduct. If the worker has put in a longer service, he cannot be taken to be licensed to commit misconduct. If leniency were to be thought on the lines pointed out by the Labour Court, it will lead to considerable anomalies. The nature and quantum of punishment have, therefore, to depend on the nature of the charges. In this case, the charge proved is one of misconduct and with reference to such a charge; the order of dismissal cannot be taken to be unjustified. Learned counsel would submit that Section 11-A of the Act does not clothe the Labour Court with the inherent power to interfere with the punishment imposed by the employer for a proved misconduct of theft by the employee for such extraneous reasons. Therefore, it is submitted that the impugned award and the order of the learned single Judge are both perverse and contrary to the evidence on record and unsustainable in law insofar as they direct reinstatement of an employee who has been found guilty of theft even as per the findings of the Labour Court itself. The learned counsel would conclude his arguments by submitting that there is no logic at all in the award of the Labour Court and after having upheld every aspect viz., a) that enquiry conducted was valid; b) that the findings of the enquiry officer are fully supported by valid evidence and that there was no reason to come to a different conclusion; c) that the acts of misconduct proved against the employee has shaken the confidence of the employer and d) that the punishment of dismissal is legal and valid, it went totally astray in granting the relief of reinstatement contrary to its own findings and the decisions of the Supreme Court.

16. We have carefully gone through the entire materials placed before us and in particular the award passed by the Labour Court as also the judgment of the learned single Judge. We have also perused the entire pleadings and considered the rival submissions made by counsel appearing on either side.

17. Section 11-A of the industrial Disputes Act, 1947 provides as under:

Powers of Labour Court, Tribunal and national Tribunal to give appropriate relief in cases of discharge or dismissal of workmen:

Where an industrial dispute relating to the discharge or dismissal of workman has been referred to a Labour Court. Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order discharge or dismissal and direct reinstatement of the workman on such terms a conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. .

18. In our opinion, a reading of Section 11-A would show that the power of the Labour Court is without limitation. The Labour Court the Industrial Tribunal can interfere when the punishment awarded is disproportionate to the proved guilt. Under such circumstances, the Labour Court, (in our opinion) is bound to give and should give its reasons in support of its decision. No doubt, the Labour Court, after due discussion of the charges and the evidence adduced by both the parties came to the conclusion that the charges stand proved. However, while considering the punishment, the Labour Court was of the view that the punishment of dismissal from service cannot be sustained. The Labour Court after holding so declared that the action of the management in imposing such a serious punishment is not proper and justified and therefore it modified the punishment of dismissal from service to that of reinstatement into service as a fresh candidate in the post of Assistant Grade-II.

19. In this case, the workman joined the service of the BHEL Company as a clerk on 18.10.1977. His services were regularised in the said post w.e.f. 19.1.1979 and his probation was declared to have been satisfactorily completed with effect from 29.1.1980. Thereafter, he was promoted to Asst. Grade-II w.e.f. 25.6.1984 and as Assistant Grade-I w.e.f. 25.6.1991 and in all these 12 years the workman discharged his duties to the entire satisfaction of his superiors and also served as one of the office bearers of BHEL employees trade union and in recognition of the cultural services rendered he was conferred with prestigious national award presented by the then Prime Minister of India Smt. Indira Gandhi. As noticed earlier, he was promoted as Assistant Grade-I w.e.f. 25.6.1991 and by the impugned award of the Labour Court dated 28.7.1997 the order of dismissal from service was set aside and the workman was reinstated into service as a fresh Candidate only in the post of Assistant Grade-II and not as Assistant Grade-I.

20. The Hon''ble Supreme Court in many cases held that if the punishment

imposed by the disciplinary authority or the appellate authority appears to be disproportionate to the gravity of the charge for the High Court or the Tribunal, it would be appropriately moulded to resolve by directing the disciplinary authority or appellate authority to consider the penalty imposed or to shorten the litigation, it may itself impose appropriate punishment with cogent reasons in support thereof. In the instant case, the Labour Court gave cogent and convincing reasons for altering the punishment. The reasons given by the Labour Court in para 20 of the award, in our opinion, are sufficient enough to modify the punishment and order reinstatement of the workman as a fresh candidate in the post of Assistant Grade-II. Considering the reasons recorded by the Labour Court in para 20 of the award name order of learned single judge, we also feel that the ends of Justice will be met if the punishment of dismissal from service is substituted with that of reinstatement into service as a fresh candidate in the post of Assistant Grade-II. The Supreme Court in *B.C CHATURVEDI*'s case (supra) held that the High Court itself in order to shorten the litigation can impose proper punishment with reasons in support thereof. This Court also would be well within its jurisdiction to interfere in justifiable cases if the penalty imposed on the workman shocks its conscience.

21. Having carefully considered the entire facts and circumstances of the case, we do not find any impropriety or illegality in the award of the Labour Court as confirmed by the learned single Judge in modifying the punishment of dismissal from service to that of reinstatement into service as a fresh candidate in the post of Assistant Grade-II. The Labour Court, in our opinion, had exercised its discretionary power u/s 11-A judiciously and has given valid and cogent reasons for modifying the punishment. The penalty imposed by the disciplinary authority, in the facts and circumstances of the case, in our view, was disproportionate to the proved misconduct and, therefore, not justified. It may also be noticed that the workman was directed to be reinstated into service by the Labour Court as Assistant Grade-II only though he was working as Assistant Grade-I at the time the impugned order of dismissal was passed. The learned single Judge has also adverted to the scope of Section 11-A of the Act and concluded that the Labour Court had exercised its discretion judiciously and has given valid and convincing reasons for modifying the punishment. In our view the learned single Judge has rightly declined to interfere with the order passed by the learned Labour Court modifying the punishment passed by the disciplinary authority and the same does not warrant any interference by us.

22. As regards the appeal filed by the workman, we are of the view "that in view of the fact that the charges against him were held to be proved and as the Labour Court has modified the punishment in exercise of its discretion u/s 11-A of the Act taking a lenient view of the matter and on a consideration of the entire material on record, no further relief as regards back wages, continuity of service etc., can be granted.

23. For the reasons aforesaid, we find no merit in the Writ Appeals and they are

accordingly dismissed. No order as to costs.