(2009) 12 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 2201 of 2009

Bharat Petroleum Corporation Ltd. APPELLANT

Vs

Ramesh R. Passi and Another RESPONDENT

Date of Decision : 03-12-2009

Acts Referred:
Industrial Disputes Act, 1947 — Section 11A

Citation : (2010) 1 BomCR 686

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : J.P. Cama, R.S. Pal and Sanjay Udeshi, instructed by Sanjay Udeshi and Co, for the Appellant; Kiran S. Bapat, Amicus Curiae, for the Respondent

Judgement

D.Y. Chandrachud, J.—The Petition is directed against an award of the Central Government Industrial Tribunal, directing the reinstatement of the First Respondent though without back wages.

2. The First Respondent was appointed as a general worker by the Petitioner on 2nd October 1978 and was subsequently promoted as an MHE Operator II in 1988. In 1987, the First Respondent submitted an application for a housing loan for the reconstruction of his house situated at 162, Pithorepur, P.O. Kamhria, Azamgarh. Subsequently, on 27th February 1992, the workman filed an application stating that he no longer proposed to reconstruct the house in Uttar Pradesh. An application was thereafter, filed on 30th January 1994 seeking a housing loan to purchase a residential flat, being Flat No. 302, Ramnagar, ''A'' Wing, 4, B.P. Road, Bhayander (East), District Thane. By his application, the workman sought a housing loan in the amount of Rs. 2,91,401/. A copy of the agreement to sell dated 25th January 1994 between the workman and the builder was submitted. Under the agreement, the workman had paid an amount of Rs. 5,000 in cash, while the balance was to be paid against delivery of possession. A housing loan was sanctioned to the workman on 15th April 1994 in the amount of Rs. 2,89,955/. An amount of Rs. 2,60,960/was paid, while the

balance was payable subsequently. The letter of sanction stipulated that the workman was required to create an equitable mortgage by deposit of the share certificate/sale deed in original with the Corporation within three months of the drawal of the loan amount. In the event that this was not done, the workman was informed that the Petitioner would charge interest, besides which the workman would be liable to disciplinary action.

3. On or about 7th January 1997, the Petitioner received a copy of a letter addressed by the Advocate for the builder to the First Respondent stating that the First Respondent had failed to comply with the terms of the agreement dated 25th January 1994 by paying the balance. The agreement was consequently terminated. On 13th March 1997, the Petitioner issued a notice to show cause to the First Respondent, recording that he had not submitted a receipt for the loan of Rs. 2,60,960/despite three reminders by the Corporation. In these circumstances, the workman was called upon to show cause as to why disciplinary action should not be taken against him. By his reply dated 2nd April 1997, the workman contended that the housing loan of Rs. 2,60,960/had been utilized to renovate his house in U.P. A chargesheet was issued to the workman on 22nd April 1997. The principal allegation in the chargesheet was that the workman had failed to submit a receipt for the loan of Rs. 2,60,960/paid to him on 20th April 1994 and that the agreement which was entered into for the purchase of the flat at Bhayander had since been terminated. It is alleged that the workman was in breach of Clause 14.11 of the Corporation''s Housing Loan Scheme Rules which provides as follows:

An employee availing himself of this scheme and not complying with any or all the provisions of the scheme or furnishing wrong or false information or certificates or misusing the facility in any form will render himself liable to disciplinary action involving major penalties, apart from incurring the liability to refund of entire amount of the loan outstanding and interest thereof.

4. The workman was charge sheeted for misconduct under Clause 28.23 of the Certified Standing Orders. The misconduct under the aforesaid provision is "securing or attempting to secure in a fraudulent manner, pecuniary advantages from the Corporation or funds of the Corporation". It was alleged that the workman had misused the amount of Rs. 2,60,960/which was sanctioned for the specific purpose of buying a flat.

5. A disciplinary enquiry was held into the allegation of misconduct. During the course of the enquiry, the workman pleaded guilty to the charges framed against him and a statement to that effect was recorded by the Enquiry Officer in the Minutes of the Meeting held on 27th July 1997. The relevant part of the statement of the workman reads as follows:

I plead guilty to the charges framed against me vide charge sheet No. ADM.B. 3 (L) CON., dated 20.04.97/ But I would like to request the Management of M/s. Bharat Petroleum Corporation Ltd. to take a lenient view in the matter as I have spent the entire amount of Rs. 2,60,960/taken from BPCL as housing loan, on 20.04.94, to construct a house at my native place. In this connection, I am requesting you to place on record the estimate dated 15.10.94 of the house constructed at my native place for the kind consideration of the Management of BPCL. I am requesting you to place on record the three receipts dated 7.10.94, for total amount of 2,57,800/which I have spent for constructing the house at my native place as mentioned above. In view of whatever I have stated here, I request Management of BPCL to take a lenient view and transfer the loan amount of Rs. 2,60,960/paid to me for buying a flat at Mumbai, for the construction of house at my native place.

6. The Enquiry Officer submitted his report holding that the workman was guilty of the misconduct alleged. A notice to show cause was issued to the workman calling upon him to explain as to why his services should not be terminated. The workman submitted his reply. An order of dismissal was passed on 14th February 2000. The workman sought a reference to adjudication which was made by the appropriate Government to the Central Government Industrial Tribunal. The Tribunal by its Part I Award, dated 7th August 2007 held that the enquiry was fair and proper and that the findings of the Enquiry Officer were not perverse. By its Part II Award, dated 25th June 2009, the Tribunal, however, came to the conclusion that the imposition of the penalty of dismissal was disproportionate since the misconduct on the part of the workman was not regarded as being very serious. The Tribunal held that though the workman had misused the loan amount by using the loan for the construction of his house in U.P. instead of the purchase of a flat at Bhayander, this was not a purpose different from that for which the loan was granted and there was no loss to the Corporation since the entire amount had been recovered from the workman. In these circumstances, the Tribunal passed an order of reinstatement, but deprived the workman of back wages.

7. In assailing the correctness of the order passed by the Tribunal, Counsel appearing on behalf of the management urged that under the Housing Loan Scheme Rules, the loan in the present case was granted for a specific purpose. The purpose was the purchase of a residential flat at Bhayander. The workman failed to purchase the flat despite the disbursal of the amount and the agreement came to be terminated by the builder for nonpayment of the balance. It was urged that under the terms of the letter of sanction, the workman was liable to create an equitable mortgage by deposit of title deeds. The workman failed to do this, since the monies were never utilized for the purpose of purchasing a residential flat. Instead, the monies were allegedly spent on the house at U.P. However, even here it would be seen that the workman has made conflicting statements. In his letter dated 2nd April 1997, the workman claimed that he had renovated his house at U.P., whereas in his affidavit in lieu of the examination in Chief, the contention was that the amount had been utilized for the construction of the house in U.P. But quite apart from this, it was submitted that the management was justified in taking a strict view of the failure of the workman to

utilize the amount for the specific purpose of purchasing the residential flat at Bhayander for which the loan had been disbursed. Under the terms of the Housing Loan Scheme, the management has inserted several safeguards to ensure that the monies are properly utilized and duly secured by creation of an equitable mortgage. Hence, the mere fact that the workman alleged that the loan was utilized for the purpose of his house at U.P. would not obviate the act of misconduct.

8. The workman appeared in person and had stated before the Court that he was unable to engage an Advocate. In the circumstances, this Court requested Shri Kiran Bapat to appear in the matter as amicus curiae. Shri Bapat ably presented the case before the Court for which the Court would wish to record its appreciation. The Learned Amicus submitted that though the workman had pleaded guilty upon the issuance of the chargesheet, he had also explained his position by stating that the monies which had been disbursed to him, had been utilized for the purpose of constructing his house in the State of U.P. Counsel submitted that the Tribunal had in the exercise of its power u/s 11A of the Industrial Disputes Act, 1947, considered it appropriate to grant reinstatement by depriving the workman of the entirety of his back wages. The deprivation of back wages would meet the ends of justice. Counsel submitted that in the present case, the entire amount of the loan had been recovered from the salary of the workman. The workman was a Class IV employee and the utilization of the loan for his house in U.P. cannot be regarded as a serious act of misconduct so as to warrant a dismissal from service. It was urged that the workman had put in nearly 22 years of service and save and except for a solitary warning, his service record was otherwise free from blemish.

9. In considering the merits of the submissions that have been urged on behalf of the Petitioner and those which are fairly placed before the Court by the Amicus Curiae, it would, at the outset, be necessary to note certain admitted facts. The first important circumstance is that the workman was granted a loan by the employer specifically for the purchase of a residential flat at Bhayander (East). The first installment of Rs. 2,60,960/was to be paid to the workman immediately which, as a matter of fact, was disbursed. The balance was to be paid by installments in accordance with the payment schedule given in the agreement with the builder and on the production of a certificate regarding the progress of the construction work. The workman was liable to execute an equitable mortgage by deposit of title deeds in original, failing which, it was stated that he would be liable to pay interest and to disciplinary action. The second circumstance is that upon the disbursal of the loan, the amount was never utilized by the workman for the purchase of the residential flat at Bhayander. On the contrary, the Corporation was informed by the builder by a letter dated 7th January 1997 that the agreement has been terminated for failure to pay the balance. The third circumstance is that under Clause 14.11 of the Housing Loan Scheme Rules, it was stipulated that an employee availing of the scheme and not complying with the provisions thereof or furnishing false information or misusing the amount,

would render himself to disciplinary action, involving a major penalty and incur the liability to refund the entire amount of the loan outstanding. In response to the chargesheet, the workman during the course of the disciplinary proceedings, admitted the charge that was levelled against him, but sought leniency on the ground that he had utilized the money for the construction of his house in U.P. There is merit in the submission that has been urged on behalf of the Petitioner that even here, the case of the workman is not free from ambiguity. In the first instance, by his letter dated 27th February 1992, the workman had informed the employer that he had submitted a housing loan application and that he had changed his intention to purchase a house at his place of origin and was now intending to purchase a house in Mumbai. A copy of the agreement between the workman and the builder dated 25th January 1994 was also produced. It was on this application, that the loan came to be sanctioned. In response to the notice to show cause, the workman by his letter dated 2nd April 1997 stated that he had renovated his house at U.P. In the course of the Examination in Chief, the statement was different and the workman sought to contend that he had constructed a house at U.P. Even if some allowance is to be made for this discrepancy, the fact which remains is that the loan which was disbursed specifically for the purpose of purchasing a residential flat in Mumbai was not used for that purpose. The monies were diverted, even according to the workman, for the purpose of renovating/reconstructing the house in the State of U.P. The employer was entitled to take a serious view of the act of diversion and to regard this as a breach of discipline. The Housing Loan Scheme Rules contain safeguards to ensure that monies are properly utilized and the employer is secured by the creation of a mortgage by deposit of title deeds. Obviously, different considerations arise when monies are utilized not for the purchase of a residential flat for which the loan is disbursed, but for the purpose of renovation. In the former case, the employer is entitled to insist upon the creation of an equitable mortgage by deposit of title deeds. The object of such a scheme is to provide a special benefit to the workmen and the facility is extended with a view to achieve a specific purpose. If there is a diversion of monies advanced for the reconstruction or renovation of an alternative piece of immovable property, the employer must be informed in advance and sanction must be taken. Failure to do so would amount to disciplinary misconduct. The workman in the present case was on notice when the loan was sanctioned that the breach of the terms of the sanction would be regarded as a disciplinary violation. The misconduct was admitted by the workman. His explanation can furnish no ground for obliterating the consequence of misconduct.

10. The Tribunal interfered with the punishment awarded to the workman, in the exercise of its jurisdiction, after having found that the enquiry was fair and proper and the findings did not suffer from perversity. Though, the Tribunal is vested with wide powers u/s 11A the Industrial Disputes Act, 1947, the jurisdiction has to be structured in accordance with settled principles of Industrial Law governing interference in disciplinary matters and cannot enable the Tribunal

to exercise an unchartered discretion without a reasoned foundation. The Tribunal held that this was not a serious offence inasmuch as the workman had utilized the amount for renovation of his house in the State of U.P. instead of purchasing a house at Bhayander. For the reasons already indicated, this view cannot be accepted. The Tribunal held that though the workman had misused the loan amount that did not change the purpose for which the loan was raised. Finally, the Tribunal also held that there was no loss to the employer and that the amount had been recovered. The entire approach of the Tribunal suffers from a basic fallacy both in approach and in the interpretation of the relevant provisions of the Certified Standing Orders. The act of misconduct under the Certified Standing Orders, lies in securing or attempting to secure any fraudulent pecuniary advantages from the Corporation or from the funds created by the Corporation. In the present case, there was a misuse of the amount which was disbursed by way of a loan since it is an admitted position that it was not utilized for the purpose of purchasing a residential flat at Bhayander for which the loan was disbursed. The employer, in these circumstances, is justified in taking a serious view of a breach of the Housing Loan Scheme Rules and to hold that the misconduct warranted the dismissal of the workman.

11. In Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy and Others, the Supreme Court considered the parameters of Section 11A of the Industrial Disputes Act, 1947. An employee to whom a house building advance had been granted by the employer, upon the creation of a mortgage by deposit of title deeds, was alleged to have surreptitiously taken away the title deeds from the custody of the employer for selling the flat. The Labour Court while upholding the finding of misconduct, held that the punishment of dismissal was disproportionate and ordered reinstatement. The High Court upheld the decision of the Labour Court and held that Section 11A of the Industrial Disputes Act, 1947 gave a wide jurisdiction to the Labour Court. The Supreme Court set aside the judgment of the High Court with the following observations:

In our opinion, there is no such thing as unlimited jurisdiction vested with any judicial or quasi judicial forum. An unfettered discretion is a sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority be it administrative or judicial has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof.

12. The Supreme Court adverted to the earlier judgments on Section 11A of the Industrial Disputes Act, 1947 which laid down the proposition that once a misconduct is proved, the Tribunal has to sustain the order of punishment unless it is harsh to the extent of indicating victimization. In other words, if a proper enquiry is conducted by an employer and a correct finding is arrived at regarding the workman, the Tribunal even though it has a power to differ from the conclusion of the management, will have to give cogent reasons for not accepting the view of the employer. Section 11A is not a source of arbitrary power for the

Industrial Tribunal or the Labour Court and the power conferred has to be exercised judicially. The decision of the management can be interfered with u/s 11A only when the Court is satisfied that the punishment imposed was highly disproportionate to the degree of guilt. In view of the principle of law laid down by the Supreme Court, the judgment of the Tribunal is unsustainable and would have to be set aside. The Industrial Tribunal overstepped the bounds of its authority and jurisdiction. Interference by taking recourse to Section 11A would be unsustainable, the Tribunal having found that the enquiry was fair and proper and the finding was not perverse. The penalty can by no circumstance be regarded as disproportionate for the act of misconduct proved.

13. Rule is accordingly made absolute in terms of prayer Clause (a).