
(2004) 04 AHC CK 0210

In the Allahabad High Court

Case No : C.M.W.P. No's. 1522 and 3230 of 1982

Bharat Pumps and Compressors Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2K, 4K, 6(2A), 6(4A)

Citation : (2004) 5 AWC 4991

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : J.N. Tiwari and P.K. Mukherjee, for the Appellant; K.P. Agrawal, R.K. Yadava, A.K. Sinha, Y.S. Saxena, A.N. Verma, P. Shukla and Surya Narain, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—There are two connected writ petitions, one filed by the employer and the other by the employee against the same award of the labour Court dated 11th December, 1981.

2. Heard Sri. P.K. Mukherjee, learned Counsel for the employer, Sri. K.P. Agarwal, learned Counsel for the workman and Sri. Piyush Shukla, learned Counsel for the State.

3. The facts of the case is that Sri. Man Bahadur Singh, workman was dismissed from service, after holding disciplinary proceedings, on 2.12.1975. The charge against Sri. Man Bahadur Singh was that he had misbehaved with the senior officer and threatened to kill him with an iron rod during working hours of the industry. He also used abusive language towards his senior officer.

4. Feeling aggrieved by the aforesaid punishment order, the workman raised an industrial dispute. The State Government in exercise of power u/s 4K of the Industrial Disputes Act referred the matter for adjudication to the Labour Court,

Gorakhpur. The said dispute was, however, transferred to the Labour Court, Allahabad and was registered as Adjudication Case No. 44 of 1979 at Allahabad.

5. The labour Court, after affording opportunity of hearing to the parties, by means of the award dated 11th December, 1981, which is subject matter to challenge in these writ petitions, held that the disciplinary proceedings, which were initiated against the employee, were fair and legal. The enquiry report cannot be said to be perverse in any manner.

6. However, the labour Court substituted the punishment of dismissal imposed upon the workman and directed that he shall be restored back in service. However, for the period between the date of punishment till the date of reinstatement, the workman shall not be entitled to any wages, etc. It was further directed that the workman shall be reinstated with full back wages from the date of publication of the award. It is not in dispute that under the interim order of this Court dated 27th April, 1983, the workman has been reinstated and he is being paid his salary in accordance with terms of the award.

7. It is contended on behalf of the employer in support of their petitions that once the labour Court has come to a conclusion that the disciplinary proceedings have been taken after affording full and fair opportunity to the workman concerned, the labour Court, in the facts of the case, was not justified in substituting the punishment.

8. On the other hand it is contended on behalf of the workman in his petition that the labour Court was not justified in directing that the workman was not entitled to the wages for the period between the date of the dismissal till the date of reinstatement under the award. Inasmuch as the labour Court should have in the facts of the case directed reinstatement with full back wages.

9. Reliance has been placed on behalf of the employers upon the judgment in *New Shorrock Mills v. Maheshbahl T. Rao* 1996 (74) FLR 2749; Reliance has been placed on behalf of the workman in the judgment in *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, ; *Post Seals Industrial Co-operative Society Ltd. v. Labour Court II, Lucknow and Ors.* 1971 (22) FLR 38 and *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, .

10. Thus, dispute between the parties, in both the writ petitions, is as to whether in the facts of the case, the labour Court could have interfered with the punishment imposed by the employer and as to whether in all cases where the labour Court directs reinstatement full back wages must necessarily follow.

11. For considering the contentions raised on behalf of the parties, it would be appropriate to refer to the provisions of Section 2K of the U.P. Industrial Disputes Act as amended by U.P. Act No. 1974 which read as follows:

Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or

industrial occupation or avocation of workmen;

12. From the aforesaid statutory provision, it cannot be disputed that the labour Court has been given a discretion to substitute the punishment imposed upon the workman having regard to the facts and circumstances of the case.

13. By means of the award, which is under challenge, the labour Court in exercise of power u/s 6(4A) has given cogent reasons for holding that the punishment of dismissal from service as imposed by the employer requires to be substituted by the punishment of non-payment of wages for the period between the date of dismissal, i.e., 2.12.1975 till the enforcement of the award dated 11th December, 1981, i.e., nearly six years.

14. This Court after going through the records and having regard to the charge levelled against the workman was satisfied that the workman for the charges proved was not entitled to the extreme punishment of dismissal from service and as such substituted the punishment. The labour Court has not acted arbitrarily and the substitution of punishment, as made by the labour Court, cannot be said to be disproportionate to the charge as found proved against the workman.

15. So far as the judgment in the case of New Shorrock Mills (supra) is concerned, the Hon''ble Supreme Court in all said the cases having regard to the various charges levelled against the workman came to the conclusion that he punishment imposed was not by way of victimization and consequently it came to the conclusion that the labour Court should not have interfered with the punishment so imposed. The legal proposition of law laid down by the Hon''ble Supreme Court in the said judgment is well-settled. However, in the facts of this case especially the charge, as levelled against the workman, did not deserve the harsh punishment of dismissal from service so as to deprive the workmen bread and butter. This Court cannot also lose sight of the fact that under the interim order passed by this Court on 27th April, 1983, the workman has already been reinstated and has been in employment for more than 21 years and during this period nothing adverse has been reported against the conduct of the workman. In such circumstances, this Court is not inclined to interfere with the aforesaid order of the labour Court.

16. The workman in support of his case, has placed reliance upon the judgment of the Hon''ble Supreme Court in the cases of M/s. Hindustan Tin Works Pvt. Ltd., Post Seals Industrial Co-operative Society Ltd. and Workmen of F.T. and R. Co. v. The Management (supra), and pleaded that in view of the same the labour Court should have directed the payment with full back wages as the same is the normal relief followed, whenever the labour Court directs reinstatement. The contention raised on behalf of the workman in that regard does not appear to the Court.

17. The contention raised on behalf of the workman as aforesaid is not based on correct appreciation of the judgment of the Hon''ble Supreme Court. The Hon''ble Supreme Court has not laid down an absolute proposition of law that in every case full back wages must follow, when reinstatement is directed by the labour

Court.

18. Payment of full back wages is only to be directed normally in the cases of reinstatement however in exception case where normal rules is not to be applied, the labour Court can refuse the payment of full back wages depending upon the facts and circumstances of the particular case and it is for this purpose the labour Court had been conferred specific power u/s 6(2A) of the U. P. Industrial Disputes Act to substitute the punishment of dismissal imposed upon a workman by a lesser punishment, which necessarily include the power to withhold the payment of salary for certain period. As already noticed above, the labour Court has exercised the said discretion on cogent fact and circumstances specifically having regard to the charge proved against the workman.

19. It is stated on behalf of the workman that no reasons have been assigned by the labour Court for directing non-payment of back wages. However, on being confronted by this Court that in such circumstances, the dispute may be remanded to the labour Court for passing afresh orders with regards the punishment to be imposed upon the workman. It was fairly stated on behalf of the workman that if the matter is remitted to the labour Court after more than two decades it would be too harsh and this Court may not pass such an order.

20. It is also contended on behalf of the workman that the employer had not stated any facts before the labour Court for imposition of lesser punishment upon the workman, as such the labour Court could not have substituted the lesser punishment on its own. Such a contention raised on behalf of the workman is totally misconceived and based on non-consideration of the provisions of Section 6(2A) of the Industrial Disputes Act. The discretion exercised by the labour Court by means of the award dated 11th December, 1981, cannot be said to be arbitrary in the facts and circumstances of the case and as such requires no interference.

21. In such circumstances, both the writ petitions do not call for any interference under Article 226 of the Constitution of India.

22. Both the writ petitions filed by the workman and employer are hereby dismissed. No order as to costs.