

(1999) 03 SC CK 0103

In the Supreme Court Of India

Case No : Civil Appeal No. 1756 Of 1999

Depot Manager, A.P.S.R.T.C.

APPELLANT

Vs

P. Basha and Another

RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Citation : (2000) 85 FLR 48 : (2000) 1 LLJ 791 : (1999) 9 SCC 190 : (1999) SCC(L&S) 950

Hon'ble Judges : S. P. Bharucha, J;D. P. Mohapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. The order under challenge was passed on a writ petition filed by the respondent workman. The writ petition was filed in the following circumstances :

The workman was dismissed from the service of the appellant. The validity of the dismissal was in issue before the Labour Court. The Labour Court initially decided in favour of the workman. The order of the Labour Court was challenged in a writ petition (W.P. No. 7360 of 1987) before the High Court. The High Court then remitted the matter to the Labour Court directing it to frame an issue as to whether the domestic enquiry against the workman had been properly conducted and if the finding was against the employer Corporation, then the Corporation was at liberty to adduce evidence, if it chose, whereafter an award could be made. Pending the disposal of the writ petition, however, the Corporation was directed to implement the award and the reinstatement of the workman was recorded.

3. On remand, the Labour Court held that the Corporation was justified in removing the workman from service for proved misconduct under the various charges leveled against him and proved by the Corporation. This order of the Labour Court was the subject-matter of the challenge in the writ petition (No.

15888 of 1990) upon which the order under challenge was passed. The High Court was of the opinion that no interference with the award under challenge before it was called for because it gave cogent and convincing reasons. However, the High Court was of the opinion that the punishment that was imposed upon the workman was disproportionate to the misconduct. It noted also that the workman had been taken back on duty and was continuing in service by reason of interim orders of the Court. It, therefore, modified the award under challenge as regards the punishment imposed as follows :

The petitioner shall be reinstated into service, with continuity of service and full back wages. The writ petition is accordingly allowed. No costs.

4. The Corporation is in appeal. Its grievance is that the punishment of dismissal which had been imposed upon the workman was not disproportionate to the misconduct that had been proved against him. It was also submitted that, whereas the High Court had purported to modify the punishment, it had in fact imposed no punishment whatsoever.

5. Learned counsel for the workman also had a grievance against the order under challenge. His grievance was that the High Court had earlier remanded the matter, specifically directing the Labour Court to frame and decide the issue as to the validity of the domestic enquiry held against workman but the Labour Court had not framed or addressed that issue and the High Court had failed to notice it.

6. We find merit in the grievances of either side.

7. There, undoubtedly, was a direction to the Labour Court to decide whether the domestic enquiry against the workman had been proper. The Labour Court did not render a finding therein and, in the order under challenge, the High Court failed to notice that the Labour Court had not, in fact, complied with its earlier direction. We will assume for the purposes of this appeal that the punishment imposed upon the workman was disproportionate to the misconduct, although the High Court has given no reason at all for so holding. Even so, it was necessary for the High Court to discuss what, in its view, was an appropriate punishment. It, certainly, was not open to the High Court, while purporting to modify the punishment, to impose no punishment whatsoever.

8. In these circumstances, we must set aside the order under challenge. We think that it is appropriate that the writ petition (No. 15888 of 1990) should be restored to the file of the High Court to be heard and disposed of afresh. This shall be done by judges other than the two learned Judges who passed the order under challenge. In deciding the writ petition, the order under challenge shall not be taken into account, but this order shall be taken into account. The writ petition shall be decided expeditiously.

9. We make it clear that we express no view on the merits of the dispute between the Corporation and the workman.

10. Order on the appeal accordingly. No order as to costs.