
(2012) 04 OHC CK 0006
In the Orissa High Court
Case No : O.J.C. No. 7425 of 2000

Essel Mining and Industries Ltd.

APPELLANT

Vs

Pravakar Mahakud and another

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2012) 134 FLR 533 : (2012) 4 LLJ 792 : (2012) LLR 964

Hon'ble Judges : Indrajit Mahanty, J

Bench : Single Bench

Advocate : Durga Prasad Nanda, S.K. Mishra, P.K. Mishra, D.P. Nanda, U.N. Nayak, J.K. Nanda, P.K. Mohapatra and M.K. Pati, for the Appellant; Sanjit Mohanty, S.C. Samantaray, N.C. Sahoo, D. Mohanty, S. Nanda, S. Panda, S. Pattnaik and P.K. Muduli Counsel for the Opp. Party No. 1 and Addl. Standing Counsel (Central) Counsel for the Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

I. Mahanty, J.—In the present writ petition, the petitioner-M/s. Essel Mining & Industries Ltd. (hereinafter termed as "the employer") has sought to challenge the award dated 27.3.2000 passed by the learned Presiding Officer, Industrial Tribunal, Rourkela in Industrial Dispute Case No. 147/97 (C) directing reinstatement of Sri Pravakar Mahakud- Opposite Party No. 1 (hereinafter referred as "the workman"), who had been employed by the petitioner-company as a Driver of a heavy vehicle. It appears that the learned Presiding Officer, Industrial Tribunal came to hold that although the domestic enquiry proceeding leading to imposition of punishment on the workman was fair and proper and all the articles of charge except the charge of dishonesty had been established against the workman who had caused an accident leading to death of a child, while driving the heavy vehicle (Dumper) by allegedly not observing the required safety measures, yet included that the imposition of penalty of termination was unduly harsh and directed reduction of punishment, to reinstatement without back wages.

The employer has sought to challenge the observations of the learned Presiding Officer, Industrial Tribunal in this writ application that the punishment of termination imposed in the disciplinary proceeding was severe, harsh and disproportionate since the accident was the first accident that had occurred in course of the workman's career and the direction directing imposition of lesser punishment i.e. the workman to be reinstated but as a punishment was not entitled to get back wages for the period until reinstatement.

Learned Counsel appearing for the petitioner vehemently urged that the learned Presiding Officer, Industrial Tribunal was not competent to judge whether the punishment imposed on the workman was severe, harsh or disproportionate and further, since the Tribunal came to hold that the domestic enquiry was fair and proper and had also agreed with the conclusion reached in the domestic enquiry vis-à-vis that all the charges against the workman having been proved, no occasion arose for the Tribunal to interfere, purportedly, on the ground of disproportionate punishment. She further alleged that the negligence on the part of the workman was very severe in nature and while driving the heavy duty Dumper, an accident had occurred resulting in the death of a young child and hence, the imposition of punishment of termination from employment ought to have been upheld.

Mr. S.C. Samantaray, learned Counsel for opposite party No. 1-workman, on the other hand, submitted that the evidence recorded in course of the domestic enquiry, as well as before the learned Presiding Officer, Industrial Tribunal, Rourkela would clearly go to show that the charges framed against the workman had clearly not been established. He placed reliance on a judgment of the Hon'ble Supreme Court in the case of Akhilesh Kumar Singh Vs. State of Jharkhand and Others, in support of his contention that in the present case, a domestic enquiry had been initiated against both the opposite party-workmen i.e. the Driver, namely, Pravakar Mahakud as well as his Helper (Sadhu Mahakud) on the selfsame charges of alleged negligence and/or, misconduct. It is asserted that though Sadhu Mahakud was exonerated in the selfsame domestic enquiry, yet the opposite party-workman, the Driver, namely, Pravakar Mahakud had been found to be guilty. In this respect, learned Counsel for the opposite party workman submits that, since the allegation against the Driver as well as the Helper had been the same, the Disciplinary Authority was required to reach a common conclusion and not to discriminate amongst the workmen. Thus, it was submitted that if the charges against the workmen are identical, it was desirable that they be dealt with similarly without any discrimination.

Mr. Samantaray further placed reliance on a judgment of the Hon'ble Supreme Court in the case of Colour-Chem Limited v. A.L. Alaspurkar, 1998 (78) FLR 625 (SC) in order to support his contention that the Tribunal was competent to vary the punishment suitably in a case, where it come to a conclusion that the punishment imposed was "shockingly disproportionate" having regard to the particular misconduct alleged against the workman, as well as by taking into

consideration the workman's past records. He also placed reliance on the judgments of the Hon'ble Supreme Court in the case of Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others, and in the case of B.C. Chaturvedi v. Union of India 1996 (72) FLR 316 (SC), in support of the aforesaid proposition.

2. On a consideration of the submissions advanced by the learned Counsel for the respective parties and on perusing the records of the present case, it appears that the basic facts of the case are that on 29.1.1996, the opposite party-workman (Pravakar Mahakud) and the Helper (Sadhu Mahakud) had taken the Dumper out of the Mines to a nearby village for checking out the tyre pressure. It further appears that when the vehicle reached the tyre work shop, while the opposite party-workman was trying to reverse the Dumper to park it properly for checking of the tyre pressure, at that very moment while the vehicle was being reversed, a young boy suddenly came running across the road and came under the rear wheel of the vehicle and due to such an accident, it lead to his unfortunate death.

Out of such an accident, a domestic enquiry was initiated. In the said enquiry while no witness was examined from the side of the management, no documents were exhibited by the management nor supplied to the delinquent. The Enquiry Officer put some questions to the delinquent and the alleged answers to such questions were purportedly recorded by the Enquiry Officer in English vernacular. From the records of the enquiry it appears that the answers of the delinquent were also recorded in English and the delinquent had put his signature thereon. It was submitted on behalf of the opposite party-workman that while no copy of such statements were ever provided to the workman. On the conclusion of the domestic enquiry the Helper (Sadhu Mahakud) was exonerated but the Driver-Pravakar Mahakud (opposite party-workman herein) was found guilty and imposed with punishment of termination from service.

3. The opposite party-workman raised an Industrial Dispute before the learned Presiding Officer, Industrial Tribunal, Rourkela, before whom the Management had filed its reply. In course of the Industrial dispute, the management examined four witnesses and filed some documents and the opposite party-workman examined himself and another person on his behalf.

On conclusion of the proceeding, referring to the evidence of M.W.1, the Tribunal came to hold that even though a copy of the enquiry proceeding was not given to the opposite party-workman no prejudice was caused since the delinquent did not ask for the same. The Tribunal further held that the Helper (Sadhu Mahakud), who was examined as M.W.2 supported the opposite party-workman by stating that when wheel of any vehicle of the company gets deflated or punctured, it goes to Gurudi Chowk for repairs and no permission was required for such purpose. He further admitted that he was accompanying the Driver in the Dumper to the usual repair shop, but since the owner of that shop denied to give air pressure to the wheel of the Dumper, the opposite party-workman

(Driver) took the Dumper to another shop at Guridi. In course of the proceeding before the Tribunal, this evidence of M.W.2 was not challenged by the management by declaring him hostile. The Tribunal also came to hold that the opposite party-workman vehemently denied either admitting his guilt or giving any statement as recorded under Ext.3. From this, it is clear that the statement of the delinquents had been written in English and the delinquent not being English educated, the opposite party-workman was never been made aware of the contents of the statement, but made to sign in Oriya vernacular below such statement by the Enquiry Officer.

In Paragraph-10 of the impugned award, the Tribunal came to hold that there is no evidence about any past misconduct on the part of the opposite party-workman in driving the vehicle and taking the same into consideration came to conclude that the imposition of punishment of termination of service was found to be disproportionate and hence, imposed a lesser punishment of reinstatement without back wages for the period under dismissal.

4. The aforesaid findings of the Tribunal must be taken into consideration in the light of the judgments of the Hon''ble Supreme Court relied upon by the learned Counsel for the opposite party-workman. In the case at hand, it is clear that both the Driver as well as the Helper were charged with the selfsame offences and while the Driver was imposed with punishment of termination of service, the Helper was exonerated.

5. On perusal of the evidence recorded by the Tribunal in course of the proceeding, except the allegation that the opposite party- workman had sought to reverse the Dumper, at a time when his Helper had gone for lunch. There was apparently no evidence of negligence whatsoever that too the witnesses of the management state that the Driver attempted to reverse the Dumper, without waiting for the Helper to come back from his lunch to assist or guide him in reversing the Dumper. The entirety of evidence would indicate that there was no person behind the Dumper at the time when the opposite party-workman attempted to reverse the vehicle. Suddenly the child who was playing across the street came running across the road resulting in this unfortunate accident which lead to his death.

6. The term "accident" has been defined in various dictionaries in the following manner:

According to Black''s Law Dictionary:

Accident-1. An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated. 2. Equity practice. An unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct.

According to Butterworth''s Judicial Dictionary:

Accident-An unexpected incident.

An effect is said to be accidental when the act by which it is caused is not done with the intention of causing it, and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precautions against it.

According to Chambers Dictionary:

Accident-Anything that happens; an unforeseen or unexpected event; a chance; a mishap; an unessential quality or property; unevenness of surface.

7. This Court is of the considered view that the incident which lead to the unfortunate death of a child was clearly an "accident" and no negligence can be attributed out of such accident. The opposite party-workman was holding a valid license under the M.V. Act and was competent to drive the vehicle in question. There is nothing in the M.V. Act which requires or mandates that the Driver of such motor vehicle cannot reverse or drive such vehicle if his helper or assistant is not available or not present. There is no allegation that the opposite party-workman was under any intoxication or in any manner incapable of driving the vehicle. While reversing such vehicle, the child suddenly came behind and there was no possibility in which such an accident could have been prevented. Therefore, this Court is of the considered view that the Tribunal was fully justified in the facts and circumstances of the present case to conclude that the punishment imposed in the domestic enquiry for termination of service was grossly disproportionate with the nature of the allegation made against him.

8. In this respect, this Court places reliance on the judgments of the Hon'ble Apex Court in the cases of Kailash Nath Gupta (supra), Colour-Chem limited (supra) and Akhilesh Kumar Singh (supra) B.C. Chaturvedi v. Union of India. 1996 (72) FLR 316 (SC) The principles of law which is enunciated in those judgments clearly state that in a case where a competent Court comes to hold that the punishment imposed by an employer is "shockingly disproportionate" with the nature of the allegation made, such Court is competent to vary such punishment and imposed such punishment appropriate to the nature of the damage caused. This Court is of the view that the Tribunal acted in due discharge of its authority and was competent to reduce the punishment of termination to reinstatement without back wages.

9. This Court is of the clear view that u/s 11-A of the I.D. Act, the Industrial Tribunal is vested with the necessary authority to take the aforesaid facts into consideration and to impose a lesser punishment than originally imposed by the employer on conclusion of such disciplinary proceeding. This Court is of the view that the Tribunal had acted within its jurisdiction conferred by the statute and had acted properly in exercise of such authority. In consideration of the above findings, I find no merits in the present writ petition filed by the petitioner-employer. This Court directs the employer to implement the award and extended all the benefits as due to the opposite party- workman within three months from today. With the aforesaid directions as noted hereinabove, the writ application is

dismissed but in the circumstance, no cost.