
(2016) 03 RAJ CK 0050

In the Rajasthan High Court

Case No : Civil Writ Petition No. 13273 of 2012.

Chief Manager, RSRTC Chittorgarh and another

APPELLANT

Vs

Ratan Giri and another

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 11-A

Citation : (2016) 2 CLR 1071 : (2016) 149 FLR 898 : (2016) LabLR 1105 :
(2016) LabLR 896 : (2016) 4 LLN 535

Hon'ble Judges : Jaishree Thakur, J.

Bench : Single Bench

Advocate : Harish Purohit, Advocate, for the Appellant; Sanjay Nahar, Ajay Vyas and H.S. Sidhu, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Jaishree Thakur, J. - This order proposes to dispose of these three writ petition by a common order since the law point involved is similar.

2. For the sake of convenience, the facts have been taken out of S.B. Civil Writ Petition No.13272/2012, Chief Manager, RSRTC Chittorgarh and Anr. v. Radheshyam Chhipa and Anr.

3. The respondent-workman was appointed as Conductor with the petitioner Rajasthan State Roadways Transport Corporation and on 13.01.1997, it was found that he had allowed 9 passengers to travel without any ticket. The respondent-workman was served by a charge-sheet on 25.01.1997 for the above referred delinquency. On completion of inquiry, the respondent-workman was issued a show-cause notice along with a copy of the inquiry report. Thereafter, on 15.01.1998, the petitioner was afforded a personal hearing and was imposed punishment of withholding three annual grade increments with cumulative effect. The respondent-workman raised an industrial dispute and the appropriate Government referred the dispute to the Industrial Tribunal, Bikaner for

adjudication. By order dated 29.08.2011, the Tribunal held the inquiry conducted by the petitioner as unfair and set aside the order dated 15.01.1998 by which the petitioner had imposed a punishment of withholding three annual grade increments.

4. Aggrieved against the award dated 29.08.2011, the present writ petition has been filed inter alia contending that under Section 11A of the Act of 1947, Industrial Tribunal can interfere only when the dispute is pertaining to the discharge or dismissal of a workman and the Industrial Tribunal does not have jurisdiction to interfere in matters pertaining to imposition of penalty and ought not to have interfered in the punishment awarded.

5. Per contra, the counsel appearing on behalf of the respondents have vehemently argued that no ground is made out to interfere in the well reasoned award that has been passed by the Tribunal and the writ petitions deserve to be dismissed out rightly.

6. I have heard the learned counsel for the parties and have gone through the record of the case.

7. The respondent-workman was served with the charge-sheet on account of the fact that he had not issued 9 tickets and allowed passengers to travel ticket-less resulting in loss to the petitioner Corporation. A full-fledged domestic inquiry was held and charges against the workman were proved. It is well settled principle of law that under Section 11A of the Act of 1947, the power of the labour court has to be exercised judicially and has to be exercised only if the punishment awarded to the respondent was in any way shockingly disproportionate to the nature of the charge found proved against him. Section 11A of the Industrial Disputes Act reads as under:-

"11A, Powers of Labour Courts, Tribunals, National Tribunals to give appropriate relief in case of discharge or dismissal of workman.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record

and shall not take any fresh evidence in relation to the matter."

8. The Apex Court, in the matter of Regional Manager, Rajasthan State Road Transport Corporation v. Sohan Lal [(2004) 8 SCC 218], has held as under:-

"We notice from the finding of the Industrial Tribunal that the respondent workman had indulged in misconduct which has not only led to monetary loss to the Corporation but the Corporation has also lost confidence in the said workman. Therefore, to continue such an employee in employment of the Corporation by virtue of a judicial order, in our opinion, is an act of misplaced sympathy which can find no foundation in law or in equity. The finding that the workman has committed the misconduct in question of not issuing tickets to passengers is a finding of fact arrived at by the Tribunal after taking into consideration the evidence recorded therein. This finding was affirmed by the learned Single Judge and the High Court has not set aside the finding. Therefore, the question of moulding the relief on the facts of this case did not arise at all. The offer of the respondent to forgo the back wages in lieu of his being reinstated is not an order to be taken into consideration by the Court unless and until the finding of the Tribunal on misconduct was set aside and having perused the records including the order of the Tribunal, we are satisfied that this is not one of those cases in which there was room for setting aside such a finding."

9. Similarly, the Apex Court in the case of U.P. State Road Transport Corporation v. Subhash Chandra Sharma and others [(2000) 2 SCC 324], has held as under:-

"The Labour Court, while upholding the third charge against the respondent nevertheless interfered with the order of the appellant removing the respondent from the service. The charge against the respondent was that he, in drunken state, along with a conductor went to the Assistant Cashier in the cash room of the appellant and demanded money from the Assistant Cashier, when the Assistant Cashier refused, the respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice."

10. In the case in hand, the labour court has appreciated the evidence and come to the conclusion that the punishment of withholding three annual grade increments is not sustainable after coming to a firm conclusion that the inquiry held was unfair. This court is not inclined to interfere in the matter as the said

finding has been arrived at after appreciation of evidence.

11. Moreover, in exercise of writ jurisdiction under Article 227 of the Constitution, interference is an award passed by the Labour Court by the High Court would be called for in case there is patent error in law or the finding is wholly perverse, which is not made out in the present case. In the judgment of the Hon"ble Supreme Court rendered in *Sadhana Lodha v. National Insurance Co. Ltd. and Anr.* (2003) 3 SCC 524, it has been held as under:-

"The supervisory jurisdiction conferred on High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or Tribunal purports to have passed the order or to correct errors of law in the decision."

12. Resultantly, the above noted writ petitions, being devoid of merit, are hereby dismissed.