

(2001) 09 RAJ CK 0059
In the Rajasthan High Court
Case No : C.W.P. No. 5048 of 1992

Doongarpur Kendriya Sahakari Bank Ltd.	APPELLANT
Vs	
Dhirendra Kumar	RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2002) 92 FLR 815 : (2002) 4 LLJ 75 : (2002) WLC 61 : (2002) 2 WLN 16

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Judgement

N.N. Mathur, J.—I have heard Mr. Dinesh Maheshwari learned counsel for the petitioner and Mr. Mridul Jain learned counsel for the respondent.

2. The respondent Dhirendra Kumar was employed as a Clerk-cum-Cashier at Bohrawadi, Sagwara Branch of the petitioner Bank. An inquiry was instituted against him alongwith other employees on the charge of cheating, embezzlement and misfeasance. The Enquiry Officer found various charges of cheating and embezzlement proved against him. He was also found grossly negligent in discharge of his official duties. Thus, a penalty of removal from service was inflicted upon him. The respondent raised an Industrial dispute, which was referred to the Labour Court, Udaipur.

3. The respondent did not challenge the legality, validity and fairness of the domestic enquiry held against him, but he only addressed on the question of punishment. The Judge of Labour Court very generously took the view that respondent be given an opportunity to improve. Thus, by impugned award dated October 10, 1991 set aside the order of removal and directed to reinstate him with the forfeiture of the salary during the period he remained out of service. He further made it clear that the interregnum period be treated as on regular service for the benefits.

4. It is contended by Mr. Dinesh Maheshwari, learned counsel appearing for the petitioner that the learned Judge of the Labour Court was obviously in gross error in directing the reinstatement inspite of the fact that the charges of very serious nature were found proved against the delinquent. He has referred to the decision of the Apex Court in Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, wherein in identical circumstances the Court observed:

"Any sympathy shown in such, cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

The Apex Court set aside the judgment of the High Court and restored the order of dismissal.

5. Recently the Apex Court in Regional Manager, R. S. R. T. C. v. Ghanshyam Sharma (CMI Appeal No. 5104 of 2001) observed as follows:

"Though u/s 11-A the Labour Court has jurisdiction and powers to interfere with the quantum of punishment, however, the discretion has to be used judiciously. When the main duty or function of the Conductor is to issue tickets and collect fare and then deposit the same with the Road Transport Corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal."

6. Thus in view of aforesaid, the view taken by the Judge of the Labour Court is totally misplaced. Accordingly, I allow this writ petition and set aside the award dated October 10, 1991. The order passed by the petitioner Bank inflicting punishment of removal is restored. No order as to costs.