
(2004) 02 GAU CK 0046
In the Gauhati High Court
Case No : W.A. No. 5 of 1999

Cement Corporation of India Ltd.

APPELLANT

Vs

Achyut Chandra Das and Others

RESPONDENT

Date of Decision : 19-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 GLR 459

Hon'ble Judges : P.P. Naolekar, C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : S.N. Sarma, H. Sarma and Y.S. Mannan, for the Appellant; C. Choudhury, for the Respondent

Judgement

P.P. Naolekar, C.J.—Heard Mr. S.N. Sarma, learned counsel for the appellant. Non appears for the respondent.

2. The respondent Achyut Chandra Das was appointed on 30.06.76 to the post of Watchman in the Cement Corporation of India at its Bokajan Cement Factory. On 05.04.83 the respondent was transferred, from factory to the quarry at Dellai Parbat, which is 20 kms. away from the factory. After receipt of the transfer order, the respondent proceeded on leave on 10.04.1983 and made prayer by various applications dated 09.05.83, 23.05.83, 23.05.83, 06.06.83 and 4.06.83 for stay of his transfer order on various grounds. The respondent workman during this period did not join the transferred post. On 20.06.83 the Company by its letter addressed to the respondent refused to accept his prayer and asked him to resume his duties at the quarry, the place where he was transferred. Again on 14.09.83 a letter was sent to the respondent asking him to explain for his continuous absence from duty without permission. In reply to the letter sent by the Company, the Respondent again made a request that he be allowed to join on his earlier post. On 03.10.1983 the Company gave him last opportunity to join at the transferred post. As the respondent did not join the transferred post, the Company by letter dated 18.10.1983 informed the respondent workman that

if he does not join the place of posting the Company would take up disciplinary proceedings against him. Later on, charge sheet was served on him and after holding inquiry, an order of dismissal was passed on 24/26.03.1984. The workman respondent approached the Government for referring the dispute for industrial adjudication and accordingly, by a Government Notification the matter was referred for industrial adjudication to the Industrial Tribunal, Guwahati in Reference No. 6(C) of 1983. The learned Industrial Tribunal by its award dated 24.09.1991 upheld the order of dismissal. Aggrieved by the award passed by the Industrial Tribunal the petitioner approached the High Court by filing a writ petition.

3. From the tenor of the order passed by the learned Single Judge it appears to us that the learned Single Judge has not found any defect or irregularity in the disciplinary proceedings. However, the learned Single Judge was of the view that the Industrial Tribunal has not adverted to the provisions of Section 11-A of the Industrial Disputes Act, 1947 wherein the court gets power to modify the order of punishment in the disciplinary proceedings considering the facts and circumstances of the case and on these premises has set aside the order of dismissal and directed that the workman be let-off with a warning and shall get all service benefits including seniority save and except 25% of the back wages. Aggrieved by the said order of the learned Single Judge the present appeal has been filed.

4. Learned counsel for the appellant submits that on the facts placed on record and the reasons given by the Industrial Tribunal, the learned Single Judge should not and could not have exercised the jurisdiction of an Industrial Tribunal and set aside the order of dismissal. It is true that the court's power in the matter of imposition of punishment are to be exercised in extreme circumstances where the court's conscience is shocked by the disproportionate nature of imposition of punishment, vis-a-vis, misconduct alleged and proved. There should certainly be some co-relation between the misconduct and the punishment imposed by the employer. But, in all cases, the Court will not exercise jurisdiction of replacing the employer and impose order different than what has been done by the employer after conducting proper disciplinary proceedings. In the present case, we feel that the court should not have exercised its jurisdiction in changing the order of punishment. Modification of the punishment by the learned Single Judge, as it appears after taking into consideration that the workman is only a Grade IV employee and is facing the order of dismissal right from 1984 and thereafter he had to undergo court proceedings. We find the misconduct committed by the workman respondent can be said to have been adequately punished, if we refuse to grant him back wages with a direction that he is to join duties on the transferred post at Dellai Parbat within a period of 1 month from today. It shall be the responsibility of the appellant employer to intimate the workman of the order passed by this Court within 7(seven) days from today.

Appeal stands disposed of.