

(1998) 11 RAJ CK 0001
In the Rajasthan High Court
Case No : C.W.P. No. 1268 of 1985

Eicher Goodearth Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 26-11-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1999) 3 LLJ 1578

Hon'ble Judges : Gyan Sudha Misra, J

Bench : Single Bench

Advocate : Raj Birbal and Bhagwati Singh Ratnu, for the Appellant; P.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Gyan Sudha Misra, J.—This writ petition has been filed by the Management of M/s. Eicher Goodearth Ltd. challenging the award of the Labour Court dated May 4, 1985 by which the respondent No. 2-workman Madan Lal had been ordered to be reinstated in service with 50% back wages. The award has essentially been challenged on the ground that although the Labour Court recorded a finding to the effect that the charge of misconduct against the respondent-workman was found to have been proved thus confirming the finding recorded by the domestic enquiry, yet it granted the relief of reinstatement with 50% back wages which is clearly illegal and unjustified in view of the conclusions arrived at by the Labour Court itself.

2. The petitioner's advocate has drawn the attention of this Court to the relevant facts and has stated that the respondent No. 2 worked with the management for a short period of two years and two months ranging from September 26, 1977 to December 10, 1979 and during this short period of service, he consistently committed numerous misconducts. To illustrate this, it has been stated that only few months after the confirmation of the respondent-workman, who had been appointed on September 26, 1977, he committed serious misconduct for which

he was served with two charge-sheets and ultimately was dismissed from service for the charges which were found to have been proved after an enquiry was held against him. The charges according to the petitioner which were levelled against the respondent workman inter alia are that he had not only gone on illegal strike but also stopped other workers from functioning as he had restrained the driver of a truck from unloading the truck and also stopped cars from moving. The relevant portion of the charges in the two charge-sheets have been quoted which alleges serious misbehaviour by the respondent workman which after enquiry were found to have been proved. An Industrial dispute was thereafter raised by the respondent-workman which was referred to the Labour Court. The Labour Court after consideration of the matter recorded a finding that the respondent workman had not only gone on strike but also stopped other employees from working by threatening them. It was pleased to notice in this regard that the respondent-workman stopped one Amar Singh from taking car, snatched the crane from the hands of Vardan Kaushik, threatened them and stopped others from working. He has also used filthy language and instigated others to join the strike. The specific finding of the Labour Court in this regard are as follows:-

"In this case it has been proved that the claimant workman stopped Amar Singh from taking the car, snatched the crane from the hands of Vardan Kaushik, threatened him and stopped others from working. This cannot be called a part of the strike only. The claimant workman went beyond his rights by doing such instigating activities. As such, the act of the claimant workman falls within the definition of misconduct in clear terms. Therefore, I hold that the charge against the claimant workman of instigating the others for strike and stopping others from working is proved".

3. However, the Labour Court, inspite of this categorical finding, was pleased to order for reinstatement of the respondent-workman alongwith 50% back wages. Learned counsel for the petitioner Mr. Raj Birbal has, therefore, assailed the order of the Labour Court and has contended that when the Labour Court itself has recorded a finding holding the charge of misconduct to be proved, there was no legal justification for the Labour Court to pass an order of reinstatement of the workman alongwith 50% back wages. Thus it has been submitted that the award of the Labour Court is clearly contradictory and self-destructive of its own finding. Shri Birbal has further contended that on the one hand the Labour Court upheld the domestic enquiry conducted by the petitioner-management on the two charge-sheets regarding serious charges as well as recorded a finding in the impugned award regarding the respondent-workman doing various acts of misconducts viz. going on illegal and unjustified strike, stopping others to work, threatening and instigating others for abstaining from work which clearly are serious misconducts and inspite of this it held that the respondent-workman is not guilty of serious misconduct. The findings being self-destructive, the Labour Court has committed an error of law and jurisdiction and thus the whole foundation of the impugned award is baseless and unfounded due to which the award is fit to be set aside. According to the petitioner's advocate, the award of

the Labour Court is arbitrary as it has been pleased to set aside the dismissal granting the relief of reinstatement with 50% back wages in a capricious manner. In support of his submission he has relied upon several authorities of the Supreme Court in order to prove his point.

4. The first case relied upon by the learned counsel is India General Navigation and Railway Co. Ltd. and Another Vs. Their Workmen, wherein at paras 19 and 24 it has been held by the Supreme Court that anybody who participates in an illegal and unjustified strike commits a serious misconduct and those who instigate others for abstaining from work, has to be treated separately than those class of persons who are "just dumb driven cattle". The observations of the Supreme Court in this matter are to the following effect:

"There may be reasons for distinguishing the case of those who may have acted as mere "dumb driven cattle", from those who have taken an active part in fomenting the trouble and instigating workmen to join such a strike, or have taken recourse to violence".

It has further been held therein that:-

"to determine the question of punishment, a clear distinction has to be made between those workmen who not only joined in such strike, but also took part in obstructing the loyal workmen from carrying on their work, or took part in violent demonstrations, or acted in defiance of law and order, on the other hand, are those workmen who were more or less silent participators in such a strike. It is not in the interest of the Industry that there should be a wholesale dismissal of all the workmen who merely participated in such a strike. It is certainly not in the interest of the workmen themselves. An Industrial Tribunal, therefore, has to consider the question of punishment keeping in view the over-riding consideration of the full and efficient working of the Industry as a whole. The punishment of dismissal or termination of services has, therefore, to be imposed on such workmen who had not only participated in the illegal strike, but had fomented it, and had been guilty of violence or doing acts detrimental to the maintenance of law and order in the locality where work had to be carried on".

It has been submitted that this proposition has been followed by the Supreme Court subsequently in a series of judgments which are Bata Shoe Company v. Ganguly 1961 I LLJ303) 309 para(iii).

5. Similarly the Constitution Bench of the Supreme Court in Bengal Bhatdee Coal Co. Vs. Ram Prabesh Singh and Others, has been pleased to hold that if a worker during a strike physically obstructed the other willing workers from doing their work, then the same is a serious misconduct and on being proved, punishment of dismissal would be justified which was recorded in the following words :-

"It was during such a strike that the misconduct in question took place and the misconduct was that these thirteen workmen physically obstructed other workmen who were willing to work from doing their work by sitting down

between the tramlines. This was in our opinion serious misconduct on the part of the thirteen workmen and if it is found as it has been found proved, punishment of dismissal would be perfectly justified. It cannot therefore be said that looking at the nature of the offence that the punishment inflicted in this case was grossly out of proportion or was unconscionable, and the Tribunal was not justified in coming to the conclusion that this was a case of victimisation because the appellant decided to dismiss these workmen and was not prepared to let them off with fine or suspension".

6. Reliance has also been placed on *Caltex (India) Ltd. Vs. Their Workmen*, and *Sri Gopalakrishna Mills Pvt. Ltd. Vs. Labour Court and Another*, and *Sarabhai M. Chemicals (S.M. Chemicals and Electronics) Limited Vs. M.S. Ajmere and Another*, in which is a Division Bench judgment of the Bombay High Court and in all these decisions the tone and tenor of the view taken is that it will seriously undermine the discipline in the establishment and the management cannot exercise its disciplinary control over its workforce in an effective manner if the employee is alleged of a misconduct in trying to enforce his will over the other employees not willing to join the strike.

7. The petitioner has further raised grievance that the refusal of the workman to receive charge-sheet also should have been treated as misconduct" and reliance has again been placed on *Tractors (India) Ltd. v. Mohd. Sayyed* 1959 II LLJ 224 (SC) where refusal to receive a communication from employer was treated as a misconduct. Thus in substance, it has been contended that in view of the serious charges levelled against the respondent and the enquiries having been upheld by the Labour Court by itself recording a finding that he has committed serious misconduct and also considering the fact that the respondent had worked for a limited period, the Labour Court ought to have upheld the order of dismissal.

8. Learned counsel for the respondent-workman Shri P.K. Sharma has, however, endeavoured to counter the submission urged on behalf of the petitioner by contending that there is no ground at all to interfere with the discretion exercised by the Labour Court while setting aside the punishment of dismissal and substituting it with reinstatement by granting only 50% back wages since the powers u/s 11A of the Industrial Disputes Act have been thoroughly examined by the Supreme Court in a number of cases and it has been held that a wide discretion has been granted to the Labour Court u/s 11A of the Industrial Disputes Act to consider whether the punishment imposed on a workman is proportionate to the gravity of the charges or not because it is settled law, according to the learned counsel, that extreme penalty of dismissal cannot be imposed in all types of cases and this should be awarded in most serious cases and should be resorted to rarely. When this discretion is exercised by the Labour Court, the High Court should not interfere with the discretion of the Labour Court. The respondent's advocate has also relied on a catena of cases in this regard which are *Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another*, *Ramakant Mishra v. State of Uttar Pradesh* 1983 (1) LLN 1, *Baldev*

Singh v. Labour Court, Patiala 1987 (1) LLN 1, Gujarat State Road Transport Corporation v. Dhanji Sukhji 1995 (2) LLN 231, Gujarat High Court (DB), Rajasthan State Road Transport Corporation v. Gopal Singh and Anr. 1999 III LLJ (Suppl) 810) Raj FB). Relying on these authorities it has been prayed that there is no ground at all to interfere with the discretion exercised by the Labour Court and the writ petition of the company should be dismissed.

9. The question, therefore, which falls for consideration in the case at hand is not merely of a worker against whom misconduct has been alleged on account of his own lapse but the misconduct alleged to have been proved is whether he acted as a kingpin in order to enforce a strike by exerting his will on others who were not willing to participate. It is no doubt true that the right to go on strike as a workman has been treated as an acknowledged method of demonstrating his protest but the fact remains that the element of willingness on the part of other workers to join the strike is predominant and one workman cannot be said to be having a superior right of pressuring and forcing other workmen to abstain from work as it is an individual right of each and every workman to decide for himself whether he wishes to join the strike or not. It is quite obvious that it is in this context that the Constitution Bench of the Supreme Court considered over the matter and distinguished the cases of those workmen who were described as "dumb driven cattle" from those who were the kingpin of the strike. The decision of the Supreme Court in *Indian General Navigation and Railway Company Ltd. v. Their Workmen*, (supra) therefore, is clearly a case where the learned Judges have considered over the matter and had been pleased to lay down that an Industrial Tribunal has to consider as to whether the punishment of dismissal or termination of service has to be imposed on such workman who had not only participated in the illegal strike but had been instrumental in initiating it and had been guilty of violence for doing acts detrimental to the maintenance of law and order in the locality where the work had to be carried on.

10. It is further undoubtedly true that while there can be no dispute about the legal proposition urged by the learned counsel for the respondents that the Labour Court had full discretion and; jurisdiction in view of Section 11A of the Industrial Disputes Act to interfere to reduce the punishment imposed on the workman, yet the authorities relied upon in support of the case of the petitioner clearly have dealt with the situation in what manner the discretion has to be exercised by the Industrial Tribunal and the Labour Courts and while doing so, situations in the past have arisen before the Apex Court as discussed hereinbefore wherein it has been considered and laid down that if a workman indulges in physically obstructing the work, thus imposing his will on other workmen trying them to restrain from work, the punishment of dismissal is not fit to be interfered with. In the instant case, the charges alleged to have been levelled by the management is to the same effect and a finding to that effect has been recorded by the Labour Court and yet the Labour Court failed to take notice that the petitioner was not only one of the strikers who could be treated in the category of "dumb driven cattle" but was instrumental in ensuring that the strike

should be successful and this kind of misconduct distinguishes his case from those workmen who silently abstained from work. The cases relied upon in support of the case of the respondent-workman is clearly distinguishable as it is clear that in the case of Ramakant Mishra (*supra*) the charge against the workman was not grave but it was only to the extent of using strong words against his superiors and further the workman in the said case had worked for a long period of 14 years and considering the charge of using strong words were not treated a sufficient ground warranting dismissal of a workman who had served for more than 14 years. It was in this circumstance that the Supreme Court had upheld the relief of reinstatement which is not the position in the instant case.

11. The next case relied upon by the respondents' advocate viz. Baldev Singh v. Presiding Officer, Labour Court, (*supra*), the charge on the workman was very light and limited i.e., of taking the bus from a different route and as such causing a loss of Rs. 22 only to the Corporation and in that background the Labour Court held that considering the nature of charges the relief of reinstatement would be proper though without back wages. This order of the Labour Court was upheld by the Supreme Court considering the nature of the charges and hence it was not the case where the charges could be treated as of a grave nature or that the charge was committed in the limited period of service.

12. This judgment was further relied in Gujarat State Road Transport (*supra*) wherein the charge against the workman, who was a conductor, was that in his long service of 11 years he was once caught with non-issuance of tickets and punching for total 6 passengers and to this limited charge, the Labour Court granted the relief of reinstatement which was upheld upto the Division Bench of the High Court.

13. There is yet another dichotomy in the impugned award, for if the Labour Court itself has been pleased to hold that the charge of misconduct has been proved, then the Labour Court ought to have assigned sufficient reasons as to why extreme penalty of dismissal has been held to be disproportionate to the charge as it has failed to record as to whether this was first misconduct committed by the respondent workman or that his behaviour otherwise was upto the mark. The Labour Court has also not taken into consideration as to whether the respondent-workman was gainfully employed in service during all these years or not so as to award him 50% of the back wages.

14. It may further be recorded that the impugned award of the Labour Court had been stayed by an order of this Court way back in the year 1985 although thereafter it was modified to the extent that the management was directed to deposit the wages which the workman would be entitled in the event of his success. The situation thus arises that the respondent has been out of job ever since 1979 since the order of dismissal was passed against him on December 10, 1979. That apart, the workman who had worked only for little more than 2 years, cannot be said to be having any justification for reinstatement with 50% back

wages, although the charge of misconduct was held to have been proved even as per the finding of the Labour Court. The cases relied upon by the respondents" advocate wherein reinstatement was granted were cases of those workmen who had put in long years of service and the misconduct committed by them were of minor nature. Hence the ratio of those decisions does not come to the assistance of the respondents.

15. The writ petition under the circumstances deserves to be allowed and hence the award passed by the Labour Court is quashed and set aside. The writ petition thus stands allowed but without any order as to costs.