

(1998) 09 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14302 of 1990

B.N.K. Jain

APPELLANT

Vs

Labour Court, hyderabad and another

RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 11

Citation : (1998) 6 ALD 149

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Mr. A.K. Jayaprakash Rao, for the Appellant; Government Pleader, for Labour and Mr. K. Srinivasa Murthy, for the Respondent

Judgement

1. In this writ petition, the petitioner questions the Award of the Labour Court upholding the order passed by the 2nd respondent discharging him from service.

2. The facts of the case may be briefly stated as follows:

The petitioner was employed as Master Technical Assistant in the establishment of the 2nd respondent. On 4-7-1986 a charge sheet was issued to the petitioner containing a charge that he has stolen two numbers of vernier calipers belonging to BDL., and on 2-7-1986 he handed over the same to Sri Mehtab Roy after taking them out from the locker at about 17-20 hours at Dabba Canteen with a view to commit theft. A similar charge-sheet was also issued to the said Mehtab Roy, The petitioner submitted his explanation to the charge-sheet on 7-7-1986 denying the said charge. An Enquiry Officer was appointed to hold an enquiry. The Enquiry Officer submitted his report on 6-8-1986 holding that the charge of theft is not proved. He, however, gave a finding that the petitioner was found possessing/transferring a vernier calipers belonging to BDL., unauthorisedly without any valid gate pass. Thereupon a show-cause notice was issued to the petitioner on 1-9-1986 requiring him to show-cause why the punishment of removal from service should not be imposed on him. The petitioner submitted his explanation to the show-cause notice on 3-9-1986. After considering the

explanation of the petitioner, the order discharging him from service was passed on 24-9-1986. A similar order of discharge was also passed against the other employee-Mehtab Roy on the same day. Questioning the order of discharge, the petitioner filed Writ Petition No-13897 of 1986; whereas the said Mehtab Roy filed Writ Petition No.14173 of 1986. The Writ Petition filed by the petitioner was disposed of on 27-8-1987 directing the petitioner to raise an industrial dispute. The Writ Petition filed by Mehtab Roy was, however, allowed on 19-8-1988 quashing the order of discharge. Writ Appeal No.1693 of 1988 filed by the Management against the said order was dismissed on 4-7-1994. The Management carried the matter to the Supreme Court, which by order dated 24-8-1995 modified the order to the extent of allowing the back wages to Mehtab Roy from the date of the High Court's order i.e., 19-8-1988 only, instead of from the date of discharge.

3. Pursuant to the direction of this Court in Writ Petition No.13897 of 1986 the petitioner herein filed ID No.474 of 1987 on the file of the Labour Court, Hyderabad. The Labour Court by the impugned Award dated 17-4-1990 upheld the order of discharge passed against the petitioner. Hence, this Writ Petition.

4. Mr. A.K. Jayaprakash Rao, learned Counsel for the petitioner, has contended that in view of the orders passed in the Writ Petition filed by Mehtab Roy, the order of discharge passed against the petitioner herein is also liable to be set aside. He also contended that, in any case, having regard to the categorical findings recorded by the Enquiry Officer in his report the extreme punishment of discharge from service is not at all justified or warranted as it is highly disproportionate to the gravity of the misconduct, which is held to be proved.

5. On the other hand, Mrs. Uma, Advocate, appearing for Sri K. Srinivasa Murthy, learned Counsel for the 2nd respondent-Management., has contended that the case of Mehtab Roy stands entirely on a different footing and the petitioner cannot derive any assistance from the orders passed in the case of Mehtab Roy and that there are no valid grounds whatsoever to interfere with the Award of the Labour Court in the instant case.

6. Before considering the rival submissions made by the learned Counsel for the parties, it is useful to refer to the findings recorded by the Enquiry Officer in his report dated 6-8-1986. As regards the two vernier calipers found in the possession of the petitioner, the Enquiry Officer found that there is no evidence to show that one of the vernier calipers, which did not bear any markings, belonged to the BDL, and no witness was examined by the Management to identify the same to be BDL property. The Enquiry Officer also found that there was no complaint regarding loss of any vernier calipers either from the custodian of the vernier calipers or the Security Officer. The Company also failed to prove that there was any shortage in its calipers by producing the relevant records. The Enquiry Officer further observed that the goods said to be stolen are also available in the market and in the absence of the aforesaid evidence it is not proved that the goods were stolen goods. The Enquiry Officer further held that

there was no direct evidence to show that the petitioner committed theft of the instruments. It is the petitioner's case that the two vernier calipers in question were given to him by Thavakal Engineering Works for repairs. The Enquiry Officer held that the petitioner could not prove the same and it was also stated that when questioned the representative of Thavakal Engineering Works denied having given any calipers to the petitioner for repairs. Under those circumstances, the Enquiry Officer found that the whole case against the petitioner is based on suspicion of circumstances. The Enquiry Officer ultimately gave a finding to the effect that the petitioner is found guilty of possessing/transferring one vernier calipers having "BDL" code marks and the other without any "BDL" code marks without any valid gate pass.

7. The disciplinary authority, accepting the said findings of the Enquiry Officer, issued the show-cause notice dated 1-9-1986 to the petitioner stating that the petitioner is found guilty of misconduct of theft under Standing Order No.26(2) and called upon the petitioner to show-cause why the punishment of removal from service should not be imposed on him. When the Enquiry Officer clearly found that the charge of theft was not established, and while accepting the said finding of the Enquiry Officer, the disciplinary authority could not have, at the same time, issued a show-cause notice to the petitioner stating that he is found guilty of misconduct of theft under Standing Order No.26(2). While awarding the punishment of discharge from service, the disciplinary authority did not bear this aspect in mind. It is merely stated in the order of discharge that the charges levelled against the petitioner and proved against him at the enquiry are grave and serious and, as such, the punishment of dismissal is warranted. However, taking a lenient view, he was discharged from service of the Company with immediate effect. That apart, the fact remains that the other employee-Mehtab Roy, who was also similarly charged along with the petitioner, has been reinstated in service pursuant to the orders passed by this Court as well as the Supreme Court. It is no doubt true that the case against the said Mehtab Roy stands on a slightly different footing as it is admitted by the petitioner that he (petitioner) himself gave the two calipers in question to Mehtab Roy for repairs. This Court in the case of Mehtab Roy held that mere possession of the vernier calipers by itself does not amount to misconduct under Standing Order No.26(2) of the Standing Orders of the Company in view of the finding of the Enquiry Officer that the theft of charge was not established. This Court further held that unless any act or an employee is specifically mentioned as misconduct in the Standing Orders, there could not be any inference of misconduct committed by any employee.

8. Having regard to the above facts and circumstances of the case, I am of the considered view that the punishment of discharge is highly disproportionate to the misconduct attributed to the petitioner. In the normal course I would have remitted back the matter to the disciplinary authority to consider the grant of any lesser punishment to the petitioner in accordance with the relevant Standing Orders. However, it is brought to my notice that the petitioner has already

attained the age of superannuation in December, 1996. Such a course is, therefore, not expedient in the present case. In the order of discharge dated 24-9-1986 it is stated that the accounts of the petitioner will be settled by the Finance Department of the company after submitting the clearance certificate on any working day of the Company. It is stated by the learned Counsel for the petitioner that so far the accounts have not been settled, and no amount whatsoever has been paid to the petitioner by the Company.

9. The next question to be considered is what is the appropriate relief that can be granted to the petitioner. The petitioner has put in 14 years of service in the Company by the date of his discharge. Nearly 12 years have elapsed since the date of discharge. Now that I have come to the conclusion that the discharge was not warranted, I am of the view that the petitioner should be awarded reasonable compensation for the loss of 10 years of service, which he would have normally enjoyed but for the order of discharge.

10. In the decision of *Hindustan Steels v. A.K. Roy*, 1970 (1) LLJ 228, the discharge of an employee who put in service of two years was found to be illegal and considering the circumstances of the case the Apex Court held that the relief of two years salary by way of compensation in lieu of reinstatement would be appropriate and proper.

11. In *O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others*, , the Supreme Court, taking into consideration the fact that eight years service was left at the time of illegal termination, held that compensation equivalent to 3.33 years salary including allowances besides provident fund and retirement benefits would be proper.

12. In the case of *Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another*, , the Supreme Court awarded a sum of Rs. 1,50,000/- to each of the workmen in addition to the sum of Rs.72,000/- received by them for the loss of 52 months of employment.

13. In the case of *Benedict and others v. Prashant Cinema Air Cooled, Secunderabad & Ors.*, 1992 LLR 623, this Court awarded salary for 70 months by way of compensation in lieu of reinstatement.

14. In the light of the principles enunciated in the above authorities, I feel that it is just and proper to direct the 2nd respondent to pay to the petitioner pay and allowances for a period of four years in addition to the retirement benefits to which he is entitled to by way of compensation within a period of three months from the date of receipt of a copy of this order. The retirement benefits, to which the petitioner is entitled, shall also be settled and paid within the said period.

15. The Award of the Labour Court is accordingly modified and the writ petition is disposed of accordingly. No order as to costs.