

(2013) 09 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 1191 and 1315 of 2013

D. Rama Krishnam Raju

APPELLANT

Vs

Dr. Reddy's Laboratories Limited

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 2A(2)

Citation : (2013) 09 AP CK 0017

Hon'ble Judges : Ashutosh Mohunta, J;A. Rajasheker Reddy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—The issue involved in both these Writ Appeals is interconnected and therefore, they are heard together and being disposed of by this common judgment. The appellant herein was working as a Boiler Operator in the respondent-Company. On 03.03.1993 he was charge sheeted on account of the fact that he left the place of work; approached the Security Supervisor; and abused him in filthy language and then threatened him. He was therefore asked to submit his explanation within three days. Dissatisfied with his explanation, departmental enquiry was initiated and thereupon the appellant was found guilty of the charges levelled against him. On considering the gravity of the charges levelled and proved against the workman, the disciplinary authority imposed upon him the punishment of dismissal from service vide order dated 16.8.1993. Aggrieved by the same, he had to invoke the jurisdiction of the Tribunal u/s 2-A(2) of the I.D. Act by way of filing I.D. No. 173 of 1996. The Industrial Tribunal through its Award dated 17.12.1999 on enquiry found that inasmuch as the guilt of charges was proved beyond any doubt, it did not find any ground to interfere with the findings recorded by the disciplinary authority. However the Tribunal held that the punishment of removal from service is too harsh and highly disproportionate to the alleged and proved misconduct and that the workman and the other co-workman were charged with the same misconduct through the

same charge sheet and both were also found guilty of the same misconduct in the common enquiry, but the management had imposed punishment of stoppage of three increments only on such co. employee whereas it imposed the punishment of dismissal from service upon appellant-workman from service for the self same misconduct and had thus shown discrimination in awarding punishment in respect of self same proved misconduct. It therefore modified the punishment of removal from service imposed against the workman and directed reinstatement of the workman in service with continuity of service, by imposing punishment of stoppage of four annual increments, but without any attendant benefits and back wages.

2. Aggrieved by the said decision of the Tribunal, the first respondent-Management filed Writ Petition No. 953 of 2000 challenging the Award dated 7.10.1999 in I.D. No. 173 of 1996 in so far as it relates to directing reinstatement of the workman in service while setting aside the punishment of removal, whereas the workman filed Writ Petition No. 7800 of 2001 challenging the same Award being aggrieved by the direction to withhold of four annual increments and denial of back wages.

3. The learned Single Judge, on scrutiny of the material available on record, allowed the Writ Petition filed by the Management while dismissing the Writ Petition filed by the Workman.

4. Being not satisfied with the same, the workman filed these two writ appeals.

5. In these appeals, the core contention of the learned Counsel for the appellant-workman is that the punishment of removal from service imposed against his client is too harsh and highly disproportionate to the charges levelled against him. He also pointed out that when the co-employee was charge sheeted with the self same misconduct through the same charge sheet and further when they were found guilty of the same misconduct in the common enquiry, the respondent-management has imposed punishment of stoppage of three increments only on the co-employee whereas it dismissed his client from service and thus shown discrimination in awarding punishment. He further pointed out that though the Tribunal rightly considered and came to the conclusion that the punishment of removal imposed against his client was harsh and disproportionate to the charges levelled and proved against him, modified the punishment of dismissal from service to that of stoppage of four annual increments while directing reinstatement of the appellant-workman, however, the learned single judge erroneously upheld the punishment imposed by the disciplinary authority without considering the matter in proper perspective. He therefore prayed that the Writ Appeals may be allowed.

6. On the other hand, the learned Standing Counsel for the first appellant-Management submitted that a punishment of dismissal from service is justified for the alleged and proved misconduct committed by the appellant-workman. He submitted that there are no valid and legitimate grounds which warrant

interference with the common impugned order. He pointed out that while imposing the punishment upon the appellant-workman and his co-employee, no discrimination has been shown as the past conduct of the appellant-workman was not good vis-à-vis his co-employee and therefore the punishments imposed against the workman and his co. employee were based on the intensity of the charges levelled and proved against them as well as consideration of their past conduct. He therefore prayed that the Writ Appeals may be dismissed.

7. Perused the record.

8. It is no doubt true that after introduction of Section 11-A of the ID Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of the misconduct. The said area of discretion has been very well defined by the various judgments of the Apex Court and other High Courts including this Court. The discretion which can be exercised u/s 11-A of the ID Act is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to strike the conscience of the Court ex facie or the existence of any mitigating circumstances which requires the reduction of the sentence or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. Further it is to be seen that in the absence of any such factor existing, the Labour court can not by way of sympathy alone exercise the power u/s 11A of the Act and thereby reduce the punishment. In the case on hand, the Tribunal had rather shown some sympathy clearly ignoring the substance of misconduct proved against the appellant on his part

9. In Orissa Cements Limited (supra) wherein a three judge Bench of the Apex Court noticing the filthy language used by the workman therein inter alia held:

Besides, the words used by the respondent in abusing the labour officer not once but twice without any provocation are absolutely indecent and vulgar and in such case, he could not keep in its employment a person who was capable of such indecent conduct, it would be justified in dismissing him.

10. In the said case, the Apex Court was clearly of the view that a punishment of dismissal was justified for using a filthy and abusive language against a superior officer.

11. Similarly in New Shorrock Mills Vs. Maheshbhai T. Rao, wherein the Apex Court considering the case of workman who abused his superior and threatened him held thus:

The Labour Court in the present case, having come to the conclusion that the finding of the Departmental enquiry was legal and proper, the order of discharge was not by way of victimization and that the respondent workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case

where the Court could come to the conclusion that the punishment awarded was shockingly disproportionate to the employee's conduct and his past record

12. Further in Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., , Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others, etc., wherein the Apex Court had unilaterally taken the view that verbal abuse by an employee of a superior officer warrants the punishment of dismissal from service. Thus using vulgar and abusive language apart from threatening a superior officer is serious misconduct and has been severely dealt with.

13. Thus from the aforesaid decisions of the Apex Court, it is abundantly clear that if an employee abuses the superior officer in filthy and abusive language, which cannot be tolerated by any civilized society, chance of taking lenient view does not arise and such employee deserves to be dealt with iron hands. Only in the cases where there is a possibility of taking a lenient view in the matter depending on the facts and circumstances, then only the question of imposition of lesser punishment would crop up for consideration. However, taking a lenient view varies case to case, misconduct proved against the appellant together with his past conduct. Further it is to be seen in the case on hand, the workman left the place of work unauthorizedly; approached the Superior Officer; abused him in filthy language and then threatened him. In view of these acts of the workman, mere taking a lenient view and thereby imposing a lesser punishment does not arise. In that view of the matter, the learned Single Judge was, in our considered view, right in holding that the Industrial Tribunal ought not to have interfered with the punishment imposed by the Disciplinary Authority as the said punishment was clearly proportionate to the gravity of the misconduct proved against the appellant together with his past conduct.

14. Apropos the next contention that the appellant-workman and co-employee were charged with the same misconduct through the same charge sheet and they were found guilty of the same misconduct in the common enquiry, but the management had imposed lesser punishment on the co-employee while the appellant-workman was imposed punishment of removal and thus the management has shown discrimination in awarding sentences. It is to be seen that although the past conduct of the workman was not a part of the charge sheet, however, as was indicated in the second show cause notice dated 19.7.1993, the appellant-workman did not raise any objection nor did he question the same in any appropriate proceedings. Thereby it follows that no prejudice has been caused to the appellant in raising the past conduct in the said show cause notice. It has come on the material on record that in the said show cause notice, three instances of past misconduct were mentioned apart from the prima facie opinion of the General Manager of the Company that he agreed with the findings in the enquiry report of the enquiry officer that the charges levelled against the workman were duly proved. When the management issued second show cause notice proposing to impose the punishment of dismissal from service, the workman in his reply did not dispute the same and on the other hand, he

expressed his regrets in the matter. It appears that even there is no serious rebuttal from the side of the workman. In that view of the matter, as no prejudice was caused to the workman in taking the past instances, the Management had not only taken the past instances but also the subject misconduct was manifestly taken into account to arrive at a decision for imposing punishment as stated supra. Whereas in the case of the co-employee, there was no past instance/s of any misconduct and therefore the case of the co-employee cannot be treated equally with the case of the appellant-workman. Further it is to be seen that in imposing the sentences to the appellant-workman and his co-employee, there is no iota of evidence to say that the disciplinary authority has imposed punishment by way of victimisation, but on the other hand, it was done so on the basis of the proved misconduct together with past misconduct. As such the contention of the learned counsel for the appellant that the Disciplinary Authority has shown discrimination in awarding sentences cannot be countenanced in any view of the matter.

15. Before parting with the case, it is just and necessary to have a view on the decision of the Apex Court in *Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others*, wherein it was observed relying on its earlier decisions that how discipline at the workplaces/industrial undertakings received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity and on the contrary, such misconduct needs to be addressed seriously.

16. In the light of the aforementioned discussion, the punishment of dismissal from service, is liable to be upheld. That being so, there is no need for us to go into the merits or otherwise of the controversy in Writ Appeal No. 1315 of 2013 in detail, which was filed questioning the Award of the Tribunal in imposing the punishment of withholding four annual increments, which was rightly set aside by the learned single Judge under the impugned order.

17. For the foregoing reasons, we do not see any merit in these appeals warranting interference from this Court with the impugned order, which we uphold accordingly. In the result, the Writ Appeals are dismissed. Miscellaneous applications pending consideration if any shall be dismissed in the consequence. There shall be no order as to costs.