

(1990) 12 RAJ CK 0030
In the Rajasthan High Court
Case No : C.W.P. No. 14 of 1984

D.C.M. Ltd. and Another

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 06-12-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1991) 63 FLR 315 : (1994) 3 LLJ 340 : (1991) 1 WLC 343

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.B. Sharma, J.—In this petition, the petitioner besides challenging the award dated 28th September 1983 of the learned Judge, Labour Court, Kota, Rajasthan (for short the Judge) has also challenged the vires of Section 11A of the Industrial Disputes Act, 1947 (for short the I.D. Act). So far as the challenge to the vires of Section 11A of the I.D. Act is concerned, it may be stated that the challenge does not survive because earlier also by the same petitioner. D.C.M. Limited v. Shriram Fertilisers Karmachari Union, Chhawani, Kota had been challenged and the same was held to be valid. A Division Bench of this Court in the case of D.C.M. Ltd. v. Shriram Fertilisers Karmachari Union, Chhawani, Kota and Ors., 1988 (1) R.L.R. P. 984 said that sufficient guidelines are provided u/s 11A of the I.D. Act to exclude arbitrariness and the aforesaid Section 11A is not violative of Article 14 of the Constitution. The challenge, therefore, to the aforesaid award is now confined to the limited extent as to whether there is error apparent on the face of the award of the learned Judge, Labour Court, Kota or not ?

2. Some facts are no longer disputed and they are these :

3. The workman Shri Radha Kishan Sharma who is represented by the respondent No. 2 Shriram Rayons Karmachari Sangh, Kota was an employee in

the Pilot Plant of M/s. Shriram Rayons, a unit of D.C.M. Ltd. Kota. He was employed for more than 12 years and during the year 1979 he was posted as supervisor in the said unit. He was absent from duty on 19th, 20th, 21st & 26th January 1979, 9th, 12th, 28th February, 1979, 2nd, 5th, 8th, 15th, 16th, 17th, 18th, 19th, 23rd, 30th and 31st March, 1979 and on 1st, 2nd, 3rd, April, 1979. There is no dispute between the parties that in accordance with the relevant Standing Orders to be absent without leave or overstaying after extension of leave is a misconduct. A charge-sheet dated 7th May, 1979 was given to Radha Kishan Sharma wherein it was clearly stated that without any permission or without getting his leave sanctioned, he remained absent as a result of which the normal functioning of the plant is affected. Besides giving the aforesaid dates on which the workman was absent without sanctioning the leave, it was also stated in the charge-sheet that on earlier occasions also he was absent without leave and charge-sheets were given to him. The first of the charge-sheet was given to him for absence for a period of 7 days from May, 1972 to October, 1973. After enquiry the charge was held proved and the punishment of suspension for a period of three days was inflicted upon him under order dated 21st February, 1974, The second charge was for the absence of 3 days during the period August; 1974 and October, 1974 and proceeded on leave without sanction. The workman accepted the charge and a penalty of suspension for two days was inflicted on him on 27.2.1974. The last of the aforesaid three charges was for the absence of 6 days in the month of November, 1977 and an enquiry was held against the workman which was held proved and the workman Radha Kishan Sharma was given a penalty of suspension for six days. It was also stated in the charge-sheet that despite the aforesaid three punishments on earlier occasions, the workman did not improve himself and he remained absent during the dates of which reference has already been made earlier. The workman filed reply to the aforesaid charges and the enquiry officer under a detailed report held that his absence without sanction of leave has been proved on all the dates of January, February, March and April 1979. The competent authority inflicted a penalty of removal from service on the petitioner.

4. The workman Radha Kishan Sharma raised an industrial dispute through the Sangh (respondent No. 2), the conciliation proceedings failed and the State Government made a reference of the dispute u/s 10 of the I.D. Act to the Judge, Labour Court, Kota. It appears that some matter was pending before the Tribunal or the Judge, Labour Court and, therefore, the management took a decision to file an application for approval u/s 33 of the I.D. Act. Later on both the parties agreed to make a reference to the Judge, Labour Court and the reference was made u/s 10 of the I.D. Act to the Judge, Labour Court.

5. The learned Judge examined the question as to whether a domestic enquiry for the alleged misconduct of the workman was in accordance with the Standing Orders and was fair or not and came to the conclusion that it was not fair and gave an opportunity to the employer to prove the misconduct. Both the parties led their evidence, the management was to prove the charges of misconduct and

thereafter the workman to rebut it. The learned Judge, Labour Court under its award dated 27th September, 1983 held that the absence of the workman for three days i.e. on 19th, 20th and 21st January, 1979 was for sufficient cause, though initially he had proceeded on leave without sanction. The learned Judge also came to the conclusion that 23rd March, 1979 was a holiday and therefore, the workman cannot be said to be absent on that day. For 30th March, 1979 to 3rd April, 1979, the learned Judge held that the workman remained absent as a result of having fallen ill and it was sufficient cause but so far as absence of 26th January, 1979, 9th, 14th and 20th February, 1979 and 2nd, 5th & 8th March, 1979 and 15th to 19th March, 1979 is concerned the workman remained absent without leave and he could not furnish any good or sufficient cause for his absence. The Judge, Labour Court, therefore, held that the charges are proved and instead of approving the action of the management imposing a penalty of removal from service for the alleged misconduct, the learned Judge, ordered that a punishment of stoppage of two annual grade increments without cumulative effect shall meet the ends of justice. He also ordered that two annual grade increments shall be withheld after reinstatement of the workman and so far as back wages are concerned, the learned Judge said that he would not be entitled for any back wages.

6. The learned counsel for the respondent workman tried to challenge the finding arrived at by the learned Judge, but he cannot be as a respondent allowed to challenge the finding and that apart the findings arrived at by the learned Judge cannot be said to be perverse. Therefore, the finding that the workman Radha Kishan Sharma had remained absent without sanction of leave for the aforesaid periods has to be taken as correct.

7. Taking the finding of misconduct as correct, the question is as to whether the learned Judge could in exercise of his powers substitute the punishment of removal from service to one of stoppage of two annual grade increments without cumulative effect and could order reinstatement without back wages ? Even before Section 11A was brought on the statute book, by insertion by Act No. 45 in Section 3 w.e.f. 15th December, 1971, the courts were taking a view that power and jurisdiction is vested in Judge, Labour Court or the Tribunal to substitute or alter the punishment inflicted on a delinquent workman by the employer. The Supreme Court in the case of (2) The East India Hotels Vs. Their Workmen and Others, examined the question in respect of the powers of the Industrial Tribunal to interfere in the decision of the management in the matter of punishment. The Court said "Once misconduct is proved, either in the enquiry conducted by the employer or by the evidence placed before the Tribunal for the first time, the punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is harsh and oppressive. In my opinion even before Section 11A of the I.D. Act the Tribunal could be said to have had the powers to examine as to whether the punishment inflicted by the employer is just or not. The present is the case when Section 11A had been brought on the statute book in the year 1971 and the misconduct is alleged to have taken place

in the year 1979. A look at Section 11A of the I.D. Act will show that only if in case of adjudication proceedings the Labour Court 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 workman on such terms and conditions, if any, as it think 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. Therefore, only if the Labour Court comes to the conclusion that the removal was not justified, it could have had a jurisdiction to interfere so far as punishment is concerned. Like all discretions, discretion and jurisdiction u/s 11A of the I.D. Act has to be exercised reasonably and properly and cannot be exercised arbitrarily. In a case of present nature besides the absence without sanction of leave or without permission, during the months of January, February, March and April 1979, the workman had even remained absent on three occasions and had been punished thrice and on each occasion a punishment of suspension was inflicted on him for few days, he appears to be a habitual absentee and appears to have developed a habit to proceed on leave without sanction of overstaying on leave without sanction of leave or even without sending his application generally and ordinarily the Court should not have interfered. In all industries, workmen are employed in accordance with the need of the establishment and if a workman remains absent without sanction of leave or even without information, the work of the industry or at least machine or unit on which the workman is employed is likely to suffer and the charge-sheet which was served on the petitioner will show that it is clearly mentioned in it that the petitioner was absenting without sanction of leave as a result of which there was obstruction in the efficient functioning of the industry. There may be cases where there is a single act of absence without sanction of leave or after proceeding on leave over-staying without extension of leave and in such a case a lenient view may be called for, but in case where a workman is a chronic defaulter, a chronic absentee and in a habit of absenting himself without sanction of leave overstaying without extension of leave, in my opinion, it cannot be said that u/s 11A of I.D. Act it will be a sound, proper and reasonable exercise of discretion or jurisdiction for interference in the punishment of removal from service of a workman. To me it appears that learned Judge, Labour Court has not even taken into consideration as to whether the workman having been punished thrice on the identical charges and on one occasion he had remained absent as many as 46 days whether he deserved any leniency. Perhaps if he would have taken earlier conduct of the petitioner into consideration which was also subject to the charge-sheet the learned Judge, might have come to a different conclusion and in my opinion though the punishment inflicted by the learned Judge, Labour Court is not appropriate to the nature of misconduct found proved against the workman but it is not in every case where this Court interferes under Article 226 of the Constitution. In the instant case it appears that this Court had vacated the stay order granted earlier and under its order dated 21st March, 1986 the Court vacated the earlier stay order, rejecting the stay application and directed that the workman Radha Kishan Sharma shall be reinstated within one month and shall

be paid back wages from the date of the award to the date of reinstatement within three months. There is no dispute that the workman was reinstated and is continuing since 21 st March, 1986 or immediately thereafter. There is no material that thereafter he has again remained absent and it will not be proper to deprive the workman of his service and, therefore, taking into consideration that the stay order was not given and he was reinstated and is continuing in service, I am of the opinion that the discretion was though not properly exercised by the learned Judge u/s 11A of the I.D. Act, I will not like to interfere in the award of the learned Judge, Labour Court. .

8. I have said earlier about the powers of the Industrial Tribunal and so in future the Labour Court may take this into consideration, but for the reasons as aforesaid, still I will not like to interfere in the award.

9. Consequently, I would not like to interfere in the award, the writ petition is hereby dismissed with no orders as to costs.