

(2009) 02 DEL CK 0266

In the Delhi High Court

Case No : Writ Petition (C) No. 15765 of 2006

Delhi Transport Corporation

APPELLANT

Vs

Chandi Ram

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2009) 02 DEL CK 0266

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : G.S. Chaturvedi, for the Appellant; Nemo, for the Respondent

Judgement

V.K. Shali, J.—This is a writ petition filed by the petitioner/DTC against the impugned award dated 10th April, 2006 passed by Ms. Nisha Saxena, Presiding Officer, Labour Court-XXI, Karkardooma Courts, Delhi in ID No. 335/06/96 in the case titled Chandi Ram v. Delhi Transport Corporation by virtue of which the learned Labour Court has held that the facts of the case did not warrant the extreme punishment of dismissal and directed the reinstatement of the respondent/workman with 50% of the back wages, though no punishment in lieu of the dismissal was given.

2. That briefly stated, the facts of the case are that the respondent/workman was employed as a driver with the petitioner/DTC. The respondent/workman was charge sheeted on 9th June, 1993 because of his allegedly having interfered in the challan of the Conductor and for pleading the case of the Conductor and against the checking staff. It is also alleged that the respondent/workman asked the Conductor not to sign his statement recorded by the checking staff. The respondent/workman was also alleged to have assaulted the checking staff.

3. A domestic enquiry was conducted. The disciplinary authority after the enquiry came to the conclusion that the respondent/workman had misconducted and accordingly he was directed to be removed from service by the General Manager.

4. The respondent/workman challenged his removal before the appropriate Government which accordingly made a reference in the following terms of the learned Labour Court:

Whether the removal of Sh. Chandi Ram from service by the Management is illegal and/or unjustified, and if so, what relief he is entitled and what directions are necessary in respect?

5. The parties have adduced their respective evidence and thereafter the learned Labour Court came to a finding that although there was no infirmity in the conduct of the enquiry, however, the punishment which was imposed on the petitioner was disproportionately heavy and excessively harsh and was not proportionate with the gravity of the offence charged. While arriving at such a finding, the learned Labour Court noted that in cases so far as the allegations of bribery, misappropriation of public funds, theft of public property etc. are concerned, they constitute a class in themselves and in such cases there is no room for showing leniency or compensation as that would be detrimental to the public interest and in such cases, accordingly, if the punishment of dismissal or removal is imposed, that would be justified.

6. But in the instant case, it was opined by the learned Labour Court that as there was no allegation of financial irregularity and the respondent/workman had rendered 13 years of service without any blameworthy conduct of a similar nature during this period, therefore, the charges proved against the delinquent do not warrant imposition of extreme penalty of dismissal or removal from service. It was also observed by the learned Labour Court that the past record of the respondent/workman showed that he was guilty of minor misconduct in the past also, and therefore, the past conduct was also of such a nature that it warranted only imposition of lesser punishment in the present case. Accordingly, the learned Labour Court set aside the punishment of removal and directed the reinstatement of the petitioner with 50% of the back wages.

7. So far as the question of payment of the back wages is concerned, the learned Labour Court noted two Supreme Court Judgments in the case titled Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, and Chief Conservator of Forest and Anr. v. Rahmat Ullah : 2003 (10) SCC 92 and observed that where there is no evidence brought on record by the petitioner/management to show that the respondent/workman was gainfully employed elsewhere during the long interregnum period of his dismissal to the date of the decision by the learned Labour Court, he was entitled to the back wages.

8. I have heard the learned Counsel for the parties. The learned counsel for the petitioner/management has essentially challenged the impugned award dated 10th April, 2006 passed by the learned Labour Court on the ground that it has exceeded his jurisdiction by not only setting aside the punishment which was imposed by the petitioner/management but has also fallen into an error by not referring the matter back to the disciplinary authority for consideration of

imposition of punishment afresh in the light of the observation passed by the Court.

9. It was also contended by the learned Counsel for the petitioner that assuming though not admitting the learned Labour Court was well within its right to set aside the punishment on the ground of being excessively harsh, the learned Labour Court ought to have imposed some punishment in lieu thereof which has not been done in the instant case. On the contrary, the punishment of the removal has been simply set aside directing the reinstatement of the respondent/workman with 50% back wages for no rhyme or reasons.

10. As against this, the respondent/workman has supported the order passed by the learned Labour Court by contending that the learned Labour Court was well within its jurisdiction and has rightly set aside the order of removal on account of the fact that the punishment which was imposed on the petitioner was admittedly excessively harsh as petitioner has rendered 13 years of service and in these years of service there was no such incident where he would have been alleged to have misbehaved with the checking staff except once. It was urged by the learned Counsel that while imposing the punishment on the delinquent, the disciplinary authority must also keep in mind the number of years of service which the delinquent employee has rendered with the organization so is not to throw him out on the slightest provocation which will result in deprivation of his benefits which may accrued to him on completion of certain minimum of years of service.

11. I have carefully considered the submissions made by the learned counsel for the parties and perused the record. The question of jurisdiction of the Labour Court u/s 11A of the Industrial Disputes Act, 1947 is not in dispute. The observations passed by the learned Labour Court to the effect that in cases of misconduct where there are allegations of bribery, misappropriation of public funds, theft of public property etc., they are a class in themselves where there is no room for showing leniency to the delinquent employee, irrespective of the quantum of amount which is involved, is correct. There is a loss of confidence in the employee by the management, and therefore, the cessation of relationship of master and servant should be permitted to come into existence in case the management decides to bring it so. But it is totally wrong on the part of the learned Labour Court to assume that it is only the cases where there is misappropriation of public funds, defalcation of accounts, theft of public property which warrant the imposition of extreme penalty of dismissal/removal by the management. There is no straight jacket formula which can be evolved by the Courts where only these punishments ought to be imposed. In a given case, an act of insubordination by the delinquent like use the filthiest possible language against his superiors, acts of commission and omission or physical assault on superior officials or even fellow colleagues which undermine the chain of command or has the potential of spoiling the overall discipline in the organization, are also cases which may warrant the imposition of extreme

penalty of dismissal/removal or compulsory retirement in the wisdom of the management. There are cases where the proved misconduct of the delinquent had the charges other than defalcation of accounts or theft of public property, yet the delinquent had been visited with the extreme penalty of dismissal or removal. To have an illustration, in *Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc.*, the dismissal of the delinquent was upheld by the Hon'ble Supreme Court, where the proved allegations against the delinquent were only use of filthiest possible language against his superior officers.

12. Apart from this, the Apex Court has repeatedly observed that the imposition of punishment on the delinquent is primarily job of the disciplinary authority and the tribunal or the Courts should not tinker with the same unless and until the same is grossly disproportionately to the proved misconduct or excessively harsh. Even in cases where the High Court finds it to be so (and not the tribunal), the general observations of the Apex Court is that the matter should be remanded back to the disciplinary authority so as to enable it to consider the imposition of punishment afresh in the light of what the High Court has observed. Reliance in this regard can be placed on *Union of India v. B.C. Chaturvedi* (1995) 6 SCC 497 wherein it was observed as under:

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

13. Coming back to the facts of the present case the learned Labour Court has first of all committed a grave error by observing that the misconduct of the respondent/workman is not a misconduct which was so serious as to warrant the imposition of punishment of dismissal from service on him. The conduct of the appellant of which he was charged was not only acts of commission and omission against the checking staff but also the incitement of the Conductor not to sign papers as well as the physical assault on the checking staff. The only inference which a reasonable person would draw under the aforesaid circumstances would be that the Conductor did not want the checking staff to check the distribution of tickets and collection of money perhaps the Conductor must have been indulging in some kind of malpractices. Even if this is not inferred the very fact he physically assaulted the checking staff and incited the Conductor not to sign the papers of checking staff, create a ruckus only had a potential of marring the

discipline in the organization. Further, this was not an isolated instance and there have been 13 instances in the past also where the delinquent respondent/workman not only cautioned, warned or censured but also visited with the monetary penalty as well as the stoppage of one increment. One of these instances is also pertaining to quarrelling with the checking staff and misbehavior. This past conduct of having almost 13 instances in a span of 13 years or so of service clearly show the proclivity of the respondent/workman to be unnecessarily aggressive, obdurate and not submitting himself to the discipline of the organization. Such conduct of the driver could not be countenanced. In the light of these facts and circumstances and the factum of the present incident, it could, by no stretch of imagination, be said that the conduct of the respondent/workman did not warrant the imposition of punishment of removal. The learned Labour Court has grossly erred and exceeded its jurisdiction in holding it to be so and setting aside the punishment of dismissal.

14. Another illegality and impropriety which the learned Labour Court has committed is that the punishment which was imposed on the respondent/workman was set aside on the ground of being excessively harsh and disproportionate; the learned Labour Court ought to have remanded the matter back to the disciplinary authority for imposition of punishment afresh on the delinquent, but the learned Labour Court has neither remanded the matter back to the disciplinary authority nor it chose to impose any lesser punishment itself, which it deemed fit, under the facts and circumstances of the case and commensurate with the proved misconduct on the respondent/workman. On the contrary, the respondent/workman has been directed to be reinstated simply with 50% of the back wages after setting aside the punishment which order is not sustainable in the eyes of law.

15. For the reasons mentioned above, I am of the considered opinion that the learned Labour Court has exceeded its jurisdiction and has passed the award dated 10th April, 2006 in ID No. 335/06/96 which is not sustainable in the eyes of law and accordingly the same is set aside and the punishment of removal imposed by the petitioner is restored on the respondent/workman.

No order as to costs.