
(2004) 09 UK CK 0023

In the Uttarakhand High Court

Case No : Civil Writ Petition No. 2191 of 2001 (M/S)

Bharat Heavy Electricals Ltd.

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 14-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 379
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2Z

Citation : (2004) 09 UK CK 0023

Hon'ble Judges : P.C. Pant, J

Bench : Single Bench

Advocate : V.K. Kohli, assisted by, L.P. Kohli, for the Appellant; P.C. Jhingan, for the Respondent

Final Decision : Allowed

Judgement

P.C. Pant, J.—By means of this writ petition, moved under Article 226 of the Constitution of India, the Petitioner has challenged the award dated 06-01-1995 passed by the Labour Court, Dehradun in adjudication case No. 1 of 1989.

2. Brief facts of the case as narrated in the writ petition are that the Petitioner is an undertaking of Government of India engaged in production of heavy electrical equipments and is located at Haridwar. About 10,000 employees are working with the Petitioner and their services are regulated by Standing Orders under Industrial Employment (Standing Orders) Act, 1946. The employees who are not in the category of "workmen" are governed by BHEL (Conduct, Discipline and Appeal) Rules, 1975. The Respondent No. 3 Mr. D.L. Khobragade was initially employed as Electrician in the year 1965 and later promoted as Section Leader and thereafter as Assistant Foreman w.e.f. 25-06-1978 in the Electrical Maintenance Department. In the year 1981 his salary was Rs. 1896.53 as Assistant Foreman. On 23-12-1980, Respondent No. 3, Mr. D.L. Khobragade was intercepted at the gate by the security staff while taking away four mercury

lamps of the Petitioner company from the Factory without any permission. The act of the Respondent No. 3, as such amounted to theft. The security staff arrested Respondent No. 3 and handed him over to the Police. First Information Report was lodged on the same day i.e. 23-12-1980 (copy Annexure-1 to the writ petition). The Police registered crime case No. 218 regarding the incident and after trial Respondent No. 3 was convicted and sentenced to six months rigorous imprisonment by Judicial Magistrate, Haridwar on 31-07-1982. However, he was acquitted by the Appellate Court, giving him benefit of doubt by order dated 06-11-1985. Meanwhile, disciplinary proceedings initiated against Respondent No. 3 under BHEL (Conduct, Discipline and Appeal) Rules, 1975 were concluded and after serving him charge sheet (copy Annexure-2 to the writ petition) and giving him opportunity of being heard and defended, several witnesses were examined by the Enquiry Officer and the charge leveled against the Respondent No. 3 was found proved. On consideration of the report of the Enquiry Officer (copy Annexure-7 to the writ petition), disciplinary authorities dismissed the Respondent No. 3 from service vide order dated 10-07-1982 (copy Annexure-8 to the writ petition). After about six years in the year 1988, the Respondent No. 3 got moved an application through Haridwar Heavy Electricals Employees' Union (Respondent No. 4) before Conciliation Officer, Saharanpur for reference of his dispute relating to validity of his dismissal from service, to Labour Court. The Presiding Officer, Labour Court (Respondent No. 2) after hearing the parties passed the impugned award dated 06-01-1995 (copy Annexure-14 to the writ petition) whereby dismissal of Sri Khobragade (Respondent No. 3) was held to be illegal and it was directed that he be reinstated in service with full back wages. Aggrieved by which the present petition is filed by the employer Petitioner alleging that the award of the Labour Court was illegal and against the law.

3. The writ petition is contested by the Respondent No. 3 who filed his counter affidavit in which para Nos. 1, 2 and 3 of the writ petition were admitted. It is also not disputed that a criminal case was instituted against the answering Respondent which ultimately resulted in acquittal. It is also not disputed that disciplinary enquiry was initiated against him and the charge sheet was served but rest of the contents of the writ petition was not admitted as stated in the writ petition. Defending the impugned award of the Labour Court, it is stated that Respondent No. 3 was a "the workman" and the Labour Court had jurisdiction to entertain the dispute referred to it. It is further stated in the counter affidavit that the Labour Court rightly found that charges against the answering Respondent were not found proved and the punishment awarded against him was liable to be set aside.

4. I heard learned Counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed thereto.

5. The questions for determination before this Court are:

i) Whether the Respondent No. 3 was a "workman" ?

ii) Whether the order of dismissal from service against Respondent No. 3 after departmental enquiry is against the law as held by the Labour Court?

iii) Whether in view of the acquittal of the Respondent No. 3 by the Appellate Court, the findings and impugned order of the Labour Court are not against the law and is the impugned award directing reinstatement of the Respondent No. 3 is lawful ?

iv) Whether the direction of the Labour Court to reinstate the employee with full back wages, in the year 1995 (particularly, when the employee had already completed age of superannuation in 1992) is a valid direction ?

6. First of all I take UP the Point No. 1:

Section 2(Z) of U.P. Industrial Disputes Act, 1947 defines "workman" as under:

"Workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connexion with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

(i) who is subject to the Army Act, 1950 or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Admittedly, initially the Respondent No. 3 was engaged as Electrician in the year 1965 and was a workman. It is also not disputed that in the year 1978, Respondent No. 3 was promoted as Assistant Foreman and his salary was Rs. 1896.53 in the year 1981. The question for determination before this Court is whether Assistant Foreman was a "workman" or not ? From the definition as quoted above of a "workman", a person who was employed in supervisory capacity and draws wages exceeding Rs. 500/- per month is not a workman. From the perusal of the impugned award dated 06-01-1995 (copy Annexure-14) passed by the Labour Court, it is clear that the Respondent No. 3 did not deny before the Labour Court if he was not on a supervisory post. Rather, the Labour Court itself has clearly observed - "SAHAYAK FOREMAN SUPERVISORY STAFF MAIN AATA HAIN." Once that is the finding of the Labour Court then in view of

the admitted salary of the Respondent No. 3, he cannot be said to be a "workman", as such the impugned award directing the reinstatement of the Respondent No. 3 with full back wages is bad in law. The only reason to treat the Respondent No. 3 as workman, given by the Labour Court is that in civil misc. writ petition No. 857 of 1978; U.P. State Sugar Corp. Ltd. Vs. Deputy Labour Commissioner and Others, , an Assistant Engineer has also been treated to be a workman on the ground that instead of designation the nature of work has the importance. Assuming that in said case law the person designated Assistant Engineer was declared to be a workman but this Court cannot ignore the enacted provision of law i.e. Section 2(z) of the U.P. Industrial Disputes Act, 1947, particularly, when the Labour Court itself in its award dated 06-01-1995 clearly says that the Respondent No. 3 did not deny the supervisory nature of his work and the salary drawn. As such the award of the Labour Court is bad in law on this ground alone that it has wrongly treated the Respondent No. 3 as a workman.

7. Point No. 2:

Copy of charge sheet is annexure-2 to the writ petition which clearly shows that after the alleged incident of theft of mercury lamps by the Respondent No. 3 he was placed under suspension and charge sheeted. Copy of award of the Labour Court (Annexure-14) shows that while discussing finding on point of determination No. 1 framed on 02-06-1990, learned Labour Court has clearly mentioned that in the departmental enquiry the employee was given full opportunity in the enquiry after which he was found guilty of the charge but the Labour Court has observed that the findings of the enquiry officer are not correct. From the perusal of the record before the Court, it is clear that witnesses were examined by the enquiry officer and after giving opportunity to the Respondent No. 3 he was found guilty of the charges. Learned Labour Court has observed that though the enquiry proceedings were lengthy but the enquiry report was short, but that by itself is no ground to upset the findings of the enquiry officer. Para 11 of copy of the written statement (Annexure-9 to the writ petition) filed by the present Petitioner before the Labour Court shows that the enquiry proceedings were held on 17-03-1981, 19-03-1981, 23-04-1981, 24-04-1981, 08-05-1981, 25-05-1981, 19-08-1981, 20-08-1981, 25-08-1981, 28-08-1981, 31-08-1981, 24-09-1981, 02-11-1981, 06-11-1981, 17-11-1981, 17-12-1981, 14-01-1982, 15-01-1982, 22-01-1982, 23-02-1982, 02-03-1982, 17-03-1982, 19-03-1982 and 30-03-1982 and statement of Ummed Singh, Security Guard (C.I.S.F.) and G.S. Sharma, A.S.I. (C.I.S.F.) were recorded on behalf of the Management and statement of D.L. Khobragade (Respondent No. 3), Raj Kumar, Helper and Raja Ram were recorded on behalf of delinquent employee. As such it cannot be said that the fair opportunity was not afforded to the employee before passing the order of dismissal against him. In the circumstances, particularly, when the departmental appeal was also preferred by the delinquent employee and the same was rejected, the findings of the Labour Court holding that the dismissal from service of the Respondent No. 3 is illegal, itself appears to be against the law.

8. Point No. 3:

It is not disputed between the parties that regarding the alleged theft, F.I.R. was lodged by the Security guards and Sri D.L. Khobagade stood trial before the Judicial Magistrate Haridwar, who found him guilty of the charge of offence punishable u/s 379 of the India Penal Code and sentenced him to six months rigorous imprisonment. It is also not disputed, on appeal Respondent No. 3 (accused) was given benefit of doubt and appeal was allowed. By then the order of dismissal after disciplinary proceedings were over and order of dismissal had already been passed by the authorities concerned. Merely for the reason that the Respondent No. 3 was acquitted on the ground of benefit of doubt by the Appellate Court, the findings of the enquiry officer does not become unsustainable, particularly when M/s Bharat Heavy Electricals Ltd. was not a party before the criminal Court. The findings of criminal Court are not necessarily sufficient to throw the findings of the enquiry officer, particularly in the case like the present one where the accused was acquitted by the criminal Appellate Court giving the Appellant benefit of doubt.

9. Point No. 4:

In view of the principle of law laid down in M.P. State Electricity Board v. Smt. Jarina Bee reported in AIR 2003 SCW 3380; directions of reinstatement with full back wages, in the award are improper and not lawful. In that M.P.S.E.B. case also the charge was that of theft and the employee was found guilty of misconduct. In Ram Ashrey Singh and Anr. v. Ram Bux Singh and Ors. reported in 2003 Lab. IC 1210, the Supreme Court has held that full back wages need not be awarded in every case of reinstatement. In said case also termination was challenged after six years. Similarly, in Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, , the Apex Court has advised that relief of full back wages should not be followed as a matter of course. In view of the aforesaid principles of law, the direction of the Labour Court regarding reinstatement with full back wages after the superannuation age of the delinquent employee is against the law and cannot be sustained.

10. In view of the aforesaid discussion, this Court finds that the impugned award dated 06-01-1995 passed by the Labour Court is against the law as neither the Respondent No. 3 was a workman nor there were sufficient ground to set aside the enquiry report after the delinquent employee availed the right of departmental appeal. The award is also liable to be set aside as it directs to reinstate the employee with full back wages, even after the employee has attained the age of superannuation.

11. Accordingly, the writ petition is allowed. The impugned award dated 06-01-1995 passed by the Labour Court, Dehradun in adjudication case No. 1 of 1989 is quashed. Excess amount, if any paid to the Respondent No. 3 shall be refunded back to the Petitioner. No order as to costs.